

Addressing impunity – How united are the nations?

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First, I would like to thank the organisers of the Stockholm Criminology Symposium for inviting me to speak on this solemn occasion.

Let me also at the outset join all those who today congratulate the winners of the Stockholm Prize in Criminology 2009, Professor John Hagan of the Northwestern University in Illinois, USA, and the American Bar Foundation in Chicago, and Justice Raúl Zaffaroni of the Supreme Court of Argentina, also Professor Emeritus and former Head of the Department of Criminal Law at the University of Buenos Aires.²

Professor Hagan and Justice Zaffaroni share the prize for field research and criminological theory on the causes and prevention of genocide. I consider it a great privilege to be given the opportunity of addressing the symposium after their very interesting lectures.

The title set by the organisers of the Symposium for this plenary session is 'Nations United against the Victimisation of Mankind'.

Reflecting on this topic, on the research performed by the two prize-winners and my own experiences in the field of combating impunity during my years on the bench and then later in the Swedish Ministries of Justice and Foreign Affairs and in particular during my ten years as the Legal Counsel of the United Nations, I decided to frame the title of my address today as a question: *Addressing impunity: how united are the nations?*

1 Address to The Stockholm Criminology Symposium Plenary Session on 'Nations United Against the Victimisation of Mankind', Stockholm, 23 June 2009.

2 The Stockholm Prize in Criminology was founded in 2006 and is awarded in conjunction with the Stockholm Criminology Symposium. This symposium was held for the first time in June 2006. The Swedish Government has commissioned the Swedish National Council for Crime Prevention to arrange the symposium and to make it an annual event. The primary purpose of the symposium is to create an environment where international criminologists, policy makers, practitioners and others engaged in criminal policy matters can share the latest research findings of importance for crime policy. The participants will be able to discuss strategies, methods and measures to reduce crime and improve levels of safety in society. The objectives of the symposium are to promote the development of: improved knowledge on the causes of crime at the individual and structural levels; more effective and humane public policies for dealing with criminal offenders; greater knowledge of alternative crime prevention strategies inside and outside the criminal justice system; and policies for helping the victims of crime.

This may sound pessimistic, maybe even ominous. But against my background and my experiences from the field of criminal law both at the national and international level I feel that it is my duty to be clear and to speak up.

My address is in three distinct parts:

- The development in the field of international criminal law over the last few years
- What has been achieved?
- Who bears the responsibility for addressing the impunity?

I will conclude with some reflections on alternative strategies with a special focus on the Security Council of the United Nations.

The development in the field of international criminal law over the last few years

It is an understatement to say that the development in the field of international criminal law over the last few years has been dramatic. In view of the research performed by Professor Hagan relating to the former Yugoslavia, let me go back to the summer of 1992. It was actually the Conference on Security and Co-Operation in Europe (CSCE, now OSCE, of which also Canada and the United States of America are participants) that took the initiative to examine whether those responsible for the atrocities committed in the former Yugoslavia could be brought to justice.

In August 1992, three rapporteurs were nominated in accordance with the so-called CSCE Moscow Human Dimension Mechanism. I was one of them. Our mandate was 'to investigate reports of atrocities against unarmed civilians in Croatia and Bosnia, and to make recommendations as to the feasibility of attributing responsibility for such acts'.

We visited Croatia from 30 September to 5 October 1992. I will never forget my impressions from that visit.

In our first report, issued on 7 October 1992, we suggested among other things that a Committee of Experts from interested states should be convened as soon as possible in order to prepare a draft treaty establishing an international *ad hoc* tribunal for certain crimes committed in the former Yugoslavia.

For security reasons we were not allowed to visit Bosnia-Herzegovina. Therefore, in November 1992, we offered to draft a convention establishing such a tribunal. In a decision on 15 December 1992, the CSCE Council welcomed this offer. On 9 February 1993, we presented our report to the CSCE participating States, including a draft treaty containing a statute for an *ad hoc* tribunal.³ The Chairman-in-Office of the CSCE immediately sent the report to the Secretary-General of the United Nations.

