

Washington University Global Studies Law Review

Volume 12

Issue 3 *The International Criminal Court At Ten (Symposium)*

2013

Reflections on International Criminal Justice: Past, Present and Future

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Recommended Citation

Hans Corell, *Reflections on International Criminal Justice: Past, Present and Future*, 12 WASH. U. GLOB. STUD. L. REV. 621 (2013), <http://digitalcommons.law.wustl.edu/globalstudies/vol12/iss3/17>

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KEYNOTE ADDRESS

REFLECTIONS ON INTERNATIONAL CRIMINAL JUSTICE: PAST, PRESENT AND FUTURE

HANS CORELL*

Distinguished colleagues and friends,

Warmest thanks to the Whitney R. Harris World Law Institute and the International Law Society for inviting me to address you today. It is an honour and a great pleasure to be with you on this occasion when we celebrate the tenth anniversary of the establishment of the International Criminal Court.

A couple of months ago, on 27 August 2012, I had the pleasure of addressing the International Humanitarian Law Dialogues 2012 at Chautauqua, New York, on the topic *Reflections on International Criminal Law over the Past 10 Years*.¹ On that occasion, I focused on salient features in the development 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.

The present symposium is focusing on Building the ICC: Challenges and Opportunities, the Early Jurisprudence of the Court, the United States and the ICC in the Decades Ahead, and on Imagining Future Directions of the Court. In agreement with the organizers, my address today will be on the topic *Reflections on International Criminal Justice: Past, Present and Future*. This will allow me to analyze the subject matter in a broader and more philosophical perspective. Also on this occasion, my address will be very personal.

First, like at Chautauqua, I must make clear that my experience in this field is somewhat different from the experience of those who are serving or have served in different capacities in the international criminal tribunals. In my case, I have served on the bench for some ten years in national courts of my country. However, I have not served in international courts. My focus has been on the establishment of all the existing

* Ambassador, Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations. The text of this address is available at www.havc.se under "Selected Material 2004—" and "International Criminal Law."

1. Hans Corell, Ambassador, Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, Keynote Address at the International Humanitarian Law Dialogues 2012: Reflections on International Criminal Law Over the Past 10 Years (Aug. 27, 2012), available at <http://www.havc.se/res/SelectedMaterial/20120827corellkeynoteicl.pdf>.

international criminal tribunals, except the one in Lebanon, and their administration.

One of the highlights of my ten years as the Legal Counsel of the United Nations was to serve as the Secretary-General's Representative at the Rome Conference in 1998. Kofi Annan loves to tell the story about his telephone call to me from Argentina, wondering whether there was a statute adopted and whether he should leave for Rome and the signing ceremony. Holding the telephone in the air so that he could hear the jubilations, my answer was a question: "Can you hear it?"²

My reflections on international criminal justice today will follow the sequence indicated in the title: the past, the present, and the future. The main focus will be on the future.

REFLECTIONS ON THE PAST

With respect to the past, if we look way back, I believe that it is very simple to sum up the situation: impunity! I often reflect on the history of my own country Sweden, and the wars that we fought with our neighbours in the past. The Thirty Years' War (1618–1648) has a special place in our history. That war, in which our King Gustavus Adolphus was killed, ended with the famous Peace of Westphalia in 1648, often referred to as the historical foundation of the modern nation state. We can only imagine what happened in the battlefields in those years and the suffering of the civilian population when the armies were marching around in Europe.

But gradually things started to change. The Battle of Solferino in 1859 could be seen as a turning point after Henry Dunant published his book *Un souvenir de Solferino—A Memory of Solferino* in 1862. The focus of his book was on how to improve care for wounded soldiers in wartime. The year after, the first meeting of what was to become the International Committee of the Red Cross was held at Geneva.

As you well know, over the coming years, humanitarian law developed step by step through several agreements. In 1949, the Geneva Conventions were adopted with their common Article 3 and the obligation on the contracting parties to criminalize certain grave crimes in their national penal laws. And today, we have the Red Cross and Red Crescent Movement, working to protect and assist victims of armed conflict and strife.

2. KOFI ANNAN WITH NADER MOUSAVISADEH, INTERVENTIONS—A LIFE IN WAR AND PEACE 150 (2012).

After the Second World War, the Nuremberg and Tokyo tribunals were established, and for the first time people at the highest level were held responsible for crimes committed during war. Much has been written about these trials, sometimes referred to as “victor’s justice.” And it is of course true that only suspects from the Axis Powers were brought to justice. However, I believe that it is fair to say that the trials met the standards for criminal proceedings at the time.

