

**ROBERT H. JACKSON CENTER  
THE CHAUTAUQUA INSTITUTION**

**INTERNATIONAL HUMANITARIAN LAW DIALOGS 2016**

**THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG –  
A LASTING LEGACY FOR THE FUTURE**

*The Future of International Criminal Law Looking Back at Nuremberg*

**Keynote Address**

**by**

**Hans Corell**

**Ambassador**

**Former Under-Secretary-General for Legal Affairs  
and the Legal Counsel of the United Nations**

**Nuremberg  
30 September 2016**

Distinguished colleagues and friends,

First of all, thank you so much for inviting me to participate in these, the Tenth International Humanitarian Law Dialogues, and to address you once again. As always, it is a great pleasure to participate in the Dialogues. And on this occasion it is very special since we are meeting not at Chautauqua but in Nuremberg to celebrate the 70<sup>th</sup> anniversary of the Verdicts of the International Military Tribunal.

Let me reiterate that my first experience of working on international criminal law was as a war crimes rapporteur in the former Yugoslavia in 1992-1993. My colleagues and I presented the first proposal for the tribunal that eventually became the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>1</sup> In the UN, I was involved in the establishment of this tribunal, the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). I was the Secretary-General's Representative at the Rome Conference in 1998. My last official function in my capacity as the Legal Counsel of the United Nations was when I represented Secretary-General Kofi Annan at the inauguration of the court house for the SCSL in Freetown in March 2004.

I have been asked to address the topic *The Future of International Criminal Law Looking Back at Nuremberg*.

Before I do this, let me just mention that some of the contents in my keynote address at the Sixth Annual International Humanitarian Law Dialogues in August 2012 "Reflections on International Criminal Law over the Past Ten Years" is relevant also in this context.<sup>2</sup> The same applies to the presentation that I delivered a couple of months later at the Whitney R. Harris World Law Institute at Washington University, St Louis, entitled "Reflections on International Criminal Justice: Past, Present and Future".<sup>3</sup> I might also in this context mention my Dean Fred F. Herzog Memorial Lecture in September 2009, entitled "International Prosecution of Heads of State for Genocide, War Crimes, and Crimes against Humanity."<sup>4</sup>

Against this background my presentation today will be somewhat different with a more circumspect perspective, looking further into the future than I have done before. It will be in three main parts:

- The Nuremberg Legacy
- The present geopolitical situation, and
- The future of international criminal law.

---

<sup>1</sup> Proposal for an International War Crimes Tribunal for the Former Yugoslavia by Rapporteurs (Corell-Türk-Thune) under the CSCE Moscow Human Dimension Mechanism to Bosnia-Herzegovina and Croatia of 9 February 1993, available at

<http://www.havc.se/res/SelectedMaterial/19930209csceproposalwarcrimestribunal.pdf>.

<sup>2</sup> *Reflections on International Criminal Law over the Past Ten Years*. Keynote Address at the Sixth Annual International Humanitarian Law Dialogues, held at Chautauqua, N.Y., on 26-28 August 2012, available at <http://www.havc.se/res/SelectedMaterial/20120827corellkeynoteicl.pdf>.

<sup>3</sup> *Reflections on International Criminal Justice: Past, Present and Future*, 12 Wash. U. Glob. Stud. L. Rev. 621 (2013), available at <http://digitalcommons.law.wustl.edu/globalstudies/vol12/iss3/17>.

<sup>4</sup> *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>.

## The Nuremberg Legacy

With respect to the first part – the Nuremberg Legacy – let me mention that, surely, I had read about the Nuremberg Trials and the Nuremberg Principles in the past. But when I was appointed a CSCE (now OSCE) war crimes rapporteur for the former Yugoslavia in 1992-1993, it was natural to dive deeper into the subject matter. In particular, I remember reading with great interest and admiration Telford Taylor’s “The Anatomy of the Nuremberg Trials : A Personal Memoir”.

The Nuremberg Trial was a historical event. As a matter of fact, it put international criminal justice on the agenda of the United Nations that had been established in 1945. However, as we all know, it would take a long time before the heritage of Nuremberg bore fruit within the Organization.

