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## International Criminal Law: A View from the Trenches – The Accidental Jurist

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# **INTERNATIONAL CRIMINAL LAW: A VIEW FROM THE TRENCHES—THE ACCIDENTAL JURIST**

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**SEPTEMBER 12, 2016 12PM-1PM ANHEUSER-BUSCH HALL  
TRIAL COURTROOM 309**

Thank you very much. I am very honored to be here with you today. I think that introduction by Professor Sadat really means one thing: that I'm old. So, I do appreciate the introduction. I want to thank Professor Sadat for inviting me and for the very warm welcome she and her colleagues have given me. And I want to thank her for her contributions and commitment to international criminal justice—very important contributions. The world community will benefit from all that she has done. I also understand that congratulations are in order, that you are celebrating the 150<sup>th</sup> anniversary of the creation of this law school. I'd also like to congratulate the faculty and students here for what is, very evidently, a dynamic law program.

I should make it clear that my comments here today are purely my personal observations, my personal comments, and in no way reflect official positions of the Residual Special Court for Sierra Leone or the Extraordinary Chambers in the Courts of Cambodia. I'm not going to provide you today a formal presentation on the law. I think you get a lot of that information from your professors here. Rather, what I would like to do today is to share my personal reflections on international criminal justice from the perspective of the experiences that Professor Sadat has already remarked on to you. My comments will focus primarily on the two *ad hoc* tribunals—the Yugoslav Tribunal and the Rwanda Tribunal—and the Special Court for Sierra Leone. These are the courts with which I have worked most closely.

Decades after the Nuremburg and Tokyo Trials, the international community, the super powers, once again worked together to create *ad hoc* international criminal tribunals – the Yugoslav and Rwanda tribunals. We know that with the creation of these tribunals, for one shining moment at least, the global community came together to act against barbarity—to

achieve some measure of justice for the tens of thousands, hundreds of thousands of victims of international crimes.

In creating the Yugoslav and Rwanda Tribunals, the UN Security Council used its power under Chapter 7. Why did it do that? Why did it act to create the international tribunals to investigate and try the crimes of genocide, war crimes, and crimes against humanity? Perhaps it acted for self-serving reasons. Perhaps it acted for altruistic reasons. Perhaps it acted because it saw these crimes as the cause of regional instability – as sowing the seeds for future atrocities and future unrest. Perhaps it acted because of the international outcry against the crimes that were being committed – or because of the horrific nature of crimes themselves. Perhaps, it acted in the hope that these tribunals could be used as one means of bringing about a true, lasting peace in these affected societies. Because after all, individuals want accountability for wrongs done to them. Criminal accountability is one part, of one package, of the many packages that are needed to bring societies forward and out of these catastrophic events. But, whatever the motivation, in creating these tribunals, the Security Council, I believe, acted to advance the highest aspirations that we have for justice. And, regardless of its motivations, it also acted to create mechanisms to give victims and survivors and the affected societies access to justice through independent impartial criminal justice systems. Because that is what these international courts are, nothing less and nothing more. And that is how they should be judged, how well they have carried out their judicial mandates.

We have this one shining moment. And we have talked about some of the reasons why, perhaps, the international community did react and create these two tribunals. But why should we as an international community react and create these types of tribunals and courts? What I suggest to you is that as members of the global community we should act to bring access to justice because, at their base, these crimes are violations of fundamental human rights, human rights all of us possess. They are violations of the norms all civilized societies should, and for the most part do, abide by. They are atrocities and violations that result in horrific suffering for countless victims and survivors – countless members of our global community. These international crimes are atrocities beyond the imagination of most of us. We cannot really envision the sustained viciousness of crimes committed on such a massive scale—murders, torture, mutilation, rapes, and other sexual savagery of both men and women, boys and girls—crimes that leave many victims and survivors devoid of hope for the future. Victims and survivors who have lost everything: Their lives, their limbs, their mental and physical integrity, their security, and sense of security, their homes and possessions, their

dignity.

