

## **THE HAGUE CLOSING PLENARY: CONFRONTING IMPUNITY AND SAFEGUARDING JOURNALISTS IN A GLOBAL CONTEXT**

This panel was convened at 10:30 a.m. on Saturday April 6, 2024 by its moderator, Dr. Gabrièle Chlevickaitė, who introduced the panelists: Catherine Amirfar, Evelien Wijkstra, and Can Yeginsu.

### **INTRODUCTORY REMARKS BY GREGORY SHAFFER**

I hope that you have had as great a meeting as I have. This has been really powerful, the different sessions of bringing people together, and we are going to conclude with an incredibly powerful session.

The Hague long has had a special connection to international law and international institutions, being the home of the International Court of Justice and so many other international tribunals and institutions. This is the thirteenth year now that the Society has collaborated with its partners in The Hague to bring leading figures from around the world to our annual meeting here.

I want to thank Deputy Mayor for International and Humanitarian Affairs, Mariëlle Vavie, and the municipality of The Hague and the International Affairs Department and the T.M.C. Asser Instituut for International and European Law for their support and sponsorship of this important concluding plenary session.

I am now proud to announce Deputy Mayor Mariëlle Vavie.

### **INTRODUCTORY REMARKS BY MARIËLLE VAVIE**

Thank you, Greg, and it is a pleasure to be here. Thank you so much, and good morning, everybody.

This year, half of the world's population will be represented at elections. Many are worried that 2024 will be a make-or-break year for democracy. The number of conflicts around the world have risen since we met in ASIL last year, 2023. Against the backdrop of this are brave journalists trying to do their work to the best of their ability, to keep people informed of the facts on the ground, and to hold those that have the power to make decisions to account honestly and objectively.

According to Article 19 of the UN Universal Declaration of Human Rights, everyone has the right to freedom of opinion and expression without interference. But we know that many journalists around the world do not enjoy this basic human rights and are confronted with increasing threats, intimidation, and violence. In many ways, journalists guard international law and human rights. In some places, they are the only source of information for international organizations and citizens alike but who in turn protect the rights of these human rights defenders.

The UN Educational, Scientific and Cultural Organization (UNESCO) has been monitoring press freedom since 1993. Their statistics tell us that over 1,600 journalists have been killed since then. In the first months of this year, around one hundred already have been killed trying to do their jobs. I am very grateful that ASIL has agreed to close off this year's annual meeting with this timely

discussion. The safeguarding of journalists and addressing impunity for crimes committed against them deserves attention at conferences like these.

As the international city of peace and justice and legal capital of the world, The Hague sees the effects of freedom of expression daily. As the seat of the Dutch government and host to a wide range of international organizations, we have demonstrations of all sizes on all kinds of issues every day. We also host many initiatives related to the protection of journalists, both on the policy, and on the practical levels.

Our fantastic T.M.C. Asser Instituut regularly brings together legal experts from the public and private sector for policy discussions on press freedom. Since 2021, the Shelter City Programme of the NGO Justice and Peace provides safe spaces to journalists coming from countries where freedom of expression is restricted. They also have specific programs for female journalists who, in some situations, are even more at risk.

The Hague is proud of its track record as a meeting point for giving a voice and finding solutions to such global challenges, from the first The Hague Peace Conference in 1890, which this year celebrates its 125th anniversary, to more recent summits like the World Press Freedom Conference we hosted in 2020. It was, in part, due to the efforts of journalists that The Hague Peace Conference was a success. While they took place behind closed doors among the “old boys’ network” of yesteryear, journalists were the driving force of the peace movement, increasing pressure to the negotiating parties to stop the arms race that gripped the world at the time. They were called the apostles of peace then. Today in times of fake news, disinformation and deepfakes, good and objective journalism has only become a bigger necessity.

Thank you to the Asser Instituut for organizing this closing plenary. I look forward to hearing the panel’s views on how international law might contribute to laying the groundwork for better protection of journalists. In the current context of shrinking civil space and the rapid deterioration of the situation of journalists worldwide, this is needed more than ever. Thank you.

### **GREGORY SHAFFER**

I am going to introduce our moderator and the convener of this great panel. That is Gabrièle Chlevickaitė. Gabrièle is an international criminal law researcher at the Asser Instituut. She is currently on loan from the University of Amsterdam. She coordinates international criminal law projects and conducts research on fact-finding in international criminal investigations and prosecutions. Gabrièle leads the Asser Instituut’s role in Restoring Dignity and Justice in Ukraine, a Dutch Ministry of Foreign Affairs funded-project. She is also the principal researcher for a feasibility study of an international investigative task force for crimes against journalists. Prior to her current role, Gabrièle was assistant professor at VU Amsterdam, co-director of the Center for International Criminal Justice, and PhD researcher at the Netherlands Institute for the Study of Crime and Law Enforcement. She has also been an analysis assistant with the Office of the Prosecutor of the International Criminal Court and has worked on the independent expert review of the Rome Statute system in a research role.

Gabrièle, thank you so much for convening us.

### **REMARKS BY GABRIÈLE CHLEVICKAITÈ**

Thank you, and thank you for the kind introduction and my whole biography. I might be a little bit more spare with our panelists. We have three distinguished panelists with us today and I would like to first introduce them before we open the discussion. Right next to me is Catherine Amirfar, who is co-chair of the International Dispute Resolution and Public International Law Groups of Debevoise & Plimpton LLP and also the past president of the American Society of International

Law and currently serves as deputy chair of the High Level Panel on Media Freedom, the independent advisory body of the Media Freedom Coalition (MFC), which we will, of course, return to during the discussion.