In the meantime, in October 1992 the Security Council of the United Nations had established a Commission of Experts to investigate and collect evidence on violations of international humanitarian law in the conflict in the former Yugoslavia.⁴ The Commission, whose original mandate did not include the question of whether an international tribunal should be established, issued an interim report which was transmitted by the Secretary-General to the Security Council under cover of a letter dated 9 February 1993.⁵ In its report the Commission noted that should the Security Council or another international organ or body decide to establish an *ad hoc* war crimes tribunal, such an initiative would be consistent with the direction of its work.

On 22 February 1993 the Security Council adopted a resolution establishing the International Criminal Tribunal for the Former Yugoslavia (ICTY), and on 25 May 1993 the Council adopted the statute of the tribunal.⁶

This is how it all got under way.

A year later the Security Council established the International Criminal Tribunal for Rwanda (ICTR).⁷

Four years later, on 17 July 1998, a UN Conference adopted the Rome Statute of the International Criminal Court (ICC). The statute entered into force already on 1 July 2002. Today, there are 108 parties to the Rome Statute.⁸

3 Proposal for an International War Crimes Tribunal for the Former Yugoslavia by Rapporteurs (Corell-Türk-Thune) under the CSCE Moscow Human Dimensional Mechanism to Bosnia-Herzegovina and Croatia.

4 Security Council resolution 780 (1992).

5 UN doc. S/25247 of 10 February 1993.

6 Security Council resolutions 808 (1993) and 827 (1993) <http://www.icty.org/>

7 Security Council resolution 955 (1994) <http://www.icttr.org/>

8 <http://www.icc-cpi.int/>

On 16 January 2002 an agreement was signed in Freetown between the United Nations and Sierra Leone, establishing the Special Court for that country (SCSL),⁹ and on 6 June 2003 an agreement on the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) was signed in Phnom Penh.¹⁰

The latest addition is the Special Tribunal for Lebanon. Its statute entered into force on 10 June 2007.¹¹

All this is a truly remarkable development over a period of only 16 years. And surely it is a sign that nations have united against the victimisation of mankind. But the questions must be put: How committed are the nations? And do they apply the same standard when action is needed?

What has been achieved?

Let us now take a look at these institutions and what they have achieved. A glance at the information that the tribunals has made available gives the following picture.

The ICTY has indicted 161 persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia. Proceedings against 120 accused in 86 cases have been concluded. Of those accused 11 were acquitted, 60 were sentenced, 13 were referred to national jurisdiction, and 36 had their indictments withdrawn or are deceased (20 indictments withdrawn; 10 reported deceased before transfer to the tribunal; six deceased after transfer to the tribunal, among them Slobodan Milošević). There are presently ongoing trials of 41 accused in 18 cases (12 before the Appeals Chamber and 21 before the Trial Chamber). Two are at large. One of them is Ratko Mladić.

The fact that Radko Mladić is still at large after so many years really darkens the picture. To wind up the ICTY without bringing him to justice would not only damage international criminal justice; it would seriously damage the authority of the Security Council.

If we examine the records of the ICTR we find that the tribunal has indicted 79 persons. Proceedings against 43 accused have been con-

9 <http://www.sc-sl.org/>

10 www.eccc.gov.kh/english

11 <http://www.un.org/apps/news/infocus/lebanon/tribunal/timeline.shtml>

cluded. Of those accused six were acquitted, 30 were sentenced, and seven are on appeal. Two were referred to national jurisdiction, and two had their indictments withdrawn, while one died after transfer to the tribunal. There are presently cases against 26 accused before the Trial Chamber and five accused are awaiting trial.

With respect to the SCSL the Prosecutor issued 13 indictments in 2003. Two of those indictments were subsequently withdrawn in December 2003 due to the deaths of the accused. The SCSL has completed proceedings against eight accused. The trials of three former leaders of the Armed Forces Revolutionary Council (AFRC) and of two members of the Civil Defence Forces (CDF) have been completed, including appeals. On 25 February 2009, a judgement was delivered by the Trial Chamber in the case against three former Revolutionary United Front (RUF) leaders. The trial of former Liberian President Charles Taylor is in the prosecution phase at The Hague. The prosecution has rested its case and the Trial Chamber has set 13 July 2009 for the opening of the defence case.