Today, I think that the Nuremberg heritage is best summarised by referring to the “Principles of International Law Recognised in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal”, the so-called Nuremberg Principles. They were elaborated by the United Nations International Law Commission and presented to the General Assembly in 1949-1950.<sup>5</sup>

The hallmark of the seven principles is that any person who commits an act which constitutes a crime under international law, including persons acting as Head of State or responsible Government official, is responsible therefor and liable to punishment. The crimes defined in the principles are crimes against peace, war crimes, and crimes against humanity.

As we all know, it took a long time before the work in this field within the United Nations bore fruit. However, these principles are now translated into the Rome Statute of the International Criminal Court.

I am not going to delve deeper into the legacy of Nuremberg now. Instead, I would like to refer to the excellent keynote address that Professor Leila Sadat delivered at the International Nuremberg Principles Academy on 20 November 2015 at a conference commemorating the 70th anniversary of the Nuremberg Trial. It is published by Washington University in St. Louis as a research paper entitled “The Nuremberg Trial, Seventy Years Later”.<sup>6</sup>

I must say that I agree very much with the analysis that Professor Sadat makes in this address and in particular when she concludes by restating the obvious: “The record of compliance with the Nuremberg principles is mixed. At the same time, the Nuremberg legacy itself is extraordinary, and its importance is hard to overstate.”

Two of the situations she mentions I remember with particular concern, since they occurred during my tenure as the UN Legal Counsel, namely the attack on the World Trade Center in

---

<sup>5</sup> Report of the International Law Commission Covering Its First Session, 12 April – 9 June 1949, U.N. GAOR, 4th Session, Supplement No. 10, U.N. Doc. A/925 (1949). See also Formulation of the Nürnberg Principles, available at [http://legal.un.org/ilc/texts/7\\_1.shtml](http://legal.un.org/ilc/texts/7_1.shtml).

<sup>6</sup> Washington University in St. Louis School of Law. Legal Studies Research Paper Series. Paper No. 16-06-01, June 2016, available at <http://poseidon01.ssrn.com/delivery.php?ID=9350270640860920000861030810901231000380120720040100290870160720930060650711170710671060960031260501111250920730931220221010860190220870030541190281030811270741020040090321250290780900161160271210860210071070830731080280070280700>.

2001, commonly referred to as 9/11, and the attack by the United Kingdom and the United States and their allies on Iraq in March 2003.

With respect to 9/11, I am afraid that this was a very dangerous turning point, which could be seen as the first step in the development that we have seen over the past years, namely that Western democracies have backtracked with respect to protection of human rights. Guantánamo is still not closed, and many countries, including my own, have participated in extraordinary renditions and incarcerations under conditions which are totally incompatible with applicable international human rights standards. I therefore completely agree with Professor Sadat when she says that “[p]articularly since the attacks of September 11, 2001, the Nuremberg principles have been undermined by the policies of the very nations that gave them birth, including my own country.”

With respect to the attack on Iraq by the United States and the United Kingdom in March 2003, this was a flagrant violation of the UN Charter. Since the attack was not in self-defence, a resolution by the Security Council was a necessary precondition for the use of armed force in this situation. The United Kingdom clearly understood this, but the efforts by the UK Permanent Representative to the UN to gain support for such a resolution were in vain. What happened on the United Kingdom side at the time has now been clarified by the Chilcot Commission.<sup>7</sup>

However, the attack was not only a violation of the UN Charter. It was also a clear violation of Nuremberg Principle VI, which defines crimes against peace as:

- (i) Planning, preparation, initiation or waging a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

This kind of behaviour has also been resorted to by another permanent member of the UN Security Council. I am referring to the attacks by Russia on Georgia in 2008 and Ukraine in 2014, including with the annexation of Crimea. In my view, the issue of Crimea could have been solved through negotiations and an agreement if sufficient statesmanship had been demonstrated in Moscow, Kiev and the West.

Under all circumstances, the fact that the permanent members of the Security Council behave in this manner constitutes a serious threat to international peace and security – and at that generated by members of an organ entrusted with the primary responsibility for the maintenance of international peace and security.

### The present geopolitical situation

Let us now focus on my second main part: the present geopolitical situation. Here I will address three aspects: the world population, the global economy, and refugees, in particular refugees generated by climate change.

