

Professionals and Professionalism(s) in International Criminal Justice

Views from Practice

To reflect on the theme of professionals and professionalism(s) covered within the articles in this symposium, on 14 February 2025, the guest editors and the *Journal of International Criminal Justice* convened an online roundtable discussion with four international criminal law practitioners with varied backgrounds and diverse experience.¹ The aim of the discussion was to explore the evolving professional landscape and to consider how professionalism is experienced, interpreted, and enacted within this complex and often fragmented field. The roundtable conversation brought together Ms Sareta Ashraph, a Trinidadian international criminal lawyer, specializing in gender-competent and intersectional investigation and analysis of core international crimes who has worked on various United Nations (UN) investigations, most recently leading the UN investigation into crimes committed by the Islamic State/Da'esh, and is a co-founder of ATLAS, a global network supporting women working in or embarking on careers in international law; Dr Fabricio Guariglia, Director of the International Development Law Organization Branch Office in The Hague, former Director of Prosecutions at the Office of the Prosecutor in the International Criminal Court (ICC), and previously Appeals Counsel at the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and defence lawyer, victims' representative and ministerial advisor in Argentina; Mr Wayne Jordash KC, a British barrister specializing in international criminal law who has represented high-profile clients before the ICTY, International Criminal Tribunal for Rwanda (ICTR), Special Court for Sierra Leone (SCSL), International Court of Justice (ICJ) and the ICC, and serves as Managing Partner at Global Rights Compliance, advising governments, corporations, non-governmental organizations and individuals; and Ms Natalie von Wistinghausen, who specializes in criminal law as a trial advocate, admitted to the List of Counsel at the ICC, the Kosovo Special Chambers (KSC), the Special Tribunal for Lebanon (STL) and the Residual Mechanism for the International Criminal Tribunals (MICT), and has worked on defence teams at the ICTR and the STL, as Common Legal Representative for Victims in the Darfur case at the ICC, and as counsel for accused and victims in universal jurisdiction cases before Higher Regional Courts in her native Germany.

¹ The roundtable was recorded remotely on Microsoft Teams; it was transcribed and edited by the guest editors, with the final version agreed by all parties to the conversation.

Moderated by symposium guest editors, Mr Alex Batesmith, Dr Ilaria Zavoli, and Dr Nora Stappert on behalf of the *Journal*, the four practitioners were invited to draw on their varied career paths as the discussion unfolded across several themes. The discussion began with general reflections on the meaning of professionalism in the context of international criminal law and the values that underpin it. The practitioners then turned to issues of how the standards of professionalism are determined in international criminal law, considering the influence of legal culture and differing inter-generational attitudes. Leadership culture and the dynamics of power led to a more granular discussion of the challenges and perceptions associated with different professional positions, before exploring ideas of shared identities and the issue of diversity in the profession. In the final segment, the editors invited the practitioners to reflect on the broader evolution of professionalism in the field: the improvements made, the persisting challenges, and how understandings of professional conduct will develop in international criminal justice. The conversation offers an insight into the lived experiences of professionals working across a legal field that continues to navigate personal, ethical and political challenges. It inevitably raises points of divergence on the scope and practice of professionalism, but there remains scope for future discussion and policy creation within and between the respective offices of courts and tribunals, and across international criminal justice more broadly.

1. The meaning of professionalism in ICL practice and the values that underpin it

We started the roundtable discussion by asking all four practitioners to reflect on what professionalism means to them within the field of international criminal justice, inviting them to focus on the values as well as the conduct that underpins it.

Sareta Ashraph: In my view, professionalism can be defined in two ways. First, there are the hard skills — how do you engage with the material itself. Are you applying best practices? If you're working in court, are you adhering not only to the letter but also to the spirit of the rules of procedure and evidence? How do you interact with survivors and witnesses? How do you document your work, and how does that work progress through the various stages of the international criminal justice process you are operating within? For these 'hard skills' of professionalism, there is significant and growing guidance, particularly in the last ten years, as the profession has moved towards an approach which values local partners and the wider skills that people who interact with the international justice system bring. Then I would say there are the 'soft skills' of professionalism, which are more about how someone runs a team, how someone is able to liaise, for example, with people of different genders, different ethnic, religious, racial and class backgrounds, different levels of education, different points of time in their professional journey. For these soft skills of professionalism, there has been considerably little guidance from Bar associations or otherwise; as a result, soft skills are particularly needed. International criminal justice is very international — people come from different backgrounds, different cultures and different ways of communicating. This means that people may think they are behaving in a professional manner within their own sphere, but this may not translate to other cultures or different professional environments, despite their good intentions. Then there are those who conduct themselves in ways which are unambiguously unprofessional — who engage in sexual harassment, discrimination on various grounds, bullying, mobbing, for example — who know they are crossing a line yet are shielded from consequences. There is greater awareness of it, and there are now more systems in place, but I would say that the field still struggles to rid itself of those who exhibit such problematic behaviour.

Wayne Jordash: I agree, but I think there's a balance to be struck. If you are genuinely respectful and attentive to what is happening in victim communities — if you remain grounded in the realities at the local level — then that kind of professionalism often carries over into the softer skills as well. For me, being professional begins, above all, with a commitment to the local context. We are often told that professionalism is something that comes from the tribunals, from the ICC, and the 'loud voices' in those spaces. But in my view, it is far more about whether you can work effectively and ethically at the local level. That means listening to victims, identifying what support is needed, and delivering it in a way that is meaningful and pragmatic. The skills developed in doing that work are directly transferable to managing a team: you rarely find someone who is attuned to victims' needs and responsive at the local level who simultaneously engages in harassment or other unprofessional conduct towards their colleagues. A helpful analogy here is with democracy. Democracy is not only about formal rules — it is also about a commitment to certain foundational principles and the ethical structures that hold them together. International criminal law operates in much the same way. Without a robust ethical foundation, the system risks losing coherence, as its legal texts — statutes, procedural rules, even jurisprudence — remain open enough to allow for wide interpretation. Ethics serve as the connective tissue that gives substance and direction to the legal framework. If you approach your role without a central ethical commitment — particularly to safeguarding the right to a fair trial, especially for the accused — then you are in my view failing to embody the true meaning of professionalism.

