TRANSCRIPT
Online Event
International Norms Under Pressure: State Compliance with International Humanitarian & Human Rights Law

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FEATURING
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Good morning, everybody. My name is John Hamre. I’m the president here at CSIS in Washington, D.C. And I want to welcome all of you for what is going to be a very, very important conversation. Those of you who are familiar with CSIS, you know we are a 62-year-old think tank that has had a longstanding history looking at defense and foreign policy issues. And I personally come from a defense background. And we’re right now, all of us, witnessing a dreadful war. You know, war is a brutal and dreadful thing, by definition, but there are rules. There are norms. We don’t always meet the highest standards, but we sure try. But we’re now seeing some dreadful, dreadful things on the world stage.

There is a structure that is supposed to govern nation-states in their behavior when they undertake these terrible things. And we are seeing really a serious erosion of these norms. We’re going to dig into that today. And I really want to thank my – these very distinguished colleagues for giving us their time and their perspective today for this conversation. I want to say thank you to Steve Morrison. Steve is stepping in here on behalf of Marti Flacks. Marti, who heads up our human rights program – (laughs) – came down with COVID. It’s going around. But Steve stepped into the breach. And, Steve, I want to thank you. And I’ll turn it to you now for a conversation with these distinguished colleagues. It’s going to be very important for all of us. And thank you all for joining us today.

Thank you, Dr. Hamre. And I want to offer special thanks to Marti Flacks for all the work she put into this. This is really her initiative that got us to this point. And Dr. Hamre, thank you for your leadership on this matter.

I’m J. Stephen Morrison, senior vice president here. I direct our Global Health Policy Center. But we’ve also taken a special interest in violence against the medical sector in conflicts. We put together a film, The New Barbarianism, back 2017 that featured folks from ICRC and many others, in looking at violence in Syria, Afghanistan, Yemen. And we’ve continued that work. We now have a series – video series, Ukraine: The Human Price of War. We’re putting the fourth episode of that out on Monday. And it treats many of these same issues.

And so we’re really delighted today to have such a distinguished panel. It couldn’t be more timely. Just this week, of course, we saw the announcement by the U.S. government of the creation – the launch of the Conflict Observatory, attempting to gather data from a variety of social media and video and satellite and imagery and the like. A partnership with Yale University, with ESRI, and with other institutions. Very creative and interesting. We also saw the launch of the trial of the 21-year-old Russian soldier in Ukraine. And we saw the threat coming from the Russians as
soldiers were moved out of the Mariupol steel mill into Russia that they might be labeled terrorists and prosecuted on that basis.

So these issues are daily, live active matters in front of us. And I think that for our purposes here today it’s really a moment to step back and hear from these remarkable experts I’ll introduce in a moment around the bigger and deeper issues that are coursing through this. Because of the actions that have been taken at the U.N. Security Council, the U.N. General Assembly, the active engagement of the International Criminal Court, the Ukrainian conflict has really shown a very bright spotlight on international human rights and humanitarian law, including the Geneva Conventions.

And it’s done it in a way – the Ukraine war, the Russian invasion’s – done it in a way that really goes beyond in intensity and dynamism and initiatives related to this than other recent conflicts, where some of the similar issues have surfaced. And we can try to unpack some of that. Many are arguing that this is a historic moment, that it’s creating the possibilities and the opportunities to do things that – faster and better than perhaps has been the case in past wars. We’ll see. That’s an active debate. That spotlight has also exposed both strengths and weaknesses in the system, depending on your point of view. And we’ll hear more about that. The glass can be either half full or half empty. And this is something, of course, that our panelists will weigh in on.

We’ve seen some – at the U.N. General Assembly – overwhelming votes endorsing and embracing the norms and the obligations under international humanitarian and human rights law. But we are also seeing a lot of constituencies, a lot of very – the majority the world’s population abstaining. And that raises all sorts of questions around, you know, what do these really represent in terms of consensus or non-consensus? There’s a strong rhetoric, of course, condemning the atrocities, but there’s less in the way of specific, concrete actions that flow from them. And that’s a concern.

Embedded beneath this, of course, is the concern about how weak or strong are the norms on which all of this is constructed. And what are the concrete measures and steps that can be taken in this moment of time to reinforce those norms? How do we broaden the consensus among countries that should care more about these norms? Many countries of the world weren’t involved at all in the drafting of these or the launch of these norms earlier, and is there some way that they can be brought in in a new fashion?

And is there a way to make the great powers more accountable to these same standards? I mean, the – there is – there is always a debate around
hypocrisy and double standards, and the degree to which a transatlantic core or Western core stands behind this, but only when it’s, perhaps, convenient.

Let me quick introduce our guests, and then we'll move rapidly into a roundtable conversation. Those from the audience online, welcome. And we welcome your thoughts in sending us remarks, and we'll try and work those in. From our staff, Lauren Burke and Stefan Welsh on the production side have been really valuable in making this happen. And thanks to both of you.

First, I want to introduce Dr. Cordula Droege. She’s the chief legal officer and head of the legal division for the International Committee of the Red Cross and is in town today. Thank you, Cordula, for being with us. We have worked very closely over many, many years with the International Committee of the Red Cross, both here, in Europe, and in many conflict areas, and hold it in the highest regard. Cordula joined the ICRC in 2005, has had a number of very important positions in the field. And in headquarters she served as chief of staff to the president of the ICRC. In her earlier career, worked at the International Commission of Jurists, the Inter-American Court of Human Rights, and the Max Planck School of International Law. She has a law degree and a Ph.D. from the University of Heidelberg and an LLM from the London School of Economics.