Evelien Wijkstra—I am going alphabetically here—leads Free Press Unlimited’s policy and advocacy work on promoting press freedom and a safe and viable work environment for journalists. She is also the project lead for a Safer World for the Truth, which is aimed at pursuing justice for murdered journalists through investigations into court cases and the organization of people’s tribunal on the murder of journalists.

And last, but definitely not least, is Can Yeginsu, who is a practicing English barrister and the other deputy chair of the High Level Panel of Legal Experts on Media Freedom, currently representing Nobel Peace Laureate Maria Ressa, and is lead counsel for Radio Free Europe/Radio Liberty and the UN High Commissioner for Human Rights before the European Court of Human Rights.

Of course, I could say much more about the panelists, but I think in the interest of having the discussion, I will stop here. And just to provide some context—thank you, Mariëlle, for already touching upon many of the issues that we have been hearing about and that we work on in the context of protection of journalists and impunity for crimes against them—let me spend a couple of minutes on the situation of media workers today.

As is stated in the title of this discussion, journalists worldwide are confronting escalating threats, intimidation, and violence, whether in the throes of armed conflict or within increasingly authoritarian contexts, as well as in seemingly peaceful situations. And here we may be reminded of the late Jamal Khashoggi, Dom Phillips, and Bruno Pereira, among many others, whom the media attention perhaps skipped.

In December 2023, UNESCO sounded an alarm over the deaths of journalists who work in conflict zones, with killings almost doubling over the past three years. This trend has been exacerbated by a record toll of journalists killed in the Israel-Gaza conflict since October 7, 2023. The consequence of these intensified conflicts and related destruction of lives and media infrastructure creates, in the words of UNESCO director-general, “zones of silence,” which have severe consequences for access to information locally, which in situations of conflict can be life-saving, and for the world at large, which also relates to accountability for killings and other human rights violations.

The increase in journalists killed in situations of declared armed conflicts overshadows a likewise serious situation in a number of non-conflict contexts, including killings and other human rights violations in relation to general violence, drug cartels, organized crime, as well as environmental reporting.

Talking of accountability, impunity for killings of journalists persists at a rate above 85 percent over the last fifteen years. Many explanations for the state of affairs have been offered: issues of capacity, that is, a lack of technical competence and staff able to conduct complex investigations, as well as issues of willingness, of political willingness, fear, coercion, and willful ignorance of going after those silencing media workers worldwide.

This is where the work toward creating an international investigative task force for crimes against journalists comes in. This work has been in the making for the last several years, and because we are lucky to have the deputy chairs with us on the panel, I will not spend much time on it, and we will get into it in the discussions. But I would like to highlight that, besides the work toward the creation of an investigative task force, many organizations around the world have been drawing attention to issues of journalist protection and the rampant impunity, and working toward shifting this trend by resorting to international law. I hope that we will be able to provide a complex understanding of the multifaceted efforts required to combat impunity,

and ensure the safety of journalists globally and the interdependency of local and international actors and of domestic and international law in supporting these efforts.

As this is a very broad issue, I would like to first turn to Can. The efforts toward the creation of the investigative task force specifically focusing on journalists and media workers have been, as I mentioned, ongoing for several years and are reflected in the work of the High Level Panel. Could you provide us with some insight into how this work came about, what was the impetus, and how did we get to the point where a feasibility study is being conducted for setting up this task force?

## REMARKS BY CAN YEGINSU

Gabrielè, thank you very much, and thank you also for convening this panel on a matter of great importance for us all.

Let me start by providing some broader context. In 2019, a group of states got together and created something called the Media Freedom Coalition. It is now a coalition that is fifty states strong. The concept at its genesis was that things were getting more and more difficult for journalists. Things were getting more and more difficult for independent media, and this was before disinformation and misinformation were at the stage they are now.

The thinking was that this group of states would provide real energy within the UN and regional frameworks to promote and protect media freedom in the face of some of the challenges that Gabrielè, and the Deputy Mayor, have set out for you this morning.

Now, the way in which this coalition was established was by reference to three pillars. The first pillar was the states themselves, and they were co-chaired initially by Canada and the United Kingdom, and then it was Canada and the Netherlands, and then the Netherlands and Estonia. And today the Media Freedom Coalition of states is co-chaired by Estonia and Germany. That is the first pillar.

The second pillar was the High Level Panel of Legal Experts on Media Freedom, and this was an independent body established to provide expert legal advice to the states, both at a bilateral level as well as a bloc. That body is chaired by Lord Neuberger of Abbotsbury, the former president of the UK Supreme Court, and Catherine and I have the privilege of serving as its deputy chairs today.

The third pillar is the coalition's consultative network. This is the media freedom and civil society organizations, the real experts on the ground providing assistance to independent media organizations as well as journalists. I am pleased that my friend Evelien is here from Free Press Unlimited, a former co-chair of the consultative network and a real energizing force within the coalition.

Back to the High Level Panel for a moment, because I am going to take you to the investigative task force and how we have arrived at the position we are in today, the panel's legal advice has really taken the form of reviewing domestic legislation for members of the Media Freedom Coalition, the individual states. It has taken the form of advising on specific legal issues that states come to us with, and the panel has also been approached by international courts and tribunals to intervene in individual cases where there are media freedom issues at stake.

As I said a moment ago—and this is important—we also advise these states as a bloc, and here what we sought to do in 2019 and in very difficult circumstances in 2020 with COVID raging, we sought to draw up a clear and detailed roadmap for states toward a principled response to some of the challenges that Gabrielè has articulated, challenges that have not gone away, and challenges that are in fact, unfortunately, proliferating.

