THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Karen Naimer

International Center for Ethics, Justice and Public Life

Brandeis University

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Q1: This is an interview with Karen Naimer for the Ad Hoc Tribunals Oral History Project at Brandeis University's International Center for Ethics, Justice and Public Life. The interview takes place at the Ethics Center offices in Waltham, Massachusetts on December 18, 2014. The interviewers are Leigh Swigart and David Briand.

Thank you so much, again, for being here. This is great. This is our fourth session in this pilot phase of our oral history project, so thank you again for being here.

Naimer: It's a pleasure.

Q1: Okay, great. As I was saying before, if we could start with your early life and background, and getting into your education. Could you start by saying your name, where you're from, and a little bit about your background?

Naimer: My name is Karen Naimer. I am from Montreal, Canada. I studied in Canada; I did my undergraduate degree at McGill University and my law school training at University of Toronto. Those were formative years for me studying in Canada. Eventually I did additional graduate legal work in the United States at NYU [New York University] School of Law.
Q1: Right. What was your idea of the path that you would take in your education, and how did you eventually move into the career that you chose?

Naimer: Even from my undergraduate days I knew I was interested in international relations and I was interested in global affairs. It was a very interesting time because the Cold War was just ending and a new global order was beginning to emerge. It was a very exciting time with a lot of opportunity and a lot of progressive thinking about how to capitalize on this new era, build new consensus and partnerships, and explore new ways for states to work with each other and create new global institutions in ways that had not been available for decades beforehand. The emerging spirit of international cooperation really captured my imagination during my undergraduate period at McGill.

Following my graduation from McGill, I lived in Israel for a couple of years and I was interested in focusing on human rights in the Israel-Palestinian context. While I was in Israel, I was working on human rights and advocacy and working at a few different non-government organizations [NGOs]. In particular, I worked at an NGO focusing on capacity building and leadership training for Palestinian administrative detainees and also, oddly, South African grassroots activists.

Q2: You mean the South Africans came there for the training?

Naimer: Yes.
Q2: How interesting.

Naimer: This was an amazing organization, actually. The organization was called the Israeli Center for International Cooperation [ICIC]. It had been established in the 1980s, discreetly, by Shimon Peres and colleagues. Shimon Peres and others recognized the need to shift the paradigm on Israeli relations with South Africa. Historically the Israeli government had very strong ties with the regime in South Africa, and Shimon Peres and others recognized that this was not an effective way to think long term. So there was a discreet effort among Israeli academics and political leaders to reach out to grassroots activists, black leaders all over South Africa—trade unionists, educators, activists from urban centers and remote areas—and convene workshops in capacity building, grassroots empowerment, and leadership training.

Q2: This was before the shift of the regime?

Naimer: Yes, this was in the mid to late 1980s. This was a very delicate enterprise at the time because officially the two states had very good relations, so Israel's quiet outreach to black grassroots activists was very politically sensitive. Likewise for the activists in South Africa who supported the ANC [African National Congress] movement and other grassroots liberation movements advocating for change in South Africa identified with the PLO [Palestine Liberation Organization] and Palestinian liberation movement, so for them, their participation in an Israeli initiative was also very politically sensitive and
fraught. For all these reasons the ICIC—Israeli Center for International Cooperation—was by necessity quite a discreet initiative.

Thirty black South African grassroots leaders would come to Israel for one-month training workshops. The gatherings were held just north of Tel Aviv and Kfar Saba—just outside of Kfar Saba—in a little college there called Beit Berl. Beit Berl was historically an agricultural college, and of course Israel had done a lot of agricultural training all over Africa since the 1960s, so it was a natural place to hold these trainings.

Eventually, in 1993 the Oslo Accords were adopted and there was a thawing of relations between the Israelis and Palestinians, and then the following year there was a democratic change in government in South Africa. These developments allowed for this ICIC initiative to surface and it got quite a lot of attention. The initiative had been designed to support capacity building for South African grassroots leaders. Now many of these past participants emerged as political leaders in this new era in South Africa. That got quite a bit of attention and there were requests coming in from different directions for the center to do similar work with Palestinian administrative detainees—a very different community with very different needs.

Q2: The people who were actually detained at that time?

Naimer: Or people who had been detained for a long period of time in Israeli prisons but now were being released. How do you train them to become activist leaders in their
communities? How do you develop political leadership in productive and meaningful ways? The center started to put together leadership trainings for Palestinian administrative detainees—no longer detainees but now potentially a new cadre of political leadership for Palestinians. A very politically sensitive and complicated enterprise, but we worked in close partnership with Palestinian universities and progressive Israeli and Palestinian academics.

It was through that work that I first met Sari Nusseibeh and others who were very much interested in trying to develop productive outreach and collaboration with Israelis. There were many innovative efforts to support collaboration at the grassroots level in parallel to any kind of negotiations that were ongoing at the government level. And then, by 1996, that became more complicated. That year saw a spate of terrorist attacks in Israel that resulted in a chilling of the formal peace negotiations at the government level. Borders were closed and the ability to do collaborative work at the grassroots level became very difficult. It also became even more important because the negotiations and open lines of communication between the Israeli government and Palestinian Authority closed, so there was a recognition that any kind of meaningful collaboration and communication between Israelis and Palestinians would have to be led, by necessity, by grassroots leaders.

Ultimately, during my two years in Israel—

Q2: The dates were what, exactly?
Naimer: For my two years in Israel? I was there from 1995 to 1997, so it exactly coincided with the optimism following Oslo and then the corresponding backlash. In the fall of 1995, [Yitzhak] Rabin was assassinated, so there was certainly this intense political backlash happening in the months preceding the assassination. There was a range of emotions in Israel—a lot of euphoria, optimism, and promise of a new era of peace because of Oslo, and an intense amount of backlash and negativity surrounding that potential collaboration with the Palestinians. When Benjamin Netanyahu came into power in 1996, following a short period after Shimon Peres had been prime minister, the ability to partner with Palestinians in any meaningful, political way declined precipitously, so that also impacted the work that grassroots organizations were trying to do on the ground. Then I went to law school.