The ECCC have only just started their work in spite of the fact that it is six years since the agreement with the UN was signed. There are two cases before the Chambers. One is against KAING Guek Eav, alias Duch. The other case is against NUON Chea, IENG Sary, IENG Thirith and KHIEU Samphan. The first case is being heard at present, while the hearings in the second case are yet to be scheduled.

For obvious reasons there is not much to report from the Special Tribunal for Lebanon, which recently started his work.

Finally, with respect to the ICC, to date, three States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo and the Central African Republic – have referred situations occurring on their territories to the court. In addition, the Security Council has referred the situation in Darfur, Sudan – a non-State Party – to the court.

Let me interject here that the situation in Sudan has also been the object of research by Professor Hagan and his colleagues. One of their conclusions is that there was substantial evidence of racial motivation for the atrocities committed, with little evidence of a strategic response to rebellion as claimed by the Sudanese authorities.

The Prosecutor has opened and is conducting investigations in all these situations. The picture is the following.

Uganda: The case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, all top members of the Lords Resistance Army (LRA), is currently being heard before Pre-Trial Chamber II. All four are at large.

The Democratic Republic of the Congo: Three cases are being heard before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. Two cases are at the pre-trial stage, while the proceedings against Thomas Lubanga Dyilo are at the trial stage. The suspect Bosco Ntaganda remains at large.

Central African Republic: The case *The Prosecutor v. Jean-Pierre Bemba Gombo* is at the pre-trial stage of the proceedings and is currently being heard before Pre-Trial Chamber II.

Darfur, Sudan: Three cases are being heard before Pre-Trial Chamber I: *The Prosecutor v. Ahmad Muhammad Harun ('Ahmad Harun')* and *Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*; *The Prosecutor v. Omar Hassan Ahmad Al Bashir* and *The Prosecutor v. Bahr Idriss Abu Garda*. The suspect Bahr Idriss Abu Garda appeared voluntarily for the first time before Pre-Trial Chamber I on 18 May 2009. He is not in custody. The three other suspects remain at large.

In view of the number of perpetrators who are potential candidates for prosecution before the court, the result is not too impressive.

Since this is a criminology symposium it should be noted that the effects that these tribunals will have on the societies and individuals concerned will undoubtedly be studied by the criminological community. Focus will be in particular on victims and how they perceive the tribunals, on societies where the accused may be viewed as heroes, and to what extent the tribunals contribute to general and individual prevention.

The result of this research will no doubt assist in the determination of how to operate the international criminal justice system in the future. Let me just say that it will always be difficult to assess what preventive effects this system will have, and surely methods other than investigating criminal responsibility must be employed to address these atrocities. I will revert to this question in a little while.

But irrespective of the outcome of this research, must we not agree that the international community simply cannot let atrocities of the kind we are discussing here go unpunished? Surely, the state community has a moral obligation to protect mankind and deal with the perpetrators and in particular expose ‘the heroes’.

Who bears the responsibility for addressing the impunity?

I have now come to the third element of my address, namely who bears the responsibility for addressing the impunity. Here it is necessary to distinguish between the national and international level.

The national level

Obviously, it is the responsibility of states to address impunity at the national level. However, the conflicts that generate the violence that we are discussing today are almost invariably caused by the absence of democracy and the rule of law. Furthermore, to establish a national criminal justice system for the purpose of dealing with a certain category of perpetrators is simply not possible unless this effort constitutes an integral part of the national legal system as a whole.

It is often said that a society under the rule of law cannot be built top down but must come from the grassroots level. However, this is easier said than done, in particular in countries where the government actually uses its power to suppress those governed. Legal technical assistance can certainly be provided, but the problem is that such assistance is not welcome in countries under the authority of such governments; they will see this as a threat to their own existence.

But in many cases legal technical assistance should be welcome and it is therefore important that states, intergovernmental organisations and others engage in providing such assistance.

When the Rome Statute of the ICC was adopted, I took it for granted that the ratification process would generate an intense legislative activity at the national level.¹² Basically, an international treaty of this nature cannot be ratified unless the national legislation necessary to fulfil the obligations under the treaty is adopted. I also assumed that countries, even if they would not consider ratifying the Rome Statute, nevertheless would examine its contents and review their nation-

¹² Corell, H. *Evaluating the ICC Regime: The Likely Impact on States and International Law*. Address at a Training Course organised by T.M.C. Asser Institute, Science Alliance and No Peace Without Justice at The Peace Palace, The Hague on 21 December 2000. Available at http://untreaty.un.org/ola/media/info_from_ic/romestatute_dec00.pdf

al legislation to make sure that they would have jurisdiction over the crimes defined in the statute.