Natalie von Wistinghausen: The hard skills — the legal framework — can vary significantly between tribunals and jurisdictions, but they are ultimately learnable. For me, however, professionalism lies much more in the realm of soft skills, which are closely tied to experience and develop over time. That's not to say I wasn't a professional when I began my career over 20 years ago: I had passed two state exams. But looking back, I see that my sense of professionalism has evolved gradually, step by step. Today, I have a much clearer understanding of what I can and cannot do. That self-awareness is essential: it shapes not only my strategic decisions in a case but also the way I engage with clients and colleagues. Over the years, I've built a repertoire of tools — from smaller trials that inform my work in larger ones, and vice versa. Courtroom experience — managing unforeseen challenges, navigating difficult prosecutors, judges, or witnesses — takes time to accumulate. That accumulated experience, for me, is what allows me to say with confidence: I am a professional. Equally important is recognizing the work and contributions of others — whether they are on my team or on the opposing side. Disagreement is part of our profession, but so is mutual respect. The standards I expect of myself, I also expect from others. When that respect is lacking, I believe it is important to speak up and demand it. This should be self-evident, but too often it isn't in our professional environment. Collegiality is essential — not just among defence or victims' counsel, but also with prosecutors and judges. For me, collegiality is an integral part of professionalism. That doesn't mean seeking harmony at all costs — our work is inherently adversarial. But professionalism means being able to argue fiercely in court while still treating one another with respect. Transparency is another vital component. A lack of transparency inevitably leads to problems — things always surface eventually. When there is openness, everything functions more smoothly. We don't have to agree on everything, but at the very least, we should always know where each other stands.

Wayne Jordash: I'd like to reflect on how important courtesy is from the perspective of the values that underpin professionalism. Thinking back to my days as a defence lawyer, I realize that part of my lingering anger and frustration stems from the lack of courtesy that was shown to the defence throughout the 1990s and 2000s — particularly at the Special Court

for Sierra Leone, but also across all the institutions. I was a defence lawyer in most of them, and the lack of courtesy and the treatment of defence as second-class professionals was incredible. I find that lack of courtesy not only made the life of a defence lawyer in these different places very difficult, but it also diminished the integrity of the process because that courtesy extended to the treatment of the accused. In fact, it started with the treatment of the accused and extended to those representing the accused. I believe this has undermined the legitimacy of the entire project over the years. In my view, the current situation is, to a large extent, a consequence of that persistent lack of courtesy — a lack of respect for different voices, diverse perspectives and basic politeness. Engaging vigorously in the courtroom, whether as a prosecutor or defence lawyer, does not preclude friendliness or the ability to facilitate proceedings through simple human decency. Unfortunately, that courtesy was lacking then, and although the situation has improved somewhat, it remains a problem within the profession today.

Natalie von Wistinghausen: When considering respect as a core value of professionalism, I would like to reflect on my experience representing victims. It is widely acknowledged that defence counsel often face a lack of respect — and even outright discrimination — both in international and domestic jurisdictions. This is, regrettably, unlikely to change. Defence lawyers are frequently conflated with their clients, who themselves are often socially and politically unsupported. Far less discussed, however, is the degree of respect — or lack thereof — afforded to victims and their legal representatives. For most of my career, I worked on the defence side. Over the past five years, I have been extensively involved in victims' representation, and I have found this shift to be revealing. On one level, the work is frequently praised as 'wonderful' and 'important.' Yet this praise is rarely matched by meaningful respect, either for the victims or for those who represent them. Courts often declare their support with statements like, 'Of course we respect you; we are here for the victims of international crimes.' But in practice, the institutional backing for victims' teams tends to be as minimal as that for the defence. While the ICC's legal framework recognizes the role of victims and their counsel — albeit in a limited capacity — in reality, we are expected not to push too hard. We are advised not to speak too forcefully, not to question witnesses too extensively, not to make too many procedural requests, and certainly not to act as a second prosecutor — a position I fully endorse. Nonetheless, victims' counsel — and victims themselves — are often treated as something of an inconvenience. Our participation adds to the court's workload without having a meaningful role. We are permitted to speak, but only within tightly controlled parameters. Our presence is frequently perceived as disruptive: whether to the truth-finding ethos of civil law systems or to the adversarial structure of common law proceedings. In short, victims' counsel routinely encounter only superficial respect. From a professional perspective, this raises serious concerns. If the justice system is committed to hearing victims' voices, then it must do so genuinely. If that is not the true intention, then the system must be reformed accordingly. We should not pretend to offer victims meaningful participation while, in practice, rendering that space illusory. That kind of disingenuousness is unprofessional — and it undermines the ability of victims' counsel to engage in the process with integrity.

Sareta Ashraph: When I think about collegiality, what we are speaking about is how people allocate value to different people inside the profession. There are different cultures in defence and prosecution, but I think about it more on an individual level — how a person is treated not only simply because of the role they play or the job they are in, but because of the value being accorded to them (or withheld from them) because of attributes they have or are perceived to have. That becomes more evident when you look at treatment inside one's own cohort, whether that's defence, prosecutions or within other investigation