But the principled response required strengthening protections for journalists but also punishing those who persecute them, and it was not only us. It was also the consensus amongst the Media Freedom Coalition of states. And we said that we could do that in at least four ways in the first

instance, and we produced four advisory reports to the Media Freedom Coalition as a bloc. The first was on safe refuge for journalists at risk. Protecting journalists from harm means getting them out of harm's way when they face imminent danger. We made detailed recommendations to states in a report that I authored on the panel's behalf, and the headline recommendation in that report was the creation of a first-of-its-kind emergency visa for journalists at risk. Happily, that is a recommendation that states have started to give effect to. We have Canada that has moved in that area. We have the Czech Republic. We have Lithuania. We have Estonia. We have Germany. We have several others, we hope, in the pipeline.

But to give you a sense of the impact of all of this, more than 1,400 emergency visas were not only created but issued in 2022 by eight Media Freedom Coalition states. If you take a step back, if this mechanism did not exist, this would not be the case. It does now, and these numbers are not derisory.

Secondly, we said that states ought to commit to protecting their own journalists abroad through strengthening diplomatic and consular support if those journalists are arbitrarily arrested or face similar abuse, and we made detailed recommendations in a report authored by Professor Irwin Cotler on behalf of the panel.

Thirdly, we advised in a report authored by the inaugural Deputy Chair of the High Level Panel, Amal Clooney, that punishment should include targeted financial and travel sanctions against those who will choose to persecute journalists, and that was one of our responses to the issue of impunity and accountability.

Finally, and most importantly perhaps for today, our second response as a panel to the problem of impunity and accountability was informed by the principle that those who kill and falsely imprison journalists must be identified and prosecuted, and that currently, the United Nations and regional mechanisms lack a standing body to independently investigate such abuses, and that there should be, in our view, an international task force that can investigate violence and other abuses against journalists when authorities on the ground are either too slow, too ill-equipped, or too politicized to act.

Our recommendation as a panel for a multilateral investigative task force was set out in a brilliant report authored by Nadim Khoury, and I should say that all of these recommendations that we made were endorsed by the UN special rapporteur, all of the regional mandate holders, as well as all major civil society organizations working to promote and protect media freedom, as well as UNESCO.

Moving to the investigative task force and what has happened since we made these recommendations and report, well, the High Level Panel has been working very closely with Free Press Unlimited and also happily with the Kingdom of the Netherlands, as well as some of our other partners, to see what can be done to turn these recommendations into actions. In October of 2022, there was a parliamentary motion that was submitted in the Netherlands to support the creation of an independent task force to give effect to some of the High Level Panel's recommendations. This was followed in December 2022, with the Kingdom of the Netherlands committing to provide financial support for further consideration of an investigative task force, and this was formally announced by then-Foreign Minister Hoekstra at the second Summit for Democracy in March 2023.

In November of last year, on the International Day to End Impunity for Crimes Against Journalists, the Netherlands unveiled the two leading academic institutions that would be undertaking further work in this area, the Asser Instituut and VU Amsterdam, which brings us to today, Gabrielé, and back to you.

## **GABRIELÉ CHLEVICKAITĖ**

Thank you. Thank you for giving a complete overview of how we got to this point where we are today, and I think it is very clear that the issue of protection of journalists and safeguarding them is

multifaceted in terms of on the one hand, we have the prevention and protection work, and on the other hand, we still have to focus on punishing and deterrence through that way.

Throughout the conference, we have been hearing about the different ways that international law is being leveraged to respond to human rights violations, also, again, both in the protection side of things and in the response after violations have occurred. I would now like to turn to Catherine and ask what are your views on the state of play of using international law and perhaps also international criminal law to respond to serious crimes and human rights violations of media workers, and what are the limitations or perhaps missing pieces in international legal architecture?

## REMARKS BY CATHERINE AMIRFAR

Thank you very much, and I have to say it is a real pleasure and privilege to be here on the closing plenary. I know on behalf of ASIL that the collaboration with the City of The Hague with Asser Instituut has been longstanding and much valued. Thank you so much, and thank you also for the attention on this issue.

I would like to tell you that international law has been the magic bullet in accountability when it comes to media freedoms and their protection, but as we all know and we have been discussing in earnest over the last several days, there are limitations. But I cannot emphasize enough that having the international legal architecture on which to build has been vital and critical in what moves that we have made going forward.

As you have heard from Can, much of the limitations, the missing pieces, as you put it, have been the focus of the High Level Panel's work over the last several years since the creation of the Media Freedom Coalition. When we are thinking about what are the missing pieces, you can see them in the four enforcement reports around emergency visas. What are we trying to address there, where we know that journalists get into trouble, not just in armed conflict, but in the ordinary course of work? They need extraction. They need opportunities to escape the harassment and the targeting that they are experiencing. That is where the emergency visas came in.

We are thinking about sanctions. How can we strengthen the global sanctions networks in order to deal specifically with media freedom issues? We are thinking about consular access. As you can imagine, to assist these reporters on the ground when they need it most in real time, you have to have really robust consular services that are attuned to the particular crisis and the particular urgency that reporters face. There is the failure of accountability, which I want to return back to.

These are the missing pieces. Those enforcement reports are really the High Level Panel's assessment of how and where and why we need to build on the existing international architecture.

The question is more, what makes media freedom different? What makes reporters and journalists particularly more vulnerable? And how can the international legal architecture address those tailored vulnerabilities? I have been a Deputy Chair for the last year and a half, almost two years. We have had two points of focus. One is to elaborate on the enforcement reports, those subject matter areas. When we engage states in bilateral, multilateral fora, especially the executive group, especially the co-chairs, it is a matter of prioritization. You have to have the political will to implement what is in the recommendations. As you can imagine, you put the four enforcement reports together, we have four hundred beautiful pages of legal edifice and recommendations. Prioritization needs to happen. Resources need to happen.