---

<sup>7</sup> See Report of the Iraq Inquiry – Executive Summary, available at [http://www.iraqinquiry.org.uk/media/246416/the-report-of-the-iraq-inquiry\\_executive-summary.pdf](http://www.iraqinquiry.org.uk/media/246416/the-report-of-the-iraq-inquiry_executive-summary.pdf).

### *The world population*

With respect to the world population, we were some two billion people on the globe when the United Nations was established in 1945. We are presently some 7.4 billion people in the world. And, according to the United Nations Population Division, we will be some 9.6 billion at mid-century. The Population Division has looked further into the future and has come to the conclusion that the world population will probably stabilise somewhere around nine billion people in the next 300 years. Under all circumstances, this is a major growth of the world population, and it is inevitable that this will have very great effects on the human habitat.

### *The world economy*

As far as the world economy is concerned, some 10 years ago my attention was drawn to an article published in by Keystone India, containing a presentation of the distribution of the world Gross Domestic Product (GDP) in 2004 with estimated figures for 2050.<sup>8</sup>

#### Distribution of the world GDP in 2004 and 2050 (estimated)

	2004	2050
European Union	34 %	15 %
USA	28 %	26 %
China	4 %	28 %
India	2 %	17 %
Japan	12 %	4 %
Others	20 %	10 %

The estimated figures for 2050 must of course be understood as precisely estimates. When I last looked at the GDP figures published by the World Bank, I realised that China has already bypassed the US in GDP terms. The GDP figures for 2015, based on “purchasing power parity” (PPP), are 17,946 billion USD for the United States of America and 19,524 billion USD for China.<sup>9</sup> I just wanted to mention this as an indication of the enormous geopolitical shift that we will see over the next few years, and which will also have effects on the legal situation in the world.

### *Refugees*

Another question that must be kept in mind in this context is my third aspect: refugees, in particular refugees generated by climate change and its effects on the living conditions of humankind. Last week, I attended the Annual Conference of the International Bar Association in Washington DC and had the privilege of moderating a panel that discussed the question: Who is a refugee? By coincidence, this happened on 20 September, the day after the High-

---

<sup>8</sup> Source Keystone India. Published in BusinessWeek August 22/29, 2005. See page 56 at [http://www.google.se/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewiGo7K5r6rPAhVEiSwKHQeWCO0QFggeMAA&url=http%3A%2F%2Fbbs.metroer.com%2Fattachment.php%3Faid%3D106&v6u=https%3A%2F%2Fs-v6exp1-ds.metric.gstatic.com%2Fgen\\_204%3Fip%3D80.216.86.35%26ts%3D1474801427364477%26auth%3D4il6w3wl3x2ahj73djcrypymcoh33pty4%26rndm%3D0.8767253033679607&v6s=2&v6t=17796&usg=AFQjCNGQswN\\_PNZ5gGFmehnREaaja-ceA](http://www.google.se/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewiGo7K5r6rPAhVEiSwKHQeWCO0QFggeMAA&url=http%3A%2F%2Fbbs.metroer.com%2Fattachment.php%3Faid%3D106&v6u=https%3A%2F%2Fs-v6exp1-ds.metric.gstatic.com%2Fgen_204%3Fip%3D80.216.86.35%26ts%3D1474801427364477%26auth%3D4il6w3wl3x2ahj73djcrypymcoh33pty4%26rndm%3D0.8767253033679607&v6s=2&v6t=17796&usg=AFQjCNGQswN_PNZ5gGFmehnREaaja-ceA).