Q1: Long story short. [Laughter]

Q2: I'm curious what it was like for someone like you—a Canadian Jew brought up in an observant background to some extent?

Naimer: My story is a bit unusual. [Laughs] Not me personally, but I think that Jewish life in Montreal is a little bit unusual. The Jewish community in Montreal really evolved from the ideological movements of 19th Century Europe, and I went to a Jewish day school of the Bundist socialist variety. It was a pretty progressive Jewish education, very much attuned to some of the ideological figures of the Labor Zionist movement. We learned Yiddish; we read the poetry of the garment workers from the Lower East Side in
the original Yiddish, so pretty unusual. Things have since evolved. The community itself can be actually quite a conservative community on the political side, but from my vantage point, there was an emphasis on social justice, on human rights. Montreal had, at the time, a large community of Holocaust survivors. I'm not sure what the statistics were but it held one of the highest concentrations of Holocaust survivors outside of Israel.

That had an enormous impact on me. Many of our Yiddish teachers and our Hebrew teachers were themselves survivors, so we grew up with a very deep awareness of what happened during the Holocaust, and that absolutely had an impact on me. By the time I went to college, I was already interested in human rights and social justice. Even though I didn't have the vocabulary or the framework to really articulate what it was that I was interested in or what I wanted to do, I just knew that I was really sensitive to those kinds of issues. That just continued to carry me forward in Israel when I gravitated to human rights work at a time when there was a lot of promise that human rights mattered politically in that moment.

Q2: Was it—were there difficult moments when you were in Israel realizing that sometimes the human rights—the contradiction between some of the practices of the Israeli government vis-à-vis Palestinians and yet—

Naimer: I have very vivid memories of being there, even actually on an earlier trip to Israel before those two years where I was traveling by bus to spend Shabbat with a family. The bus passed through the West Bank. I had never been in the West Bank before
and it was so jarring for me to see how fundamentally different it was, how the conditions, the quality of life were—it was just so dramatically different than what I had grown so familiar with in Israel. It was very eye opening for me. That also helped to define my work during the two years when I was there. I was very keen to have direct contact with the Palestinian community to learn about their challenges, their priorities.

There is this very moving experience for me as a young twenty-two or twenty-three-year-old post-college kid living there. We had a group of South African women come during one of these month-long training programs and we brought them to a Palestinian village to meet women colleagues. The South Africans spoke English and the Palestinians spoke Arabic and Hebrew but they didn't speak English. So suddenly I found myself operating as an interpreter facilitating conversation between these South African and Palestinian women. I was interpreting a discussion they were having about the challenges they all experienced of customary traditions being used to suppress women.

These women were having an amazing conversation about empowerment and leadership building among women, for women, and I just thought this is such a privilege to be able to be a conduit for communication for these courageous women. That desire to help coordinate those encounters and help support and reinforce that communication was something that was incredibly powerful for me.

Q1: What year did you graduate from McGill?


Naimer: Well, things are different in Canada. Actually I was at McGill from 1992 to 1995.

Q1: Okay.

Q2: In Canada is law school—that's not an undergraduate degree. Or is it?

Naimer: No.

Q2: It's like the United States?

Naimer: Law school is a graduate degree, with the exception of some civil law programs in Quebec. I went to law school from 1997 to 2000.

Q2: Did you have the opportunity to study international law at that point?

Naimer: Yes. It's a great question. I actually did a joint degree; I did a law degree and I also did a masters in international relations—
Q1: Easy enough, right?

Naimer: [Laughs]—because I was also interested in continuing with the international relations piece. When I first started law school in 1997, there wasn't much by way of international law. I took public international law in the fall of my second year of law school, and the law that we studied concerned relations between states, the law of the sea [Laughs]—very classic, traditional public international law. I knew that I was interested in aspects of this, but modern international law, public international law, international criminal law as we know it today just didn't exist at the time.

I took an international criminal law class at that same time and the law that we studied was basically international humanitarian law, the Geneva Conventions. We studied a few cases from Vietnam and the early cases of Nuremberg and the Tokyo trials, but that was it. At the very end of the semester, the [Jean-Paul] Akayesu judgment was delivered. It was a landmark judgment. For me the case really captured this moment; that we are beginning to enter into a new era of international justice. It became absolutely clear that this is what I was interested in pursuing.

Q2: Can you say a couple of words about that case?

Naimer: Yes. The Akayesu case emerged from the Rwanda tribunal, and it was the first case that addressed the issue of rape as a crime against humanity and also an element of genocide. It was judge-made law basically because both the Yugoslavia tribunal and the
Rwanda tribunal had emerged from Security Council resolutions and had processes that developed from there. The Security Council established the statutes of both the ICTY [International Criminal Tribunal for the former Yugoslavia] and ICTR [International Criminal Tribunal for Rwanda] and it laid out the elements that would be required to establish that certain violations had taken place—war crimes, crimes against humanity and genocide. None of those provisions actually contemplated sexual violence as a crime. Slowly, there were certain leaders like Patricia Sellers and others who were really advocating for the inclusion and integration of sexual violence as a form of these crimes. The Akayesu decision was really the landmark decision, the first one that actually affirmed that sexual violence was a grave offense in itself and rape can constitute a crime against humanity and an element of genocide.

Q2: Is that the case where there were no crimes of sexual violence that were included in the original indictment and then Navi [Naventhem] Pillay pushed for the indictment to be—?