Which brings me to another alum of the London School of Economics, which is Chanaka Wickremasinghe. Welcome, Chanaka. He is minister-counsellor and legal advisor for the United Kingdom mission to the United Nations in New York. He joined that directorate at the Foreign Commonwealth and Development Office in 2001. Previously been posted earlier to New York and to Brussels. Prior to that, he led – prior to his current position, he led a legal team dealing with human rights, and was the governor’s agent before the European Court of Human Rights.

Third is Oona Hathaway. Oona is professor of international law at Yale Law School, and a professor in the Department of Political Science there, and director of the Law School Center for Global Legal Challenges, and a counselor to the dean. She's taken also a very strong role in the public domain. She’s a member of the Advisory Committee on International Law for the legal advisor at the U.S. Department of State since 2005. And in the Obama administration during the first term – the second term, 2014-15, took leave to serve in a very important post as special counsel to the general counsel of U.S. Department of Defense. And as Dr. Hamre has emphasized, these matters are of great – of great importance to the way in which our military trains and deploys and sees its own mission in the world.
Let's start the conversation. I'm going to start with Cordula. Let's begin with a broad question for you. I would encourage all – we’re going to – this is meant to be interactive. I’ll put a couple questions to you, Cordula, and then I'll move around to our other guests. But let’s keep our answers relatively short, even though we’re asking really big questions. And I’d ask everyone to try and reflect on what we’ve heard from our earlier speakers.

So, Cordula, the Geneva Conventions and the related body of international humanitarian law are among the most widely accepted international norms. And ICRC plays this special custodian role. It plays this role in monitoring and supporting implementation of those rules. In your estimation, how are states performing in terms of their responsibilities – their international humanitarian responsibilities? How do you – how do you assess the broad climate right now?

Cordula Droege: I think broadly what's important to say, perhaps, first is that the consensus around – the international consensus around international humanitarian law stands. It is – it is strong. And we see that both in the formal statements that states make about international humanitarian law in the public domain, but also we see it at ICRC in our bilateral engagement with states, where we really have this confirmation that states do have a commitment to international humanitarianism.

You know, a couple years back at the 70th anniversary of the Geneva Conventions, in 2019, there was as well a lot of writing and talk about, you know, the death of the international rule law, of the rules-based order. And yet, what we saw was actually also a great reaffirmation and commitment for the Geneva Conventions. And we saw that also in 2019 at the international conference for the Red Cross and Red Crescent, where a unanimous resolution was adopted, and I might be able to talk about it a little bit later, about, you know, bringing IHL home and implementing it in the national system.

And I think there are sort of broadly two reasons for this. First, I think is that IHL and the Geneva Conventions have actually stood the test of time, and they have, without any doubt, contributed to lessening the suffering of people in armed conflict. We don’t see that so much, and of course we mustn’t dismiss the suffering that exists, but there’s no doubt that the Geneva Conventions have saved lives and that states also, in a normative sense, weren’t carried away by idealism when they agreed to the Geneva Conventions in 1949. They agreed to conventions that are – that do not demand the impossible, that are finding this balance between military necessity and, as you said, not outlawing war, allowing states to pursue their military goals but, at the same time, providing a principle of humanity to counterbalance the military necessity principle.
And then secondly, I think they also reflect universal values. And we have
to be careful, I think, not to give the impression that there’s a monopoly of
humanitarian values in certain parts of the world. So I think for that it’s
important to recall this commitment that is universal, even though
perhaps historically not too many states were present, as you said, at the
drafting of the Geneva Conventions. But that is not what is really the
discussion with states and governments at the moment. And, you know, at
the risk of being a bit of a pesky positivist, but they are universally ratified.
And so I think we also have to recall that there is a universal obligation on
states to respect them.

Now, that said, of course, we have to acknowledge that the biggest
challenge for international humanitarian law remains lack of respect for it
in so many conflicts around the world. There’s absolutely no doubt that
we have to – we have to see improvement on respect for humanitarian law
in so many conflicts. And the question then is what is the consequence of
that? And do we – do we therefore dismiss the framework as such? And I
think the answer to that is no. And that the way we should respond sort of
has two elements to it. One of them is to remind ourselves, in a way, what
would be the contrary position, if we did not have these rules of
international humanitarian law.

And the simple message to me that it would be simply immoral to dismiss
some of these rules that are so basic, reminding ourselves perhaps that we
often think about the destruction and the rules on the conduct of
hostilities – which are complex rules with their own challenges. But
international humanitarian law contains prohibitions such as the
prohibition of murder, the prohibition of rape, the prohibition of enforced
disappearance. It has simple rules on the protection of the wounded and
sick, on, you know, the right to remain – that you have contact with family.
And I think it would just simply – there is just simply no moral ground to
dismiss those rules. And so therefore, we simply have to keep them up.

And I think we also, secondly, have to nuance the diagnosis a little bit
about the problem analysis, and why there are a lot of nations. There is
actually a lot of respect for international humanitarian law. There’s
respect for international humanitarian law every day by many parties to
conflict that do commit to treating their detainees properly, that do
commit to allowing their detainees to have family contacts, that do commit
to demobilizing child soldiers, that enact rules that lessen civilian harm,
that prohibit certain weapons, or that decided even if the weapons are not
prohibited to not use them in, for instance, urban areas in order to reduce
civilian harm.

So there are all these instances that we have to also record of respect for
international humanitarian law. And that should be for us be a message, I
think, to spread because it gives a sense of agency as well, and of choice for
the parties, that they can choose to protect international humanitarian
law. And I think the more examples and the best practices that we show,
the more we can still sort of show that it is possible and not to the
detriment to military objectives with respect to international
humanitarian law.