What are the human realities of these international crimes—the realities that are too often lost in the discussion about the legal intricacies of these crimes and debates on the politics of the situations giving rise to these crimes? The realities are what I am going to show you in the next few slides—the reality of hundreds of thousands of people—men women, children, slaughtered in Rwanda, in Cambodia, tens of thousands in Sierra Leone, in Bosnia. They are the realities of countless thousands who have been beaten, tortured, and starved. They are the realities of tens of thousands who have been mutilated, with no respect to age, no respect to gender. And they are the realities of thousands upon thousands of women and girls—men and boys as well, who were subjected to capture, beatings, torture, rapes, and then were revictimized by the communities that shunned them and the offspring of those rapes. Shunned then for wrongs done to them, not for any wrongs that they had done. The realities also include millions of people forced to flee from their homes with only what they could carry with them, if they were allowed to carry anything with them at all.

These calamities are the accumulation of individual calamities. Those individual calamities are what we recorded as we investigated these international crimes—beginning at the micro level to build the picture at the macro level. Of course, we remember all the people that we interacted with. In the course of my career I have been involved with hundreds of interviews with victims and survivors. But some of those human tragedies, real human calamities stand out in my mind, as they do in the minds of the colleagues who also investigated and prosecuted these crimes. I would like to share some of those recollections with you because they explain to us why we should act as a global community against these horrific crimes.

I recall the testimony of one elderly man who himself had been imprisoned in a concentration camp in the former Yugoslavia during WWII. He once again found himself in a death camp, in Omarska death camp in Prijedor municipality in Bosnia and Herzegovina. In that camp, he was held in a huge building that was packed with people who had been captured because of their ethnicity. He was in a room where there were so many people that they couldn't sit down. They had to stand up. When someone passed out or died, they had to lift them up and pass them out of the room. That's how they were packed into that room, in the heat of summer, which in Bosnia and Herzegovina could be in the 90s or even 100 degrees. On one occasion, his captors came into the room and called him out. They told him that he had to go to another part of that building and bring his son out from another crowded room. He knew that they were going to kill his son, and told them, "I can't do that." And they said to

him, "You do that or we kill everybody in this room." So he went, found his son, and told his son "Son, you have to come with me." And his son said "I can't father, I'm afraid." And he said, "Son, I am afraid too, but we have to go." He took his son out, and handed him over to their captors, to his torture and death. And I recall the testimony of a young man who told of holding his father in his arms throughout the night as the father's breathing and voice became fainter and fainter, and as he eventually died from the sustained beatings he received in this death camp.

I also recall stories of women who were repeatedly raped, held captive for years, who became property of fighters and commanders, or became common property who, as one of the perpetrators said, "were kicked like a football from person to person." Their stories include not just these horrific ongoing crimes, but the consequences of those crimes. In addition to ostracism, because of the viciousness of these attacks many of these women have lifelong health problems. Many of them have been rendered barren. They have sexually transmitted diseases including AIDS. We have lost some of these to AIDS.

I also recall the story of an incredible woman who was held captive for many weeks. She was subjected to all forms of sexual violence as torture, in part as punishment and in part to get information. She was also starved. She managed to escape after some weeks. She made it to a road, emaciated, her clothes in tatters, but able to hail down a vehicle belonging to an international organization. The occupants of that vehicle refused to take her from the area because they said, "We have to remain impartial." She was recaptured and the torture and sexual violence continued for several more weeks.

I recall not only the crimes, but the impact they had on the future of the victims. For example, the young boys and young girls who were forced to themselves become murderers and torturers after being captured and turned into child soldiers. And the girls, who in addition to being turned into child soldiers, also became the objects of ongoing sexual violence.

And of course I recall the stories of villagers who not only witnessed rapes and murders in their village after it was attacked, but then were lined up and one-by-one were amputated in sight of all of those standing behind. One of the survivors of these atrocities told of one such villager crying out to God for help. The rebel commander's response was "There is no God here today. I am God here today."