Naimer: That's right.

Q2: I think the witnesses—they kept hearing the testimony that there was rape and she said, "Why is the sexual violence not included in the indictments?" I think they had to rework the indictment to include those, which is sort of astonishing given that then it was such a landmark case for sexual violence.
Naimer: Right. There's so much to say about how these courts completely transformed international criminal law and even our thinking about what constitutes a crime. But that's exactly right—this was an incredible moment in time where it was driven by a few voices who recognized that wait, we need to recognize that rape, at the time, or sexual violence writ large is not just an inevitable byproduct of war, but actually a grave criminal offense in and of itself and it has to be adjudicated as such and prosecuted as such. This was really a watershed moment in international criminal law—and it was as recent as 1998.

Again, it came down in a judgment so it wasn't in any legal statute, but after that the idea of sexual violence was integrated into, for example, the Rome Statute for the International Criminal Court [ICC]. The negotiations for the Rome Statute that took place in 1998—there was a significant amount of discussion on sexual violence and how to integrate it into the Rome Statute. All of these conversations very quickly began to cascade and build on each other. In the late 1990s when I was in law school, these conversations were just beginning to happen. The Yugoslavia tribunal was established in 1993, but the first cases didn't start emerging until 1995 really. The Rwanda tribunal was established in 1994, but the first judgments were being delivered in the late 1990s.

It was exactly when I was in law school where things started to happen. [Duško] Tadić was the first case that the ICTY was working on. The trial decision came out eventually, and then there was of course an appeal, so these processes were beginning to happen but because it was so early our ability to analyze or grapple with these judgments was limited
—but seeds were being planted. For me as a young student, I thought, this is an area that
I'm really interested in even though it doesn't really quite exist yet. [Laughs] It's really
inchoate. But there were indications that a legal sea change was happening, so it was very
exciting.

Q2: So what happened then? Did you kind of get this spark, and then what do you do
with it?

Q1: Obviously you were in school at a time where these institutions were growing and
evolving, but to what extent were you following the events in Rwanda and Yugoslavia at
the time that they were occurring? How were you following the establishment of these
tribunals?

Naimer: Oh, I was following it very closely, again—not from an international criminal
law perspective, but these events were unfolding while I was in college as current events.

Q1: And you had this sense from your upbringing of social justice anyways, right?

Naimer: Absolutely, yes, I was following what was going on in the former Yugoslavia.
Then when the genocide in Rwanda was happening I was doing a year abroad in
Washington, D.C. I was a student there doing a semester of study there, but also working
at a think tank. I was at the Washington Institute for Near East Policy and I was
surrounded by people who were extremely engaged in international affairs. We would
spend the mornings in a conference room with a range of newspapers in front of us. Of course it was 1994, so there were newspapers. [Laughter]

Q1: And lots of them.

Naimer: It's really interesting actually to think about it from that kind of historical context too. We would all be in the conference room sitting together, not at our respective, individual computer terminals, reading the news. We would sit there every day in April following what was going on in Rwanda and just the horrific stories that were coming out in real time. It was just so horrific, so tragic, and then also so paralyzing to feel like I'm watching this, I'm reading it, I'm completely engaged and following what's happening but I can't do anything about it here. All I could do is read the news and follow this closely, but I can't respond. I'm just in this conference room in Washington, D.C.

I think that also was another piece of the puzzle—what is it that I can do to have impact and help, and be able to respond meaningfully to genocides like this, if not Rwanda then the next one? I definitely felt like that was another formative experience. I was watching it unfold in real time.

Q1: So you graduated the University of Toronto with a dual degree—the MA and the JD—and that was 2000. Can you take us from your finishing at the University of Toronto up to your clerkship?
Naimer: Yes. I should mention that of course in 1998, sort of in the middle of my law school period, there was the big Rome conference to draft the Rome Statute of the International Criminal Court. Philippe Kirsch was very active in that process. He's a Canadian—

Q2: What was his position in Canada at that time?

Naimer: He was chairman of the Committee of the Whole of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, then he became the chairman of the Preparatory Commission for the International Criminal Court. Subsequently, he served as the first president of the International Criminal Court. At one point while in law school, he came to speak to the students. We were fascinated by the Rome Conference and his work there. Obviously there were many, many people who were involved in the Rome conference and many who held leadership roles, but it was really interesting to have that kind of direct contact with someone who was so deeply involved in that process.

By the time I graduated law school, the ICTY and ICTR were new institutions just getting off the ground, and the ICC didn't exist at all. Yet there was this growing momentum that there was something happening in the field of international criminal law. I knew I wanted to be a part of it, even though I couldn't articulate yet in what capacity. [Laughs] After I graduated from law school, I went to New York and I worked at a major law firm in New York for three years. While I was there I experienced the time at the law
firm as an opportunity to really polish my legal skills and gain experience working in the private sector, but I knew in my heart that I wanted to get back to the international criminal law world.

Q1: This was Paul, Weiss? [Paul, Weiss, Rifkind, Wharton & Garrison]

Naimer: Yes, exactly.

Q1: What kinds of things were you working on?

Naimer: I was part of the real estate group and—

Q1: Exactly what you wanted to be doing. [Sarcasm]

Naimer: Exactly. I did some work on public interest housing and some public interest litigation. One of the earliest experiences I had at Paul, Weiss was working on a case in collaboration with the ACLU [American Civil Liberties Union] to support students at Einstein, the medical school at Yeshiva University [Albert Einstein College of Medicine] to advocate for same-sex housing for partners. We were working with Robbie [Roberta A.] Kaplan; she was a young litigation partner at the time who was leading the case for Paul, Weiss. Robbie Kaplan went on to represent Edie Windsor at the Supreme Court in *United States v. Windsor* in 2013. The Supreme Court ruled that a section of the so-called
"Defense of Marriage Act" [DOMA] is unconstitutional, thereby securing rights for same-sex partners.

