

Reflections on International Criminal Law Over the Past Ten Years

Hans Corell*

Distinguished colleagues and friends,

First of all, let me thank the sponsors of the sixth International Humanitarian Law Dialogs for inviting me to address you. This is the first time that I am participating in the Dialogs. I accepted the invitation with particular pleasure since I knew that I would meet many friends from the many years during which I was actively involved in the efforts to establish an effective administration of criminal justice at the international level.

My first experience of this work was as a war crimes rapporteur in the former Yugoslavia in 1992-1993. My colleagues and I presented the first proposal for the tribunal that eventually became the International Criminal Tribunal for the former Yugoslavia (ICTY).¹

* Ambassador, Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations. This publication is based on Ambassador Corell's keynote address on August 27, 2012 at the sixth International Humanitarian Law Dialogs held in Chautauqua, New York.

¹ HANS CORELL ET AL. PROPOSAL FOR AN INTERNATIONAL WAR CRIMES TRIBUNAL FOR THE FORMER YUGOSLAVIA (1993), *available*

My last official function in my capacity as the Legal Counsel of the United Nations was in March 2004, when I represented the U.N. Secretary-General at the inauguration of the courthouse for the Special Court for Sierra Leone (SCSL) in Freetown.

I have been asked to address the topic, “Reflections on International Criminal Law over the Past Ten Years.” I will do this in four main points:

- Salient features in the development of international criminal law over the last few years;
- The Rome Statute and the obligations of states;
- The role of the Security Council; and
- Crime prevention and protection of human rights.

Before embarking on this exercise, I must make clear—particularly when I see all of the expertise present in the room, including persons with day-to-day experience of serving in different capacities in these international institutions—that my experience is somewhat different. I have served on the bench for some ten years in national courts but not in international courts. All my activities relating to the institutions that we discuss here have been focused on their establishment and administration. Therefore, I do not have the same kind of experience that most of the participants in this year's Dialogs have.

Furthermore, since my retirement from the United Nations and from public service in my native Sweden in 2004, I have been deeply involved in so many other matters that I have not been able to closely follow the case law that has developed in the international criminal courts over the years. My focus on international criminal justice has mainly been on the International Criminal Court (ICC) and the situation in Kenya. The simple reason for this is that since February 2008, I have been the legal adviser to former U.N. Secretary-General Kofi Annan and the other members of the Panel of Eminent African Personalities engaged in the Kenya National Dialogue and Reconciliation.

The main focus of my work in recent years has been on the protection of human rights and the importance of establishing the rule of law at both the national and the international levels. These elements are therefore important points of departure for my presentation today. You will also notice that my presentation will be very personal.

Salient Features in the Development of International Criminal Law Over the Last Few Years

With these provisos, let us now focus on the first main point: salient features in the development of international criminal law over the last few years.

When the agreement on the SCSL was signed in Freetown on January 16, 2002, both the ICTY and the International Criminal Tribunal for Rwanda (ICTR) had

been in operation for almost ten years. The Rome Statute of the ICC would enter into force on July 1, 2002, and on February 8, 2002, U.N. Secretary-General Kofi Annan would withdraw from the negotiations with Cambodia on the establishment of what eventually would become the Extraordinary Chambers in the Courts of Cambodia (ECCC).

While the Security Council had deemed it appropriate to establish the ICTY and the ICTR, they were not comfortable with the idea of establishing yet another tribunal of this nature in Sierra Leone.

An important difference between the two tribunals established by the Council and the SCSL is that states have different obligations. With respect to the two tribunals established by the Council, states are bound by resolutions adopted under Chapter VII of the U.N. Charter. The same obligations do not flow from the agreement between the United Nations and Sierra Leone. I, for one, had hoped that the Council would adopt a resolution creating Chapter VII obligations to cooperate with the SCSL once the agreement was concluded, but this did not materialize.

The negotiations between the United Nations and Sierra Leone were conducted on the basis of Security Council Resolution 1315 of August 14, 2000. In paragraph 8(c) of that resolution the Council requested the Secretary-General to include recommendations on “the amount of voluntary contributions, as appropriate, of funds, equipment and services to the Special Court, including through the offer of expert personnel that may

be needed from states, intergovernmental organizations and nongovernmental organizations.”