The courage and resilience of these victims and these survivors is absolutely amazing, including the courage of Rwanda Hutus who went to their deaths because they helped their Tutsi friends, or the Serbs, the Croats, and the Muslims in Bosnia and Herzegovina who went to their deaths or were sent to camps because they reached out to help victims of

other ethnic groups.

As investigators and prosecutors, these were our everyday realities. These were the realities that motivated us and made clear to us, that as a global community, we should act. We should create tribunals and courts that can deliver independent, impartial justice, and do so in an environment that is safe, in an environment that will guarantee the rights of the accused persons, but also safeguard the dignity of the victims and survivors who come forward to testify.

Those are the reasons that I believe we should act and continue to act to ensure access to international justice for victims and survivors of horrific injustices. As I said, in the face of all this viciousness and suffering, for one shining moment, the world powers did just that, they acted together to once again say “enough”. Decades after they had said “enough” at the end of World War II.

As we look at the statutes and procedures of the courts and tribunals that were created, do these statutes and procedures reflect the evolution of criminal justice since World War II? I would suggest to you that they do; that when we look at the statutes of these tribunals in relation to the crimes over which they have jurisdiction, we see an attempt, at least, to reflect evolving customary and conventional law. When the Secretary General sent his report to the Security Council about the creation of the Yugoslav tribunal, the Secretary General stated that this tribunal should have jurisdiction over crimes that are, without doubt, part of customary international law. In that regard, he noted that many of the major conventional instruments had become part of customary law. So that was the approach taken in creating these statutes—to give the tribunals jurisdiction over the law as it had evolved, over what were, at least in the mind of the Secretary General and the Security Council, without a doubt crimes that had become part of customary law.

We see that evolution in the crimes included in the statutes. For example, the scope of crimes of sexual violence was broadened to include not only rape, but sexual slavery, forced prostitution, and forced pregnancy, as well as other forms of sexual violence. These inclusions reflected the evolution in our appreciation of the realities of sexual violence on a global scale, the many forms it could take. As we investigated and prosecuted these crimes it became crystal clear that these crimes of sexual violence were an inherent part of genocide, of crimes against humanity, and of war crimes. They were not separate little things that troops did when they came home from a hard day at war. It also became crystal clear that these crimes were committed in inherently coercive environments. The procedures of these courts, the rules of procedure and evidence, reflected an understanding of this inherently

coercive environment. The procedures and rules made it clear that when we were looking at force and lack of consent, these elements, if they were required at all, were an implicit part of the circumstances in which these crimes were committed.

I suggest that these statutes were also evolutionary in that they specifically included acts of terror as war crimes, and attacks on peacekeepers and the conscription, enlistment, and use of child soldiers as other serious violations of international humanitarian law. They were also evolutionary in that they laid out in very clear detail that heads of state have no immunity from prosecution for these crimes, at least not in international courts, nor do those who would claim that they were only acting in an official capacity when these crimes were committed.

The modes of liability included in the statutes and the interpretation of these forms of personal criminal liability also, in my view, reflect the evolution of international criminal justice since World War II. The modes of liability are much more expansive than in many domestic jurisdictions. For example, in addition to commission of these crimes, at least in the *ad hoc* tribunals and the Special Court for Sierra Leone, planning is included as a mode of liability. Interestingly, planning is not included as a mode of liability in the ICC statute, which was politically negotiated, and not based on what was, without a doubt, part of international criminal law and customary law. In addition to planning, the statutes of the Yugoslav and Rwanda tribunals and the SCSL also include instigating, ordering, or otherwise aiding and abetting as modes of liability. And, very importantly, these statutes include criminal liability of a superior who fails to prevent or punish the crimes when he or she knew or had reason to know the crimes were being committed or had been committed and fails to take reasonable and necessary measures to prevent or punish those crimes.