mechanisms. Unprofessional treatment — which sometimes rises to the level of abuse — flows from the value given to or withheld from those who are being poorly treated; those value judgments are tightly interlinked with the prejudices and marginalizations present in wider society globally. The question becomes who do we value, why, and how does that impact members of any given team with all their respective diversity in prosecution, defence, chambers or victims (and outside of the tribunal bubble, across investigations of atrocity by a multiplicity of actors, including civil society and the UN). One of the challenges has been that the value systems are often what is both dominant and deeply rooted in society. For example, we have got a lot better at speaking about race and gender in the profession — although I don't think that necessarily means that the situation has *in fact* become better. However, class background is very rarely discussed, let alone addressed, and it is a huge issue in the profession, particularly at the English Bar. Thinking about soft skills, the bedrock of how people treat each other is how they allocate value in the team, and that is influenced by a wider worldview. Let me share an example from the early years of my career. I remember attending a meeting at the UN — I believe it was related to Syria or Libya — where another woman was present, a member of an ethnic minority group. She was wearing a striking outfit. I clearly recall one of the men in the meeting commenting, 'That's really difficult to pull off', to which another man replied, 'Well, I'd like to pull it off.' This wasn't a question of whether the team was prosecution or defence — it was an issue of professionalism. Although the meeting was in a closed setting, most of the women in the room, including myself, were fairly junior, while the men were all senior figures. The comment wasn't even directed at the woman in question, but the incident, or perhaps the feeling in the room, stayed with me for a long time. I don't think such a remark would be as easily made today, as there is greater awareness of how colleagues are valued — or perhaps less optimistically, it would not be made as loudly, due to a greater awareness of possible consequences. I'm sure that the person who made the comment respects his female colleagues in many ways. Yet there was an undeniable element of objectification — or, more precisely, exoticization — in his attitude towards this woman. That kind of behaviour creates long-term problems. It's insidious. This is not like improper witness proofing, which can be addressed in court, raised over time, or handled as a clear breach of established rules. These small incidents — what we now recognize as microaggressions — quietly accumulate. I am certain that many people here, from diverse backgrounds, have experienced similar moments. These behaviours shape how you perceive your own value within a team and how you navigate the environment around you. When you find yourself in a professional space where you repeatedly encounter these subtle jabs, the unspoken message is clear: 'You don't really belong here. We can't overtly push you out, and we may value you in certain ways — but you're not the kind of person who naturally fits in this room.'

2. Determining the standards of professional behaviour in ICL

When we invited the practitioners to reflect on how professional standards are determined in ICL, the discussions raised two factors: the influence of lawyers' domestic legal culture on international courts and tribunals (in particular, how this was exemplified by the differing practices of 'witness proofing'), and the changing attitudes to professionalism revealing inter-generational differences that spoke to increasing focus on well-being and work-life balance.

Fabrizio Guariglia: The standards of professional behaviour in international criminal law are far from uniform, particularly within institutions that bring together practitioners from diverse legal traditions — not only in terms of procedure or substance but also in their

underlying ethical and deontological frameworks, including differing views on what is valued, appropriate or professionally acceptable.

Wayne Jordash: What happened with witness proofing at the SCSL illustrates a broader concern. Some prosecutors treated proofing as a licence to meet with witnesses, test their accounts, and point out inconsistencies — essentially coaching them. While they claimed to be following the principles developed at the ICTY, they often strayed from the underlying intent of those guidelines. To me, that's a central issue of professionalism — or rather, the absence of it — in international criminal law. It's about the distortion of a principle for strategic gain.

Fabricio Guariglia: The saga of witness proofing at the ICTY reflects the complexity of professional standards in international practice. At the time, you had American prosecutors arguing that *not* proofing witnesses would be unprofessional, British lawyers worrying they could be disbarred for doing so, and civil law lawyers concerned that they could be prosecuted if they engaged in similar practices. These differences show how much legal culture shapes perceptions of professional conduct. Over time, it became clear that the way proofing was done at the ICTY was highly controversial and exposed serious weaknesses. But the alternative — bringing witnesses into court 'cold' without any interaction or support from the people who first heard their stories and built their trust — is also deeply problematic. This affects both prosecution and defence witnesses. In fact, I'd go further: the dominant legal culture often dictates what is considered acceptable. At the ICTY, the Office of the Prosecutor (OTP) was initially very American-dominated. That influenced internal practice, including disclosure. I had many heated debates — even with colleagues I admired — over what disclosure should look like. My view, grounded in an 'open file' tradition, was that everything that was relevant should go to the defence. Others believed in giving, say, the second sentence of a document and redacting the rest. To me, that was unacceptable. But again, it reflects divergent legal assumptions. When the ICC was established, the OTP had to define its own identity. It took time, but eventually the Office developed a Code of Conduct and a set of core values that reflected the pluralistic legal heritage of the Rome Statute system. If you look at the Kosovo Specialist Chambers today, the prosecutorial culture there is likely quite different again — more heavily shaped by American legal traditions, with all their strengths and shortcomings. I am not one for 'holy wars' about which system is best; I prefer a pragmatic mix-and-match approach. But it's critical to recognize that each tribunal will, inevitably, develop its own internal culture and standards. The key is having an ongoing conversation about the institution's mission, its values, and how to live them in practice.

Wayne Jordash: I agree with much of that, especially the need for reflection. But your example also highlights a broader problem: that, too often, professionalism in the tribunals seems guided less by principle and more by whether it helps you win. The debate about proofing is fundamentally not that complicated. After my experience in Sierra Leone, I wrote an article highlighting how abusive the practice had become.² Prosecutors defended themselves by saying, 'But it's allowed.' Our response in the Defence was, 'Yes, but only within limits defined by fair trial rights.' Having spent the first 15 years of my career as a defence lawyer and then more recently in prosecution, I've seen both sides. But the frustration I felt as a defence counsel hasn't gone away. My central concern is this: I still see a reluctance among many practitioners to anchor their professionalism in the fundamental principle of a

² W.J. Jordash, 'The Practice of 'Witness Proofing' in International Criminal Tribunals: Why the International Criminal Court Should Prohibit the Practice', 22 *Leiden Journal of International Law* (2009) 501–523.

fair trial. It is not difficult to work out that when you are proofing a witness you do not tell that witness what to say. That should be a baseline, regardless of whether you're American, British, or from elsewhere. Yet, in my experience, many prosecutors crossed that line, whether explicitly or implicitly.