Regretfully, it seems that many countries, including my own I am sad to say, have not yet completed their work in this field. The question is why. In many cases the reason is probably that the level of expertise at the national level is not sufficient. There are many who follow this development with great attention. The situation should be viewed as an opportunity to offer legal technical assistance to countries that need such assistance.

In this context I would like to commend the work performed by the Coalition for the International Criminal Court.¹³ To quote the coalition: 'For the principle of complementarity to become truly effective, following ratification, States must also implement all of the crimes under the Rome Statute into domestic legislation. As the Court initiates investigations, the existence of solid cooperation and implementing legislation takes on new urgency.'

One avenue is to turn to the coalition to seek guidance.¹⁴ Also, other non-governmental organisations provide assistance through national capacity-building.¹⁵

The experiences of the last few years clearly demonstrate that international criminal tribunals, and specifically the ICC, simply cannot deal with all cases that should be addressed within the criminal justice system. Therefore, the strengthening of the court system at the national level in countries visited by genocide, war crimes and crimes against humanity must be a matter of priority.

I am looking forward with great expectations to Ms. Marie Tuma's address. Ms. Tuma, who will speak immediately after me, is an international judge at the War Crimes Chamber of the State Court of Bosnia-Herzegovina.

13 <http://www.iccnw.org/?mod=ratimp>

14 Reference is made in particular to the material, including enacted and draft legislation, available at <http://www.iccnw.org/?mod=romeimplementation>

15 One example is the International Law and Policy Group, see <http://www.ilpg.org/what-we-do>

The international level

Looking at the international level, it is natural to start with the international criminal tribunals. Obviously, the ICTY and ICTR will have to wind up their work within the next few years. The same applies to the Special Court for Sierra Leone and the Extraordinary Chambers of the National Courts of Cambodia. The Special Tribunal for Lebanon has only just started its work and has a very limited mandate.

This means that in a few years' time there might only be the ICC operating at the international level. It is to be hoped that those who serve this court in various capacities do realise the responsibility with which they are entrusted. In a few days time it is seven years since the Rome Statute came into force. The record of the ICC so far is, as I just said, not too impressive.

There are of course many reasons why only a few cases have been brought before the ICC and why so few persons actually are in the custody of the court. One reason is that it is bound to take some time before an institution of this nature becomes fully operational. Furthermore, the nature of the criminality that the court has to address is very serious. Even the most well-organised national criminal justice system would be under tremendous pressure if it had to deal with cases of the kind that come before the ICC.

A very important difference between the ICC and the courts at the national level is that the ICC does not have a police force of its own and that it is dependent on the cooperation of states for its proper functioning. Against this background one would hope that this matter will be addressed at the ICC review conference that will take place in Kampala, Uganda, during the first semester of 2010 as well as at meetings of the Assembly of States Parties.

The Assembly of States Parties is another actor that has a great responsibility for the development in the future. In a Plan of Action for achieving universality and full implementation of the Rome Statute, the Assembly has stated that universality of the Rome Statute is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice. Full and effective implementation of the Rome Statute by all states parties is said to be equally vital to the achievement of these objectives.

In a note of 24 April 2009, the Secretariat of the Assembly has requested that states parties convey, by 31 August 2009, certain information relating to the implementation of their obligations under the Rome Statute.¹⁶ It will be very interesting to study this information which hopefully will be made public.

All of this sets the scene for a united effort to address impunity for international crimes. But more determined action is needed. In this context one simply cannot overlook the fact that some powerful States and notably the US are not party to the Rome Statute. This is very serious, and we must hope that these states reconsider their position vis-à-vis the ICC.