Within the Secretariat, we concluded that the intention of the Council was that the SCSL would be financed from voluntary contributions from U.N. member states. The Secretary-General's view was that the only realistic solution was financing through assessed contributions, and he provided reasons for this opinion. I have, in another context, expressed regret that we did not advise the Secretary-General to include in his report yet another argument in favor of assessed contributions, namely the constitutional argument.² One should make a comparison with funding of courts at the national level. If national courts were funded by different donors and not from taxes or similar official revenues, what credibility would they have? This reasoning should actually be applied at the international level as well.

In a more general perspective there has, of course, been tremendous development in the field of international criminal law over the last few years. There is no point in giving an account of the records of the existing international criminal tribunals to the present audience. As you know, both the ICTY and ICTR are being wound up according to plan, and a residual

² Hans Corell, *Foreword* to INTERNATIONAL PROSECUTORS v (Luc Reydams et al eds., Oxford Univ. Press 2012), available at http://www.havc.se/res/SelectedMaterial/internationalprosecutors_pr elims.pdf.

mechanism has been set up to manage the remaining issues.

This Mechanism for International Criminal Tribunals (MICT) was established by Security Council Resolution 1966 of December 22, 2010. As you are aware, it has two branches: one branch focusing on matters relating to the ICTR, and one branch that will focus on matters relating to the ICTY. The first branch is located in Arusha and is in operation as of July 1, 2012. The second branch will be located in The Hague and operational as of July 1, 2013. The Security Council has determined that the MICT will continue to operate until it decides otherwise. In accordance with the resolution, the progress of the work of the Mechanism will be reviewed in 2016 and every two years thereafter.

I believe that it is fair to say that the record of these two tribunals is impressive. In particular, the trial and conviction of high-level perpetrators has made an important mark in the history of international criminal law.

The same could be said about the work of the SCSL. The most significant case is the trial of Charles Taylor. If anyone had suggested to me, when I signed the agreement with Justice Minister Solomon Berewa in Freetown on January 16, 2002, that Charles Taylor would stand trial before this court, I would not have believed it.

The ECCC presents a complex issue. I am sure that you understand that my position is somewhat delicate

here. While others may be free to express their views about this process, I am still bound by the rules of discretion that apply to international civil servants. It also goes without saying that I must support the ECCC and hope that its work will benefit the people of Cambodia. I have the greatest respect for those serving the ECCC who are trying to make the best of the situation.

I may still say, however, that I was extremely concerned by the development of the negotiations that led to the establishment of the ECCC. In particular, I was concerned about some of the features that appeared in the final agreement. The reason is partly that, when the United Nations conducts negotiations, there are many actors involved behind the scenes. This was certainly the case here. Several states demonstrated a keen interest. Most of the persons engaged here had no courtroom experience. This, in my view, is the reason that the U.N. Secretariat was obliged to accept features that led to the current difficulties.

I actually suggested to the Secretary-General that he should open to the public the U.N. records from the negotiations. I have no idea if this will happen soon, but one day the information will be made public. The efforts by the U.N. delegation to arrive at a result that respected international standards for the conduct of proceedings in criminal cases will then be apparent.

Let me just say that, as a professional judge, I was extremely concerned when the U.N. Secretariat was forced back to the negotiation table by the U.N. General Assembly in December 2002. In some respects our

hands were tied. Now, some of the things I warned against have actually occurred. I am sure that today even people without courtroom experience realize that the solution chosen for the ECCC should not be used as a model for any future effort of this nature. The U.N. imprint should not be given to institutions over which the organization does not have full administrative control.

The ICC can now look back on ten years of activity. It is obvious that establishing an institution of this nature requires careful considerations and a considerable start-up phase.

I agree with current U.N. Legal Counsel Patricia O'Brien when she said:

For several decades, the voices of victims who suffered unimaginable atrocities went unheard as the international community struggled to build upon the legacy of the Nuremberg and Tokyo Tribunals.