<sup>9</sup> See [http://databank.worldbank.org/data/download/GDP\\_PPP.pdf](http://databank.worldbank.org/data/download/GDP_PPP.pdf).

level plenary meeting on addressing large movements of refugees and migrants by the General Assembly at its seventieth session. On 19 September, the Assembly had adopted the New York Declaration for Refugees and Migrants.<sup>10</sup>

At the IBA Conference, the highly qualified panellists discussed the refugee topic from various points of departure.<sup>11</sup> References were made to the declaration just adopted by the UN General Assembly and the present situations in Europe and Asia. The number of forcibly displaced persons in the world today is some 65 million, including over 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons.<sup>12</sup>

The conclusion in our panel was that the 1951 United Nations Convention Relating to the Status of Refugees is still relevant in today's world. However, in the discussion there was special focus not so much on the articles of the Convention as on one of the provisions in the preamble: "considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation". The conclusion in our panel was that such co-operation is absolutely necessary but that there is a serious risk that this is not forthcoming in spite of the Declaration for Refugees and Migrants just adopted by the UN General Assembly. As for me, I can definitely see consequence for international criminal law here.

With respect to the 1951 Convention Relating to the Status of Refugees this instrument must of course be seen against the background of the situation caused by the Second World War. However, in the discussion I pointed to another phenomenon that might generate refugees, namely climate change. The main factors here are desertification and sea level rise, since both will cause situations where land becomes inhabitable with the result that people who now live in these areas will be forced to flee.

After I left the United Nations in 2004, I have had reason to focus specifically on the polar regions and the effects that climate change in these regions will have on the rest of the globe. I have come to realise that not many people are aware of the size of these regions, and the differences between the two.

In Antarctica, 53 States have a well-functioning co-operation within the framework of the Antarctic Treaty, signed in Washington on 1 December 1959. The main purpose of the Treaty is to ensure in the interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord. The treaty applies south of 60° South Latitude. Antarctica is a continent of some 14 million square kilometers surrounded by sea. Compare with the surface areas of the US, which is 9,6 million square kilometers, and the Russian Federation, which is 17 million square kilometers. About 90 per cent of the freshwater resources of the globe are frozen on the continent Antarctica. With global warming some of this ice will start melting.

---

<sup>10</sup> Available at [https://refugeesmigrants.un.org/sites/default/files/a\\_71\\_11.pdf](https://refugeesmigrants.un.org/sites/default/files/a_71_11.pdf).

<sup>11</sup> Speakers on the panel were Assistant Professor Idil Atak, Department of Criminology, Ryerson University, Toronto, Canada; Baroness Helena Kennedy QC, London, United Kingdom; Hon Justice Michael Kirby, Former Justice of the High Court of Australia, Sydney, Australia; and Alex Neve, Amnesty International, Ottawa, Canada.

<sup>12</sup> See *supra* note 10 at para. 3.

The Arctic is the opposite in several ways. The Arctic is a sea – the Arctic Ocean – surrounded by continents. This sea is also some 14 million square kilometers. The overarching legal regime here is the 1982 United Nations Convention on the Law of the Sea. This means that the rules on the territorial sea, the exclusive economic zone and the continental shelf apply. The sea ice is melting in the Arctic Ocean. This does not directly affect the sea level, but it will contribute to the thermal expansion. Furthermore, the albedo effect of the white sea ice that rejects the radiation from the sun is disappearing. Instead, the dark sea surface attracts the radiation. This is why the rise of temperature is twice as fast in the Arctic as elsewhere. But there are also glaciers melting, particularly in Greenland, which will have an effect on the sea level. Another effect of the warming is that the permafrost in the region is melting, releasing methane, a very effective greenhouse gas. Reference is made to the 2004 Arctic Climate Impact Assessment (ACIA)<sup>13</sup> and the Intergovernmental Panel on Climate Change (IPCC).<sup>14</sup>

Taken together, the effects of climate change in particular in the polar regions will lead to a considerable rise of the sea level in a near future, and I am afraid that this will generate additional millions of refugees. Just take a look at a world map indicating a rise of the sea level with one meter!

This will have very serious consequences also for international peace and security. It is extremely important that in particular the political leaders of the world realize that they must focus on the long-term effects of these phenomena when they discuss how to maintain international peace and security. In this context it is crucial that they also understand the importance of maintaining the rule of law, of which human rights is a core element, at the national and international levels.<sup>15</sup> In this analysis the subject matter that we discuss here at Nuremberg – international criminal law – is a very important component.

### The future of international criminal law

So, having now looked back at the Nuremberg Legacy and briefly discussed three aspects of the present geopolitical situation let me now address my third main part: the future of international criminal law. The focus of this part will also be on three elements: the law, the performance of the International Criminal Court and the performance of states.