The Yugoslav Tribunal *Tadić* Appeals Chamber Judgment is the basis for much of international criminal law today, at least in the non-permanent tribunals and courts. The Appeals Chamber in that case echoed this evolved view of criminal responsibility when it determined that a person who participated in a “common plan, design, or purpose” is individually criminally responsible for those crimes as a form of commission. The Chamber noted that this interpretation of liability is warranted by the very nature of many international crimes. “Most of the time,” it stated, “these crimes do not result from the criminal propensity of single individuals, but constitute manifestations of collective criminality.”<sup>1</sup> This mode of liability

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1. *Prosecutor v Dusko Tadić*, ICTY IT-94-1-A, Appeals Chamber Judgment, 15 July 1999, para. 191.

of participation in a common plan, design, or purpose is usually referred to as joint criminal enterprise. It has been the subject of much debate and much criticism. But in my view, this mode of liability is the mode that most represents what really happens in these situations of mass atrocities.

The statutes of the Yugoslav and Rwanda tribunals also incorporated modes of liability for genocide that went beyond the ones just mentioned. These modes of liability in the tribunal statutes were taken directly from the genocide convention and, in addition to the commission of genocide, include direct and public incitement, conspiracy and attempts to commit genocide, and complicity in genocide. Inclusion of these forms of liability is also, in my view, reflective of the evolution of international criminal law.

Later, the United Nations entered into agreements with countries to create special courts to deal with situations in those countries. The Special Court for Sierra Leone was one such court. In the agreement and in the statute of that court, I believe that we saw a further evolution in terms of the mandate and focus of international criminal courts. If we recall the Yugoslav and Rwanda tribunal mandates, they were very, very broad: "...shall prosecute those who committed serious violations of international humanitarian law." We are talking about tens of thousands, perhaps hundreds or thousands of perpetrators. No international court can deal with those numbers. The statute of the Special Court guided us to bring to trial only those who bore greatest responsibility for the crimes within the jurisdiction of the Court. I believe this is a very important evolutionary step because it allows the international courts to focus on what they can feasibly do. Also, it causes them to focus on trying those individuals who have the greatest ability to undermine peace efforts but who, if convicted, are removed from the affected communities and therefore do not have the ability to undermine peace and forward progress in those societies. I think that's a very important step toward both accountability and sustainable peace.

The Special Court's statute also sought more efficiency and consistency in the development of one body of law to address international crimes. It did that in two ways. First, the statute guided the Special Court to use the rules of procedure and evidence from the Rwanda Tribunal except to the extent it found it necessary to amend those rules. And second, and most importantly in my view, it mandated that the Appeals Chamber of the Special Court, *shall* be guided by the Appeals Chamber jurisprudence of the Yugoslav and Rwanda tribunals. I find this of immense importance. International crimes impact all of us. In my view, there should be one body of law that addresses these crimes. Genocide should not differ from court to court or from state to state. So I applaud

this provision as very important recognition of the need to have one consistent body of law in relation to the criminal prosecution of these crimes.

What about future evolution of what we recognize as international criminal law? Will there be any and what might it be? I hope that among the future evolutions there would be recognition that terrorism and torture are stand-alone crimes, which should not be required to be connected to war crimes or crimes against humanity. I would also hope that at some point in the future there would be recognition that organized crime, including human trafficking, is a real threat to international peace and security and should be recognized as an international crime. And I would hope that in the future, there will be put in place a mechanism that will ensure there is one body of law—one consistent body of law—to address these international crimes, even in domestic prosecutions.

Putting these statutes, evolutionary or not, into practice within these courts posed many challenges, especially in the early years of the tribunals. At the Yugoslav Tribunal, for example, one of the biggest challenges that we faced was our continued existence. Many people were opposed to the creation of the Yugoslav Tribunal. They were certainly opposed to the timing of its creation, seeing us as an impediment to peace rather than a means to ensure peace in the region. The first Prosecutor of the Yugoslav Tribunal spent much of his time trying to raise awareness with state leaders the importance of accountability for future peace, the importance of the work of the Yugoslav Tribunal, and thus the importance of its continued existence. In the early years budget issues were also a challenge. The Rwanda tribunal faced similar challenges. For example, an Acting Registrar of that tribunal saw the main objective of that institution as saving money, and basically treated it as an administrative entity, rather than a judicial system. So, the Office of the Prosecutor there had real fights to ensure it was able to send out the missions needed in order to effectively investigate these international crimes in order to prepare accurate indictments.