I often quote the remarks by Robert H. Jackson, who represented the United States as Chief Prosecutor at the Nuremberg Tribunal, when he concluded his Opening Statement for the Prosecution on 21 November 1945, almost to the day 67 years ago:³

Unfortunately the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The worldwide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves. After the first World War, we learned the futility of the latter course. The former high station of these defendants, the notoriety of their acts, and the adaptability of their conduct to provoke retaliation make it hard to distinguish between the demand for a just and measured retribution, and the unthinking cry for vengeance which arises from the anguish of war. It is our task, so far as humanly possible, to draw the line between the two. We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.

I actually had the last three sentences from this quote translated into Arabic and communicated to the judges of the Special Tribunal of Iraq orally in August 2005 and in writing in January 2006.

We also know the history of the establishment of the United Nations and the mandate of the International Law Commission to elaborate a Code of Offences against the Peace and Security of Mankind and “to study the desirability and possibility of establishing an international judicial organ

3. *Second Day, Wednesday, 11/21/1945, Part 04, in 2 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 98–102 (1947), available at <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/jackson.html>.*

for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions.”⁴ We remember the stalemate that plagued that work during the Cold War and the breakthrough after the fall of the Berlin Wall in 1989. The establishment of the Yugoslav and Rwanda Tribunals followed in 1993 and 1994, respectively. In turn, this paved the way for the Rome Conference on the ICC in June–July 1998 and the entry into force of the Rome Statute on 1 July 2002.

REFLECTIONS ON THE PRESENT

Let us now focus on the second main part: the present. Here, I will be very brief since I dealt with this topic in my address at Chautauqua.⁵

On that occasion, I said that I am somewhat concerned that the record so far by the ICC is rather meagre, at least in comparison with the achievements of the Yugoslav and Rwanda Tribunals and the Special Court for Sierra Leone 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 ICC.

I also focused on the principle of complementarity and the obligation of states parties to see to it that the Statute is properly implemented at the national level, suggesting that this would be one of the most important contributions that the Rome Statute makes in the field of criminal justice and something that will lead to a harmonization of criminal law and criminal procedure in the community of states.

Another focus was on the provisions in Part 9 of the Rome Statute on international cooperation and judicial assistance and the question of to what extent states fulfil these obligations. I also expressed concern with respect to the qualifications of candidates for election to the Court, their age, and the methods of electing judges. It is my hope that the Assembly of States Parties will analyze very seriously the proposals that I made in that context.

Furthermore, I criticized the unworthy way in which the Security Council allocates the responsibility for the costs when the Council requests the Prosecutor of the ICC to address a situation in accordance with Article 13(b) of the Rome Statute. In an international society under the rule of law, the organ that makes a decision under this provision

4. See 1 THE WORK OF THE INTERNATIONAL LAW COMMISSION (7th ed. 2007) (quotation available at http://untreaty.un.org/ilc/summaries/7_2.htm).

5. See Corell, *supra* note 1.

should be prepared to contribute in a reasonable manner to the costs generated by the decision.

In that context, I also expressed concern over the fact that the Security Council is not following up by supporting the ICC if such referral leads to the indictment of persons at a high level. The possibility of bringing Heads of State and Government to justice at the international level is an indispensable ingredient in a multilateral rules-based international system. It goes to the very heart of the Rome Statute and international criminal justice. If the evidence leads in this direction, it is precisely persons at this level that should be brought to justice. Through its inability to act in consequence, the Security Council not only undermines its own authority but also the authority of the ICC.⁶

Finally in this context, in my capacity as the legal adviser to former UN Secretary-General Kofi Annan and the other members of the Panel of Eminent African Personalities engaged in the Kenya National Dialogue and Reconciliation, I focused on the ICC and the situation in Kenya.

A national commission had proposed that a special national court should be established to try those suspected of having orchestrated the so-called Post-Election Violence in late 2007 and early 2008. When a proposal to this effect had been defeated twice in the National Assembly, representatives of the government of Kenya sought the assistance of the ICC Prosecutor. 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 them could proceed before the ICC, and the Appeals Chamber confirmed these rulings.⁷

Two of the people indicted before the ICC are presently candidates for the presidential election that will take place in March 2013. They are campaigning for themselves as if nothing had happened. The trials before the ICC are scheduled to start in April 2013.