The tide has finally turned. Today, those responsible for genocide, war crimes, crimes against humanity and other gross violations of international humanitarian and human rights law are being held accountable. Heads of state

and senior officials can no longer hide from justice.³

However, there is still a long way to go. And I must confess that I am somewhat concerned that the ICC's record so far is rather meager, at least in comparison with the achievements of the ICTY, ICTR, and SCSL during a similar period of time. There could be several reasons for this, in particular the degree of willingness of states to cooperate effectively with the Court.

The Rome Statute and the Obligations of States

This brings me to my second main point—the Rome Statute and the obligations of states.

Let me first focus on the principle of complementarity. There are presently 121 States Parties to the Rome Statute. The first obligation is to see to it that the Statute is properly implemented at the national level. In my view this is one of the most important contributions that the Rome Statute makes in the field of criminal justice.

Already in 2000, when discussing this question at a conference in The Hague, I suggested that perhaps the

³ Patricia O'Brien, *Impunity Over for Heinous Crimes Against Humanity*, IRISH TIMES, July 23, 2012, at 14.

most important factor in fostering the acceptability of the ICC is the fact that the Court was not created as a replacement to national jurisdictions. Instead, it would act as a complement to them.⁴

This complementarity principle became a key element in the negotiations in Rome. The Court may determine that a case brought before it is inadmissible if the case is being investigated or prosecuted by a state which has jurisdiction. However, if the state is unwilling or unable to genuinely carry out the investigation or prosecution, the ICC may decide to take the case.

From this follows that states have an obligation to carefully examine their national criminal justice systems in the process of ratifying the Rome Statute. In many cases it will be necessary to introduce rather elaborate implementation legislation. A natural ingredient in this process should be to see if improvements of a more general nature can be made to the national system based on the common effort in Rome. Hopefully this will lead to a harmonization of criminal law and criminal procedure in the community of states.

I am not aware of exactly how this work has proceeded in the states that have ratified the Rome

⁴ Hans Corell, Under-Secretary-General for Legal Affairs, U.N., Evaluating the ICC Regime: The Likely Impact on States and International Law (Dec. 21, 2000), *available at* http://untreaty.un.org/ola/media/info_from_lc/romestatute_dec00.pdf.

Statute. However, I have a feeling that much remains to be done here. I say this since I have observed that in my country, which has ratified the Statute, work still remains to be done in this respect. Sweden would normally meticulously examine the need for legislative acts before ratification of international agreements. This work is, however, not yet fully completed with respect to the Rome Statute.⁵

Another obligation that falls upon states is that they must see to it that attention is paid at the national level to ICC case law; this case law should also influence the national justice systems.

When we discuss the obligations of states, the provisions in Part 9 of the Rome Statute on international cooperation and judicial assistance are of great importance. Article 86 of the Statute contains a general provision that obligates states to cooperate fully with the ICC in its investigation and prosecution of crimes within the jurisdiction of the Court. As you are well aware, this provision is followed by a number of detailed rules on the topic. The question is, to what extent do states fulfill these obligations?

There are many present here who are better placed than I am to provide information about this. And perhaps

⁵ A report entitled “International Crimes and Swedish Jurisdiction” (SOU 2002:98) was presented in November 2002 by the Commission on International Criminal Law and is still under consideration in the Ministry of Justice.

this could be a topic for discussion at the present Dialogs. Suffice it to say that criticism is sometimes unjustly voiced against the ICC for not being effective when the criticism should actually be directed against states that do not cooperate. I note in this context a very pertinent remark that ICC Prosecutor Fatou Bensouda made to *Al Jazeera* in July this year in relation to the prosecution of the president of Sudan:

The way that ICC has been set up we do our legal part, we investigate and we request for arrest warrants to issue. This is our part. And if we do have the person brought before the court we prosecute. But the obligation to arrest, the obligation to execute the warrants of the court are with the states parties. We've done what we were supposed to do and I think it is up to the states parties to ensure that Omar al-Bashir is arrested and brought to the court. I think his destiny is with the ICC... It is not yet time perhaps for Bashir, but I believe he will be arrested, eventually.⁶

In this context, we should also note the attitude that has developed within the African Union with respect to cooperating with the ICC. One can fully understand that this discussion takes place in Africa; the situations and

⁶ *Fatou Bensouda: 'Al-Bashir will be arrested,' AL JAZEERA* (July 7, 2012), <http://www.aljazeera.com/programmes/talktojazeera/2012/07/20127792042321699.html>.

cases presently before the ICC are focused on that continent. However, the Prosecutor has to go where the evidence leads him or her. This is a common feature in the field of criminal justice. Furthermore, in most of the situations, the state in question has requested the assistance of the ICC.