#### *The law*

With respect to the law it is there – the Rome Statute of the International Criminal Court – with its different parts: establishment of the court; jurisdiction, admissibility and applicable law; general principles of criminal law; composition and administration of the court; investigation and prosecution; the trial; penalties; appeal and revision; international cooperation and judicial assistance; enforcement; assembly of states parties; financing; and final clauses.<sup>16</sup>

---

<sup>13</sup> Available at <http://www.amap.no/arctic-climate-impact-assessment-acia>.

<sup>14</sup> See <http://www.ipcc.ch/> and [https://www.ipcc.ch/pdf/unfccc/cop19/3\\_gregory13sbsta.pdf](https://www.ipcc.ch/pdf/unfccc/cop19/3_gregory13sbsta.pdf).

<sup>15</sup> *Rule of Law – A Guide for Politicians*. A Guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiiL), the Netherlands. It is freely available for downloading and printing from the web in 23 languages at the websites of the two institutes. See <http://rwi.lu.se/what-we-do/academic-activities/rule-of-law-a-guide-for-politicians-2/>.

<sup>16</sup> See <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

The other international criminal tribunals are gradually being phased out, and the Rome Statute will be the remaining core criminal law at the international level. This is not to say that additional special criminal tribunals may not be established in the future. By way of example, the Rome Statute does not prevent the UN Security Council from establishing new courts of the same kind as the ICTY and the ICTR. However, this should not be necessary in view of the fact that under article 13 (b) of the Rome Statute the Security Council, acting under Chapter VII of the UN Charter, has the authority to refer to the ICC Prosecutor situations in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed.

With respect to the development of this international criminal law, I see no major difference from the manner in which criminal law develops at the national level. Basically, it will be through the application of this international law by the different organs and actors under the Rome Statute. The main contribution here will be the case law produced by the ICC. However, there might also be amendments to the Rome Statute. Reference could in this case be made to the so-called Kampala amendments adopted in 2010.

With respect to amendments, it is crucial that the integrity of the Rome Statute is maintained. By way of example, it is very important that the attempts by some states to exempt persons at the level of head of state or government from the jurisdiction of the ICC are prevented. This is a very serious threat to the integrity of international criminal law. If the evidence leads the Prosecutor to persons at this level, it is precisely such individuals that should be subject to the jurisdiction of the ICC.<sup>17</sup> This is for the simple reason that they normally have immunity under national criminal law. Here, I fully agree with former UN Secretary-General Kofi Annan when he was asked a question regarding this phenomenon in 2013: “Those leaders who chose to withdraw from the Court will earn a badge of shame.”<sup>18</sup>

Looking further into the future of international criminal law, we may experience additional efforts to administer justice at the international level. This may happen in areas like transnational organised crime, trafficking in persons, terrorism, and corruption. If this happens, a complementarity principle would obviously have to be applied also here.

### *The performance of the International Criminal Court*

Let me now address the second element: the performance of the International Criminal Court. A key factor for the future of international criminal law will be how the ICC and its organs perform. It is obvious that it takes time before an organ of this complexity functions as intended. A complicating factor here is of course that the ICC is critically dependent on co-operation from national authorities. This is not always forthcoming. I do not have the necessary insight in the daily work of the ICC to comment on this in detail, but I will revert to the matter in a moment.

With respect to the performance of the organs of the ICC, I have followed this question with particular attention to the manner in which the organs have dealt with the Kenyan cases. You may recall that after the general elections and the presidential election in Kenya in December 2007 there followed a period of extreme violence in the country. Some 1 300 people lost their

---

<sup>17</sup> See *supra* note 4.

<sup>18</sup> See <http://www.kofiannanfoundation.org/videos/the-third-annual-desmond-tutu-international-peace-lecture-2/>.

lives, and around 650 000 became internally displaced. This prompted the African Union to appoint a Panel of Eminent African Personalities, chaired by former UN Secretary-General Kofi Annan, to engage in what became known as the Kenya National Dialogue and Reconciliation. For almost six years, I served as the Legal Adviser to this Panel.