Dr. Morrison:

Yeah. I mean, just to quickly push a bit on what you’ve said, the – you can –
you can assert that there’s a sort of universal consensus, but you can also
posit that there is skepticism, there’s resistance, there’s fatigue, there’s
many instances in which respect – many instances in which there’s been
dramatic abrogation without an ability to enforce, and that you have many
states that don’t see – that may not necessarily identify fully with this.

ICRC plays the role of being the custodian, but also the evangelist and the –
and the center of this. So you’re seeing this – you’re seeing this climate –
this opinion climate. And, you know, we have a number of countries in
Asia, Latin America, Africa that are – that have come into their own in this
period. You know, and their worldviews have evolved over this 70-year
period. Do you see the trajectory of opinion towards consensus or towards
sort of a fractured or mixed picture of opinion?

Ms. Droege:

No, I think the trajectory is actually towards consensus. And the more you
reach out, the more you see that. I think in Latin America there’s often a
very strong support for the normative rules-based order, including for
international humanitarian law. But just to give some examples as well,
you know, the speech of the Chinese president at Davos a few years back,
that referenced also the importance of international humanitarian law. We
hold a lot of regional events and seminars on international humanitarian
law because we also feel that international humanitarian law has to be –
that we have to engage with states about those things in international
humanitarian law that are of particular interest or concern in their region.
And again, I think there’s no – the issue is not an issue of putting into
question on the part of government of legal framework around it. There
are a lot of questions around the respect. And I think we will speak later
about accountability and how to enforce international humanitarian law.
And of course, that’s the key question. But it’s – I don’t think we can say
really that there is a – that there is on the part of any region – any
particular region of the world or putting into question the values that
international humanitarian law embodies.

Dr. Morrison:

Yeah. I mean, the votes that we’ve seen, there’s a large contingent of states
that are hedging their bets, right? They’re abstaining. They’re hedging
their bets. That’s –
Ms. Droege: I think, though, that – and I think Chanaka and Oona will speak more to this – there was the right – you know, the discussions at the U.N. were really about jus ad bellum) as we – as we say as lawyers; that is, about the question of going to war, rather than about, you know, what rules have to be respected when war is waged. And so I think we have to not conflate the hedging their bets on those – on those different – on those different issues.

Dr. Morrison: On the values. Yeah. Chanaka, let's talk about, you know, where you sit, in New York, and how you see things. You're there observing this evolution around the Ukraine, the Russian invasion, and the consequences of that. Do you see a consensus forming or do you see a fracturing when we're talking about international human rights and humanitarian norms? Obviously, there's a very, very strong, and ever stronger, transatlantic alliance coming out of this conflict. The question is, what about the other countries that may be on the sidelines? Where is their sentiment in your estimation?

Chanaka Wickremasinghe: Thank you very much, Stephen. That's – it's a very interesting question, and it's one that is – I think when one's thinking about state’s approaches to these questions, they have both political views and legal views. But I think it would sort of go along with Cordula, that in terms of the norms themselves there is a large degree of consensus around the applicable norms. International humanitarian law is cited by all states as being important in questions of conflict, in situations of conflict. And I think that it does set a basis for state behavior that is broadly agreed on.

And what tends to be the argument is whether or not states have complied with those obligations. It's not about challenging the obligations themselves very often. And I think when we look at the activity around Ukraine, when we look at those early resolutions in the General Assembly from early in March, where there were 140 votes – 140 states voting in favor, and then maybe only sort of five voting against, even if the silent minority of, whatever it is, 40-odd states, that was relatively small. There were 140 states condemning this aggressive behavior. A hundred and forty states saying that, you know, this is a fundamental rule – the non-use of force is a fundamental rule in the international system.

So I think these rules are more broadly based than perhaps some times one gets the impression, when one hears the sort of policy thing around and the justifications for and the sort of and so on. Usually, states agree on what the basic rule is. It's then they find – they try to justify an exception, or a reason why it's not applicable to them in this way, or a reason why they have applied it in good faith, they would say. So I think the rules are there, and they are actually remarkably strong.
Dr. Morrison: Thank you. While – you know, just since you’re in New York and you’re working on – working there, I want to ask you one institutional question. I mean, the decision to send any resolution vetoed by the Security Council to the General Assembly is a very interesting one. And I wanted you to offer some reflections on that. And in this conversation that we’re having here, which is about trying to deepen and broaden a consensus, we know that there’s deep tensions, if not paralysis, on many issues within the Security Council. The General Assembly does have some authority over these peace and security issues, but its enforcement ability is limited. But it has – it has the capacity to broaden the conversation, including around reform, but also around building institutions. Say a little bit about that decision and what that may mean operationally looking ahead in this debate that we’re having right now.

Mr. Wickremasinghe: Thank you. Yes, of course. So the recent decision for – that the General Assembly passed was to ask a permanent member who has wielded a veto in the Security Council to block a resolution to come to the General Assembly and explain itself. It’s a sort of means of political accountability to the General Assembly. I think the thought behind it is that there is an acceptance, of course, that these five states have an unusual and an extraordinary power in the system. But if they wield that power to prevent the adoption of a resolution, then they should explain themselves to the sort of parliamentary body, as it were, the General Assembly.

And that, I think, passed by consensus, which is very interesting. There were no votes against it, even from Russia or China, who one might think would be – would be – would have difficulties with it. And in fact, the U.K., U.S., and France, the other permanent members, all co-sponsored the resolution and firmly supported it. So I think there is an acceptance that if one has that unusual power, then one should be accountable for its use. As to whether or not that will lead to further institutional change in the U.N., so to perhaps expand the membership of the Security Council, there has been an ongoing process over very many years on that, as I’m sure and the audience know.