To someone who closely follows the development in Kenya, it is a surrealistic experience to read the daily news summaries from Nairobi. The question whether the two candidates are qualified to run is presently

6. Hans Corell, *International Prosecution of Heads of State for Genocide, War Crimes and Crimes Against Humanity*, 43 J. MARSHALL L. REV. xxv, xxv-xli (2009), available at <http://www.havc.se/res/SelectedMaterial/20090916headsofstate.pdf>.

7. Press Release, International Criminal Court, Kenyan Cases: Appeals Chamber Rejects Appeals Regarding Challenges to the ICC's Jurisdiction (May 24, 2012), available at <http://www2.icc-cpi.int/NetApp/App/MCMSTemplates/Content.aspx?NRMODE=Published&NRNODEGUID={06F7CE2E-1C80-4D36-B6C7-58FC7ADD3115}&NRORIGINALURL=/menus/icc/situations%2520and%2520cases/situations/situation%2520icc%25200109/related%2520cases/icc01090211/press%2520releases/pr797&NRCACHEHINT=Guest#>.

before the national courts, and a ruling is expected in the near future. During Kofi Annan's latest visit to Kenya last October, all of our interlocutors expressed concern about this situation. If they are allowed to run and if one of them is elected, it will, as Kofi Annan put it at a press conference in Nairobi, have consequences for Kenya's foreign policy.

REFLECTIONS ON THE FUTURE

I now come to the main focus of my address: the future.

At Chautauqua, Judge Hans-Peter Kaul of the ICC gave an excellent address under the title *The ICC of the Future*.⁸ In this address, he struck a very positive note, and I hope that his predictions will come true.

It is natural for lawyers to focus on the law and the way in which the institutions that apply this law function. However, on this occasion, it is essential that we also discuss international criminal justice in a more general perspective, where the point of departure should be the rule of law at the national and international levels.

As you are well aware, increasingly the rule of law has come into focus within the United Nations. It is now a distinct item on the agendas of both the General Assembly and the Security Council. The latest development here is the declaration that was adopted on 24 September 2012 by the High-level Meeting of the UN General Assembly: *Declaration on the Rule of Law at the National and International Levels*.⁹

The declaration contains several elements of direct relevance to our symposium. Let me exemplify.

In the declaration, the members of the United Nations reaffirm their solemn commitment to the purposes and principles of the UN Charter, international law and justice, and to an international order based on the rule of law, which are indispensable foundations for a more peaceful, prosperous, and just world.

They recognize that the rule of law applies to all states equally, and that all persons, institutions, and entities, public and private, including the state itself, are accountable to just, fair, and equitable laws and are entitled without any discrimination to equal protection of the law.

They also reaffirm that human rights, the rule of law, and democracy are interlinked and mutually reinforcing. They emphasize the importance of the rule of law as one of the key elements of conflict prevention,

8. Hans-Peter Kaul, *Proceedings of the Sixth International Humanitarian Law Dialogs* (forthcoming).

9. G.A. Res. 67/1, U.N. Doc. A/RES/67/1 (Nov. 30, 2012).

peacekeeping, conflict resolution, and peacebuilding and stress that justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations.

Of particular interest in this context is that they commit to ensuring that impunity is not tolerated for genocide, war crimes, and crimes against humanity or for violations of international humanitarian law and gross violations of human rights law, and that such violations are properly investigated and appropriately sanctioned, including by bringing the perpetrators of any crimes to justice.

They also recognize the role of the ICC in a multilateral system that aims to end impunity and establish the rule of law, and call upon all states that are not yet parties to the Rome Statute to consider ratifying or acceding to it. They also emphasize the importance of cooperation with the Court.

Finally, in this context, they reaffirm that states shall abide by all their obligations under international law.

This is a very clear message indeed. But what counts is that the members of the United Nations now live up to what they have declared so that the declaration does not become empty words. The Western democracies must take the lead by demonstrating that they do live up to the undertakings in the declaration.

But what does the rule of law mean? If we take the national level as a point of departure, one of the fundamental elements of the rule of law is that all should be equal under the law. In particular, the government and its officials and agents must be subject to and held accountable under the law. An important component here is criminal law.