The most recent development in this respect is a report, released in March 2009 by an independent task force, on US policy towards the International Criminal Court (ICC).¹⁷ The task force, established by the American Society of International Law, believes that there is an auspicious opportunity to put US relations with the ICC on an articulated course of positive engagement and recommends that President Obama take prompt steps to announce a policy of continued positive engagement with the court. Among the elements suggested in the recommendation is a stated policy of the US Government's intention, notwithstanding its letter of 6 May 2002 to the UN Secretary-General, to support the object and purpose of the Rome Statute.¹⁸

16 http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/NV-ASP8-PoA-ENG-23aprilo9.pdf
Among other things, the states parties are asked to provide the Secretariat with information relevant to promotion of the ratification and full implementation of the Rome Statute, including, inter alia:

- (i) Information on obstacles to ratification or full implementation facing states;
- (ii) National or regional strategies or plans of action to promote ratification and/or full implementation;
- (iii) Technical and other assistance needs and delivery programmes;
- (iv) Planned events and activities;
- (v) Examples of implementing legislation for the Rome Statute;
- (vi) Bilateral cooperation agreements between the Court and states parties;
- (vii) Solutions to constitutional issues arising from ratification;
- (viii) National contact points for matters related to promotion of ratification and full implementation.

17 <http://www.asil.org/files/ASIL-08-DiscPaper2.pdf>

18 On 6 May 2002, UN Secretary-General Kofi Annan received a letter from Under Secretary of State for Arms Control and International Security John R. Bolton of the following wording: 'This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty.'

The indictment of Sudan's President Omar Hassan al-Bashir on charges of war crimes and crimes against humanity has caused reactions, in particular in Africa. It has been said that African states might withdraw from the Rome Statute. However, at a press conference on 10 June 2009, the President of the Assembly of States Parties said that the African ambassadors to the United Nations had dismissed that prospect as rumour.¹⁹

It has also been said that the ICC is focused on Africa only. However, the fact is that, apart from Sudan, the three other African states where the ICC operates are parties to the Rome Statute and have asked the Prosecutor of the ICC to address the situations.

The prospect of the post-election violence in Kenya in early 2008 becoming a matter for the ICC is also there. The hope is that Kenya will be able to deal with this situation on her own through a national special court as proposed by the Commission of Inquiry into Post-Election Violence (CIPEV), the so-called Waki Commission.²⁰ But if this does not materialise, the situation will be addressed by the ICC.

Viewed in this perspective, Africa is actually setting an example by seeking assistance from the ICC.

The case of the indictment of President al-Bashir is different. Here the ICC is acting at the request of the Security Council in accordance with Article 13(b) of the Rome Statute. In spite of this indictment President al-Bashir has been invited to and has attended meetings in other states – a disgrace. At the same time at least two African governments have warned the President not to visit their countries; they would be obliged to arrest him.

The indictment of President al-Bashir is now above all a matter for the Security Council. It is a common principle that if one embarks on a certain course of action one should also be prepared to follow suit and face the consequences. Therefore, when the Council asked the ICC to address the situation in Sudan, the Council should also have realised that the evidence might lead the Prosecutor to the very highest level.

It goes without saying that President al-Bashir is entitled to the presumption of innocence. But if indicted, he should be brought to

¹⁹ http://www2.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-PressConference-10June2009.pdf

²⁰ <http://www.dialoguekenya.org/docs/PEVReport1.pdf>

justice. It is therefore tragic to see the inability of the Council to act with consequence and determination in this matter. Surely, one would expect the Council to follow suit with a resolution ordering Sudan to comply with the arrest warrant.

This situation 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.

Concluding remarks

This brings me to my reflections on alternative strategies. As a point of departure I take what is said in the invitation to this symposium about justice and Professor Emeritus Zaffaroni's research:

Zaffaroni's analysis of the deep causes of genocide encompassed and anticipated later explanations focusing on competition for scarce resources such as water and arable land. His critique of criminal law as an inadequate means of preventing genocide raises profound questions about the role of the retributive model of international justice in the aftermath of genocide. Zaffaroni's theory points to the likely benefits of 'secondary prevention' – minimising the effects of genocides by restoring families and communities and developing far more intense therapeutic and conciliatory models – to break the cycle of blood feuds and vengeance that can last for centuries.