Q1: Oh, yes, of course.

Q2: Oh, yes, okay. I didn't recognize that.

Naimer: That was a little moment in time for me at Paul, Weiss. I enjoyed being part of meaningful public interest litigation. But my heart was really committed to going back to international criminal law and working on cases of global affairs and human rights.

Q1: How long were you there?

Naimer: I was at Paul, Weiss for three years, and then I left the firm to do an LLM—a masters in international legal studies at NYU Law School. That was also a formative experience for me. It was great to be back with like-minded peers who were very interested in international law. By then three years had passed since I had graduated from law school and there were so many changes in international law and jurisprudence and in the international legal communities.

Q2: Was there a concentration already in that at NYU?
Naimer: Yes, I focused on international legal affairs, and at that point there was a whole cohort of students who were focusing on international law, public international law, in the LLM program. There were many different elements of public international law, but this was definitely a very distinct area. NYU just—and they still do—had this distinguished faculty there focusing on these issues, from the theoretical to the applied to transitional justice. They were all there, and it was such an exciting time to be studying these issues.

Q1: Tell us about what sticks out in your mind at that time, or maybe some informative or transformative instructors or people that you met through—

Naimer: Joseph [H.H.] Weiler and Benedict [W.] Kingsbury were there. It was during that period in 2003-2004 where Kingsbury and colleagues at NYU were developing a framework for international administrative law, which at the time most people had no idea what that was. It was just beginning to develop and crystallize, but of course now this is a significant area of international law that has developed in the intervening years. The invasion in Iraq had just taken place so there was a lot of discussion about the Iraqi tribunal and what shape and form accountability should take.

There was a lot going on with respect to transitional justice. I will say actually—I forgot to mention this earlier, but while I was at law school at University of Toronto, the Truth and Reconciliation Commission [TRC] was up and running in South Africa. There were many Canadians who were involved in that process, so there was a lot of interaction
between South Africans and Canadians, and also specifically faculty at the law school at University of Toronto, and especially those who were then involved in participating in the development of the new South African constitution.

This is not insignificant. The South African constitution, once it was—and I'm sorry I'm going back in time—but when the South African constitution was drafted they looked around at lots of different constitutions and they borrowed heavily from the Canadian Charter of Rights and Freedoms. There are a handful of constitutions out there—Canada, Germany, the Basic Laws from Israel, India—that are sort of akin to each other, and South Africa borrowed a lot from these various constitutions. So there were significant exchanges taking place between and among South African legal scholars and judges and Canadian faculty at University of Toronto.

I can recall being a law student and Chief Justice of South Africa's Constitutional Court, Arthur Chaskalson, and Justice Albie Sachs, also of the Constitutional Court, came to speak to us. There were faculty at the law school who were deeply engaged in the negotiations for the South African constitution or who were involved in assessing the Truth and Reconciliation Commission—Rob Howse, David Dyzenhaus. All these professors were on faculty at University of Toronto. So as international law was sort of developing and I was beginning to think about that as a potential area for my own professional development, I was also deeply engaged in comparative constitutional law and the opportunities there to learn from all these other models.
When I was at NYU, there was also a real interest in comparative constitutional law. There were many graduate students from Canada, Germany, Israel, South Africa, and Australia, working on these issues. I found those constitutional law exchanges mutually reinforcing and instructive to what was emerging at the international level. These are all separate but related movements happening on parallel tracks.

You asked about the faculty at NYU. The International Center for Transitional Justice, which emerged from the South African experience, was headquartered in New York. They had people from the Center teaching at NYU about various transitional justice mechanisms and successes and challenges globally, and I found that to be particularly engaging. In the spring of that year at NYU, Justice Richard [J.] Goldstone arrived; he had just retired from the South African Constitutional Court. Naturally I gravitated to the two classes that he was teaching—one on international criminal law and one on comparative constitutional law, so my two areas. And he became one of my most valued mentors.

Q2: Was Ted [Theodor] Meron teaching at that time?

Naimer: No, Ted was already at the ICTY.

Q2: He was already at the ICTY, okay.

Naimer: Ted had left NYU I think a few years earlier.
Q1: But you would catch up with him later.

Naimer: I would catch up with him later. [Laughter]

Q2: I wondered if you had met him at NYU, that's why—

Naimer: No, I hadn't, but that's when I met Richard Goldstone. As you can see from my two areas of interest—comparative constitutional law and international criminal law—I was completely fascinated by the two classes that he was teaching and wanted to just absorb all his stories and learn so much from such a pivotal figure in both of those institutions—the Constitutional Court in South Africa and of course the ICTY. He was such a central figure in the establishment of the Yugoslavia tribunal and really frankly the birth of modern international criminal law—and yet he was very generous with his time, very generous with me, and we established a very warm rapport from there. That was one of the most meaningful experiences from my time at NYU.

Q2: So that's where you met Richard. Okay.

Naimer: Yes.
Q2: So when you met Richard Goldstone, he had been the first prosecutor at the ICTY. There was someone who was appointed before him, I guess, who never did it or something.

Naimer: Right. I think Richard came on board in 1995. He had just been appointed to the South African Constitutional Court, and I think before he even took his position there he was requested to be the first prosecutor at the Yugoslavia tribunal based in The Hague. He did that for two years and then returned to South Africa to take his place on the court. At the Yugoslavia tribunal, there were staff who were there before he got there but he was the first chief prosecutor there who really started to operationalize the court and they started investigating and prosecuting the first few cases. He has these essential stories about some of the early strategic decisions that he made to insure that the court would get off on the right footing, both from a legal standpoint and from a strategic, political standpoint. I find these stories so instructive for how to develop institutional credibility. I think a lot about his stories when I fast-forward to establishment of the International Criminal Court and the early struggles that it's been having.