Both tribunals were also fundamentally challenged by developments in international criminal law since Nuremberg; developments that meant we had to do a great deal of research to define the elements of the crimes and modes of liability and to determine procedural requirements. What was the law and the procedures we must apply? Nuremberg could be the framework for us, but the world of international criminal justice had moved in very significant degrees beyond Nuremberg. So, Nuremberg was a framework only, leaving so very much to be determined by the courts in relation to current law and procedure. For example, what conduct would fall within some of these underlying crimes? What conduct would fall

within “other inhuman acts” as a crime against humanity, would fall within “outrages on personal dignity” as a war crime? How would we clarify the elements of the crimes – the definitions of the terms in those elements? How would we determine exactly what the scope of the required procedures were? The Prosecutors of these courts developed our prosecutorial positions on these issues after internal discussions and debate – some of it quite heated. Then we litigated these issues before judges, and the judges decided, based on the input of the parties and on their own research into what is today, and what was at the time of the crimes, the status of customary law. What is and was for example, without a doubt, recognized as criminal in customary law?

I joined the Office of the Prosecutor in the Yugoslav Tribunal in 1994. I was privileged to take part in these discussions and have a part in shaping the positions we eventually took. But, when we approached our first litigated case, the *Tadić* case, these issues were unresolved at the trial court level. So, in our pre-trial brief to the judges, we included what we thought the elements of the crimes were, what we thought the definitions were, including of our alleged modes of liability. The defense did the same. We expected that the judges would come back to us before the trial started and say “this is what you, the prosecution, have to prove.” When that didn’t happen, we asked the judges to do that. Their response to us was, “You’ll find out what the elements and definitions are when we give you our judgment.” And then they said “Prosecution, if we were in your place, we would prove what you think is required, and we would also prove what the defence thinks is required.” And that is how we went about our first case. To say that it raised the tension on the trial team is an understatement.

Investigations at the Yugoslav and the Rwanda tribunals were hampered very early on by lack of access to the locations where these crimes had been committed, or very restricted access to those locations. Not only did we have no or little access to those locations, we had no pictures or videos of suspected crimes scenes. We had no pictures of suspected perpetrators of these crimes. We were forced to conduct very extensive interviews in order to build very detailed word-pictures to describe these locations and these suspects to us. This was problematic not only for us, but also for witnesses, who were called upon to remember, in excruciating detail, everything about the horrific experiences to which they had been subjected. And, our investigative missions into Bosnia and Herzegovina began during the conflict there, adding an element of danger to our work in the region.

We also had missions throughout the world to speak to victims and other potential witnesses, and this caused logistical and budgetary issues.

Depending on where they were located, we had to devise methods by which we could approach or contact them, without putting them at risk. Operating conditions for us were very, very difficult, and sometimes, even dangerous. We would commiserate about that amongst ourselves until we remembered the conditions of the affected populations. They lived under those conditions every day and they didn't go home at the end of the mission. That helped us to reorient our thinking to the proper perspective.

The Special Court had similar challenges, including going out on missions shortly after the war was declared over—going into areas where there were many ex-combatants whose leaders we were investigating. These were areas where there had not been a return to the rule of law in any effective way. The ex-combatants were the *de facto* powers in many of these areas, making it very difficult to approach potential witnesses without endangering them.

So, on a very personal level, what was life like in the trenches as we tried to carry out these mandates? What were the challenges we faced on the ground, which is where I was for most of the time before the *Tadić* trial began, because that's where I wanted to be. Well, life in the trenches was basically very long, long days. Twelve, fourteen, sixteen hour days were the norm. Long weeks, long months, long years. I had a slogan I always told my teams: "Fridays are wonderful, there are only two more workdays until Monday." And people laughed until they worked with me for a while and realized that was the reality, not a joke.