It is obvious that a well-functioning criminal justice system at the national level is a necessary requirement for an orderly society. If such a system does not exist, this would have extremely serious consequences, maybe leading to outright anarchy. In the United Nations, we could observe this during the initial stages of the administration of Kosovo and East Timor. Until the necessary resources for the maintenance of law and order were mastered, the vacuum was swiftly filled by organized crime and serious disorder.

The question is: what consequences should be drawn from this need for a well-functioning criminal justice system at the national level if we move on to the international arena?

If we focus first on the ICC, it goes without saying that the Court must be given the necessary resources. I hear that there are complaints in this regard and that it may be difficult for the Assembly of States Parties to make the necessary commitments. Since I am not familiar with the details,

let me just observe that the resources necessary to administer a criminal justice system must always be measured against the tremendous damage to a society that will be the result if this system does not function. Properly administered, an international criminal justice system should be seen as an investment in the maintenance of peace and security and the protection of humanity.

The horrific scenes from Syria at present are a sad reminder of our failure to protect a population that is the victim of grave international crimes. This brings into focus two imperatives for the future: (1) impunity can simply not be tolerated in modern society, and (2) to address impunity effectively, all states have to participate in the international criminal justice system.

The latter requirement brings to the forefront the sad fact that many states are not party to the Rome Statute, among them, the United States of America. Let us hope that the important work performed by Ambassador Stephen Rapp and others will bear fruit.¹⁰

If we are serious about the need for the rule of law at the international level, and if we understand that there has to be a functioning criminal justice system also at this level, then the conclusion is obvious. States, and in particular the major players, simply have to join hands with those who have already ratified or acceded to the Rome Statute.

When I was informed that one of the focuses of this Symposium would be on the United States and the ICC, I recalled a message that I sent to a conference organized by the Municipality of Rome and “No Peace without Justice” at the Campidoglio in Rome on 17 July 2000 to celebrate the second anniversary of the adoption of the Rome Statute:¹¹

There is great symbolism in the fact that the Statute was adopted in the eternal City of Rome and bears its name. I had the privilege of accompanying Secretary-General Kofi Annan at the ceremony at the Campidoglio on 18 July 1998. In ancient Rome this place was known as Capitolium, in English the Capitol. It struck me at the ceremony that this is where the Roman senators ruled until the

10. Ambassador Stephen Rapp is Ambassador-at-Large, Office of Global Criminal Justice, U.S. Department of State. See REPORT OF AN INDEP. TASK FORCE, CONVENED BY THE AMERICAN SOC’Y OF INT’L LAW, U.S. POLICY TOWARDS THE INTERNATIONAL CRIMINAL COURT: FURTHERING POSITIVE ENGAGEMENT (Mar. 2009), available at <http://www.asil.org/files/ASIL-08-DiscPaper2.pdf>; see also CTR. FOR HUMAN RIGHTS, AMERICAN BAR ASSOCIATION, *ICC Project*, http://www.americanbar.org/groups/human_rights/projects/icc_project.html (last visited Feb. 23, 2013).

11. Hans Corell, Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, Message at the Conference Organized by the Municipality of Rome—“No Peace Without Justice” (July 17, 2000), available at <http://www.un.org/law/counsel/17july00.htm>.

emperors came some 2000 years ago; the senators met in the Curia right nearby. I thought: Is it not remarkable that, today, the heirs of these mighty senators are the warmest supporters of the International Criminal Court? Could it be because you represent both history and, in a sense, also the future. I can think of no people better placed than the people of Italy to convince today's governments and today's senators on other Capitol Hills, that they should make use of this historic opportunity to sign and ratify the Rome Statute, in order to end the impunity that has caused so much suffering and sorrow among human beings since time immemorial.

This brings me to the challenges and risks that humankind will be facing with increasing intensity in the future. Without going into detail, suffice it to mention the growing world population in combination with climate change and its effects on the human habitat. Add to this transnational organized crime and corruption that have an extremely negative impact on our efforts to establish the rule of law at the national level. The question is: where does one start if one really wants to make a difference here?

It is at this stage that I want to once again point to the role of the United Nations. There is still a window of opportunity for the Western democracies to take the lead by demonstrating that they take seriously the declarations that they make about the importance of the rule of law. It is vital that they set an example before the enormous ongoing geopolitical shift from West to East is complete. Are people in the West in general, and in this country in particular, aware of this shift? Do they see the writing on the wall? We should certainly not oversimplify here. Many Eastern states and notably China are facing major challenges. But it is a fact that the geopolitical situation is changing rapidly.