At the same time there is a genuine problem that flows from the fact that many states, including some of the most powerful ones, are not parties to the Rome Statute, among them, regrettably, the United States of America. Another problem is the tendency by some states to apply double standards when it comes to international criminal justice. I will revert to this question shortly.

An interesting example of cooperation with the ICC is the situation in Kenya. You will recall that the general and presidential elections in Kenya in December 2007 were followed by a period of extreme violence in the country. Some 1,300 people lost their lives, and around 650,000 became internally displaced.

To make a long story short, a national commission examined the so-called “post-election violence” and proposed that a special court should be established at the national level for trying those suspected of having orchestrated the violence. When a proposal for the establishment of such a special court had twice been defeated in the National Assembly, representatives of the government of Kenya visited the ICC Prosecutor to seek assistance. Eventually, this led the Prosecutor to seek *proprio motu* indictment of six persons for crimes against humanity. The Pre-Trial Chamber came to the

conclusion that the cases against four of these individuals could proceed before the ICC, and these rulings were confirmed by the Appeals Chamber.⁷

What is striking in this context is the attempt some time ago by the government of Kenya to try to convince the Security Council that it should stay the hand of the Prosecutor in these cases in accordance with Article 16 of the Rome Statute. Furthermore, the African Union is considering expanding the jurisdiction of the African Court of Justice and Human and Peoples' Rights (the African Court) to include international crimes such as genocide, crimes against humanity, and war crimes.⁸ A similar extension of jurisdiction is also contemplated for the East African Court of Justice.⁹

⁷ Press Release, ICC, Kenyan cases: Appeals Chamber Rejects Appeals Regarding Challenges to the ICC's Jurisdiction, ICC-CPI-20120524-PR797 (May 24, 2012), http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr797.aspx.

⁸ African Union, Assembly of the Union, Decisions, Resolutions and Declaration, 18th Ordinary Sess., Jan. 23-31, 2012, *available at* [http://www.au.int/en/sites/default/files/ASSEMBLY%20AU%20DEC%20391%20-%20415%20\(XVIII\)%20_E.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY%20AU%20DEC%20391%20-%20415%20(XVIII)%20_E.pdf).

⁹ East African Community News, Council of Ministers to Discuss Extended Jurisdiction for EACJ (June 26, 2012), *available at* <http://www.eac.int/about-eac/eacnews/1038-council-of-ministers-to-discuss-extended-jurisdiction-for-eacj.html>.

I noted that on May 3, 2012, some 50 African civil society organizations and international organizations with a presence in Africa sent a letter to African justice ministers and attorneys general to share their concerns regarding the proposed expansion of the African Court's jurisdiction. Let me quote the following from this letter:

African Union (AU) members have the primary obligation to investigate and, if there is sufficient evidence, prosecute persons suspected of crimes under international law before their national courts. The ICC already promotes complementarity at the national level. Expanding the African Court's jurisdiction and diluting the work of the current African Court on Human and Peoples' Rights may not only undermine human rights protection but also divert resources and attention from strengthening the ability and willingness of national authorities to prosecute international crimes.¹⁰

I could not agree more. The contemplated extension of jurisdiction is, in my view, utterly troubling. Based on

¹⁰ Joint Letter to the Justice Ministers and Attorneys General of the African States Parties to the International Criminal Court Regarding the Proposed Expansion of the Jurisdiction of the African Court of Justice and Human Rights, *available at* <http://www.hrw.org/news/2012/05/03/joint-letter-justice-ministers-and-attorneys-general-african-states-parties-internat>.

my experiences from the bench in criminal cases and my responsibility as the agent of the Swedish government before the European Court of Human Rights for a period of 11 years, my considered opinion is that it would be a disaster to extend the jurisdiction of the African Court in the manner contemplated. A human rights court is completely different from a criminal court. And it must be different from such a court. I suspect that a similar reasoning could be made with respect to the East African Court of Justice.