I mentioned that we had missions throughout the world. At the Yugoslav tribunal there were long lines of people who wanted to go to other countries in Europe, wanted to go to North America, even to Australia. There was a much shorter line, the line I was usually in, the line to go to the former Yugoslavia, in particular into Bosnia and Herzegovina.

Our missions into Bosnia and Herzegovina began in August of 1994, when there was still a very, very hot war going on in the country. In fact, we had a prolonged argument with the Deputy Prosecutor before he gave us permission to go on those missions. His view was it was too dangerous and we needed to wait until there is a peace. Our position was that we had a mandate and we needed to begin to fulfill that mandate. We eventually won out on that argument and went into Bosnia and Herzegovina. On our first missions we had no dedicated vehicles. We had no communications equipment. So, once we were in country, we were very much on our own. We were able to function because we hitched rides from NGOs that were in the country. At that time, UNPROFOR was the international force there and, in truth, they wanted nothing to do with us. We got access to communications whenever we found somebody with a phone. That was how we would phone home, if you will.

Those first missions into Bosnia and Herzegovina brought home, more than anything else, the reality of the crimes that we were investigating, because we saw and experienced first-hand the conditions in which these populations lived: the constant threat and commission of atrocious crimes against them, their lack of heat, their lack of water, their lack of food, their lack of medical support, these were the primary and secondary victimizations that they endured every day.

I first went into Bosnia and Herzegovina in August of 1994. That trip brought home to me the dangers the peacekeepers there also faced, because on my helicopter ride back from Tuzla to Sarajevo, I shared that helicopter with the body of a peacekeeper who had been killed in the field.

On that first trip, we stayed at the “Holiday Inn” in Sarajevo. Those of you who are old enough, or interested in history, may have seen pictures of the “Holiday Inn” in Sarajevo. Of course, it wasn't a Holiday Inn, although one of our prosecutors who went there later, went up to the desk and asked if they took frequent flyer miles – they didn't. On that first trip, in the Holiday Inn as we were walking down the hall on one of the higher floors, we discovered first of all, that the preferred window material in Bosnia and Herzegovina at the time was UNHCR plastic, because all the windows had been blown out from shelling and sniping and replaced by readily available heavy HCR plastic. We also discovered that every room had blackout curtains because of the shelling, although there wasn't much need for them because we really didn't have electricity during that first trip. As we were walking down the hall to our rooms, we saw this piece of plywood propped up against the wall. We looked behind it, and what we saw was a room that had been hit by artillery or mortar and the outer wall had been blown away. They put the plywood up so people wouldn't walk into the room and then walk out into empty space.

The Sarajevans had a local paper that they put together during the years of siege. There was a classic picture in this paper that reflected not only the situation there, but the attitude of the people in Sarajevo. In the picture was an armored personnel carrier with an UNPROFOR soldier hiding behind it. Near him, out in the open, was a Sarajevan, standing there leaning on his umbrella observing what was happening, in the midst of sniper fire.

These experiences were typical of what we experienced when we first began to go into Bosnia and Herzegovina. We were in areas being shelled. We were in areas where there was sniping and fighting.

After that first mission, I had my first long mission to Bosnia and Herzegovina, almost two months in duration. During that time, we took many, many witness statements. These statements were further revelations about the realities of these crimes, because these people had to talk to us in

detail about things that are unimaginable – about unspeakable acts of cruelty and viciousness. We had mixed reactions. Many of us think that persons exposed to traumatic events will cry and be very emotional when they talk about them. Some of those we interviewed were like that. Others were very matter-of-fact. Others showed no emotion, no affect, whatsoever. Often we think that if they do it that way, if they talk without emotion or affect, they must be lying. But that's not it at all. They talk without emotion or affect because that's the only way they can deal with what's happened to them; they can't yet process it in any other way. That's what we found with many of those individuals we interviewed.