Let me also repeat what I said briefly about the Security Council last August.¹² I pointed to 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 international level. In particular, I stressed that the permanent five members must take the lead by demonstrating that they bow to the law and, in particular, to the Charter of the United Nations that they are set to supervise.

On this occasion, I would like to develop this reasoning further and also reiterate a suggestion that I made in a letter to the governments of the

12. See Corell, *supra* note 1.

members of the United Nations in 2008 under the title: *Security Council Reform: Rule of Law More Important Than Additional Members*.¹³

The point made in this letter is that international peace and security will be under serious threat in the future unless the rule of law is established both at the national and international level. The way in which the members of the Security Council, and in particular the permanent members of the Council, conduct themselves will be *the* determining factor in what must be a global effort to establish the rule of law. The permanent members must now lead the way by fully respecting their obligations and bow to the law. If this does not materialize, it will damage the UN Charter system of collective security. An enlarged Council without a firm and credible commitment to respect the law risks making this system inoperable.

Referring to Articles 24 and 25 of the UN Charter, I suggested that, irrespective of the outcome of the negotiations on the composition of the Council, the five permanent members should make a solemn declaration of the kind that would be binding under international law. I suggested that in this declaration they pledge:

—To scrupulously adhere to the obligations under international law that they have undertaken and, in particular, those laid down in the Charter of the United Nations;

—To make use of their veto power in the Security Council only if their most serious and direct national interests are affected and to explain, in case they do use this power, the reasons for doing so;

—To refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state unless in self-defence in accordance with Article 51 of the Charter of the United Nations or in accordance with a clear and unambiguous mandate by the Security Council under Chapter VII; and

—To take forceful action to intervene in situations when international peace and security are threatened by governments that seriously violate human rights or fail to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity or when otherwise the responsibility to protect is engaged.

13. Letter from Hans Corell to the Governments of the Members of the United Nations, Security Council Reform: Rule of Law More Important than Additional Members (Dec. 10, 2008), available at <http://www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>.

But now you ask: is this realistic? Does anyone believe that the permanent five members of the Security Council are prepared to take such a step?

My response today would be: look at the pledges suggested in the letter and repeated here and compare them to the declaration on the rule of law adopted by the General Assembly on 24 September 2012.¹⁴ Do the first three pledges not fall squarely within the framework of an international society under the rule of law? Is it too much to ask that the body entrusted with the primary responsibility for the maintenance of international peace and security bow to the very law they are set to supervise and apply?

In my letter of 2008, I noted that it is often said that the Security Council is a political body. So it is. But this does not mean that the Council is not bound by the law. In a state under the rule of law, also political organs must bow to the law. So, too, it must be at the international level. An obvious example is that the members of the Security Council must respect the UN Charter, in particular the rules governing the use of force, and must observe international human rights standards.

The fourth pledge may be a little more complex. Reference must be made here to the Summit Outcome Document of September 2005, where the General Assembly declared that “we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”¹⁵ This provision was reaffirmed by the Security Council in resolution 1674 (2006) of 28 April 2006.

In such situations, the five basic criteria of legitimacy elaborated by the High-level Panel on Threats, Challenges, and Change should assist the Council in making a systematic and credible analysis.¹⁶ These criteria are: seriousness of threat; proper purpose; use of force as last resort; proportional means; and balance of consequences. The last criterion is of particular importance: Is there a reasonable chance of the military action

14. See *supra* note 9.

15. G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

16. U.N. General Assembly, *A More Secure World: Our Shared Responsibility: Rep. of the High Level Panel on Threats, Challenges and Change*, ¶ 207, U.N. Doc. A/59/565 (Dec. 2, 2004).

being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

Admittedly, these considerations are delicate and require very careful analysis with the participation not only of the members of the Council but also of others and, in particular, states that are prospective troop contributors. In some cases the Council will act. However, if after careful and transparent analysis the Council would conclude that the fifth criterion would prevent a robust intervention, this would be fully understood and respected.

Let us take the present situation in Syria as an example. Here, the sad conclusion must be that the Security Council has failed miserably. This is not to suggest that the Council should resort to the use of force in that situation. I do not have the necessary information to express an opinion in that matter.

However, what is lacking is a determined effort by the Council to send, already at the outset, a strong, unanimous message to the parties that what is happening in Syria is totally unacceptable in modern day society. The message should also have included an indication that further measures would be considered in case the violence did not stop. And why is the Council hesitating in sending the signal that those responsible for the international crimes committed in Syria will be brought to justice?¹⁷ Compare with the very clear contents of the 24 September rule of law declaration!