When we talk about how to make that a reality, that is the phase that we are in, to meet the states where they are. It is not the same conversation with each state, we have to tailor these recommendations in our bilateral multilateral engagements to meet the states where they are. Then on top of that is what I call moving with alacrity. As the High Level Panel, we have to keep up with where the crisis is, and I would like to tell you the situation in the world is safer for journalists, but it is



actually much less safe. I want to go into some table setting and focus on two things where we are doing even worse. One is cyber targeting of journalists, and I want to talk a bit about that table setting. The second is accountability, which obviously dovetails with the investigative task force and where we are today.

Table setting on cyber targeting. That has only increased. It has increased because of the prevalence and use of commercially available spyware. Can I ask how many of you have heard of Pegasus? Raise your hand. How many of you have heard of Predator? Raise your hand. Okay. So we know. We know what the issue is out there in terms of spyware, that literally using what is called “no-click technology,” you do not have to do anything. You do not have to download. You do not have to respond to an email. You do literally nothing when Pegasus comes into your phone and turns it into a microphone, recording device, and surveillance device. Imagine how powerful that can be when it gets on the cell phones and technology of journalists.

That goes to show where we are today. We are in a world where we have journalists routinely, every day, being targeted and being taken out. What do I mean by that? We have a lot to thank our civil society colleagues and the information that we do know. According to the Pegasus Project, which is an investigative effort led by Paris-based journalists, a non-profit called Forbidden Stories, in collaboration with media partners, more than 180 journalists in twenty-one countries have been tracked with Pegasus alone, which is just the tip of the iceberg. We all know about Jamal Khashoggi, L  na  g Bredoux of France, Siddharth Varadarajan of India. These are the high-profile cases, but this is happening routinely. We know that Pegasus has been brought up to the floor in terms of being on sanctions lists in the United States. There are lawsuits pending all over the world.

What about the next era, Predator? The more recent Predator files investigations, which were convened by the European Investigative Collaborations Media Network, Citizen Lab, Meta, they have documented suspected Predator customers in eleven countries. Amnesty International identified one, just one surveillance campaign, which used Predator to target at least fifty social media accounts, including senior political officials in the European Parliament, the European Commission, the U.S. Congress, the UN, the president of Taiwan, EU-based journalists, academic researchers, think tanks. It is prevalent.

The other aspect of this that I think is little spoken about is the disproportionate impact on women, on female journalists, and I am going to give you chilling statistics from UNESCO. According to UNESCO, 73 percent of women journalists said, in a survey, that they had been threatened, intimidated, insulted online in connection with their work. The Coalition for Women in Journalism recorded ninety-two press freedom violations involving female journalists in January of this year alone, twenty cases of legal harassment, eleven of threats and intimidation, eight of sexual harassment, six were detained, nine physically assaulted, three were targeted on online harassment. It is a 253 percent increase in just one year over January of last year. We are in a crisis, and we are in a crisis in which the technology deployed is completely and comprehensively destructive.

I do not think it overstates things to say that when we as the High-Level Panel come to the issue of media freedom, we try to get at where we think the limitations are. Cyber targeting is one point of focus. You can imagine for those that are not taken out entirely, the chilling effect that this has and what that means for our inability to access independent information, what that means for our democracies. It is not just an issue for journalists, but all of us. I do not need to tell this group that.

In my view, it has to be an all-of-society effort, and we thank our civil society organizations for putting the spotlight out there. You have the Pegasus files. You have the Predator files. You see what is being done. There are myriad lawsuits actually in at least seventeen jurisdictions on Pegasus alone. We are learning. We are understanding how these technologies are being deployed,

and with that information, comes power. But there are literally only, I would say, two labs in the entire world that can help journalists in real time when their phones have been infected.

You think about Citizen Lab, Amnesty International. Do they have the resources they need to actually roll this out to journalists in real time all over the world? No, not yet. Why not when we are facing this kind of urgency? You have the participation of the private sector. That is critically important where you have social media companies, large tech companies, who in conversations with them, we know are very actively oriented and protective around making sure that this kind of technology is not misused and abused in violation of human rights and with respect to journalists in particular. Those companies, to give you a sense, have committed resources to understanding how data exfiltration is working, resources to giving journalists tools to actually be able to detect these viruses on their various devices, but again, it is not enough.

Very recently, the firm Paladin actually published—and this was just a month ago—among venture capital firms, a set of voluntary investment principles that committed firms to invest in companies only where there was a balancing, where the enhancement of defense, national security, and foreign policy interests was in the service of free and open societies and that they “invest only in companies that sell to countries that abide by international law as recognized by the United States.” For those words to have meaning it is all about how is it implemented. Who is watching? Is it just voluntary? But again, these are the kinds of all-of-society efforts that we need.

The last piece of this is to think about our role is as an advisory body to states. Our job is to take all this information, this knowledge, and to try in our independent function, advise states, “Here are the priorities. Here is what we think is necessary.” We have, as the High Level Panel, identified cyber targeting as a priority topic and so have asked states to work with us to engage in pledges in how you bring this technology to bear.

I note that our friends in the consultative network have called for an all-out ban until human rights principles can be fully accounted. What we are talking about in the High Level Panel is thinking about these technologies that we know are going to be employed in certain contexts legitimately by law enforcement, national security. How do we live in a world where those technologies are used to battle crimes at the same time to bring human rights principles higher as a priority in the conversation so that they are not misused and abused. That is a big part of the conversation. As you can imagine, drawing those lines is not easy, but that is why state prioritization and engagement is so necessary. From a state’s perspective, it is building that political will.

On the accountability—I will be brief because I know we are going to be talking back to the investigative task force recommendations—I will say that it has been really wonderful to see how the Netherlands has championed the investigative task force. Any multilateral effort that does not die on a vine in international law is a win to me, and if it were not for the Netherlands commitment, this might have been one of them.