On many of the missions into Bosnia and Herzegovina, we were requested, and felt it our obligation, to be present when they uncovered mass graves and removed bodies from those mass graves. Children, babies, women, men, the firm, the infirm—we were first hand witnesses to these exhumations. We were witnesses as outsiders, not witnesses as the people there whose families and friends were in those graves. In fact, on one mission, we ourselves discovered two gravesites. One was a large gravesite with an estimated thirty people in it. Next to it, was a smaller gravesite with two people in it. Our thinking was, the two individuals in the smaller grave had been forced to help dig the large grave, cover it up, and then they had been killed and put in their own grave and covered up.

On our first trip into Prijedor municipality to visit Omarska camp and other crimes sites, the enormity of the crimes committed was apparent as we saw mile after mile of destroyed homes and abandoned, silent villages. I recall, in particular, one very cold, very snowy, very windy day when we were at one of these silent villages. We went into some of the homes, and in those homes we found children's toys, children's clothes, school books and other personal possessions of people killed there or that the people were not allowed to take with them when they were forced to leave. And I remember particularly, because it was surreal, that the wind blowing through the trees around the homes and through those homes sounded like the cries of those who had been killed or dispossessed.

The military officer in temporary command of the Omarska death camp didn't like us being there, probably because the Serbs had illegal weapons stashed there. So at one point, I found myself staring down the barrel of an AK-47 as they attempted to persuade us to leave the site. The chief of police didn't really like our presence there either, so he brought out an armored personnel carrier to persuade us to go elsewhere. When we went back to The Hague, we had a status conference about the *Tadić* case. We wanted the judges to do site visits in Bosnia and Herzegovina as part of the case. But then they asked us what our experience had been. And of course, you can't lie to judges, so we had to tell them about these

experiences we had just had. The response after hearing about this was to the effect, “And you want us to go there?” Needless to say, we did not have site visits in that case.

On a later mission, we did have a dedicated vehicle, but we still did not have communications equipment. We were coming back from a day of interviews, and we went through these towns and villages where there were many, many people out in the streets. Speakers were using megaphones to talk to the people. Everyone was very, very upset. We had no idea what was going on. We finally got access to a phone and found out that they were in the streets protesting because one of our indictees from that area had died in detention in The Hague. So we were driving our very well-marked UN vehicle in the midst of these demonstrations.

At the *ad hoc* tribunals and the Special Court we had long working hours, hours often worked in very difficult, stressful and sometimes dangerous circumstances, but, as I think is true in the military and similar institutions, these conditions forged very strong, enduring friendships and very strong teams. In this very perverse way, I think it helped us. Also, working these very long hours, people didn't really have a social life outside of the courts, outside of the teams, so many of my colleagues began to date each other. As a result, we have this wonderful family of couples who met and married because of their work at the courts and on the teams. Even today our family continues to grow as children are born of the couples who were brought together in these circumstances. In very tragic circumstances, you can still have very some good outcomes.

How was it that I have been so privileged as to play a part in international criminal law since 1994? At university, I really had no idea what I wanted to do with my education, so I took subjects that I enjoyed. I graduated with a Bachelor of Arts, focusing on Political Science, Psychology, History, Sociology, and Philosophy—all the subjects that lead to very good jobs, right? I had two very good job offers when I left university: one was with the CIA, and one was with the Peace Corps. I went to the Peace Corps, to West Africa, Senegal, and Niger, where I worked as a public health worker. I learned many things there about human nature, as I have in all of the places I have been. I have now been to some 105, 106 countries of the world. Many different cultures, many different ethnicities, and what I have learned is this: Forget all this talk about “us” and “them.” There isn't any “them.” It's all “us.” Some of us are the bad guys and some of us are the victims, and most of us stand by and watch it happen. My experiences have really given me a firm belief that this is true of all situations.