Regretfully, in this particular case, we have to lay the main blame at the feet of China and Russia, two states that have to make determined and sustained efforts in order to establish the rule of law at the national level. But then we should remember that back in 2003, the United Kingdom and the United States flagrantly violated the UN Charter by attacking Iraq.

And today, there are discussions in the United States and Israel about attacking Iran as if the UN Charter did not even exist. An attack on Iran under present circumstances would be another flagrant violation of the UN Charter. As a matter of fact, it would amount to an act of aggression. How does that tally with the declaration on the rule of law and, more importantly, the legal provisions binding on the UN members?

17. At the 6849th Meeting of the Security Council on 17 October 2012, many speakers urged the Council to act on the crisis in Syria. *See* Press Release, Security Council, Secretary-General Hails International Criminal Court as Centerpiece of 'New Age of Accountability' Urges Enhanced Cooperation with Security Council (Oct. 17, 2012), available at <http://www.un.org/News/Press/docs/2012/sc10793.doc.htm>.

When we discuss the future of international criminal law, it is impossible not to take into consideration the issues raised here and in particular that members of the Security Council sometimes violate the UN Charter. Regrettably, there is also the tendency among some of its members to now and then apply double standards and to manoeuvre looking to their own immediate interests rather than viewing things in a global and more long-term perspective. This does not meet the standards required by an international system based on the rule of law. Furthermore, it demonstrates a shameful lack of statesmanship.

What we are entitled to expect from the permanent five members of the Security Council is a serious discussion among them about their obligations. Unless they change their behaviour, they actually fuel conflicts that otherwise might be avoided or be brought to an end. Now everybody is looking at Syria. But where is the next Syria? It could be anytime, anywhere in the world, in a society where democracy and the rule of law are absent.

This inability of the Security Council to act in certain situations when it should do so is deplorable. It is all the more sad since the Council is actually in a formidable position to make a difference in the world if its members, and notably the permanent members, joined hands and agreed to adhere strictly to international law and, in particular, the UN Charter. In addition, as just mentioned, the permanent members of the Council could make a commitment to use their veto only in situations where their own most serious and direct national interests are affected.

Such steps by the permanent five members of the Council would, as I have suggested, send a resounding signal around the globe, in particular to oppressive regimes and presumptive warlords, in other words those who cause the conflicts that the Council will be faced with unless they are prevented. And, in a criminal justice perspective, it is difficult to think of a more effective manner in which to engage in crime prevention.

The question is: could the tragedy in Syria have been avoided if the permanent members of the Security Council had, a few years ago, taken the steps suggested here?

THE CRIMES AGAINST HUMANITY INITIATIVE

Before I come to the conclusions, and since we are at the Whitney R. Harris World Law Institute, let me end these reflections on the future with a plea to the member states of the United Nations that they bring into

fruition the Crimes Against Humanity Initiative.¹⁸ It is a promising sign that the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity is being discussed within the International Law Commission.

However, it is also important to bring the proposed convention to the attention of those at the political level in capitals. May I therefore suggest that, if they have not already done so, the Legal Advisers of the Ministries of Foreign Affairs contact their colleagues in the Ministries of Justice and jointly inform the competent cabinet ministers about the proposal and suggest that they support that the subject matter is also put on the agenda of the Sixth (Legal) Committee of the UN General Assembly.

CONCLUSIONS

Now, what are the conclusions to be drawn from all this? The ICC must of course act within its own competence in accordance with the Rome Statute. It is important to make a clear distinction here between the competence of the Court and the obligations that fall upon states. Failures on the part of states—be they lack of cooperation with the ICC or the Security Council applying different standards when it considers referring situations to the Prosecutor of the ICC—should not be allowed to reflect on the integrity of the Court. It is important that this distinction is made clear to the general public.

However, looking to the future, the obvious conclusion to be drawn from the analysis is that a system under the rule of law has to be comprehensive and include all components that constitute such a system. In addition, it must be built on the premise that the whole state community participates.

State sovereignty today is different from the concept that emerged after the Peace of Westphalia. One of the most prominent features of this sovereignty is the responsibility to protect. This responsibility includes an obligation on states to protect their populations against grave international crimes. The international criminal justice system must, therefore, function everywhere. The whole state community must be part of this system.