That intergovernmental negotiating process is ongoing. It’s just had another round this year. There is a little bit more convergence, I think, than there has been in the past. But I don’t think we’re likely to get to see fast action on that because the international community is still too split on that. So whilst I think charter change may be difficult, some of these other mechanisms to ensure greater accountability for the way the security – the way states act in the Security Council may come forward more strongly.

Dr. Morrison: Thank you, Chanaka.
I want to turn to Oona along these same lines. The, you know, enforcement of international norms has long relied on the Security Council to take action. That system has, by definition, leaned towards protecting great powers from accountability, in many occasions. You know, the United States benefitted from that. In this – in this current context, do you envision reforms to the system that can provide greater accountability for situations like Ukraine?

Oona Hathaway: Well, let me talk a little bit about the question of how international law is enforced, because I think it would take – I would not fully accept the Security Council is the main way in which international law, in fact, is enforced. So I mean, the Security Council is, of course, one mechanism. But even from the very get-go it was rendered not entirely ineffectual, but not a central mechanism for enforcement of international law by the fact that getting the five permanent members to agree on any significant intervention is quite difficult. And from the beginning, the Russian Representative Gromyko was known as Mr. Nyet, because he voted against so many resolutions.

So the Security Council has not been the main way in which international law has been enforced. The main way in which international law is enforced in the modern era is actually through a much more decentralized mechanism, which in my work – a lot of it with Scott Shapiro, we call “outcasting.” But that includes the familiar use of economic sanctions, for instance. So the idea is you create a set of benefits that come from being a member of a global organization, of engaging in global cooperation. And what’s the way in which you are disciplined? It’s often through being excluded from the benefits of that global cooperation.

So one obvious way is you’re a party to the WTO, you break the rules of the WTO. And nobody sends in the military to enforce those rules. What they do is they just allow you to put in place countermeasures once it’s been found that, in fact, there’s been a violation that allow you effectively to break the rules back against the state that has violated the rules to begin with. And much of international law, once you start looking around the world, works this way.

Now, that doesn’t work very well for certain kinds of norms, like international humanitarian law, for instance. You can’t sort of engage in an international humanitarian law violation in response to an international humanitarian law violation. So you have to do what we sometimes call cross-countermeasures, or use other mechanisms – sometimes trade sanctions, sometimes diplomatic measures, sometimes we have – of course, we have universal jurisdiction in many countries for war crimes. So even if a state is not willing to enforce it itself, it gets enforced by other states.
And now, of course, we have the International Criminal Court, which doesn’t have universal jurisdiction, but does have jurisdiction in a number of countries. It gets jurisdiction either over states that are party – the actions of nationals of states that are party to the international criminal court, or over the territory of a state that has agreed to the jurisdiction of the court, or over a state that has specially accepted the jurisdiction of the court. And that’s what we’re seeing today in Ukraine, where Ukraine is not a party to the Rome Statute that creates the International Criminal Court. But it has agreed, agreed in 2014 and 2015, to the jurisdiction of the court.

And that is allowing the court actually to engage in massive investigations of war crimes, crimes against humanity, and genocide that are taking place in Ukraine. So I think narrowing the scope to the Security Council is just a very narrow scope. And we have to be looking much more broadly at this whole range of mechanisms, much of which is highly decentralized. So one of the main ways in which Russia is being disciplined in the current conflict is through massive economic sanctions from the world over. And that has been one of the main costs that has been exacted on Russia, in addition to the investigations from the ICC and war crimes prosecutions taking place in Ukraine and elsewhere. So I think if we’re just looking at the Security Council, we’re missing all that much bigger and more interesting picture of how international enforcement actually works.

**Dr. Morrison:** Cordula, would you like to add anything to this?

**Ms. Droege:** I’m very glad Oona explained it so well, and also that you can’t really respond to IHL violations with other IHL violations, which is, you know, a good thing, of course. IHL – and we all know this – lacks effective enforcement mechanisms. But that is also because states have decided not to agree to them, so you have mechanisms of individual accountability. But also I think it has to do with the fact that international humanitarian law is – in the way it’s conceived, it’s really meant to be a very practical body of law to guide parties while the conflict is ongoing. So it will have very precise rules about how do you treat detainees, how do you conduct hostilities. And it’s really – it’s sort of a body of law that is very much concerned with what happens during the conflict.

Now, interestingly, of course, in Ukraine accountability starts very, very early. I don’t think – I’m not sure there’s any conflict that I’ve seen where, you know, there’s been so much activity on individual criminal accountability right from the outset. Often it comes much later. But that is, of course, also something that’s foreseen in the Geneva Conventions. So the Geneva Conventions do have – you know, were perhaps the first conventions to codify war crimes, and the jurisdiction, and the obligation to exercise jurisdiction over war crimes.
So in the Geneva Conventions you have something called grave breaches of the Geneva Conventions. And those are complemented in the additional protocol to the Geneva Conventions of 1977, which complements those grave breaches with other war crimes committed in the conduct of hostilities – such as directing attacks against civilians, indiscriminate attacks. And so you have a set of obligations of enacting legislation. And it’s an obligation for states to enact this legislation, to investigate, and prosecute violations of the Geneva Conventions, so grave breaches, wherever they occur and whether your state has a relationship with that conflict or not.

And then you have more war crimes have been sort of developed over the years, for which there’s what is called permissive universal jurisdiction, so for which states are allowed to enacted universal jurisdiction without infringing other states’ sovereignty, when they prosecute these violations. So, you know, that’s a – that is also another way in which international humanitarian law is being enforced.