Fabrizio Guariglia: Then I suspect you've come across prosecutors whose understanding of professional ethics was lacking. The good American prosecutors I worked with made it absolutely clear: coaching witnesses was entirely out of bounds. At the ICC, we introduced a process that recorded every single witness preparation session on video, which was then handed over to the defence, along with transcripts. That way, the process was fully transparent, and if there was any suspicion of foul play, the defence could take it up with the trial chamber. We also developed specific guidelines outlining what could and could not be done during preparation. And that's where professionalism really matters — not in vague abstractions, but in clear, regulated practices. So, the deeper question is: how do we define adversarial justice? Is it a game where anything goes as long as you win? Or is it a principled process, grounded in ethics and fairness, where the goal is to uncover truth and serve justice? If it's the latter — and I believe it must be — then what you described should have no place in international criminal proceedings. What I realized over time is the importance of the question: what is your regulatory framework? What principles, systems and safeguards are built into your practice? In my experience, bad prosecutors — or those who don't care about the integrity of the process — tend to be allergic to regulation. They resist safeguards, and they avoid any system of accountability or record-keeping. But when you create those safeguards — clear guidelines on proofing, mandatory co-presence, mandatory recording, transcripts, and meaningful consequences for breaches — the space for abuse shrinks exponentially. I have seen this across institutions. At the ICTY, some practices simply were not regulated, and new rules had to be created from scratch. Perhaps the SCSL lacked detailed guidelines on proofing altogether. Ultimately though, professionalism isn't a matter of individual morality alone — it's about the systems we build to enforce standards. Without that, the entire field risks descending into procedural anarchy.

Sareta Ashraph: I have a different example to illustrate how professional behaviour and attitudes are changing. When I was working in a high-risk conflict-affected country, there was a legal assistant on my team who was probably 24–25 years old. They told me, 'I'm working, but on Friday, I turn my phone off, and I don't turn my phone back on till Monday at 9:00 AM, so if you want me, it will be after the weekend.' I said, 'that doesn't work safety-wise because we're in the middle of [X country], which was both true and gave me time to process what the legal assistant said. But I feel fairly sure that even if the legal assistant and I had been working in The Hague, I would have been at least momentarily caught off guard. There has definitely been a generational shift. When I started in the job, whatever you needed to do, you had to do it there and then. You were expected to give yourself over to the work: and we *wanted* to do the work. I remember going into the SCSL to work in the tiny defence container at weekends in part because I was consumed by the case and knew the under-resourced defence could only benefit from that work; and frankly, because I was thrilled to be doing the work — to have bridged the gap between wanting a career in this field and to be building that career. The whole concept of turning a work phone off each weekend would have been alien as a junior back then, and to be honest, even now when I am relatively more senior. Nowadays, there is a lot more emphasis on work/life balance. For the most part, I regard this as a positive and necessary development — one that the profession should support, particularly in high-stress fields like international criminal justice, and especially within the constraints of personal well-being as well as personal safety and security. However, I have found the practical application of this emphasis on work/life balance

quite confronting at times. In the example I've just discussed we were preparing to conduct interviews in an Internally Displaced Persons (IDP) camp with survivors of some of the gravest crimes imaginable. In such a context, while the language of 'self-care' and standing up for one's boundaries is undoubtedly legitimate, it becomes difficult to reconcile with the immediacy and gravity of the work. When my junior colleague informed the team that she would not be available at weekends — including turning off her phone entirely for 48 hours — it raised difficult questions. Survivors had prepared themselves for deeply distressing interviews within a narrow operational window; our presence in the field was necessarily time-limited and logistically complex. In such circumstances, it is not immediately clear what constitutes unprofessional conduct. Was it the junior colleague's decision to be entirely unreachable during this critical period, or would it have been mine, had I insisted not only that her phone remain on (which I did, on safety grounds), but also that she be available to conduct interviews throughout the field mission? This is an example of intergenerational differences in understanding what constitutes professional conduct. Determining what constituted professional behaviour in this context was challenging for me: while I agreed with her stance on work/life balance in principle, I found it frustrating in practice, given the limited time available to conduct the interviews. Reflecting on my response to the situation was also complex, as I struggled to balance being supportive with the irritation I felt.

Wayne Jordash: Only a few years ago, unpaid interns were not considered to be objectionable, or at least this practice was acceptable to many. And now, 5, 6, 7 years later, it is completely unacceptable. Things have changed quite rapidly, and many of those changes are good. But some of those changes do get in the way of delivering. Trying to strike a balance between the two is not always easy.

Fabricio Guariglia: I can relate to the story of generational differences because, in the ICC, I could see that for the prosecutors from my generation and the generation below, the sense of an all-encompassing mission remained very strong, even though we were trying to develop a much more balanced system where people could go back to their families during the week and didn't have to be in the office every single weekend. However, you still must deliver at a very high level. For some younger lawyers you could see a shift from a perspective centred on the well-being of the victims and affected communities and delivering justice for them to a much more self-centred goal, along the lines of 'This has to work for me, too; it has to give me professional satisfaction; and my well-being is as important as anything else.' This created a rift that led to several clashes, in appraisals and as to expectations of what constituted proper quality at work. Some — but by no means all — younger colleagues were accusing the older generation of being perfectionists. We did, for instance, require a high level of attention to detail: we insisted on the specific line of the right page of the right document when attributing a crime to someone. Maybe we (the older generation) did go too far in expecting that everyone should be ready to give everything for the mission. I understand the other side of the argument as well, but in any event, this is one area where you can see how attitudes change across the generations, and how cultural changes impact this line of work.

3. The influence of leadership cultures and power structures on professionalism

We asked practitioners to reflect on how leadership cultures and power hierarchies influenced the understanding and practice of professionalism in ICL, which led to discussions of accountability and oversight.