Just make a comparison with the criminal justice system at the national level. Would it be possible to administer a country if all of a sudden the

18. See WHITNEY R. HARRIS WORLD LAW INSTITUTE, CRIMES AGAINST HUMANITY INITIATIVE—A RULE OF LAW PROJECT, <http://crimesagainsthumanity.wustl.edu/> (last visited Feb. 23, 2013); see also FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY (Leila Nadya Sadat ed., 2011).

criminal justice system would not apply in certain municipalities or counties? The answer is self-evident: it would not! If we look to the administration of our modern day international globalized society, the answer is the same. The international criminal justice system must, therefore, apply in all states.

It is true that we have a long way to go before we attain a comprehensive and all-inclusive system under the rule of law. But it is important that those responsible for the administration of the nation states, including for their interaction at the international level, are aware that this is the only way ahead if we are to live in peace and security in the future.

As at Chautauqua, I would like to refer here to the reasoning of the InterAction Council of Former Heads of State and Government and their conclusion that the challenges mankind faces must be addressed through multilateral solutions within a rule-based international system.¹⁹

The question is then: how do we achieve this? The answer is again self-evident: through education! Here, much remains to be done.

First, a systematic effort must be made to raise the awareness of politicians around the world of the basics of international law, the meaning of the rule of law, and the importance of a well-functioning international criminal justice system. The recently published guide for politicians on the rule of law is an effort in this direction.²⁰

Here, we must be aware of something that could be referred to as “the democratic dilemma.” It describes an all too common scenario: a politician who supports interaction with other states within the United Nations and other international institutions, as well as the need for an international system under the rule of law, risks being viciously attacked by populist opponents. Have we not heard the argument that this would be a “weakening our state” and similar vulgarities? International cooperation is actually the opposite: it strengthens states.

This kind of attack can be countered only by a determined effort to educate the general public. The rule of law is an ideal that must be founded at the grassroots level in all societies. It is, accordingly, necessary to make a systematic effort to educate also the general public.

19. See INTERACTION COUNCIL, FINAL COMMUNIQUÉ: PRESENT STATE OF THE WORLD, RESTORING INTERNATIONAL LAW, MANAGING INTERNATIONAL FINANCIAL MARKETS, available at <http://www.interactioncouncil.org/final-communique-29>.

20. See RAOUL WALLENBERG INST. OF HUMAN RIGHTS AND HUMANITARIAN LAW & THE HAGUE INST. FOR THE INTERNATIONALISATION OF LAW, 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/>.

To an outside observer, the expenses in connection with the latest presidential campaign in the United States are a warning signal. Is this how the election campaigns of the world's democracies will develop in the future? Millions and millions of dollars spent on campaigns that sometimes have amounted to outright misinformation.²¹ To a great friend of the United States, this is a painful observation. Would it not be a good idea to channel at least some of these resources into education about the need to address the enormous challenges that humankind faces through a rules-based international system?

Through this educational effort, it is also important to realize that the interaction between religion and culture at the national level on the one hand and international law, in particular in the field of human rights, on the other is a very important ingredient. In another context, I have suggested that all of this must be explained already at the grassroots level and, in particular, to the younger generation. As a matter of fact, the questions discussed here should be treated as one of the most prominent topics in school curricula all around the world.²² Add to this also education about another imperative: empowerment of women.

When we imagine the future directions of international criminal justice, we must realize that this cannot be done in isolation. Criminal justice is an integral part of our society both at the national and international level. It is against this background my reflections should be understood.

Thank you for your attention!

21. See, e.g., Kevin N. Kruse, Editorial, *The Real Loser: Truth*, N.Y. TIMES (Nov. 5, 2012), available at <http://www.nytimes.com/2012/11/06/opinion/the-real-loser-truth.html>; Editorial, *A Landslide Loss for Big Money*, N.Y. TIMES (Nov. 10, 2012), available at http://www.nytimes.com/2012/11/11/opinion/sunday/a-landslide-loss-for-big-money.html?_r=0.

22. Hans Corell, *Commentary to 'Shari'a and the Modern State' and 'Narrating Law'*, in ISLAMIC LAW AND HUMAN RIGHTS LAW. SEARCHING FOR COMMON GROUND 89 (Anver M. Emon, Mark Ellis, & Benjamin Glahn eds., 2012), available at <http://www.havc.se/res/SelectedMaterial/shariaandthemodernstateetc.pdf>.