To make a long story short, a few persons were indicted before the ICC, among them Uhuru Kenyatta and William Ruto, now President and Vice President of Kenya, respectively. In an article published in 2014, I developed my thoughts regarding these cases as they stood then. Let me quote from my conclusions in this article:

In my view, the Kenyan cases before the ICC went wrong from the very beginning, and there is now a serious risk that they might become unmanageable at the trial stage. Needless to say, since I am not familiar with all the details of the cases it is difficult to know exactly where the fault lies. But it is obvious that serious mistakes have been committed. The responsibility might rest with the Prosecutor who may have taken the cases to the Court before he had made sufficiently thorough investigations. The responsibility might also rest with the judges who obviously have not understood what a court must do if it confirms charges against persons for very serious crimes under international law and commits them to trial.

A possible scenario is that the Prosecutor approached the Court before he had solid cases and that the judges (judge Hans Peter Kaul dissenting) did not realize that they should have sent the cases back to the Prosecutor asking him to make a more reliable investigation before reverting to the Court, cf articles 54(1)(a) and 61(7)(c) of the Rome Statute.<sup>19</sup>

Now we know that the cases against Uhuru Kenyatta and William Ruto have been terminated before the ICC. Time does not allow me to go into detail here, but let me express grave concern over how these cases were dealt with by the ICC. I always maintain that the *presumption of innocence* is a given. As I said in my article just quoted, under no circumstances can anyone be considered guilty of crimes before he or she is found guilty by a competent court of law. However, the question that presents itself here is how a court should deal with persons who are suspected of very grave crimes. One of the first things that I learnt as a young court clerk more than 50 years ago is that if someone is indicted as suspected for very grave crimes, by definition this person should be arrested and put in detention on remand. Otherwise, he or she may try to evade the trial and also engage in interfering with the evidence. Today I ask if this is not precisely what happened in the Kenyan cases.

I am now following the work of the ICC and its Office of the Prosecutor with great expectations. We are glad to see Fatou Bensouda, the present Prosecutor, among us here. I wish you all the best in your important charge!

Another concern that I have is that the work of the ICC risks becoming too academic. My experience from my ten years on the bench in my own country is that justice must be done with precision and pragmatism.

---

<sup>19</sup> H. Corell, *Challenges for the International Criminal Court*. In: The Winter 2014 Issue of the International Judicial Monitor, available at [http://www.judicialmonitor.org/archive\\_winter2014/specialreport1.html](http://www.judicialmonitor.org/archive_winter2014/specialreport1.html).

## *The performance of states*

As I just said, a complicating factor is that the ICC is critically dependent on co-operation from national authorities. In my previous presentations on this topic I have pointed to Part 9 of the Rome Statute and in particular to article 86 containing a general provision that obligates states to cooperate fully with the ICC in its investigation and prosecution of crimes within the jurisdiction of the Court. This provision is followed by a number of detailed rules on the topic and the question is to what extent states fulfil these obligations.

This issue has been discussed by the ICC Prosecutors and other representatives of the Court. It has also been examined in the literature. Let me quote from the conclusions in an article published already before the Rome statute entered into force:

The ICC will rely heavily on the cooperation of States Parties for its success. States Parties will be asked to arrest and surrender suspects, investigate and collect evidence, extend privileges and immunities to ICC officials, protect witnesses, enforce ICC orders for fines and forfeiture and, at times, prosecute those who have committed offenses against the administration of justice. Key to this cooperation will be domestic legislation permitting the State Party to assist the ICC when requested.<sup>20</sup>

As I have said in the past, this means that states have an obligation to carefully examine the national criminal justice system in the process of ratifying the Rome Statute. It is obvious that in many cases it will be necessary to introduce rather elaborate implementation legislation. A natural ingredient in this process should be to see if improvements of a more general nature can be made to the national system based on the Rome Statute.

Looking at the specific responsibility that rests with the states parties to the Rome Statute other aspects come into the picture. A proper administration of the ICC is heavily dependent on the support of the Assembly of States Parties (ASP). In the past, I have expressed concern in relation to three problems, suggesting ways to solve them.<sup>21</sup>

- First, the question of the qualifications of candidates for election to the Court, the solution being abolishing List B for ICC judicial candidates.
- Second, the question of age, the solution being not to elect judges who will turn 70 years old before the expiration of their nine-year term.
- Third, the method of electing judges, the solution being appointing an independent committee of experts to review not only the candidates for election, but also the judges who remain on the Court, so as to be able to propose candidates who would be most suitable from the point of view of the composition of the ICC as a whole.