Q2: Yes.

Q1: What year did you go to the ICTY?
Naimer: I was there in 2004. I was awarded an international human rights fellowship through NYU's Center for Human Rights and Global Justice. That fellowship allowed me to work with President Meron. When I graduated from NYU, I worked at the ICTY.

Q2: So it was really called a clerkship? Because generally they don't have that position there, right?

Naimer: No, it was a fellowship. It was my fellowship through NYU. The tribunal itself doesn't have clerkships, but I was working in President Meron's office. He had two lawyers, the equivalent of clerks, who were there full-time for a period of two years.

Q2: Legal officers or whatever they're called?

Naimer: They were Associate Legal Officers. So I worked very closely with these two legal officers, as well as the chief of staff for President Meron, Larry [D.] Johnson, and then another legal advisor, Gabrielle McIntyre. This made up the sort of "kitchen cabinet" of President Meron's office, so I worked very closely with all of them. When I was there I worked on a range of issues, but two cases stand out—I worked on the [Elizaphan and Gérard] Ntakirutimana case and a very small element of the [Vojislav] Šešelj case. President Meron as president of the court was part of the appeals bench of judges, and by virtue of the historical emergence of the ICTY and ICTR—the appeals bench is the same for the ICTY and ICTR. When Richard Goldstone was at the tribunal he also served as chief prosecutor for both, but the institutions eventually evolved separately. So as
someone who was working for Ted Meron, who was part of this appeals bench, I had the opportunity to work on both cases relating to the former Yugoslavia and Rwanda.

Q2: That's pretty interesting. That must have been an interesting thing to be seeing how they were different. Were they using similar legal concepts and jurisprudence? They don't have to cite one another, right, those two tribunals, but they can?

Naimer: They don't need to cite each other but they do periodically. I think there is an effort to harmonize the judgments emerging from each institution but they are not obligated to follow each other's decisions. This raises another interesting question—the integration of common law versus civil law at both of these institutions. I'm sure there are loads of people who you'll be talking to who can tell you many stories about how that played out, both in court and out of court, because the legal cultures between common law and civil law are so dramatically different.

Q1: How did you see it play out?

Naimer: I was probably too low on the totem pole to really see where the challenges were, where—probably in judicial deliberations—people would have completely different approaches on how to view a case. I know there are loads of examples, and Richard tells many stories about the shock that common law judges have when they saw judges from civil law countries talking casually with counsel from a case at lunchtime. That is forbidden in common law legal culture, but not so for attorneys coming from civil
code countries. There are loads of examples like that and we would talk about that all the time when we were at the tribunal. How it actually played out legally was probably at a level far higher than that on which I was operating.

I was, as a young post-graduate lawyer, trying to really grapple with these institutions, being so eager for the privilege of working at the Yugoslavia tribunal after studying it and learning about it for so many years. One striking experience I had concerned the Ntakirutimana case. I was given the task at one point to make determinations about the credibility of different witnesses. I had not observed these hearings in court; of course, this case was heard in Arusha at the ICTR. I had observed other cases concerning the former Yugoslavia while I was in The Hague, but I had not witnessed or observed any of the hearings for Ntakirutimana. I found the exercise of trying to establish credibility so challenging when you're so remote.

Q2: How were you supposed to do that? Based on the transcripts?

Naimer: Based on the transcripts, based on documentation, but it was a near-impossible task. During my graduate work at NYU, I had been thinking and writing about the promises and perils of international law, and the optics of setting up these international tribunals in The Hague verses in these local communities, and the challenges of justice being done and being seen to be done by these communities, and what grassroots survivors in these communities would know about or be able to track as these cases are unfolding in The Hague.
Of course there is much merit for bringing these cases to The Hague, but there are pitfalls also. Specifically on this task of establishing credibility, it felt like, this is one of those challenges of being remote. This is so distant from these survivors, from the perpetrators. I'm cloistered or isolated in this bubble in The Hague and this was something that took place so far from here. It's really hard to determine witness credibility when you are removed from the proceedings. It was a defining experience for me, as it demonstrated the challenges with respect to the remoteness of international justice.

Q2: I'm just thinking about the linguistic remoteness because these are people who would have testified in Kinyarwanda and it might have gone into French, and then you're probably looking at the English translation from that.

Naimer: Right.

Q2: That's kind of an amazing, like what happens to the language when it's going through those processes.

Q1: All those different translations.

Naimer: Yes.

Q2: What was the working atmosphere like when you were at the ICTY?
Naimer: It was great, actually. I appreciated so much of my time there. When I was at the law firm and I started to tell people that I was leaving to go to graduate school to do an LLM in international law, many colleagues were skeptical. This is not a degree or a subject area that is familiar to American lawyers. I had many friends who had clerked in the U.S. and were working as assistant U.S. attorneys, and they would scratch their head and look at me like, "What on earth are you doing? Why do you need to go to grad school? Why do you care about international law?"

Q2: What's the point?

Naimer: "What is the point?" I would also explain my interest in international law, but I felt like I was always trying to justify my interest in this new but growing, emerging area of law.

When I was at NYU, and then also of course more so when I was at the court, I just found myself with a group of likeminded people who were very engaged in the international legal enterprise and were trying so hard to make it work. People were certainly aware of the challenges or areas for improvement at the tribunal, but there was the sense that we were part of this very unique enterprise in this moment in time. And 2004 marked the start of the "completion strategy" for the tribunal, and that added to the sense that we were very privileged to be at the ICTY, given that this temporary tribunal would soon be
winding down. It was a real opportunity to be there when it was still functioning at full capacity.