This conclusion seems to point in the same direction as the so-called Chicago Principles on Post-Conflict Justice with their focus not only on prosecution of perpetrators but also their focus on victims, the need to educate society regarding past political violence, and the need for institutional reform to support the rule of law, restore public trust, promote fundamental rights, and support good governance.²¹

As a matter of fact, in a discussion about these Principles at a seminar at The Hague earlier this month I learned about a project conducted by the International Institute of Higher Studies in Criminal Sciences (ISISC). The Institute has undertaken the task of performing a world-wide survey of conflicts. The research and data amassed shows that

²¹ <http://www.isisc.org/public/chicago%20principles%20-%20final%20-%20may%209%202007.pdf>

between 1945 and 2008, some 310 conflicts took place. Depending on the estimates, the victims of these conflicts fluctuate between 92 and 101 million casualties. This is twice the cumulative casualties of World Wars I and II.

The project is now evaluating post-conflict justice mechanisms to create a strategy that will maximise accountability, reveal as much truth as possible, achieve as much reconciliation as is feasible, provide as full and complete reparations as are affordable, and address past violence in a transparent and truthful manner.

All of these findings regarding the evaluation of post-conflict justice mechanisms will be published in a manual for civil society and government officials in the next two months. The larger academic study of over 2,500 pages will be published this fall as part of the European Commission funded project *Fighting Impunity and Promoting International Justice*.

All this leads to the conclusion that an international criminal justice system, while a necessary component in the quest for international peace and security, is not the only solution. It can only address the symptoms of what is defective. What is needed is a systematic effort to establish democracy and just rule of law worldwide.

But this will not materialise unless someone takes the lead. And now I come to what has become my *praeterea censeo*: it is the United Nations Security Council and in particular its five permanent members that must take the lead.

In a letter to the governments of the members of the United Nations of 10 December 2008 under the title *Security Council Reform: Rule of Law More Important Than Additional Members*, I expressed the view 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 and added:²²

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.

22 <http://www.havc.se/res/SelectedMaterial/20081210corelllettertounmembers.pdf>

This point is sometimes met with the comment that the Security Council is a political organ and that one must not be too ‘idealistic’; there is such a thing as ‘Realpolitik’.

My reply is that the only way ahead is a rules-based international society. And I feel confident making this point and addressing it, in particular, to the members of the Security Council.

Last year, the InterAction Council of Former Heads of State and Government discussed the topic ‘Restoring International Law: Legal, Political and Human Dimensions’. On 27 June 2008, they issued a Communiqué that among other things contains the following two recommendations:²³

- Acknowledging that the challenges mankind faces must be addressed through multilateral solutions within a rule-based international system;
- Insisting that states observe scrupulously their obligations under international law, in particular the Charter of the United Nations and encouraging the leading powers to set an example by working within the law and abiding by it, realising that this is also in their interest.

This advice should be seen against the backdrop of the unprecedented challenges that mankind will be facing in the years to come, among them major shifts in the geopolitical situation, climate change and a world population that is growing at an exponential rate.

Let me close by suggesting as an alternative strategy that the members of the Security Council engage in a systematic and frank discussion of their role in establishing the rule of law and good governance – a precondition for maintaining international peace and security.

In spite of my critical remarks in the foregoing, I have actually very positive experiences from working with the Council in the past. In particular, I remember the frank and constructive discussions during the Security Council retreats organised by Secretary-General Kofi Annan. Maybe this is the setting for the discussion needed?

Among the questions that the members must consider and relay to their Governments are: Are we fulfilling the mandate that the members of the United Nations have entrusted to us under Article 24 of

23 <http://www.interactioncouncil.org/sessions/communique/s26.pdf>

the UN Charter? Are we setting the example? Are we, who have the primary responsibility for the maintenance of international peace and security, acting in accordance with international law? Are we abiding by the Charter? Are we applying the same standards in the matters that we are addressing? For example, when referring the situation in Sudan to the ICC, why not also do the same with the situations in the Middle East in 2006 (Lebanon) and 2009 (Gaza)?

The 15 ambassadors on the Security Council are actually a formidable group. Obviously, they have to act under instructions from their capitals. But at the same time they make friends and they have a good understanding of the positions of their respective countries. These ambassadors are actually better placed than others to convince their governments that they should support and implement a multilateral rules-based international system. And why do these ambassadors not turn to their principals with the plea: Please do not wait until you are ‘former’ heads of state and government before you realise that such a system is the only way ahead!