We are in the midst of the study, the Asser Instituut, this amazing group of experts, the High Level Panels engaging. As you can imagine, it is all about the details. What does an international legal framework look like in an investigations context that is specifically tailored to crimes against journalists? How do we not reinvent the wheel? There is lots of programs out there, international, domestic, that look to try to prevent crimes in general. How are journalists differently situated?

So one example is the forensics around Predator and Pegasus tracking when the surveillance technology is employed. That evidence is very particular. It is an example of in a routine, ordinary investigation, there may not be the steps necessary taken to preserve that evidence, to ensure that that evidence can be used and translated in a legal context when prosecution comes on deck.

At Debevoise, we, for example, represented Sri Lankan journalists who had been assassinated through the use of these technologies, and it is a very complicated evidentiary showing to be able to actually show how the phone was used to track. The investigative task force bringing to bear an



internationalized group and body of experts is a step in the right direction. But we are looking forward to engaging further with the Asser Instituut on these details.

I will leave it there and turn it back to you in terms of the next step.

### GABRIELÈ CHLEVICKAITĖ

Thank you, Catherine, for touching upon many of the issues. Also, the invisible side of things that I think if you are not within the world of looking at journalism and how cyber technologies are being used by the actors to silence journalists may not be known to many of us. We have heard of Pegasus, we have heard of Predator, but have we actually heard the details and how these technologies are being deployed?

I also think it is a good reminder not to take journalism and access to information for granted. I think many of us who sit in this room just sort of open up our phones to get to *The Guardian*, *The New York Times*, and do not really think about what it takes to get that information out there, and that there are many places in the world where that is not possible at the moment.

As mentioned, this is an all-of-society problem that requires an all-of-society response, and with that, I would like to turn to Evelien. Given your experience with Free Press Unlimited, may I ask you to highlight what strategies have been effective in protecting journalists at risk? Let us first focus on that, particularly in countries with limited press freedom.

### REMARKS BY EVELIEN WIJCKSTRA

Thank you so much, and thank you for having me. I am delighted to be here as a civil society representative. We are a press freedom organization based in the Netherlands. We support journalists and independent media across the world. We work with about three hundred partners in more than fifty countries. These are mainly countries where press freedom is under pressure, but I must say, I have been with the organization for eight years, and I am not sure where it is not under pressure at the moment. Even in the Netherlands, we have challenges that journalists face. We are about to publish a report this week about the legal intimidation of journalists in the Netherlands, and I would say that it is a pressing issue that might be less visible at the moment. But I will try to sketch out what we have seen over the last couple of years, and then from the doom and gloom, discuss what might work.

Since 2011, we have had a global emergency fund for journalists at risk. To illustrate the magnitude of the problems we see today, which have been alluded to already, in 2011, we supported about fifty journalists per year; for instance, repairing a broken camera or getting a new computer after they had been attacked at a demonstration. Last year, we supported almost 1,600 journalists. Looking at the support we were able to grant, one out of seven requests was for legal assistance.

Speaking to you today, the law in many countries around the world is being abused against journalists and being used to silence them. That is a huge issue, and it is something that we are continuously working on.

Another thing we see is the many conflicts around the world that affect the work of journalists. Right now in Gaza, we see the devastating effects of the attacks on journalists, which are not comparable to the attacks on civilians in general. There is a three times higher chance of being killed as a journalist in Gaza. What we see very clearly is that these journalists are our eyes and ears from the conflict, and that is why they are targeted.

A lot of negative trends have been mentioned already. We have public trust that has gone down, which is a big issue that is related to economic viability issues that many journalists around the world face. What you were just saying, Gabrielè, one of the main things that we see as a solution to safety issues is for people to pay for journalism, because that is a way for journalists to create

those systems, internally at least, to be safe when they go out and report. It is also for us to value the intrinsic value of independent information and journalism as the fourth estate in our society.

The last couple of years, we have been studying impunity quite deeply at the organization, and I think one of the main reasons why journalists are targeted more than compared to 2011 is because that fourth estate function is under attack. When you look at Gaza, for instance, you also see very clearly that other pillars of accountability are fragile, and that is what you see in all the countries around the world where journalists are murdered. The problem is not only that they are attacked, but also that the legal system is not functioning, and that the politicians often are the ones targeting journalists. In terms of the responses we need, if you look at a silver bullet, we need this tide of authoritarianism to be reversed, and we need a democratic uprising.

But obviously, that is a bit challenging. As an organization, we have been working with journalists to support them, and apart from safety support that we provide, we also try to support them in collaborating cross-border, which is also a way for them to be more safe and to tell crucial stories.

Regarding the impunity issue, we had been requesting states to act upon their obligation to investigate attacks and murders against journalists, and a few years ago we decided that we would start doing that ourselves. The last couple of years, we have been investigating cold cases of journalist murders, and we have done that in seventeen cases of murders up until now. It shows that it is possible to find the perpetrator, if you do a proper investigation from the start, and you can see what the systemic failures are that are the basis for this impunity to be the result.

One of the things that we found, for instance, is that in many jurisdictions, there is an issue with transparency during investigations. Many times, the relatives of murdered journalists have no way to find out what actually is happening in the investigation. If they had legal counsel from the start, they would have been able to see what was happening. They would have been able to follow and track and actually push for this accountability. Lessons learned is combining this legal counsel together with investigative journalism skills as a way to fight the impunity and press for accountability.

### **GABRIELÉ CHLEVICKAITĖ**

Thank you, Evelien, and thank you also for highlighting the moral outrage and the democratic uprising that I think has also been the trend through this conference of where we are now in the world.