Q2: That's amazing, because at that point how many judgments had been rendered? There were still so many to come.

Naimer: There were still so many to come. At the time, [Slobodan] Milošević was in the dock, but of course [Radovan] Karadžić and [Ratko] Mladić hadn't been captured or brought there yet, so there were "Wanted" posters on the walls all around the tribunal. The tribunal employed a great mix of people from around the world who were engaged in this process. There was a lot of energy, and a lot of motivation.

At that point, the International Criminal Court was newly established and becoming operational. It was established in 2002, so slowly, slowly interns and staff were beginning to leave the ICTY to move to the ICC. Judges from the ICTY of course were also moving to the ICC. Some of my housemates in The Hague were people working in the Office of the Prosecutor at the ICC, so it would be really interesting to hear their stories about how those new investigations were beginning to unfold. In contrast, the ICTY was in this early stage of winding down. The contrast between the two institutions was really interesting—the sunset of one institution marked the dawn of another. It was a privilege to be there in that moment.
Q1: What was the adjustment from your work domestically to a new international context, especially one that had at that point already existed for—ten years?

Q2: Nine or ten years, yes.

Naimer: The international context?

Q1: The tribunal had been in existence for ten years, so you were coming into a system that had already established itself. What was your adjustment from the domestic system that you had been working in to this new international one?

Naimer: I had been so frustrated when I was working on domestic issues because my heart was in the international context, so I was just very excited to finally devote my time to topics and subject matters and themes that were truly areas that I was passionate about. I think the fact that I was coming to the institution having already worked at a law firm for three years was something that I found to be extremely helpful. I was not someone who was fresh out of school without any work experience and I think that it allowed me to take on meaningful projects. I hope that extra level of professional experience I brought to the job also helped to improve the quality of work that I had produced.

Q2: Was six months an impossibly short amount of time to be there, or do you feel like you could come up to speed? What was it like when you arrived there? How were you oriented to the institution?
Q1: What was the learning curve?

Q2: Yes, what was the learning curve?

Naimer: I think that I was very lucky that I was part of the Office of the President. I think by and large people can have very substantive experiences there, but I appreciated being assigned to a very small office. The associate legal officers working the Office of the President were very generous with me and received me very warmly and gave me substantive work to do. I really felt like my experience was very meaningful.

The other people in chambers were working typically with a judge, but I think experiences ranged. It really depended on your judge and how they brought you in, how they integrated you, how they gave you work. If you worked for a good judge, you had a really terrific experience. Like anywhere, those individuals who worked with great judges or supervisors who mentored them, had very positive experiences. I felt lucky that I was working with people who were doing that for me.

Q2: What was the inside chat about different judges? [Laughs]

Naimer: People talk all the time. And there was a lot of movement between the different tribunals. There were judges at the ICTY who came from the ICTR and there was a cross fertilization of experiences. Because of the "completion strategy," people observed that
less effective judges from the Yugoslavia tribunal were beginning to migrate to the ICC. That was also the case for certain investigators or others, some of whom were extremely effective and some of whom were less so, but they were migrating to the new institution because that's where the new opportunities were. I saw seeds being sewn regarding challenges that would eventually manifest quite notably at the ICC.

Q2: That's interesting, and you don't have to name names, but I have two questions. One is, what makes a judge effective? And the second question is, the judges who were not effective, how was it that they managed to get another judgeship in such an important institution as the ICC?

Naimer: Those are very good questions. There are many answers. People are nominated by their countries so their mastery of content and subject matter could be limited. Some of the judges may not have even worked in international criminal law before. Especially in those early days, when modern international criminal law was developing in real time, few of the judges would have come to the court with that kind of experience. Some of the judges came from business backgrounds, some of them were diplomats and not necessarily legal experts. Some judges outsourced a significant amount of work to their clerks or legal advisors.

Q2: Some drank too much.
Naimer: Some were not necessarily passionate about this work, or maybe they saw it as a sinecure. Maybe some were burnt out, whatever it was. Some judges are—were terrific and wrote these really important decisions that catalyzed international criminal law and these decisions became watershed moments that transformed the whole international legal system, like the Akayesu case. But other judges didn't do that.

Q2: If I understand correctly, it seems to me that when you see a decision—a judgment comes out—the people who worked on it really are not recognized, whereas if you look at an indictment or something you actually see a lot of the people who were on the team who were working on something like that. What's it like to work with a judge and kind of be invisible? Did you feel invisible?

Naimer: I didn't have any expectations of being more visible. That's a really interesting question for many of the senior legal officers who, for many of these judges—not all of them but for many of them—actually write the decision. They may have a different opinion on that.

Q2: And they're not recognized officially on the document, right?

Naimer: No, they're not.

Q2: Because I can imagine if somebody was working for one of the less effective judges they must have been shouldering a lot of the work—the writing and the—
Naimer: Absolutely.

Q2: —the intellectual work that went into these judgments.

Naimer: That's absolutely true. It's interesting—I think that the larger culture does not acknowledge the critical role of the law clerk at the ICJ [International Court of Justice] or the Supreme Court in many different countries. And frankly I'm not sure if there's a grand expectation to have that kind of formal acknowledgment. I think the privilege of working in these institutions with these judges without any public recognition of your particular contribution is just part of the experience. It's an interesting question but I don't think clerks or legal officers have grand expectations to have that kind of highly visible role. I think your job is to make your judge look good and if you can do that well and then you are affiliated with that judge then that's a bonus for you.

Q2: It's understood in the field that—

Naimer: Right, that's part of the job.

Q1: You mentioned these two cases that you were working on. What was your role? Can you talk us through those cases and that work?
Naimer: I don't remember with granularity, but like I said I was given particular tasks to focus on—a piece of the case. The Ntakirutimana case was being considered on appeal and the hearings had taken place already so—

Q1: Can you give us some background on that case?