Fabricio Guariglia: When it comes to workplace culture, at one end of the spectrum, there was the Office of the Prosecutor of the ICTY. In late 1998, if you were not in the office at

2:00 AM on a Wednesday, you were not delivering. You were clearly not putting in the hours, and were not doing what had to be done. The idea that you could spend time with your family, or that you took time off at the weekend, was considered a European eccentricity. While that was shaped by the intense American office hours culture and the law firm/prosecutorial idea that you had to be there all the time, there was an element of truth in it. You *had* to be there a lot of the time. At one point, when I was Appeals Counsel for both the ICTY and the ICTR, it was a very small unit, the deadlines were punishing, and you had to deliver something good. The culture of striving to deliver something of high quality, driven by a truly important mission, was a particularly powerful motivator. As to the question of power hierarchies, one point to note is that none of us here (today) have worked directly with judges in Chambers, where I suspect the dynamics are quite different and carry their own complexities. There, hierarchies probably play a very different and much more central role. What I have observed from afar is that Chambers function as a diverse ecosystem: some judges are approachable, grounded, and open to critique, while others believe strongly that their authority should remain unquestioned — whether by the parties or even by their own legal officers. In contrast, the Offices of the Prosecutor in international criminal tribunals are vertically structured, with clear lines of authority. Obviously, the personality and leadership style of the chief prosecutor shapes the culture of the office. This is especially true in international organizations, where internal accountability mechanisms are often underdeveloped. An autocratic prosecutor, for example, may resist any form of code of conduct that could constrain their authority, preferring to surround themselves with ‘yes’ people. These enablers help to reshape the concept of professionalism to align with the chief prosecutor’s will — often at the expense of integrity, ethics and deontological principles that should govern one’s actions. When the person at the top promotes impartiality, independence, critical thinking and ethical behaviour, the system can function well. But when ‘professionalism’ is redefined to mean ‘follow orders unquestioningly’, the integrity of the institution is undermined. The ability of a leader to shape the office culture is considerable — this can be a force for good, but also for bad. That’s why internal checks and balances are essential. Unfortunately, at the international level, these safeguards are very basic compared to most national jurisdictions. In a domestic system like the UK, for instance, the Director of Public Prosecutions operates within a tightly regulated framework. Their discretion is limited by well-established procedures, civil service structures and legal norms that prevent abuse of authority. They cannot unilaterally reorganize departments, relocate staff or implement sweeping structural changes without accountability. In contrast, international prosecutors — whether at the ICC, the Special Court for Sierra Leone or the Kosovo Tribunal — often enjoy a degree of latitude that no national prosecutor could exercise. At the international level, there are very limited checks and balances in the system. Some essential safeguards that you frequently find in national systems, like job security for prosecutors, are either missing or are comparatively very weak. Take the example of senior trial lawyers at the ICC: under the new policy, their contracts end after seven years, with no guarantee of renewal. This is deeply problematic. Such a system undermines not only the development of a long-term professional career structure but also the independence of individual lawyers. If your position is set to expire after seven years, how much risk are you willing to take? Are you going to take the Palestine dossier, for instance? Are you going to risk getting sanctioned when after seven years you might be unemployed? Would you speak out against unethical instructions from a superior — knowing your professional future may depend on their favour? These are not just theoretical questions. I’m sure that a lot of people would do all that, regardless of the risks. But the point is: the system was already compromised in terms of its ability to address abuses of discretion. These tenure policies only weaken it further.

Natalie von Wistinghausen: I don't think the problem lies in the hard skills, as Sareta mentioned at the start of our conversation. Those are all laid out — on paper, in every language imaginable. For me, the real issue is personalities. And for whatever reason, difficult personalities often end up in positions of significant responsibility. There are, of course, excellent appointments, but there are also poor ones — and that brings us back to a key theme we've already discussed: resistance. There must be people willing to stand up and speak out. As Fabricio rightly emphasized earlier, that willingness — to 'stand up to' authority — is a fundamental aspect of professionalism. It is central to how I understand our profession, especially in the environment we work in. Whether it is in a team meeting, a courtroom, or a closed-door discussion, if someone is being treated inappropriately — whether it is a member of the defence, the prosecution or the victims' teams — someone must speak up. That's the message I always try to pass on to junior colleagues: if you want to be an advocate, you need to be able to raise your voice. I'm not saying it's easy — but it's essential. Courts are not just another type of international institution; they are meant to be spaces of justice. Yet, international criminal tribunals often operate with the same rigid hierarchies we see in UN bodies. Even within those hierarchies, there must be room for dissent — people who are strong enough to disagree, even when the consequences are unclear. That's the only way to build a truly professional environment, in line with everything we've discussed today. What I often see in both defence and victims' teams is that many junior professionals grow up within 'the system'. They are incredibly skilled — brilliant at research, drafting and navigating procedure. But to become a true professional in criminal law, legal knowledge alone isn't enough. You also need the courage to speak up, to stand your ground and to defend the interests at stake, no matter the cost. That said, I recognize how difficult this can be in practice — especially when you have no job security. You could lose your position, or even be forced to leave the country on ten days' notice. I'm European — if things go wrong, I can hop on a train back to Berlin from The Hague. But for someone from Canada or Argentina, for instance, that risk feels very different. They may be living with a constant, unspoken fear: What happens if I speak out? What happens if I lose my salary, my visa, my chance at a future in international criminal law? Of course, I'm not naïve — I see this, I hear it — but I still believe that speaking out is a choice. A profession should be a choice. Most of the time, at least, it can be. That's why I find it troubling when people say, 'Yes, things are bad, but we'd better stay quiet.' Maybe it's easier for me to say that, since I chose the so-called 'free' profession — I'm external counsel. That was a conscious choice, with all the trade-offs it involves. But from that position, I can observe how much pressure others — especially younger colleagues — are under. That's why I believe it's crucial they learn to advocate not only for others, but also for themselves. Ideally, this happens under the guidance of experienced, fair supervisors who model the right kind of leadership. Because while there are endless internal guidelines, codes of conduct, and policy papers, there's still a major problem with transparency — and with credibility. Occasionally, a defence counsel faces disciplinary proceedings (and one might ask, why is it always defence counsel?), but the real issues — mobbing, harassment — often happen behind the scenes, across all departments, with no accountability. It's shocking, really. We do this work because we believe in the importance of international criminal justice. But internally, there are serious behavioural problems, and a glaring lack of mechanisms to address them. From an independent position like mine, it's relatively easy to raise concerns. But for those inside the system — the so-called 'golden cage' — it's far more complex. What worries me most is the efficiency that's lost because of these internal tensions and power struggles. It undermines not just morale but the entire mission of international justice.