Another striking feature with respect to the situation in Kenya is that two of the persons indicted before the ICC are candidates in the presidential election that will take place in March 2013. They are now campaigning as if nothing has happened. The trials are scheduled to start in April 2013.

When U.S. Secretary of State Hillary Clinton raised this matter during her recent visit to Kenya, she was criticized by some for meddling into the internal affairs of the country. In my view, she was absolutely right in raising this issue. True, there is the important principle of presumption of innocence. This must be emphasized emphatically. However, it is a completely different matter if a person indicted for serious international crimes starts campaigning to become the head of state in his or her country. Common sense provides an answer—it is unthinkable that persons suspected of such grave crimes should be accepted as candidates in a presidential election. In my view one does not even have to go to Chapter six of the Constitution of Kenya to understand this.

Let me now revert to the responsibility of states and to the specific responsibility that rests with the states parties to the Rome Statute. Obviously, a proper administration of the ICC is heavily dependent on the support of the Assembly of States Parties (ASP). I do not intend to dwell too much on this self-evident requirement. However, I would like to reiterate three concerns that I have expressed in the past.¹¹

First, there is the question of the qualifications of candidates for election to the Court. In my view, too much emphasis has been put on the requirement of knowledge of international law. Much more emphasis should be put on courtroom experience. I have actually suggested that if the only intention behind List B for ICC judicial candidates is to allow persons with no courtroom experience whatsoever to sit on the Court, the ASP may be wise to abolish this list.

Another matter is the question of age. I have suggested that the ASP should not elect candidates who will turn 70 years old before the expiration of their nine-year term. A closer look at Annex III to the Report of the Independent Panel on International Criminal Court Judicial Elections reveals that, out of the 96 States Parties that provided information about retirement age, 76 States Parties, or 80 percent, have a retirement age which is 70 years and younger.¹² If it transpires that the

¹¹ See *supra* note 2.

¹² The Report is available at <http://iccindependentpanel.org>.

ICC consists of judges who are no longer regarded as suitable for service on the bench in their own countries, there is a clear risk that the ICC will lose respect.

My third concern relates to the method of electing judges. In this respect I have suggested a method where an independent committee of experts should review not only the candidates for election, but also the judges who remain on the Court, so as to be able to propose candidates who would be most suitable from the point of view of the composition of the ICC as a whole. Such a method would allow the committee to present a “clean slate,” which could be accepted by the ASP. Under all circumstances it is imperative that vote trading and similar unworthy features be abandoned in the election process. The ASP should be looking for the very best.

In making these proposals I have emphasized, as I do now emphatically, that they should in no way be understood as criticism of the present judges of the ICC. The subject matter is a systemic question and, consequently, the sole responsibility of the ASP.

With the benefit of the experience from the two Kenyan cases, the ASP may also wish to consider whether the Rome Statute should allow appeals from Pre-Trial Chamber decisions that the ICC has jurisdiction in a particular case. The fact that the Rome Statute allows appeals from such decisions entails a clear risk that the pre-trial phase will get mixed up with the trial phase. A decision of this nature by the Pre-Trial Chamber should be delivered promptly and should be as brief as possible. As it is now, the Pre-Trial Chamber may have to spend too much time in formulating its

decisions, which have to stay clear of issues that relate to the substantive merits of the case, as opposed to the issue of whether the Court has subject matter jurisdiction to consider such questions.¹³ If the Pre-Trial Chamber finds that the ICC has jurisdiction in a particular case, I really do not see any reason why this decision should be appealable. Too much focus on the pre-trial phase, which in this context is basically an extra check on the Prosecutor, risks causing serious delays in trials before the ICC. The ASP may wish to look into this question.

The Role of the Security Council

The third main point—the role of the Security Council—is an obvious issue to discuss. The provision in Article 13(b) of the Rome Statute allows the Security Council, acting under Chapter VII of the U.N. Charter, to refer to the Prosecutor of the ICC a situation in which one or more of the crimes referred to in Article 5 of the Statute appears to have been committed.

