

2023 PARIS



Interview with Leila Nadya Sadat

*James Carr Professor of International Criminal Law
Washington University
Special Advisor on Crimes Against Humanity to the
International Criminal Court Prosecutor*

1) Could you describe why you chose International Law as your professional expertise?

I was raised in an international, interfaith, and multicultural environment. Foreign languages were spoken at home; relatives visited from abroad. Although that rendered me an oddity at school, I fortunately attended a public university where that was the norm. I abandoned my pre-med curriculum, and took courses in international affairs, was a student activist combatting apartheid in South Africa, served on the University Senate, and decided to become “an international lawyer,” even though I wasn’t sure what that was or how to do it.

I finished law school and received a two-year Jersey Fellowship from Columbia University that supported a year abroad, which I spent in Paris. I received a D.E.A. from Paris I Panthéon-Sorbonne University and was a *stagiaire* at the *Cour de Cassation* and the *Conseil d'état*. I started practicing with Cleary Gottlieb and finished at Slaughter and May, where I enjoyed having my British colleagues “correct” my American English! I found the cross-border work I did as a commercial (international) lawyer exciting and fulfilling.

2) What has the ILA represented in your career?

Shortly after entering the academy, I joined the ILA (American Branch) at the invitation of then-President Al Rubin, who asked me to form a committee on the International Criminal Court draft statute of the UN International Law Commission. The experience was transformative. As the Chair of the ICC committee, I called upon the top experts in the field, including the late M. Cherif Bassiouni, who became a mentor and a friend. We developed our own “model draft statute” and many members of our committee, including myself, attended the Rome Diplomatic Conference in 1998.

As Branch President for the past four years, I have tried to nourish this entrepreneurial spirit of ABILA and the ILA. Members can propose projects or ideas for new committees in a way that is enhancing to their own careers, of benefit to the organization, and may even contribute to the formation of international law.

Newsletter

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3) What reflections does the current war in Ukraine trigger in you, particularly considering your expertise in international criminal law ?

The war has come as a shock. Perhaps it should not have been, given Chechnya, Georgia, Syria, and the annexation of Crimea, but to see two members of the Council of Europe at war, one of which invaded the other, is beyond upsetting, and I issued an [ABILA Presidential Statement](#) to that effect¹. The unlawful use of force against the territorial integrity of another state is an act of aggression, and the mounting evidence of war crimes and crimes against humanity represents an attack on the people and territory of Ukraine and on the values of civilization itself, values embodied in international law. As a Special Adviser to the ICC Prosecutor, it has been gratifying to see how states – including the United States – have rallied to the Court, recognizing the importance of having justice, in real time, be a part of the equation.

4) In June 2023, we will meet to celebrate the 150th anniversary of the ILA, with a theme of “build tomorrow.” What are some of the key issues the ILA needs to tackle in order to “build tomorrow”?

In addition to the serious problem of war and the ongoing global pandemic, a key challenge to the international legal order today is the problem of inequity, of haves and have nots. International law is built upon universal values; but its application across the globe is anything but equal or universal. With 4,600 members worldwide, in 63 Branches, the ILA is well placed to make important and concrete contributions to addressing global inequality.

WHITE PAPER – OCEANS

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¹The ADI/ILA 2023 [Special Newsletter](#) and ADI/ILA’s [Additional Statement](#) on Ukraine are also available online.

Bernard H. Oxman

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Melissa Walsh

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3 questions for Niki Aloupi and Gabriele Götsche Wanli

1. The importance of the oceans for our planet is no longer in question. Why do you think there has been a renewed interest in it in recent years ?



It is well known that the oceans cover 71% of our "blue planet" and play a predominant role in its ecosystem. However, as long as their use was essentially limited to the main activities, such as navigation and the exploitation of certain living and non-living resources, it did not seem to pose any new problems for several years. At the same time, the law of the sea did not attract as much attention from international lawyers. Indeed, since the adoption of the Montego Bay Convention in 1982, the "new law of the sea", as it has been called, was considered to be almost fully codified and no longer raising any new major legal issues. However,

various more or less recent developments have given rise to a considerable and much-needed revival of interest in both the oceans and the law of the sea. These include the impacts of climate change and notably rising sea-level; loss of and threats to marine biodiversity as a result of overexploitation and pollution, including from plastics; geopolitical instability and maritime disputes; large scale migration of people by sea; criminal activities, such as modern piracy; and significant technological advances impacting for example marine scientific research, the exploration for and exploitation of the ocean's resources and the generation of renewable energy, maritime transport, and surveillance and enforcement activities at sea... These are all highly topical issues that demonstrate beyond any doubt the importance of renewing our thinking about the legal norms we need to organize human activities involving the maritime surfaces.



2. Modern international law was first built around the Law of the Sea. Grotius comes to mind. What does history teach us for our contemporary concerns ?