But I also found out in the Peace Corps, the very hard way, that I have no affinity for language. Senegal and Niger were French speaking

countries. As part of our training to go there, we had about four weeks of training in French. Then we were put in the country, and we were on our own. That was it. Because in the Peace Corps you actually work for the government of the country you were in, they welcomed us with official dinners and official gatherings. Of course, they wanted to introduce us to local foods – very, very spicy, hot foods. We were told not to drink unbottled water, and the other option was wine. Also, they wanted to introduce to us to the traditional way of eating. So we ate with our hand. Well folks, I'm left-handed and you don't eat with your left hand. So, I was struggling with using my right hand to eat, my mouth was aflame, I had nothing to drink, so to politely avoid eating any more hot food I would say "Oh no thanks, I've had enough, I'm full." Well, I didn't know enough French to know how to say that correctly so I said, "Je suis plein." I was telling everyone "No thanks, I'm pregnant", not knowing that's what I was saying. Eventually someone took me aside and, in French, explained what I was really saying and how I should correctly say "I'm full". Heaven only knows what else I said that they were too embarrassed to confront me with.

After the Peace Corps, I went into the Air Force, first as a briefing officer for combat air crews. Then I got an early release from active duty and went into the Air Force Reserves. I went back to Denver, Colorado where I had trained as an air intelligence briefing officer. I had fallen in love with the state, so it became my home, but I couldn't find a job. Now how surprising is that- Bachelor of Arts, Peace Corps volunteer, Air Force air intelligence briefing officer, couldn't find a job. One of the people I played sports with said "You know what, the law school admissions test is coming up. Why don't you take it?" I thought it was better to be an unemployed student than just to be unemployed, so I went to law school in Denver where I wanted to live.

In law school, I met other Air Force officers. They convinced me to go back into the Air Force and after admission to the Colorado bar, I did go back onto active duty as an Air Force judge advocate. In that capacity, I was very fortunate in that my mentors and my superiors saw, very early on, where my limited abilities lay. That was in litigation. I spent most of my Air Force judge advocate career as a prosecutor at the trial and appellate level. But then, my superiors said "Brenda, if you want to get promoted to full-colonel, you have to avoid the two Cs – Colorado and criminal law." So they sent me to Rhein-Main Air Base in Germany to be the base Staff Judge Advocate.

At that time, Rhein-Main Air Base was flying food-drops into Bosnia and Herzegovina. On a return flight of one of those food-drops, we had a very unexpected guest aboard that aircraft, requiring us to call up the road

to the Deputy Prosecutor of the Yugoslav Tribunal in The Hague. The Deputy Prosecutor came to our base to resolve the situation. That was my introduction to the Yugoslav Tribunal. The thing I remember most about meeting the Deputy Prosecutor was this huge business card that he gave me. It was huge because on the business card, they had the complete title of the Yugoslav Tribunal: “The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.” A big card indeed.

A few months later, I found myself on the road up to the Yugoslav Tribunal as one of some 22 U.S. government professionals who were loaned to the Prosecutor’s office there - most of us prosecutors and investigators. In 1997, I returned to the Air Force. A few months later, Prosecutor Louise Arbour convinced me to retire from the Air Force and come back as a staff member of the Yugoslav Tribunal Office of the Prosecutor. In 2001 I left the Tribunal and became a consultant. In 2002 I was asked to be a consultant to the Prosecutor of the Special Court for Sierra Leone. You’ve heard about the rest of my experience with the Special Court of Sierra Leone.

Now why do I tell you all of this? Is it to be part of the “I love me” wall? Actually, it’s not. It’s because I am an “accidental jurist”, and you can be one too. Most of my opportunities came about because I was in the right place, at the right time, with the right skill set. For me, the lesson from all of this is that you may not know where your true interests and true talents lie until much later in your professional life. To the extent that you can, seize all the opportunities that present themselves to you. Those opportunities may lead you on unexpected paths, but will bring you, I think, to your true life’s purpose. Be open to that. You will find the journey amazing.

I’d like to leave you with a question: International criminal justice today, is it continuing to evolve or is it in the process of de-evolution? Are we continuing to devise ways to ensure victims and survivors have access to independent and impartial justice, or are we today returning to realpolitik?

Thank you very much.