Ms. Hathaway: So I realize I didn’t answer one part of your question, which is how do we – how do we discipline great powers. I don’t know if you want me to jump in and actually answer that part of the question.

Dr. Morrison: Please.

Ms. Hathaway: I mean, I think what’s so interesting about this moment is that we are meeting – we’re seeing this challenge kind of – and facing it head-on. You know, so we have Russia, which is a nuclear-power state, that is engaging in what pretty much everyone agrees are clear violations of jus ad bellum, the United Nations Charter, which prohibits states from using force against one another, and in international humanitarian law violations. We’re seeing that rampantly. And the question is, how do you discipline a great power? And of course, Russia has a veto on the Security Council. So it has kind of all of the – all the cards kind of in Putin’s hands.

And so what we’ve seen is this effort to figure out, how do we discipline a great power? How do we discipline a state that holds all these cards? That has nuclear power, that – you know, that has a seat on the Security Council, that is – you know, that many countries in Europe economically rely on for their energy resources? And we’re seeing the development of answers to that question, which I find really exciting. And so, again, massive economic sanctions which have been put in place. Very broad-based across a range of countries that have collaborated. And put in place those sanctions almost immediately. I mean, that was pretty – the speed with which those sanctions went into place was almost unprecedented – not only their scope, but their speed.
We’re also seeing a kind of unprecedented response of all the international legal institutions of – that could weigh in. We’ve had a decision by the European Court of Human Rights against Russia, which has led to its being expelled from the Council of Europe. We’ve had a decision of the International Court of Justice finding that claims of genocide were clearly – that claims that Russia was making that genocide was taking place against Russian nationals in the eastern part of Ukraine were unjustified and did not justify an intervention by Russia, and ordering Russia to cease its intervention.

Seeing the U.N. General Assembly for the first time in decades acting under the Uniting for Peace Resolution to respond to the fact that Russia vetoed the resolution against it and pushing that to the General Assembly to have this unprecedented vote condemning its action. A hundred and forty members voting against it, to only four other states voting along with Russia. You’re right that there were 35 abstentions, but, you know, it only had four states willing to stick with it. And kind of the worst of the worst were the ones that joined with it.

And then, of course, we have the International Criminal Court, which is launching its largest investigation ever. And so we’re seeing that it is possible to discipline a great power, as long as you have reasonably – a reasonable amount of consensus within the globe and a willingness to use all of these legal institutions. And I think Ukraine has been particularly creative about how it’s used these legal institutions. It has really understood that its strength is that law is 100 percent on its side. And it has used that also to encourage states to come to its aid. I mean, the fact that it is fighting a lawful war in defense of itself against a manifestly illegal war is a reason that also countries have been willing to provide significant, unprecedented military aid, lethal aid, military assistance, and the rest, which is allowing it to defend itself.

And so we’re seeing that it is possible if you can build enough of a consensus around the world. Now, the trick is going to be, are we going to be able to hold that consensus together over time. You know, is – this is not something that is likely to resolve immediately. You know, are states going to be willing to stick with sanctions for the long term, you know, when we hit the next winter and, you know, European nations that have historically relied significantly on Russian energy resources, you know, are they going to be able to stick with sanctions? You know, is this consensus going to hold?

At the moment, the answer seems to be “yes.” I do think we have some work to do with Russian – with African nations that – half of the 35 abstention states were African nations. And I think there is clear work to
be done in terms of bringing nations on board and addressing their very reasonable critique of the response as being highly hypocritical because, you know, similar kinds of violations have happened in parts of Africa, and the world didn’t respond in the way that it’s responding to these violations in Ukraine. So I think there is work to do to build and hold together that consensus.

But it’s pretty extraordinary, actually, in some ways, what we’re seeing. The capacity to discipline a nuclear power state that holds one of the P-5 seats on the Security Council, you know, this is – this is pretty unprecedented. And so in that sense I think it actually sends a hopeful message.

Dr. Morrison: Thank you, Oona. Just a few reactions and then I want to ask Chanaka and Cordula to respond. I mean, what you’re painting really is a picture of an emerging historic opportunity, where there’s a convergence of factors coming into play in this crisis. It’s being built on international humanitarian law and human rights. It’s being built on that consensus. It’s not at odds with this at all. It’s strengthened by this. But it’s driven by other geopolitical factors that are moving forward. And it is – and there’s work to be done to consolidate it, what you’re saying here about Africa and elsewhere. There’s work that has to be done diplomatically to consolidate that. And that – and it has to come to terms with perceptions of bias and discrimination within these institutions and within this – within this.

I agree also that the question right now is around sustainability. You could imagine that with inflation, energy costs, food insecurity, continued burden of refugees into Europe and elsewhere – all of those factors coming together to really force a significant reappraisal around the wisdom of some of this, or a slackening of the determination. I also think that right now – right now there’s no prospect of negotiation. And that benefits this emerging consensus. If there were a quick option on the horizon around negotiation, the political dynamic would be completely different, I think, right now. The absence of that option is giving energy and space to what you’re describing, Oona. And that could change too, you know, if we – in a heartbeat. And that would force a different dynamic, and a different set of tradeoffs, potentially.

Chanaka, your thoughts?

Mr. Wickremasinghe: Thank you, Stephen. Yes, I think that if there were a negotiated settlement, that that would – or, the potential of a negotiated settlement, that would change the dynamic. I think one of the things one has to bear in mind is the widespread effects of this – of this particular conflict. It goes well beyond Russia and Ukraine. As the – as during the Security Council meeting
yesterday heard with Secretary Blinken there, the food security effects of this crisis are very widespread and will hit a number of those African countries, who may be reluctant to take too public a line condemning Russia on this.