Wayne Jordash: Until we deal with the central question of unaccountability at the top, chief prosecutors and judges will continue creating cultures that allow bad behaviour to trickle down throughout the whole of the structure. So yes, we can point to individual prosecutors, individual defence who behaved badly, but until we deal with the central problem of holding the top people accountable and requiring them to hold their subordinates accountable, we will get nowhere.

4. Identity, diversity, and professionalism within ICL

In this section of the discussion, we asked the practitioners to reflect on the extent to which professional identity is (or might be) shared across different roles in ICL. The practitioners also identified the importance of diversity to professionalism and how this shapes a sense of belonging within the profession.

Sareta Ashraph: At a very basic level, I do think there's a shared sense of professional identity among lawyers — litigators, at least — working in international criminal justice. That said, it's worth noting that investigators and analysts have often voiced frustration at not being seen or treated as part of that shared identity, despite working closely alongside lawyers in many international justice bodies. At the same time, there are clearly stronger bonds among professionals from similar countries, regions, or backgrounds. When we talk about fragmentation of professional identity, I think it's fair to say that a lawyer's core identity is grounded in the specific role they inhabit — whether as defence counsel, victims' lawyer or prosecutor. This can lead to a lack of affinity across those roles. I saw this, for instance, with some of the senior American and Canadian lawyers I worked with at the SCSL, who didn't always feel a strong kinship with lawyers working on the other side of the courtroom. Legal traditions also matter. The divide between civil and common law can significantly affect communication and professional dynamics. In common law systems, the adversarial approach often extends beyond the courtroom into team discussions and workplace culture. People argue their position strongly, a decision is reached, and everyone moves on. Disagreement is typically viewed as neither personal nor emotional. At the English Bar, for example, it's perfectly normal to have a fierce dispute in court or a team meeting and then go out for a drink together afterwards. But this approach can be jarring for colleagues from different legal or cultural backgrounds — particularly those for whom English is a second, third or fourth language. Having to deal with English barristers relentlessly hammering home their points, often as if performing before an invisible jury, can be exhausting and alienating. Of course, professional identity is shaped not just by legal role or tradition, but also by class, nationality, region, gender and other social factors. These influence both how you see yourself and how others perceive you. For example, the solidarity that exists among female lawyers — still underrepresented in senior roles — among those from the Global South (who are underrepresented at virtually all levels) can be vital for recruitment, support, and retention. These networks are gradually helping to create a more inclusive and representative professional identity within the field.

Fabrizio Guariglia: There needs to be a forum for this kind of discussion — and right now, none exists. I'm not sure whether it should take the form of a general process or something more tailored, institution by institution. But what's clear is that there must be space for dialogue — particularly between prosecutors and defence counsel — about shared standards: integrity, professionalism, collegiality, and basic courtesy. At present, that dialogue simply isn't happening. The relationship between the sides is deeply entrenched, and it often feels like neither side is really listening to the other. Just as prosecutors need to seriously reflect on how

they interact with defence counsel — how they approach fairness, disclosure, and the understanding that justice is not solely about winning cases — there also needs to be an honest conversation within the defence community about what it means to be a professional defence lawyer in the international arena. I'm sure that some defence counsel have attempted strategies before international tribunals that they wouldn't dare try domestically — where consequences like disbarment are much more immediate. Everyone, to some extent, takes advantage of the fact that the rules and boundaries in international criminal law can be looser or more ambiguous. That's precisely why it's time to work towards a set of shared understandings around professional conduct — across the board, on all sides.

Wayne Jordash: What is striking about this conversation is that we were having it 20 years ago: the same conversation about a lack of attention being paid to victims, to defendants and to defence lawyers. It is extremely disheartening to see how little has changed, particularly in relation to judicial accountability and the process of electing chief prosecutors.

Sareta Ashraph: To avoid having this same conversation in 20 years, I'd like to make two points. First, as a concrete measure, we need to place greater emphasis on developing systems that filter out irredeemable individuals and act as safeguards against misconduct. In international criminal law, professional success is often linked to self-promotion and the ability to attract clients or contracts — qualities that do not necessarily reflect high standards of interpersonal conduct. Currently, there is no trusted or effective mechanism for identifying and removing those who engage in poor behaviour, particularly within defence or victim teams, civil society organizations, or strategic litigation groups. Many of these operate with limited, or even no, internal or independent oversight capable of meaningfully addressing complaints — especially when allegations involve senior figures. A single individual can drastically affect team dynamics and the career paths of others. To me, professionalism is fundamentally about conduct: how I am treated, how I treat others — both within and outside the team — and whether I uphold professional standards in all interactions. When unprofessional behaviour goes unchecked, even by a small number of individuals, it can poison the system. Over time, such individuals can make the environment so toxic that they drive good people out. As they move up in seniority, they risk becoming a dominant influence within the profession, shaping the culture in damaging ways. Second, increasing diversity in the profession has already shown tangible benefits. Those who have progressed in a system that historically undervalued them — or people like them — often bring a heightened awareness, once in senior positions, of the responsibility they hold as examples to others. This awareness demands both leadership and a delicate balancing act. A significant advantage of having more diverse individuals in senior roles is that they often have a visceral understanding that the system does not treat everyone equally. While this isn't always the case, in my experience, those with this insight are more likely to reflect on their behaviour and ask themselves: How am I making others feel? How am I behaving? Am I recognizing and valuing others as I should? Often, poor behaviour or a lack of consideration for others is justified by time pressure or the urgency of tasks. But meaningful change takes time. Slowing down to consider different perspectives can feel uncomfortable — not just because of deadlines, but due to the deeper friction involved in challenging established norms. It requires a deliberate investment of time to reflect: Where is this person coming from? How can I support those less likely to speak up? How should I approach outreach? There has been real progress in recognizing the importance of the so-called 'soft skills' of professionalism — particularly in interactions with survivors and local communities. However, improvements have been much slower when it comes to how we treat colleagues within the profession who hold less power in particular situations. In my view, this issue is most acute in team dynamics. The reality is