The old quarrel between Grotius and Selden four centuries ago is hardly alien to contemporary concerns, even if it has undergone an inevitable evolution. *Mare liberum* versus *mare clausum* remained for a long time a statocentric dichotomy (even though Grotius wrote *Mare liberum* in order to defend the interests of a private company): what mattered was whether the oceans, or rather a significant part of them, could be freely used and exploited by all states. Nowadays, however, the question goes beyond the purely state-based framework: it is no longer just a question of preserving the freedom of the seas, but of protecting the oceans themselves, their resources and their environment, from overexploitation and pollution, so that all humanity can continue to benefit from them in the future. Thinking of ocean management in terms of the rights and freedoms of states has become insufficient, especially as history has shown that abuses are too often perpetrated in the name of freedom. It is therefore more appropriate to think in terms of "limits". The legally binding instrument on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, currently under negotiation, is nothing less than a response to the many challenges posed by the implementation of the Grotian freedom of the seas. There are also several other contemporary issues which find their origins, but also some answers, in history, for example piracy, perhaps the oldest phenomenon in international law, which is still relevant today, albeit in a different form.

3. With a few months to go before the publication of the white paper for which you are responsible, can you already sketch out some of the ideas that are beginning to emerge from your work?

The themes to be addressed in the White Paper on the Ocean(s) are as vast as the oceans themselves. While it is difficult to predict the future, climate change, environmental degradation, population growth and movements, economic development, technological advances and geopolitical insecurity, criminal activities and governance gaps, are expected to be among the main drivers of change for the oceans in the years to come. From a law of the sea perspective, we identified in particular sea level rise and technological advances, such as autonomous ships and other vehicles, drones, and floating offshore structures, as developments which will substantially transform the way in which the use of the oceans and its framing by the law of the sea have been conceived until now. We also underscore the fundamental importance of the human dimension and the need for the law of the sea, which is essentially statocentric and horizontal in its classical conception, to be humanized. All above said drivers will impact social development and further accentuate the need to protect human health and safety as well as other human rights. Today and in the future, people will need to be protected not only against smuggling and illicit trafficking, refoulement, forced labour, piracy and armed robbery, terrorist acts, unfair labour practices and gender inequality, but also against the adverse impacts of climate change and environmental degradation amongst other threats. In short, the individual is emerging as a central figure in the law of the sea and its contemporary issues and cannot be ignored when thinking about the future of the oceans.

News: Unilateral Sanctions and the War in Ukraine

Natalia Chaeva

Doctor of Law, in-house counsel and Member of the Communications Committee ADI/ILA 2023

Russia launched the so-called "[special military operation](#)" in Ukraine on 24 February 2022. On [2 March 2022](#), an overwhelming majority of states in the UN General Assembly qualified Russian actions in Ukraine as "aggression" and demanded the withdrawal of Russian forces. Yet the adoption of any coercive measures by the Security Council, the only body empowered by the Charter to do so, is [blocked by Russia](#), a permanent member which is at the very source of the Charter violations. The current [major crisis](#) on the European continent shows, once again, [the limits of the UN system](#).

Since President Putin's recognition of the Luhansk and Donetsk Republics and the entry of Russian tanks into Ukraine, Western States have acted through unilateral sanctions, either individually or jointly, notably within the European Union. [Several packages of sanctions](#) have been placed on Russia and extended to Belarus for its involvement alongside Russia. These [unprecedentedly broad sanctions](#) are primarily intended to put pressure on the Russian government to cease military attacks and restore Ukraine's territorial integrity.

In the fourth month of the war, the measures adopted have yet to prove their effectiveness. The fact remains that Russia has committed internationally wrongful acts of particular gravity, namely the violation of the territorial integrity of Ukraine and aggression, "[the most serious and dangerous form of the illegal use of force](#)". Since the prohibition of armed aggression is a [peremptory norm of international law](#), States and international organisations are obliged to cooperate in order to put an end to any serious breach of the prohibition of armed aggression and not to recognise as lawful the situation created as a result of such breach (see Article 41 (1) & (2) of [the ILC Articles on Responsibility of States for Internationally Wrongful Acts](#) and Article 42 (1) & (2) of [the Articles on Responsibility of International Organisations](#)). Although the coercive instruments adopted in the context of the war in Ukraine do not explicitly refer to these obligations, they [can be seen](#) as [contributing](#) to their [implementation](#).

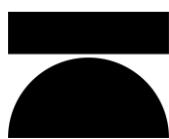
Since the collective sanctions are not possible, are states and international organisations not obliged or at least legitimate to act? The legitimacy of recourse to unilateral sanctions would be based on the protection of the collective interest of the international community as a whole, in the sense of Article 48 (1) of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts (and Article 49 (3) of the Articles on the Responsibility of International Organisations). This is without prejudice to the question of the lawfulness of such measures, a complex issue to which international law provides only a few answers. Given the role that international sanctions are bound to play, the definition of their legal regime becomes pressing.

PARTNERSHIPS

An updated list of the institutions listed having entered into a partnership with the French Branch of the International Law Association to participate in the preparatory work and discussions that will take place on the occasion of the 150th anniversary of the International Law Association (ILA) in 2023, is available at the following link.

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Our sincerest thanks go to the first sponsors and donors who have accepted to support financially the 150th anniversary of the ILA. Their list is as follows :



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The Newsletter ADI/ILA 2023 n°8 will be released in July 2022.