I am fully aware that the first suggestion may be problematic. However, I fail to see that it is not possible to find candidates with not only courtroom experience, which in my view should be an absolute prerequisite for serving on the court, but also academic expertise. Comes time,

---

<sup>20</sup> V. Oosterveld, M. Perry, and J. McManus, *The Cooperation of States With the International Criminal Court* in *Fordham International Law Journal* Vol. 25, Issue 3 2001 Article 14  
<https://pdfs.semanticscholar.org/e5da/5e767fe798d6cbbde8b0fefe3333c2310743.pdf>

<sup>21</sup> H. Corell, Foreword in *On the Proposed Crimes Against Humanity Convention*. Ed. Morten Bergsmo and SONG Tianying. FICHL Publication Series No. 18 (2014), Torkel Opsahl Academic EPublisher, Brussels (2014) (p. iii-vi), available at [http://www.havc.se/res/SelectedMaterial/fichlps18\\_foreword\\_corell\\_oeffprint.pdf](http://www.havc.se/res/SelectedMaterial/fichlps18_foreword_corell_oeffprint.pdf).

candidate List B will be more and more problematic in light of the fact that there will be candidates who have served in different functions in the ICC who would be much more competent than most candidates at the national level. With respect to the third suggestion, I was very pleased when the ASP decided to appoint the Advisory Committee on Nominations of Judges. With respect to the second suggestion, I found that it was a step in the right direction when this Advisory Committee included “Date of birth” in the suggested arrangement for the CVs of candidates.<sup>22</sup>

A particular problem is that many states, including some of the most powerful ones, are not parties to the Rome Statute, among them the permanent members of the Security Council China, the Russian Federation, and the United States of America. This is one of the major challenges to the future of international criminal law. It also brings to the forefront the role of the Security Council. This issue I have also addressed in the past pointing to the 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 levels and the need for crime prevention and protection of human rights.

Against this background it is of tremendous importance that the Security Council applies article 13 (b) with consequence, using the same yardstick everywhere. In addition, the Council should follow suit and act in accordance with its own resolutions. It goes without saying that applying this provision in the Rome Statute and then not follow suit in support of the Court organs is unacceptable. I also reiterate that the funding of the ICC in these cases should be provided by the United Nations.

Finally in this context I would like to mention a project called Law & Diplomacy. It is a multi-year project conducted by the International Bar Association and Académie Diplomatique Internationale.<sup>23</sup> The Academy is an international organisation dedicated to promoting modern diplomacy and contributing to the understanding and analysis of the emerging dynamics in global affairs. The project is intended to identify principles and guidelines for avoiding contradictions between diplomatic and judicial processes, as well as potential for cooperation, in responding to international crises that involve potential violations of international humanitarian and criminal law. The project will in the near future publish five case studies, in which conclusions are drawn, based upon the experiences of the operations in Bosnia, Darfur, Kosovo, Libya, and Rwanda. Hopefully, this will be of assistance in the future, in particular to the United Nations.

## Conclusion

To conclude: the future of international criminal law is a very important matter, closely linked to the development in all sectors of our global village. In the past, I have asked the question if it would be possible to administer a country if all of a sudden the criminal justice system would not apply in certain municipalities or counties. Obviously not! I therefore reiterate with great emphasis that the globalisation means that international criminal law must apply and an international criminal justice system must function all around the world. This is a goal of paramount importance for the future.

---

<sup>22</sup> See *supra* note 19.

<sup>23</sup> See <http://www.academiediplomatique.org/en/pag-563067-droit-et-diplomatie.html>.

International prosecutors have an important role to fulfil here. Based on their unique and special competence and experience, they can assist in explaining this to those who make decisions regarding these matters at the political level.

Finally, my *praeterea censeo*: empowerment of women is a precondition for international peace and security – and for justice.

Thank you for your attention!