To follow up on some of the things that you mentioned, investigation seems to be the place where things break down. There is either no initiation of investigation in the first place, which also keeps the issue completely in the dark and it is even hard to get the numbers, or investigations are conducted improperly without the technical tools, for example. Now it is getting more complicated, as Catherine mentioned, with the complexity of evidence when cyberattacks are involved.

Evelien, from the perspective of your work at Free Press Unlimited, what would you say are some of the reasons why we are at this stage with investigations? Why are they not conducted properly, and is there a difference between perhaps conflict-related and non-conflict-related situations?

### **EVELIEN WIJCKSTRA**

It is important to state from the start that most journalists are murdered in what we call hybrid countries. These are countries where there is a mix of democratic and autocratic features. The perception is often the Chinas, the Russias of this world, that is where journalists are most attacked. But if you look at murders, there is no reason to murder them because they are already in prison or they are already silenced through other means.

We have worked in Pakistan, Brazil, and Mexico. If you look at Mexico, for instance, there is this local power holder who is actually the mastermind behind the murder, who is also able to make sure that in the end, the whole system does not work. A murder cannot be prosecuted because they are actually the ones behind it.

### **GABRIELÈ CHLEVICKAITĖ**

In conflict situations, we also have the issues of evidence and who is conducting the investigation, we also see these challenges with the Israel and Gaza conflict of who is looking at these killings and whether they are the regular course of conduct of conflict, which is usually what at least those in power would hide behind, or is it really something more targeted?

Here I would like to go into more detail on the investigative task force and where it might offer some solutions or what type of modalities we actually need in order for this type of issue to be addressed with task force. Catherine, you could start with that, and then I will give the floor to Can.

### **CATHERINE AMIRFAR**

In terms of the task force itself, the structure, the scope, the kind of activity we expect is critical, and all of it comes down to how do we do two things. One, do not re-create the wheel in that, as you well know, Gabrielè, from your work, there are actually a lot of existing mechanisms that are in the realm of failure of accountability. There are expert panels and rosters, and there are programs in which that kind of expertise or resource sharing exists.

There are models in which there are deployment models. For example, the Federal Bureau of Investigation here in the United States has basically a legal attaché program in which there is a crisis response group of experts comprised of investigators and prosecutors who are well versed in evidence and other aspects who are deployed to different countries in order to be on the ground and assist. Then there is the more abstract advisory role, where there are training programs, education, and capacity building.

If you think about the efforts across those three, when you look at crimes against journalists, we have to ask ourselves, how can we add to the existing architecture that international legal institutions are already providing in a way that actually gets to why these crimes are on a greater rate being left with no measure of accountability? In that respect, from the High Level Panel and Nadim and, as you know, in conversations with you and the Asser Instituut, we are very much focused on less of a “here is a roster of experts” and more of an active deployment model in the sense of thinking through what does that actually look like? As you can imagine, there are a lot of issues of political will for host states where a crime actually happens. Is there the ability to engage a host state, go on the ground, collect evidence? That is going to be a threshold issue.

There are questions about the right expertise, as we mentioned already, the cyber piece, but there are very specific evidentiary aspects. Is the right expertise getting there?

There is an issue that does not get a lot of attention, which is how culturally sensitive are these internationalized investigative task forces? By that I mean do they understand the country, something as basic as the language, or is there an ability to be perceived as a value-add rather than parachuting in for ten days and then leaving? There are important questions of implementation. How do immunities work for this kind of body? Where is the funding going to come from on a go-forward basis? Which is why I am so grateful that the Asser Instituut is working with the High Level Panel, with other key stakeholders, and with states who have the political will to take this on.

We are in a moment for all of the bad news, for all of the horror that we are experiencing, and for international lawyers, it hits very close to home as to being so far from the world that we imagined

in the post-war order. One of the aspects that the horrors in Ukraine, for example, have brought up is this increased appetite for how do we think about international accountability.

The ICC has actually had a bit of a renaissance, if you will, in terms of focus. We are thinking about crimes of aggression. We are prepared to do things differently, and from the High Level Panel's perspective, we have to do it differently where it counts the most. I cannot think of what could be more important than protecting media freedom, because it is on that basis that as we do 50 percent of the world's elections this year, how can we have fair elections, a functioning democracy, protection of freedoms, unless we protect the information ecosystem? As Maria Ressa likes to say, we have a crisis in the information ecosystem.

The Investigative Task Force is obviously not that magic bullet, but it does need to be tailored to where we need it for media freedom.

### **GABRIELE CHLEVICKAITĖ**

Thank you. And I, of course, have seventy-seven follow-up questions. But, Can, would you like to add something?

### **CAN YEGINSU**

I would echo all of that. Talking about statistics, 50 percent of the world is going to elections, 12 percent of the world has access to an independent and free media—12 percent.

So far as the accountability piece is concerned, the biggest challenge here is for legal experts, civil society, and academic experts to work in such a way as to provide recommendations that can be taken up, whereby those recommendations actually have impact. The biggest challenge for the panel on inception has not been writing the reports, very handsome as they are, but it is writing the reports with a view to thinking about which states may move first, which states may then join them, and so on and so forth. These are not easy areas. We did not pick a single easy area, and this investigative task force is particularly difficult.

That is why, just as when it came to the issue of safe refuge, it was so important to find a state to move first, and that state was Canada. We have the beginnings of momentum. Here, we are extremely grateful to the Netherlands. We are also extremely grateful to the Asser Instituut and their partners. At the end of all of this, there will be a very strong work product, but we will then have to turn our minds to the states, and it could not come at a more important time.

### **GABRIELE CHLEVICKAITĖ**

To make the conversation even more difficult, now we are talking about something that is at least graspable, the killing of journalists, that a response is needed. It is hard for a state to say, "No, it's fine," like they die and it is okay.