So I think there is – there is still a lot to be seen as to how this plays out. And the maintenance of the – of a broad coalition is, obviously, a key to our diplomatic strategy in this, as Professor Hathaway was saying. So I think there's lot of work for us to continue doing in that respect. But I do think with the sort of strong framework of legal standards underlying our position, that is well-understood and makes our case easier to make with states who are more reluctant.

Dr. Morrison: I mean, what difference does it make that we have such a strong unity at a transatlantic geopolitical level to move this agenda forward?

Mr. Wickremasinghe: Well, I think it’s been vital in some aspects of the – of the response. For example, in – on the sanctions side, as Professor Hathaway was saying, these unprecedented sanctions, the position of the United States in being able to control the dollar and that end of the sanctions is absolutely key. But what has been interesting is the response of lots of other countries as well, and the sort of strengthening of NATO in some ways, that Sweden and Finland are now coming forward to sort of give up a position on neutrality in this respect. And I think there is – there are real choices for states as they look at what the implications directly are for their own interests. And that is – that is significant.

Dr. Morrison: Thank you. Cordula, I know you wanted to weigh in.

Ms. Droege: You know, just sort of going on from what Oona was saying as well about the enforcement and no, you know, a country like Russia is being disciplined. And I think it was very important to sort of set out all those – all the mechanisms now. In a way, to my mind, they are not so different, either in their effectiveness or, indeed, their lack of effectiveness, from previous – from previous conflicts. And I think when we look, for instance, at conflicts like Syria, like Myanmar, like Yemen, I mean, the fundamental question – or Nigeria – the fundamental question also arises, how do you put a stop to these egregious violations?

And the international community has imposed sanctions in many of these – in many of these situations. There is still, though, ongoing conflict and there is great suffering for the people there, and lack of respect for international humanitarian law. And, you know, the challenge of getting respect for international humanitarian law remains and is, in a way, structurally not so different in the Ukraine-Russia conflict as it is, perhaps, in other conflicts.
Also, that leads me to what you were saying about, you know, the lack of space for negotiation. And sort of from my vantage point as a humanitarian, but looking at what really needs to be done, you know, respect for international humanitarian law can only ever go so far in lessening the suffering in armed conflict. And we have to be modest about the objectives that international humanitarian law can really achieve, and also modest about humanitarian work and humanitarian access in conflicts.

And I think what we’ve seen over the past decade or so is sometimes that the international community goes to what I would almost call the low-hanging fruit of humanitarian access. We saw that very much in Syria. When really, and that is important, of course, and we are very – you know, we’re very grateful, of course, for the commitment to humanitarian work, et cetera. But really, what needs to be done is to bring peace also.

And I think – and that is, for me, something that’s similar in – so in in bello, as I would call it, in armed conflict trying to get the parties to respect the law, as well as ad bellum, trying to maintain peace, which is the space for negotiation has to be created. It doesn’t fall from the sky. And so I think we shouldn’t sort of go from the premise that there is no space for negotiation, and for getting to peace. I think that is the effort that needs to be made to negotiate for peace in this conflict, just as in others.

Dr. Morrison:

Yes. What is the – what is the – if we assume that this is a long and grinding war, you know, there’s various scenarios that people are putting out in terms of what lies ahead in the next six to 12 months. None of the scenarios are saying that this is going to be resolved through negotiations anytime soon, nor that Putin’s likely to reassess, even while losing. So we’re looking at a war – in all likelihood, prospects are reasonably good that we’re going to see a long and grinding war of attrition, and a possible partition. And under those circumstances, what’s the best we can expect in terms of pursuit of accountability under international humanitarian law?

Oona, you’ve referenced all the different initiatives that have sprung forward with a remarkable speed, and determination, and attracting lots of energy and support. These, I assume, need to be integrated and coordinated at some level. There’s pressure for acceleration, unlike any time we’ve ever seen. There’s pressure for acceleration. There’s pressure to rationalize and streamline and integrate, to the degree possible. I just wanted to put that out for you all as, you know, what would be the optimal course of events over the next six to 12 months, given what we see in this?

And I – just to reinforce the point Oona was making earlier, the fact that this is not just a superpower, but this is an international aggression, is –
this is an international war. This is not an internal war with proxies and a variety of other malign forces that make it a little harder to disentangle. This is – this is – this fits in a way that makes it much clearer to us, as to what’s at stake. If we could just step back and think about – in the time that remains here – about, you know, what is a scenario? Oona, would you like to take a stab at that?

Ms. Hathaway:

I’ll say a few words. I think that we already have some of the mechanisms in place, right? So we already have – the Ukrainian courts are already beginning war crime prosecutions. The Ukrainian prosecutor general has – is investigating thousands of potential war crimes and collecting evidence, so that that is – that is happening. As we saw, there was the first Russian soldier pled guilty for killing a 62-year-old civilian – unarmed civilian. And so that’s going to be the first of many prosecutions, I would expect, in the Ukrainian courts.

The International Criminal Court is also investigating war crimes, crimes against humanity, and genocide. I would expect that there’s going to be coordination – I’m certain there’s going to be coordination between the two as to who is going to be trying what crimes. It is probably going to be appropriate for the International Criminal Court to take more of the high-level officials, to the extent that there are any that are captured in Ukraine. There are two reasons for that. Those are complex and difficult and politically challenging, and evidentiarily challenging. So having international officials I think is going to be important there.