In my view, this provision in no way prevents the Security Council from establishing new criminal tribunals of the kind that the ICTY and the ICTR represent. However, the whole idea is that this should not be necessary when there is a permanent and fully functional court established.

¹³ See the reasoning of the Appeals Chamber, *supra* note 7.

However, the way in which this provision has been applied so far is somewhat problematic. As is well known, the Council has referred two situations to the ICC Prosecutor: the situation in Sudan and the situation in Libya. But the question must be asked, why in these situations and not in other situations?

In my view, the situation in Gaza in 2008-2009 would be an obvious case in point. And what about Syria at present? To an objective observer it would seem that the members of the Security Council, and in particular the permanent members, do not use the same yardstick when applying Article 13(b) of the Rome Statute in different situations.

Furthermore, in the two cases where Article 13(b) has been applied, the resolutions contained the following paragraph:

Recognizes that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;¹⁴

¹⁴ S.C. Res. 1593, ¶ 7, U.N. Doc. S/Res/1583 (Jan. 28, 2005) and S. C. Res. 1970, ¶ 8, U.N. Doc. S/Res/1970 (Feb. 26, 2011).

I must confess that I did not believe my eyes when I read this provision for the first time. Surely, in an international society under the rule of law, the organ that makes a decision under Article 13(b) of the Rome Statute should be prepared to contribute in a reasonable manner to the costs generated by that decision. I refer also to what I said a while ago about financing criminal courts through voluntary contributions.

One could also discuss the appropriateness of operative paragraph six in the two resolutions mentioned, namely the provision that exempts nationals, current or former officials, or personnel from a state outside the situation area which is not a party to the Rome Statute from the jurisdiction of the ICC. However, here it is easier to understand the background, provided that any criminal offences by persons falling under the exemption are properly addressed by competent national courts.

Furthermore, would one not expect the Security Council to follow suit and act in accordance with its own resolutions? If the evidence leads the ICC Prosecutor to the level of head of state, would one not expect the Council to support the ICC, including, if need be, by ordering the state in question to deliver the accused to the ICC?¹⁵

¹⁵ Hans Corell, *International Prosecution of Heads of State for Genocide, War Crimes, and Crimes Against Humanity*, 43 J. MARSHALL L. REV. iii (2009).

One of the lessons from this development over the last few years is something that my colleagues and I discussed when we were war crimes rapporteurs in the former Yugoslavia back in 1992–1993. If persons at this level are suspected of war crimes, crimes against humanity, or genocide, sooner or later they become a burden to their country. We have certainly seen this in the former Yugoslavia. The same can be expected to happen also elsewhere.

I am fully aware that a reasoning of the kind that I have presented here can be viewed as idealistic and out of touch with reality. But here again I would like to refer to the very firm positions that the organizations of former heads of state and government, the Madrid Club and the InterAction Council of Former Heads of State and Government, have taken. In their view, the only way ahead in addressing the challenges mankind faces is through multilateral solutions within a rule-based international system.¹⁶

This also brings to the forefront the formidable contribution that the members of the Security Council could make to our efforts to establish the rule of law both at the national and the international level. It cannot be stressed enough how important it is that these states, and in particular the five permanent members, take the lead by demonstrating that they bow to the law and, in particular, to the law that they are set to supervise—the

¹⁶ See, e.g., <http://www.interactioncouncil.org/final-communiqu-29>.

Charter of the United Nations. I will not go further into detail here but refer to my reasoning elsewhere.¹⁷

Crime Prevention and Protection of Human Rights

This brings me to the fourth main point—crime prevention and the protection of human rights.

International criminal justice should of course reflect the classical objective underlying the criminal justice system at the national level—crime prevention, be it individual or general.

By bringing individuals to justice for crimes committed, the perpetrators will be prevented from continuing their criminal activity. This is an obvious purpose of the system. However, the community of states should also vigorously aim for general prevention. By demonstrating that perpetrators are being investigated and prosecuted, there is a greater chance that humankind can live in peace and security in the future. One should certainly not oversimplify here, but it goes without saying that the moment prominent rulers who violate international criminal law are brought to justice, other rulers will note this and hopefully adjust their behavior.