I would like to bring attention to some of the issues that seem to be particularly intractable and raise, perhaps, even more resistance when talking to states about their responsibility, and that is the issue of arbitrary detentions, which, according to the data, tend to increase in countries that transition from open violence methods and as Evelien mentioned, the Chinas, the Russias of this world. It becomes this way of quietly silencing the journalists, and some of those cases are very high profile. We think of Gershkovich currently imprisoned in Russia, but a lot of them we never hear about because there is nobody left to report if there is the constant threat of ending up in prison.

With surveillance technologies and cyber technologies, the journalists are even more at risk of actually becoming imprisoned before they publish the reports, and there have been wonderful

initiatives from civil society of finishing the reports where the journalists were either killed or imprisoned at the time of working on it.

I wanted to ask, is there something that could be done to either reduce—and I think the visa program is one of those things—the number of journalists who face arbitrary detention in the first place? But even more importantly, is there a way to use international law to fight the arbitrariness or to expose arbitrariness and actually have these individuals released? Can, I think you would like to comment on that.

## CAN YEGINSU

Yes. This is another area that Catherine and I are working on very closely in the context of the High Level Panel having to keep up with the new challenges.

Arbitrary detention is not a new challenge, but it is getting worse, and it is getting worse very quickly. As Gabrielè said, for every high profile instance, there are fifteen to twenty instances of journalists being arbitrarily detained that are not picked up.

Here, unfortunately, there are real gaps in the regional framework in terms of enforceable legal standards. The European Court of Human Rights traditionally has done a good job of enforcing an international minimum standard when it comes to arbitrary detention by reference to its Article 5 jurisprudence, and the cases have moved more quickly, but unfortunately, some states now are not responding to orders from the court.

But more broadly, there are the beginnings of an international initiative led by Canada, but also with the United States, Japan, and a number of other countries—an international initiative against arbitrary detention. We as the High Level Panel have been feeding into that work so far as media freedom and journalists are concerned.

There is an effort to give greater teeth to the UN Working Group on Arbitrary Detention. It is important to support existing UN efforts. But the question will be, how? And now that initiative has seventy state signatories, and it is following a model which is not dissimilar to the Media Freedom Coalition. Canada has sought to replicate in its arbitrary detention initiative some of the good news stories from Media Freedom Coalition. That initiative started more from the perspective of arbitrary detention in state-to-state relations. You have to start somewhere. We have a member of the High Level Panel who is one of the experts. Professor Hong is a former president of the UN Working Group, advising that body now.

## CATHERINE AMIRFAR

If I could just add on to that, because I think that this question also dovetails with another point, which is our tendency to think about the availability of the legal mechanisms really being human rights mechanisms, which are absolutely correct focus, but they are not exclusive, because this is not just a human rights issue. It is a rule of law issue. The reason I mention that is because for everyone in the room who is working in human rights, but also in other areas of international law, this is again an all-of-society effort. We have to use all of the arrows in our quiver, and part of that is other areas of law.

With respect to arbitrary detention, I will give you an example in the context of investment arbitration. We represented a company operating in Albania that was subjected to a series of harassment and other actions by Albania, because it was the only independent news source in the country. Ultimately, those actions resulted in the shutdown of this media organization. All of its individuals dispersed and the chief proprietor was threatened with detention, and what we were able to do is get an investment tribunal up and running and used the opportunity to obtain binding provisional measures that put a stop to a pending indictment that was clearly motivated by the campaign of

harassment against the media organization and ultimately prevailed on that. Two years later, we were able to win a 110 million euro judgment against the state of Albania, which goes into the ICSID system, which has real enforcement teeth. If you think from a jaded perspective, what gets states to stand up and pay attention, it is having a 110 million euro damages award. At the end of the day, it was about media freedom arising in the context of investment arbitration.

It goes back to full toolkit. This media freedom is something that manifests not just in human rights and arbitrary detention, not just in human rights, but in other areas of law that we should be thinking about.

**GABRIELÈ CHLEVICKAITĖ**

Thank you. And it is really refreshing to hear that something actually has worked. I think in the context of our work—

**CATHERINE AMIRFAR**

They have not paid yet, but still working.

**GABRIELÈ CHLEVICKAITĖ**

It is a work in progress, at least not a work in regress.

**CATHERINE AMIRFAR**

Yes.

**GABRIELÈ CHLEVICKAITĖ**

I would like to give the floor to Evelien to add from the civil society perspective, what have been some of the things that work.

**EVELIEN WIJSTRA**

Yes, of course. I would say in terms of detention, what we see really works very well, if journalists have access to legal counsel very quickly. Often that is a big deterrence to pull through. What we also see in terms of political support, what is really helpful is when states come and monitor a case, come to trial, show up and show that they are actually following what is happening.

Very often we see that if this is more orchestrated—so for instance, by the EU or several member states of the EU and the United States—then that has a deterrent effect, which we would like to see more of. But definitely, we see that as a good practice.

**CAN YEGINSU**

Can I just add to that? Because that is something where the Media Freedom Coalition has moved the dial in the right direction. They have set up these diplomatic networks whereby the key Media Freedom Coalition states are talking to each other not only through central government, but also through their embassies and their consulates, and that makes the sort of trial watching and observations—I think it has made it more coordinated. There is still a bit of coordination to go, but it can make a real difference.



**GABRIELĖ CHLEVICKAITĖ**

Dovetailing on that as well, the coordination between civil society, the states, the legal professionals, experts, Media Freedom Coalition, where do you see that working, and where do you see that perhaps breaking down? I am also thinking of the new task force and considering where it would slot in. Is there a place where there is a meeting place for all of these actors that are working on these issues, or is it something that still needs to be further developed? I think Evelien is ready to jump in.