It’s also the case that domestic courts face immunity bars that do not apply to international courts when it comes to high-level foreign officials. And so some of these trials are going to have to happen at the International Criminal Court if they’re not going to be barred by immunity – by international immunity requirements. So there’s going to be that process underway when it comes to war crimes, crimes against humanity, and genocide.

There’s a whole separate set of questions we haven’t mentioned yet today that I think is worth putting on the table, which is the question as to whether there’s going to be any trial for the crime of aggression. So the crime of aggression cannot be tried in the International Criminal Court in this instance because the way that the jurisdiction is set up for the crime of aggression in the International Criminal Court, it can only be applied against states that are party to the Rome Statute. And Russia is not. So even though there’s jurisdiction over Russian soldiers and even high-level officials for the crimes that are being committed in Ukraine – for war crimes, genocide, and crimes against humanity – that doesn’t apply to the crime of aggression. So if there’s going to be a trial for the crime of aggression, we’re going to have to invent a whole new court. And there’s a
debate happening right now about how is that going to happen? Who’s going to create it? Who’s going to fund it? Who is it going to go after? How does that relate to these crimes? What if they’re trying the same people for war crimes, crimes against humanity and genocide that are also going to be tried for the crime of aggression?

I have a piece that was out in Foreign Affairs yesterday arguing that the best way forward for this is to create a court through an agreement between Ukraine and the U.N. on the recommendation on the General Assembly. I think that’s best because it brings in universal buy-in, as opposed to some of the proposals that are on the table, which is to do this through the EU or the OSCE, which are regional organizations, and I think feeds this narrative of Russia that this is a contest between the West and Russia, and this is kind of a new Cold War. I really think universalizing this and having the U.N. be the home for it is the better approach.

There’ll be all kinds of questions about where is it located, how does it cooperate with the ICC, how does it cooperate with domestic courts. And I think that there’s going to have to be deep integration across all these courts. A crime of aggression court is really only – it’s a leadership crime. So it’s only going to go against those at the very highest levels. And so but that will be an issue with the ICC, because those are the same people that if they’re captured are going to likely be tried at the International Criminal Court. So that’s where the main deconfliction is likely going to have to come. And there’s just going to have to be very careful coordination across everyone who’s involved in this. Also, when it comes to evidence collection.

And coordination with even states that are not parties to the International Criminal Court. For instance, U.S. has agreed to support the prosecutions in the International Criminal Court, presumably through provision of evidence and particular intelligence that the U.S. has unique access to. And so there are a lot of these questions that are going to have to be worked out about how we coordinate, how do we fund these things, who gets to prosecute who, that are going to have to be worked out. Luckily, I think that there’s a general sense of consensus about what should be prosecuted and who should be prosecuted, and general consensus that these crimes are happening, and they have to be – there has to be accountability for them. But when we get into the details, it’s going to get more complicated.

Dr. Morrison: Thank you, Oona.

Cordula and then Chanaka, tell us in the time that remains here – tell us, like, what you’re hoping for in the next six months. What is it – what’s the optimistic scenario around this whole body of issues? Oona’s laid out very clearly sort of the trajectory and the big question around aggression. And
that there’s a deliberation. Cordula, what is the optimistic scenario, from your standpoint?

Ms. Droege:  
I mean, you know, from the perspective of the ICRC, we had to scale up our operations in Ukraine very, very quickly because of the massive scale of the needs in this conflict. We do so together with the Ukrainian Red Cross, but also Red Cross and Red Crescent Societies in other parts of the world who are present in Ukraine and who are trying to bring a response now. So it’s true that we are really concerned with alleviating the situation for people in the here and now. But because we also believe not only that it is good for them now, but that it paves the way also for, you know, creating an environment later in which peace will be more lasting.

And just to give you some examples, you know, in this conflict you have, of course, great numbers of dead, of wounded, and of prisoners. And in the Geneva Conventions there are very, very strong rules about this. For prisoners of war and civilians, the ICRC is – states have to give the ICRC access to these people. And so we have, of course, asked for access to prisoners, to civilians. We have started visiting some of these prisoners. And it seems to us that the fundamental question of treating people with humanity who are your enemies is, you know, one of the things that we will focus on, and hoping also that this will prevent, you know, further spirals of violence and retaliation, et cetera, that make it more difficult also to get – to get out of conflicts.

And, you know, families should be able to know about the whereabouts of their relatives. Hopefully, dead bodies can also be given back to them. And I think, very, very importantly in the medium term but also in the long term, we will have probably, unfortunately, a relatively high number of missing persons in this conflict. And so, you know, there is a real urgency today to prevent that as much as we can, to prevent people from going missing, but also to register the identification, et cetera, so that then quickly family links and, you know, accounting for people can be reestablished. So that’s sort of the scenario that we’re looking at, and what we’re preparing for.

Dr. Morrison:  
Yeah. I can – I can imagine. I mean, when you look at in the east and south and that front, you’re looking at a 500-mile line of combat. And we know that most of these atrocities occur near to the major – the major urban centers on the perimeter, peripheries of those major urban centers, where the lines of combat have been the most intense. So, you know, what happens on that 500-mile stretch is going to be terribly important, plus we have the sort of great uncertainty around the filtration camps inside Russia and elsewhere.
Chanaka, your thoughts. And then I’m going to come back for some – just a minute of closing thoughts from each of you. Chanaka.