Naimer: Ntakirutimana is a well-known case. Philip Gourevitch wrote about it in his in-depth account of the Rwandan genocide *We Wish To Inform You That Tomorrow We Will Be Killed With Our Families*. Elizaphan Ntakirutimana was a pastor and he encouraged Tutsis to find safe haven in his parish, and he then informed militias that the Tutsis were hiding there, and they were subsequently killed. He and his son, Gérard, were both implicated. Elizaphan managed to get to Texas but he was eventually extradited to the ICTR.

Q2: Yes, that's what I was looking—that he was in Texas.

Naimer: Yes, he tried to hide out there, but then he was extradited to the Rwanda tribunal in Arusha. Both were found guilty for their role in the genocide. They appealed, and while I was there the appeals chamber was considering the appeal. One of my tasks included writing a memo on the question of witness credibility.

Q2: Were the appeals judges divided into panels or did they work as a plenary group?
Naimer: There were five judges on the appeals bench.

Q2: Who was with Meron?

Naimer: Judge Meron was the presiding judge. He was joined by Judge Florence Ndepele Mwachande, Judge Mehmet Güney, Judge Wolfgang Schomburg, and Judge Inés Mónica Weinberg de Roca. The appeals decision was handed down in December 2004. I had been following the case even before I arrived at the tribunal, so it was one of those moments where it was particularly fascinating to have direct experience working on even a small piece of the case. I don't want to overstate my role there; it was a small role but I felt very excited to just have access to the tribunal, to the case, and have a little window on how justice actually works inside the belly of the beast.

Q2: What about the other case?

Naimer: Šešelj was a case that emerged from the former Yugoslavia. He was, as I recall, a very difficult defendant and there were a range of issues that were slowing down his trial at the time, so there was an action brought against him in contempt of court. I worked on that. In the meantime, while I was working on a whole range of issues relating to these two cases—and of course other cases as well—there were many hearings that were taking place at the tribunal. Whenever there was a hearing with Milošević or anyone else, we would as interested personnel working at the tribunal—we would go and sit in the observation area and watch these cases. I just felt very privileged to be able to be
there. For so long these international justice institutions didn't exist at all. International justice was just an ethereal concept. But there I was several years later actually observing these cases in The Hague at the tribunal.

Q1: You were seeing it in real life, finally.

Naimer: Yes, and I felt very privileged to be there.

Q1: What sticks out in your mind about some of those observations being there? Not necessarily cases that you worked on but maybe some other examples?

Naimer: I was struck by a number of things. I was struck by how procedurally heavy these cases are. I was struck by the intentional efforts the judges were making as they tried to engage all sides in court—the prosecution and the defense. I was also struck by the remoteness of these hearings and how the people most impacted by these cases resided in communities that were so far away—most would never be able to get to the ICTY to see these hearings in person. Every once in a while, if there was a major decision coming down, you would see family members coming from the former Yugoslavia sitting in the gallery to watch.

Q2: The tribunal would bring them in?

Naimer: They would allow them to come in.
Q2: But did they pay for them to come? Was there any of that?

Naimer: I don't know. That's a good question for the registrar. I was really struck by the remoteness issue. Even for the Rwanda cases, the ICTR is based in Tanzania—but it's far enough that people in Rwandan communities wouldn't necessarily be able to see justice being done for themselves.

[INTERUPTION]

Q1: The ICTY was the first war crimes tribunal that had been established since Nuremberg, so I was wondering, what was the legacy of Nuremberg at the ICTY, and if that factored into your thinking about it at all?

Naimer: I think that Nuremberg played an enormous role as a historical precedent for an opportunity, a moment in time, to have differing groups—the Americans, the Russians, the French the British—agree on an approach to justice and to deliver that justice fairly quickly. Similarly, the ICTY emerged from a post-Cold War moment where countries who didn't always agree with each shared a moment of consensus to create an institution that would also respond to horrible atrocities with an attempt to bring justice for survivors and document a historical record. Of course, justice and historical records are not always the same, but I think that there is a recognition that some historical record can emerge from a justice process.
One of the legacies of Nuremberg that didn't translate was that the actual Nuremberg trial was very short, all things considered. I think that one of the challenges the Yugoslavia tribunal has really had to reckon with is how long these cases are taking there. Milošević is a perfect example of how complicated, how convoluted, how cumbersome cases can get when you also are trying to use the judicial process as a means of capturing all the data to build a historical record. The fact that Milošević died in the middle of his case, his trial, was devastating for the tribunal, for people working on his case and others who were very keen to see a former head of state be held to account and receive the judgment they felt he deserved, and for the historical record to show that justice was meted out in his case.

The process dragged out so long, deliberations were so slow, procedure was so cumbersome, and everyone was disappointed. Somehow between Nuremberg and the emergence of the new international legal order in the 1990s, we lost the ability to try cases as quickly or as efficiently as they were able to do back then, for better or for worse. This is also a criticism that's frequently lodged against the ICC.

It's a real challenge for international criminal law today. There was so much hope. There was so much promise. Even people who were naturally quite cynical about the international justice enterprise were watching to see if it would succeed. But the length of these cases and the corresponding cost reinforce the notion that justice is very slow, and it's very costly, and so as a result is only going to capture very, very few people who even
get there. As a result a deep amount of cynicism has set in and more people are trying to explore alternative opportunities for meting out justice at least at the local level.

