

GOLER T. BUTCHER MEDAL LECTURE: THE ACCOUNTABILITY OF SOVEREIGN POWER FOR INTERNATIONAL CRIMES

This lecture was convened at 2:00 p.m. on Friday, April 8, 2022. Judge Chile Eboe-Osuji, former International Criminal Court president and 2022 Goler T. Butcher Medal recipient, was the honoree and lecturer. Michael Scharf of Case Western Reserve University School of Law was the discussant.

INTRODUCTORY REMARKS BY CATHERINE AMIRFAR

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Welcome, everyone; it is a pleasure to see you as always. This is a very special inaugural event and one that I am very excited about because as we all know, the history of Goler T. Butcher is very special. This award has been awarded since 1997 to a distinguished person of American or other nationality for outstanding contributions to the development or effective realization of international human rights, and as we also know, it was named for Goler Teal Butcher, a remarkable person, prominent African American scholar, and professor of international law at Howard University School of Law, who served as the assistant administrator for Africa at the U.S. Agency for International Development in the Carter administration, and was a leading advocate for ending global hunger. We are here very much to honor the legacy.

The society's long connection with Judge Eboe-Osuji, including his speech at our last in-person meeting in 2019 while he was president of the International Criminal Court (ICC), is not to be forgotten, and that long relationship continues. We were so pleased to be able to give this wonderful award at yesterday's assembly. I want to thank Dean Michael Scharf and Case Western Reserve University School of Law for their very generous sponsorship of this event. I know she would be very proud of where this award is at this stage. Let me please welcome Michael to the podium.

REMARKS BY MICHAEL SCHARF

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Thank you so much, Catherine. As Catherine said, I am Michael Scharf, dean of Case Western Reserve University School of Law. We are very pleased to be sponsoring this program today, a conversation with Judge Chile Eboe-Osuji, one of my oldest friends in this field and recipient of the Butcher Medal.

Judge Eboe-Osuji served as president of the International Criminal Court in The Hague from 2018 to 2021. He was a trial chamber judge of the ICC from 2012 to 2018 and an appeals chamber judge from 2018 until his retirement in 2021. During that time, he presided over one of the most important decisions of the appeals chamber, and that is the question of immunity of heads of state in the *al-Bashir* case, decided in 2019. You will hear him talk to you a bit about that decision. We are going to explore some of its ramifications to the Ukraine crisis, which is unfolding today.

Prior to joining the ICC, Judge Eboe-Osuji served as the legal advisor to the United Nations High Commissioner for Human Rights in Geneva. He was also appeals counsel for the prosecution in the *Charles Taylor* case in the Special Court for Sierra Leone. Earlier he served as senior prosecutor at

the International Criminal Tribunal for Rwanda, and he practiced law as a litigator before trial courts in both Canada and Nigeria. He received his Ph.D. from the University of Amsterdam in the Netherlands, an LLM degree from McGill University in Canada, and received his Bachelor of Laws degree from the University of Calabar in Nigeria.

Since completing his term at the ICC, Judge Eboe-Osuji now holds appointments as distinguished international jurist at Ryerson University in Canada, Paul Martin Senior Professor of Political Science at the University of Windsor, and as Senior Fellow at the Carr Center at Harvard University.

We are going to start with some remarks from Judge Eboe-Osuji, followed by a conversation with me, and then Q&A from the audience. Please, everybody, join me in both welcoming Judge Eboe-Osuji and congratulating him for the honor of the Butcher Medal.

REMARKS BY JUDGE CHILE EBOE-OSUJI

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Thank you, Michael. When Mark Agrast and I settled on the title of this lecture on February 4, 2022, the idea was to speak generally about the accountability of sovereign power for international crimes. That was to discuss no particular head of state, except perhaps historical figures whose behaviors helped to develop the norm of individual criminal responsibility for even heads of state.

Then three weeks later on February 24, 2022, you know what happened: President Putin invaded Ukraine in what everyone accepts as a blatant war of aggression, which international law says is a crime in international law, and thereby he walked himself straight into my lecture, as if to say, “Eboe-Osuji, why talk about historical figures while I am right here, right now?”

There is no doubt that he got what he asked for. President Biden has now repeatedly called President Putin a “criminal” in international law who must be brought to justice and many other world leaders have agreed. As we will see in a moment, President Biden broke no new ground when he called for the prosecution of another head of state or head of government for international crimes. At the end of the World War I, French Premier Georges Clemenceau and British Prime Minister David Lloyd George, later joined by U.S. President Woodrow Wilson, called for the prosecution of Kaiser Wilhelm II, the emperor of Germany and king of Prussia, and they actually took steps to make that happen.

About twenty-five years later, in the middle of World War II, U.S. President Franklin D. Roosevelt, UK Premier Winston Churchill, and Soviet leader Joseph Stalin called for the prosecution of the leadership of the Third Reich, including Adolf Hitler. These were early developments that charted the course of international law.

I shall return to that discussion in a moment, but first things first. I want to pause here and thank ASIL for awarding me this year’s Goler T. Butcher Medal and inviting me to give a second lecture to the Society, the second time we are all getting together in person. These are immense honors for which I am truly grateful. Thank you very much.

I take this opportunity to dedicate that award to an institution that is now dear to all of us and should have been for a long time, and that is the International Criminal Court. And to everyone who worked at the Court before and during my time and those who still do. They have done and are doing amazing work in spite of daunting challenges. The world’s gratitude is eternally theirs, and I call on the world to continue to support that institution and double efforts in doing that so that it can do more.

International law touches the special problems of the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. International lawyers who are familiar with the negotiation and drafting of the provisions of the Rome Statute in relation to the crime of aggression are