Thank you, Steve. From a U.K. perspective, we have a sort of two-pronged approach to accountability. I mean, I think getting things done quickly is important for people to be able to see that international justice does mean something for them, and the enforcement of international law is possible. So our approach is, A, to assist as far as possible – you know, within proper grounds – the International Criminal Court. We have made additional funding available to the prosecutor. We’re providing additional experts – forensic experts and so on to his office, as are a number of European and other countries. I think there is some 40-odd Dutch and French experts already in the field working to collect evidence for the prosecutor.

So the ICC is one of our main avenues for assist accountability. And the other is to assist the prosecutor general in Kyiv. Her office has got some 11(,000) or 12,000 cases underway, I think. I believe, something like that. And obviously that’s a huge ask of any prosecution service. And these are likely complicated or unfamiliar crimes to be prosecuting. So a loss of assistance directly to the Ukrainian prosecutor’s office I think will be – will be very important.

Thank you. OK. We’re going to wrap things up. I’m going to ask each of you to tell me why – what gives you the greatest hope and optimism in this awful situation at this moment?

Cordula, why don’t you open up? And then we’ll go to Chanaka and close with Oona. Cordula.

Thank you. And, yes, perhaps it’s just to sort of take a step back and look at, you know, this conflict as a moment. And, I mean, I think there’s no question, as you have been saying, is that this is a conflict that is, you know, important and a watershed moment in many respects, just because it involves nuclear powers, because of the scale of refugees, the fact that it will affect other states in terms of the, you know, food security, et cetera. But just taking a step back and thinking: OK, you know, how do we need to pursue international humanitarian law efforts?

And I would say, you know, we have to continue to incentivize states to bring IHL home, in a way, and lead by example. Every state has agency and a choice to, on the one hand, commit on a normative level to international humanitarian law, but also to make that happen. Ratifying treaties, for instance. You know, the Geneva Conventions have universally ratified the additional protocols. And I think that’s something that’s important to do, because it’s difficult for those who haven’t ratified, for instance, additional protocol one, which enshrines all the laws on the conduct of hostilities, to
then, you know, require other states to really abide by laws that they themselves are sort of hesitant to ratify.

And similarly, to engage states to have good-faith interpretations, also, of the rules of international humanitarian law. And so, for instance, when you look today at Ukraine and the use of explosive weapons in cities, in populated areas, the use of unguided mortars, or artillery, you know, then it’s difficult for those states that have, you know, for many years tried to say that those weapons should be stigmatized to then have such an outcry when they are used against, you know, probably also military objectives – not only, perhaps, but also against military objectives in those cities. So I think, again, good faith interpretation of international humanitarian law is important.

And then, more on a sort of, you know, humanitarian values level, I think one of the things that we saw in all these counterterrorism wars in the last 20 years, one of the biggest threats is the dehumanization of the enemy in these wars. And the counterterrorist discourse now – what gives me hope is that contrary to perhaps 9/11, in this conflict there has been no putting into question that international humanitarian law applies, and that the Geneva Conventions apply. And I think we have to hold onto that, and add to that the fact that, you know, your enemy is still a human being. Your enemy’s children are not your enemy. And that over the long haul, we have to hold to those values and to those norms in order to get out of the conflict in a way that ensures not only international peace and security, but human peace and security.

Dr. Morrison: Thank you so much, Cordula. That’s so eloquent and powerful.

Chanaka.

Mr. Wickremasinghe: Thank you, Stephen. From my perspective what gives me hope is the isolation of Russia on the fundamental questions. I don’t think you’ll find anybody in any other state who will say that it is acceptable for one state to march in on its neighbor and seek to take it over. Everybody uphold – you know, every state I think underlies the importance of the principles of the nonuse of force, territorial integrity, and so on. And the other aspect – and this is more on Cordula’s side, is the absolute horror at what came out of Bucha.

I think there is sort of general consensus around the horror of what we’re seeing from those images. And while it’s an odd thing to talk about a moment of hope coming from such things, I think it is the consensus of the international community around that horror that I hope will motivate us all to maintain all our diplomatic work, to ensure that we maintain the pressure on Russia to remove itself from Ukraine.
Thanks so much, Chanaka.

Oona, we’re going to let you have the last word here today.

I'll keep it brief. I agree with everything that’s been said. I think that what really gives me hope is the extraordinary response these clear violations. Echoing Chanaka, there has been real consensus that Russia has violated the United Nations Charter and has engaged in clear violations of international humanitarian law, and widespread condemnation of that, and willingness to do something about it. And I think that that is a really important moment. I think we're seeing states realize that, you know, some of these rules that we kind of might have taken for granted over the last several decades can be broken.

And we need to do more to maintain them and to respond to these violations in a serious and collective way. And we’re seeing that, and we’re seeing this rebuilding or revitalization of some institutions that I think had been allowed to atrophy a bit. And my hope is that this will continue to grow, and build, and we’ll continue to build the consensus, and that there will be a real clear message that will come out of this, that violations of the prohibition of the use of force are absolutely unacceptable, and there will be consequences. And violations of the Geneva Conventions, and the customary rules of international humanitarian law likewise are utterly unacceptable and there will be consequences. If that is what comes out of this, that will be an important step forward for the global community.

Well, we’ve reached the end of our time here. I’m coming away from this conversation feeling like – not simply that I learned an enormous amount, and I think our audience learned an enormous amount, but that you've each brought so much knowledge and insights to this topic, I think. And it is showing us that in the midst of all this darkness really there’s quite a bit of reason to be hopeful. And it gets back to the norms and values and consensus that we started the conversation around. So I just want to thank each of you for taking the time to be with us today, but more importantly for all the work you do and the leadership that you exercise in your respective posts, and the contributions you're making to the thought as we move through this really quite amazing moment in history. So thank you.

Thank you so much.