**EVELIEN WIJKSTRA**

The Media Freedom Coalition has been a really good convening forum in that sense. Last year at World Press Freedom Day, we had strategic sessions where we discussed multiple issues from different perspectives. The High Level Panel, the consultative network members, and the states were there. This could happen way more often where we convene and actually set our agendas and make sure that we do not work in silos as much as we tend to do.

But I would fully agree with Can that in terms of casework, we see the Media Freedom Coalition has actually, with the diplomatic networks, created something that was not there before. For instance, when we raise a case of a journalist that is arrested somewhere in the world or that is being persecuted on other grounds, this is a way for us to directly speak to several states at the same time and ask them for action. I feel that is key. In terms of fighting impunity, there are also definitely other actors that we need on board.

**GABRIELĖ CHLEVICKAITĖ**

On the other actors, but also on the Media Freedom Coalition, currently the Media Freedom Coalition counts over fifty states. The representation is also very uneven, as with many of those progressive human rights coalitions. Where do you think more work could be done and where is there actually political momentum to get more states on board to have a broader representation, especially from countries where you have pressing media freedom concerns? I do not know who would like to jump in on this one. It is not an easy one.

**CATHERINE AMIRFAR**

I think that certainly the prior co-chairs and the current co-chairs are very cognizant of what it means to be and the importance of diversity within the Media Freedom Coalition. There are efforts at every stage to make it more geographically diverse and make sure that regions are represented. There are some structural difficulties with that, because in order to be part of the Media Freedom Coalition, you need to actually be able to say we are a state that prioritizes media freedom, are willing to sign on to some pledges, and work with the High Level Panel, work with the consultative network. You could say that there is a structural impediment to getting states in the coalition where perhaps the greatest need arises.

You have inherent in the enterprise this tiering of states, which is not necessarily helpful. But at the same time, you cannot have a Media Freedom Coalition with lots of states who do not prioritize media freedom. As you can imagine, it is a balancing act. It is trying to bring states along who are outside of the MFC, so that at some point, they can come into the MFC. It is taking states like Afghanistan, where there has been a change in government, where you cannot actually say that media freedom exists, and they come out of the MFC. It is a constant dialogue.

I think the chairs know that it is very politically sensitive but extremely important. I can say that we are very pleased that the MFC is paying attention to this issue and trying to increase diversity. But as I mentioned, you have to balance it with some of these structural limitations.

#### **GABRIELÈ CHLEVICKAITĖ**

I see. Yes, Can.

#### **CAN YEGINSU**

I would just add—and I should have said this at the outset—states who are not in the MFC but would like to join the MFC are able to come to the High Level Panel and ask for expert advice on legislation that they are considering on safety of journalists, media freedom, and we have engaged with those states as well. We are trying to do our best from a capacity-building perspective.

The earlier point you made, a question that you asked Gabrielè about civil society experts and states at the very start of our work in 2019, we had a non-derogable rule, which is that no work of the High Level Panel, less any of these advisory reports where we are advising the states en masse, was going to proceed without very broad and deep consultation. We put a lot of effort in talking to civil society, which is why the recommendations in the reports were endorsed by so many members of civil society. It takes longer, but ultimately, it has a much greater impact and legitimacy when you go to the states with those recommendations, and that has been absolutely critical to our work.

#### **GABRIELÈ CHLEVICKAITĖ**

And of course, we do have a consultative network at the table as well. I would like to ask one more question. I will start with Evelien, because I mentioned the work on the cold cases and actually taking up the work of investigations in the absence of any other type of interventions, so really in situations where there is nowhere to turn anymore. From our previous conversations, some of this work is being done remotely. I also wanted to have a slightly more positive spin perhaps on technology, about which we have been hearing very concerning panel interventions throughout this conference and today. How do you think technology might be leveraged to conduct investigations or to advance media freedoms, so the other side of the coin?

#### **EVELIEN WIJSTRA**

We have been able to work with a team of investigators based partly in Amsterdam and partly in the countries where these murders happened. In that sense, technology is very helpful, because it is a way for us to guide local investigators in their work.

The option of open-source investigations is something that is really valuable in looking at these murders. Because we have been looking at older cases, it is sometimes a bit harder to do that with technology because a lot of the evidence is not available in terms of open source information.

If I can say some hopeful words that when we look at these cases that are cold for twelve years even, it is possible when you actually collect a good group of people with legal expertise who can devise a legal strategy and who know what evidence you need to go to court or to reopen a case, and you work with investigative journalists who understand the environment very well and understand how to find the evidence and how to speak to witnesses, we can see that there are a lot of opportunities to reopen cases and to also find more structural issues that can be tackled even today and that matter to the environment for journalists to work in.

**GABRIELÈ CHLEVICKAITĖ**

I will give the floor to Catherine.

**CATHERINE AMIRFAR**

Very briefly, I am glad you mentioned this, because I think we can sometimes get in the mode of thinking of technology as only a problem, when in fact, it can actually be a very powerful solution. One of the greatest areas that gives me hope is I there is so much more potential for public-private collaboration to solve some of the world's most difficult problems, and this is no exception.

In this instance, so as an example, we have some of the biggest tech companies focused on this sufficiently to think about how do you employ, for example, artificial intelligence in a positive way here, and one example that comes to mind is I sit on the board of Human Rights First, and we have had some really remarkable success in that organization using AI to basically do a scraping of the internet to find patterns and bots around white supremacist movements, for example, take that information and bring it to bear in various advocacy and various accountability and other mechanisms.

Potentially, AI is just one example of a very powerful way to be able to track what is happening on the internet, understand where bots and disinformation campaigns come from, and be able to employ that in various legal accountability mechanisms. I have reason to be hopeful that technology can be helpful in this regard.

**GABRIELÈ CHLEVICKAITĖ**

Thank you.