¹⁷ Letter from Hans Corell to the Governments of the Members of the United Nations (Dec. 10, 2008), *available at* <http://www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>.

The connection between crime prevention and protection of human rights is obvious. The first element that comes to mind in this connection is the fact that those who are brought to justice should be protected by due process and other human rights guarantees required in a proper criminal justice system. However, I am specifically speaking of the human rights of the many thousands around the world who are suffering under rulers who abuse their power.

Protection of human rights is a core element in the rule of law. The rule of law must permeate a society in all its aspects. The connection between criminal justice and other fields of law cannot be overemphasized. The legal system must be seen as a whole.

By way of example, a couple of months ago the World Congress on Justice, Governance and Law for Environmental Sustainability took place in Rio de Janeiro. This Congress gathered well over 200 high-level judges, public prosecutors, and auditors, and it preceded the Rio+20 Conference. At the end of the Congress, the participants adopted a resolution in which they emphasized the importance of societies based on the rule of law and standards of transparency and accountability, and they stated that environmental sustainability can only be achieved in the context of fair, effective, and transparent national governance arrangements and rule of law.¹⁸

¹⁸ Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability (June 20, 2012), *available at*

Since we are now in the United States, I feel obliged to point to the responsibility that falls upon the Western democracies in this respect. If we are to succeed in establishing the rule of law at the national and international levels, these states simply have to set the example. But unfortunately, much remains to be done here. Developments in the United States in recent years are, in my view, a source of great concern.

In the latest newsletter from the American Society of International Law, President Donald Donovan presented a very interesting analysis of the United States' relationship with international law. His point of departure was that the United States had long been in the vanguard of the developing system of international law and international dispute resolution. Based on its experiences in recent years, he asked the question why some segments of the U.S. body politic have become so skeptical of international law. His conclusion was that it is in the U.S. interest, now more than ever, to promote the rule of law on the international plane, as well as to support fair and independent adjudication as a component of the rule of law.¹⁹

<http://www.unep.org/delc/worldcongress/Portals/24151/Rio+Declaration.pdf>.

¹⁹ Donald Donovan, *Honoring the Founders' Vision*, 28 AMERICAN SOC'Y INT'L L. NEWSL. (Apr./June 2012), available at http://www.asil.org/pdfs/asilnewsletter/2012_Q2_Newsletter.pdf.

The United Nations is an important institution for establishing the rule of law both nationally and internationally. The United States of America was the main engineer behind the creation of this organization. Sadly, today the President of the United States of America does not dare to even reference the United Nations in his State of the Union addresses.

When it comes to criminal law, the same standards must be applied all over the world. According to a *New York Times* article from November 14, 2011, three of the contenders for one of the political parties' nomination for president came out in favor of authorizing waterboarding in order to extract information—in other words they would authorize torture.²⁰ And what about Guantánamo? And the use of drones?

And what should the ICC Prosecutor do if in a situation before the Court it turns out that drones had been used in a manner that civilians were killed? I am afraid that this question may soon no longer be hypothetical.

To a great friend of the United States, these are extremely troubling elements. What is needed to remedy the situation in this country, as well as in Europe and the rest of the world, is education. What people, and in

²⁰ See *The Torture Candidates*, N.Y. TIMES, Nov. 15, 2011, at A30.

particular politicians, must know is that the rule of law has to apply absolutely to all people at all times.²¹

The behavior of the major states, and in particular the five permanent members of the Security Council, will be a determining factor, if not *the* determining factor, for the maintenance of international peace and security in the future. It is of particular importance that Western democracies take the lead here.

To conclude, I wish you interesting, stimulating, and successful Dialogs! It is important that the knowledge and experience that you have gathered over the years can be transferred to new generations of prosecutors in an organized manner. I know that this question is on your minds. Let us hope that you will succeed in finding a suitable method for carrying this knowledge on in the interest of humankind.

Thank you for your attention.

²¹ Cf. HIIL & RAOUL WALLENBERG INST. RULE OF LAW: A GUIDE FOR POLITICIANS (2012), *available at* <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>.