that we tend to value people whose working style mirrors our own. When someone operates in a familiar way, we are more inclined to see their work as competent or good. However, I believe that professionals with more diverse — and often less privileged — backgrounds, who don't see themselves reflected in existing power structures, are key to shifting these perceptions. This is important for two reasons: first, because it helps redefine who is seen to 'belong' in the profession, influencing how junior professionals outside the traditional 'pale, male, Western' profile are treated; and second, because a more diverse profession is better equipped to take seriously the issue of undervaluing individuals from underrepresented groups. For me, diversity is not just intrinsically good — it's essential. It drives transformation in our understanding of professional identity and helps reshape what is considered acceptable professional conduct within our community.

Fabrizio Guariglia: I think one key point that Sareta made was in terms of how you deal with bad actors. The problem there is that the toxicity created through or by them impregnates everything, and we lose sight of the success stories, which are plentiful. We end up with this terribly bleak picture. I was reading the recent interview with Mark Drumbl and Mark Freeman in *JusticeInfo*,³ and the emerging picture of the ICC was so bleak I couldn't recognize it. I thought it was a terrible, self-defeating narrative, even if they had a number of very valid and important points. There are still a lot of good things to talk about, and yet all that is overshadowed by the bad stories. I am not saying we should brush the bad stories aside; I am saying that some of the bad stories are so bad that they end up really eclipsing everything else, and of course, we must deal with that. I agree with the point Wayne made earlier: we need to start demanding answers and demanding reactions, and demanding solutions to improve the system on all sides. But we need to push back: this is not a completely broken system, and I disagree with the views expressed in the *JusticeInfo* interview about the ICC, although I acknowledge that the system could break for good very soon. The question is, how do we improve the situation? How do we make sure that we get the basics right, the right prosecutors, the right judges, the right registrars, the right professionals leading the different support sections? How do we do this in a way that maintains diversity, which is absolutely key, maintains and increases gender balance, and maintains everything else we aspire to? There are no simple answers to these questions. But I agree it may be time to challenge the system and acknowledge that things are not working well, that we are not getting the right people for these jobs, that we are not putting the right safeguards in place, and that we are allowing a level of discretion that is unhealthy. However, we also need to add the other demands: stand by the ICC. Give the ICC the means, cooperation and support that it needs to perform well. Protect this critical, precious and fragile institution from unwarranted attacks. All this must be revisited because if not, we will not be having the same conversation in 20 years' time. We will be having a very different conversation — a League of Nations-type of conversation, in which we will be saying, 'It was a great and noble idea, what a shame that it died'.

5. Concluding thoughts: progress in professionalism and the future

We concluded our roundtable by inviting practitioners to identify specific examples that encapsulated the highest standards of professionalism, to consider what progress had been made in professionalizing ICL practice, and to offer their thoughts on what needs to be done in the future.

³ T. Cruvellier, 'Thinking About the Death of the ICC and What Comes Next', *JusticeInfo In-Depth Interviews with Mark Freeman and Mark Drumbl*, 7 February 2025, available online at <https://www.justiceinfo.net/en/141309-thinking-about-death-icc-what-comes-next.html> (visited 18 June 2025).

Sareta Ashraph: When I reflect on someone who has been particularly professional, what stays with me more than the specifics of their work is the positive feeling I am left with after the interaction — the sense that this is an environment I would want to return to, that this is a person I would want to work with again. The common characteristic of those I consider exemplifying 'professionalism' within the international criminal justice field is that, first and foremost, they are highly skilled lawyers. They take their profession seriously, seeking to master both the material and the process; they avoid shortcuts and take pride in continuously refining their skills. In contrast, where I have observed more unprofessional conduct, it has typically involved individuals who are somewhat opportunistic — those who have done just enough to get started, or who are very adept at self-promotion, but who fail to take the necessary steps to improve their expertise and craft. This is problematic because such individuals, in my experience, tend to be more cavalier with rules. Not necessarily because they are inherently unethical, but because they lack a deep understanding of their work, having never taken the time to fully master it. As a result, they often proceed in a haphazard manner. Beyond that, in my view, those I have considered to exemplify true professionalism are better listeners and demonstrate a reflective attitude. I believe this often comes with experience and a sense of security in one's professional role. However, there are more than a few people in our field whose behaviour has the effect of undermining others — diminishing their confidence, eroding their motivation to stay in the profession. This often stems from insecurity: a reluctance to be contradicted or to have their authority questioned. In my experience, those who are confident in their expertise and committed to continual improvement tend to be curious and open to learning from others, including those who disagree with them. They are also, again in my experience, willing to share the knowledge they have acquired, thereby empowering others rather than diminishing them. This distinction has been a defining factor in how I view many of the people I have worked with. So, when I reflect on the qualities that define professionalism, these two characteristics — openness to learning and a commitment to building others up — stand out as the most significant. Two other points that are important to me are the development of self-confidence — which, like many things, comes with time and experience — and the ability to speak freely, without hesitation or inhibition, as Natalie was describing earlier. It is equally important to resist the pressure to conform to the notion that 'This is not the way things are done here.' I believe it is vital to challenge such assumptions because we all have the capacity to shape and improve the system. Perhaps that, too, is part of professionalism: the ability to contribute meaningfully. Individually, we may be just a small cog in a much larger machine, but the goal should be to try to make a difference, each of us guided by our own understanding of what professionalism means.

