

**WHITNEY R. HARRIS WORLD LAW INSTITUTE
WASHINGTON UNIVERSITY SCHOOL OF LAW**

SYMPOSIUM

THE INTERNATIONAL CRIMINAL COURT AT TEN

Reflections on International Criminal Justice: Past, Present and Future

Keynote Address

by

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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 analyse 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 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

¹ Proceedings of the Sixth International Humanitarian Law Dialogs (forthcoming). Also available at <http://www.havc.se/res/SelectedMaterial/20120827corellkeynoteicl.pdf>.

² Kofi Annan with Nader Mousavisadeh. *Interventions – A Life in War and Peace*. Allen Lane/Penguin Books (2012), p. 150.

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.

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.

³ See "Second Day, Wednesday, 11/21/1945, Part 04", in Trial of the Major War Criminals before the International Military Tribunal. Volume II. Proceedings: 11/14/1945-11/30/1945. [Official text in the English language.] Nuremberg: IMT, 1947. pp. 98-102. Also available at <http://law2.umkc.edu/faculty/projects/ftrials/nuremberg/jackson.html>.

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 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 hopefully 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 to what extent states do 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 analyse 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 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 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

⁴ The Work of the International Law Commission, 7th ed., vol. 1.

⁵ Supra note 1.

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 these could proceed before the ICC and these rulings were confirmed by the Appeals Chamber.⁷

Two of the persons 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 before the national courts, and a ruling is expected in the near future. During Kofi Annan's latest visit to Kenya last October, all 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.

⁶ International Prosecution of Heads of State for Genocide, War Crimes and Crimes Against Humanity. In: The John Marshall Law Review [43:xxv 2009] (p. xxv-xli), available at <http://www.havc.se/res/SelectedMaterial/20090916headsofstate.pdf>.

⁷ Kenyan cases: Appeals Chamber rejects appeals regarding challenges to the ICC's jurisdiction, available at <http://www.icc-cpi.int/menu/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/icc01090111/press%20releases/pr797>.

⁸ Proceedings of the Sixth International Humanitarian Law Dialogs (forthcoming).

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, 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.

⁹ A/RES/67/1.

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 right-out anarchy. In the UN 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 U.S. 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

¹⁰ Ambassador Stephen Rapp is Ambassador-at-Large, Office of Global Criminal Justice, U.S. Department of State. See also Report of An Independent Task Force Convened by the American Society of International Law, *U.S. Policy Towards the International Criminal Court: Furthering Positive Engagement* (March 2009), available at <http://www.asil.org/files/ASIL-08-DiscPaper2.pdf>, and the ABA Center for Human Rights and its ABA-ICC Project http://www.americanbar.org/groups/human_rights/projects/icc_project.html.

¹¹ Available at <http://www.un.org/law/counsel/17july00.htm>.

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 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 on-going geopolitical shift from West to East is complete. Are people in general in the West and in particular in this country aware of this shift? Do they see the writings 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 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.

¹² Supra note 1.

¹³ Available at <http://www.havc.se/res/SelectedMaterial/20081210corellettertounmembers.pdf>.

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.

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 here be made to the Summit Outcome Document of September 2005, where the General Assembly declared (in para. 139) 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

¹⁴ Supra note 9.

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 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 U.S. flagrantly violated the UN Charter by attacking Iraq.

And today, there are discussions in the U.S. 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?

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

¹⁵ A/RES/60/1.

¹⁶ UN Doc. A/59/565, para. 207.

¹⁷ In the 6849th Meeting of the Security Council Security Council on 17 October 2012, many speakers urged the Council to act on the crisis in Syria. See Press Release available at <http://www.un.org/News/Press/docs/2012/sc10793.doc.htm>.

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 a few years ago had 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 UN 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 important that the proposed convention is also brought to the attention 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

¹⁸ Crimes Against Humanity Initiative – A rule of law project of the Whitney R. Harris World Law Institute. See <http://crimesagainsthumanity.wustl.edu/>. See also *Forging a Convention for Crimes Against Humanity*. Ed. Leila Nadya Sadat. Cambridge University Press (2011).

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 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”. A politician who advances well founded thoughts on interaction with other states within the United Nations and other international institutions and the need for an international system under the rule of law risks being viciously attacked by populist opponents. Have we not heard

¹⁹ See <http://www.interactioncouncil.org/final-communicu-29>.

²⁰ See *Rule of Law – A guide for politicians*, published in August 2012 by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and the Hague Institute for the Internationalisation of Law. The Guide is freely available at <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>.

the argument that this would be “weakening our state” and similar vulgarities? International cooperation is actually the opposite: it is strengthening states.

This kind of attacks 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 therefore necessary to make a systematic effort to educate also the general public.

To an outside observer, the expenses in connection with the latest presidential campaign in the U.S. are a warning signal. Is this how election campaigns in democracies in the world will develop in the future? Millions and millions of dollars spent on campaigns that sometimes have amounted to right out misinformation.²¹ To a great friend of the U.S. 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.

In 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: *The Real Loser: Truth*. In: The New York Times, 6 November 2012, and the editorial in the same paper on 10 November 2012: *A Landslide Loss for Big Money*.

²² Commentary to ‘Shari’a and the Modern State’ and ‘Narrating Law’. In: *Islamic Law and Human Rights Law. Searching for Common Ground*. Ed. Anver M. Emon, Mark Ellis, and Benjamin Glahn. Oxford University Press (2012), p. 89. Also available at <http://www.havc.se/res/SelectedMaterial/shariaandthemodernstateetc.pdf>.