That's what we're trying to do now at Physicians for Human Rights, where I direct the Program on Sexual Violence in Conflict Zones. We work largely with communities in sub-Saharan Africa, in the eastern parts of the Democratic Republic of the Congo [DRC] and in Kenya. We train doctors, nurses, police officers, lawyers and judges in these communities on the most effective ways of collecting, documenting, and preserving evidence of sexual violence in order to support local prosecutions of those crimes. Of course, we are training on best practices, so if evidence is collected and can be useful in international prosecutions then the hope is that this evidence would be admissible in those other processes. But, through this program, we are really trying to build capacity at the local level so that these prosecutions, these trials can be taking place in these communities where these survivors, the alleged perpetrators, and the first responders can be part of a justice process and see justice being done at the local level.

Q2: Through that colloquium we did—and David you've seen, working on the report, the challenges faced by the DRC judges are pretty phenomenal.

Naimer: Yes. One thing that certainly emerged at the judicial colloquium that we convened together is that—and this I found actually amazing—that judges, military and civilian magistrates in Congo, and judges in Kenya too are aware of the Rome Statute, and they are using it, especially in DRC. They're using the Rome Statute in their courts.
What's amazing to me is that despite the challenges of implementing the statute at the ICC—and we saw these challenges again recently with the [Uhuru Muigai] Kenyatta decision a few weeks ago—nevertheless the enterprise of developing the Rome Statute and trying to implement it as a model for local processes, is very meaningful to stakeholders in these communities. I find that extremely heartening while, at the same time, I'm fully aware of all the challenges and the deficits of the international justice enterprise.

I think that there's a lot of merit to the fact that the Rome Statute exists and is used as a model that is implemented locally by these judges who don't have much access to observing international processes or access to international jurisprudence. Nevertheless, these judges are using this statute as something that is guiding them locally on best practices.

Q2: It's kind of amazing when you think that the unrealistic expectations some members of the international community have about how quickly the ICC could actually get up and get running and have the impact that it probably has the potential to have, but it might take a hundred years. Certainly it's going to take more than twelve years, or twelve or thirteen years since its establishment.

Naimer: It's true. When we make comparisons between the ICC and the ICTY, we must be mindful of the challenges that the ICC has faced as compared to the Yugoslavia tribunal. Some of them are obvious—that the Yugoslavia tribunal was established to
respond to only one war, albeit comprised of multiple conflicts, whereas the ICC is investigating so many situations involving so many different countries. Each conflict is completely different culturally, politically, linguistically. It's harder to spread limited resources across a wider range of areas.

At the same time, the ICTY did get up and running fairly quickly, and when it finally did become operational there were great people there who were advancing these cases and were able to be agile and efficient. So much of the enterprise is also about optics, and early on, the prosecutors at the ICTY were able to establish the credibility of the court, which then reinforced the credibility of the court when they were actually able to carry out some of their work. The ICC has not benefited from similar processes that then reinforce the credibility of the work that it is doing.

Q1: Relatively.

Naimer: Twelve years of the ICTY accomplished a certain amount of work and twelve years at the ICC is very different; it's a different record. Again, different mandates, different resources, different challenges.

Q2: On the work I've been doing recently on how the ICC is dealing with the languages of cases and victims, I think they're currently working on training and coming up to speed in—I think—thirty-three African languages, many of which are not habitually written.
Naimer: It's an impossible—

Q2: Rwanda basically has one language, which is very unusual for Africa. Of course, the same thing in the Balkans, but you can't just—the time that goes into that cannot be understated. I wanted to ask you something, and this gets back to what David was saying about the legacy of Nuremberg. I'm struck by you talking about the people who have been very important in developing your interest in international criminal law. You mentioned Richard Goldstone, and then you worked with Ted Meron, and you yourself being Jewish, I'm wondering about a particular resonance there is for members of the Jewish community working in international criminal law looking at how essentially the whole enterprise started as a response to the Holocaust, and whether you think that there's a particular engagement on the part of the Jewish community in international criminal law?

Naimer: I would argue that Jewish engagement in international law started long before the Holocaust. There's a small town of Lwów and one can argue that there are so many great Jewish thinkers who emerged from Lwów who then went on to become great legal thinkers on international law—Hersch Lauterpacht, Louis Henkin. There are a handful of others whose own identities as Jews and struggling with anti-Semitism in Europe; the porousness of borders; the inability to trust in local authorities as protectors; needing, searching for some legal authority above the local community or state that one can reach out to and hope could serve as a mechanism for accountability for violence taking place by authorities within the community. I think those concepts helped to frame for those
early thinkers that there has got to be some kind of legal system out there beyond their local legal system that can protect them and that can protect them from anti-Semitism, from violence. What better way than to identify with universal human rights, not just rights for Jews but rights for all human beings, just to pull yourself out of your small community and recognize there must be basic universal rights that apply to everyone and that need protection.

It's not surprising to me that 1948 actually marked a moment, a day apart—December 9, December 10—where the Genocide Convention and the Universal Declaration of Human Rights were adopted, respectively. These are twin concepts, two sides of the same coin, and Jewish legal thinkers had significant input in each of these landmark documents. Raphael Lemkin—also from Lwów—a survivor who lost many of his family members in the Holocaust, drafted and helped to establish the Genocide Convention. And the leadership of the American Jewish Committee was among the distinguished Jewish contingent urging the United Nations to adopt the Declaration of Human Rights. There has been a significant Jewish contribution to the development of public international law. And, reinforced by the experience of the Holocaust, Jewish thinkers played a significant role in the development of international criminal law, flowing from Nuremberg.

Q1: If there's anything you'd like to say in closing, go ahead and we'll close up for the day.
Naimer: I think this is a really important project and I hope that you can get as many diverse voices to speak about their experiences. Mine is such a small one, but for me being at the ICTY was a really formative experience and I felt very privileged to be part of that tribunal when I was there, and to have continued to grow and learn from my time there as I continue to do my work in international law.

Q1: Okay. Thank you so much for taking part in this.

Naimer: Thanks.

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