Wayne Jordash: Let me pick up on the distinction Sareta makes — it is an important and valuable one. I would go as far as to say that I rarely encounter a professional whose skills I respect but who does not treat people well. Those who are truly competent tend to treat others well because they are not trying to compensate for deficiencies. They are aware that they operate not just as lawyers, but working within a broader system that demands a particular dynamic. While there are exceptions, in my experience, people who demonstrate poor soft skills also often fall short in their technical or 'hard' skills. This is why listening to Natalie and Sareta discuss soft skills resonates with me, even though it doesn't change the point I made earlier: we must ensure a strong link between hard skills and the structures that safeguard quality in the profession. We need systems that exclude incompetent judges, bad prosecutors, and inadequate defence lawyers. I believe doing this would have a transformative effect on soft skills as well. When someone is confident and proficient in their work,

they are less likely to clash with colleagues, to resist diversity or to undermine women. They are more inclined to take an egalitarian approach. Of course, we all make mistakes along the way, but starting with robust hard skills — and an understanding that those skills must be exercised along with soft skills — can be profoundly transformative. I see this clearly at the local level. In Ukraine, where I have been working extensively, the best lawyers, whether local or international, are those who possess both hard skills and soft skills. To me, the two are deeply interconnected.

Natalie von Wistinghausen: I completely agree with Wayne on this. There is undoubtedly a connection between professionalism and a combination of the soft and hard skills required in our field. The more confident you are in your abilities and clearer you are about what you are doing, the more considerate and respectful you tend to be towards the people around you. But to end on a positive note: despite the criticisms, why do I still choose to take cases before international tribunals? It is, in large part, because of the people. I have had the privilege of working alongside some of the most outstanding professionals in the field. Personally, I have rarely encountered the kind of problems we have discussed here, and when I did, I was able to address and resolve them. I know I have been fortunate in that regard. Many of those working within the tribunals are not only highly skilled legal experts but also exceptionally kind and responsible individuals. This is why it feels like such a waste when others — and unfortunately, there are quite a few — jeopardize the integrity of the system. Despite this, it is important to recognize that there remains a great deal of professionalism and excellent, diligent work being carried out. When you look at the outcome of the trials, they are generally well-balanced and represent a commendable example of procedural fairness. At the very least, there is a realistic possibility that a case may be dismissed or that an accused may be acquitted — something that is nearly impossible in universal jurisdiction cases in domestic courts. This demonstrates that, despite its flaws, the system does work to a certain extent. However, the criticisms still stand. It is no longer reasonable to describe the ICC as being in its infancy; after more than 24 years, we should expect a higher level of professionalism. For example, if the Court still lacks a clear procedure for handling the provisional release of an accused when no member state is willing to host them, this is deeply unprofessional. After more than two decades, solutions should be established to procedural challenges like this. This is just one of many examples faced by lawyers practising before the Court — situations that can leave you speechless. And yet, despite these shortcomings, there are outstanding individuals on all sides of the courtroom, and it is their presence that makes the work rewarding and enriching, at least in my professional life. At the same time, I am also grateful to be in a position where I can step back and speak freely about these issues.

Fabrizio Guariglia: I have had the privilege of meeting remarkable people in this line of work. My ‘acquired professional family’ comes from the tribunals and the Court — some of my closest friends in adult life. These are people with whom I have endured challenges, stood in the trenches: people who demonstrated unwavering integrity and commitment to the cause. They consistently placed the mission ahead of their own personal interests. Some even sacrificed their health in the service of the mission — something that, in hindsight, was not wise. I have witnessed countless examples of what I would call heroism. Yet the role of a prosecutor is often a thankless one. You can never get everything right. There will always be disappointment: a victim dissatisfied with the outcome, a defence counsel unhappy with your approach, a judge displeased by the fact you challenged a decision, or an academic posting a scathing critique online. This is precisely why I hold such deep respect for my colleagues — those who have persevered and continue to persevere under extremely difficult

conditions, facing daily challenges from many directions. While there are, inevitably, a few individuals who tarnish the profession's image, I believe the vast majority of people in this field are exceptional and deserve far better treatment than they often receive. Over the years, I have come to a clear conclusion about one of the greatest dangers in international criminal justice: ego. The ego can be a formidable enemy. Of course, we all have egos, but ego must be harnessed in the service of the mission. The moment you believe this work is about you, you are lost. The moment you stop listening to the people who bring you the bad news, you are lost. The moment you prioritize your press conference over the needs of victims and affected communities, you are lost. And when that happens, the entire exercise is undermined, because you are no longer serving the people you are meant to serve or supporting those you are meant to lead. For me, the critical question is: how do we ensure that, as part of the job description, there is a clear message in bold letters stating, 'If you want to make this about yourself, do not apply'? This must be a job where your primary responsibility is to guide and support your teams so they can deliver their best work — and to take responsibility when things go wrong, even if the fault was not directly yours. The challenge is: how do you do all of this in a way that is human, empathic, and genuinely supportive of your teams? I have seen senior lawyers and managers who deliver results — but they do so in a manner that basically leaves the room full of corpses: they drive their own troops into the ground. It is like the general who takes the bridge but loses 95% of the troops in the process. I would not consider that a true success. The real question is: how do we achieve institutional goals while safeguarding the well-being of those working tirelessly to deliver justice for victims in an increasingly complex, volatile, and challenging environment — one marked by fear, insecurity, lack of resources, and immense pressure? It is not an easy place to be. Now, observing from the outside, I feel for my colleagues and all they continue to face: sanctions, lack of cooperation and support and ongoing threats against the institution. It has never been an easy job, but today it borders on the impossible. And yet, I still believe it can be the best job in the world. I still believe — as I have said — that there are extraordinary people in this field, demonstrating unparalleled commitment, strong work ethics and deep integrity. They all deserve better.

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