

Consultative Conference on International Criminal Justice

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**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Thank you, Professor Stone, for that very kind introduction. I am grateful to you, the Hauser Center and the MacArthur Foundation for inviting me to speak this evening. This conference provides a valuable opportunity for the Court to join with partners in the field of international criminal justice to look together toward the future.

To look toward the future, we must first understand the past. The history of modern international relations extends over some 400 years. For most of this time, international law concerned itself primarily with regulating the behaviour and interaction of States. This was the predominant reality even with the end of the Second World War. The Charter of the United Nations and the Statute of the International Court of Justice, the principal pillars on which the post-war order was constructed, reflect this focus on inter-State relations.

At the same time, the ravages of the Second World War lent momentum to making individuals, too, subjects and objects of international law. Individuals hold rights under international law, as recognized in the Universal Declaration on Human Rights and subsequent conventions. They also possess duties for which they can and should be held accountable. In its judgment, the Nuremberg Tribunal famously stated, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." This prescient observation was the premise for the initial development of international criminal law.

Then, almost immediately after this statement was uttered, the Cold War froze for decades the expectation of accountability for war crimes, crimes against humanity and genocide. International criminal justice was a mere afterthought to peace, if it was thought of at all. Mass atrocities in such places as Uganda and Cambodia went unpunished, the victims ignored. Leaders did not expect to be held individually accountable. Peacemakers knew not to try, and, all too often, the atrocities continued.

The end of the Cold War renewed hope for the prospects of justice and, through justice, peace. With the ad hoc tribunals, the International Criminal Court and subsequent institutions, Presidents and rebel leaders began to consider the spectre of legal accountability. For some victims, perhaps, seeing justice done obviated an urge for violent retribution. Accountability for atrocity crimes became a real possibility for a broader range of situations. More victims have reason to hope that their tormentors will answer for their crimes. More communities can see that fair trial rights of the accused are vigorously defended. Although difficult to prove, according to some observers, including Patricia O' Brien this morning, fear of prosecution may have led some would-be perpetrators to refrain from the commission of atrocities in the first place.

If true, this already would be a great achievement. But creation of a court of last resort cannot be the final word in the development of international criminal justice. The system of international criminal justice must continue its progress.

From the perspective of the Court, it is difficult to plan this development. The Prosecutor can devise strategies for determining where and how to investigate and prosecute. The Presidency and the Registrar have been working, in consultation with the Prosecutor, towards the ambitious goal of making the Court a model of public administration. My Presidency has committed to increasing understanding through its role as the public face of the Court, making several trips to meet with key partners in Africa in the last months alone. However, in our core activities we are a judicial institution. We cannot take actions or decisions which will infringe on future judicial decisions. The Court cannot overreach its mandate. Already, we have seen even non-judicial aspects of our strategic plan being raised by parties in litigation. Advance guidance from the Court on key issues would provide clarity which may be desirable in a new institution with many novel features. But we cannot obtain clarity at the cost of reducing guarantees to a fair and impartial process. As Justice Goldstone said, fair trials are the cornerstone of our work. We therefore remain dependent on the Prosecutor, States Parties and the Security Council to bring us cases.

The challenge of realizing the vision of a world of accountability and peace is even more difficult once you step back from the ICC to the broader system of international justice. This system comprises numerous actors with widely diverging, sometimes conflicting, mandates. Even acting at the best of its ability, the ICC is only one small piece of the puzzle. Too many atrocity crimes fall outside the jurisdiction of the ICC. And in any case, the Court will only ever have the resources to focus on the most serious cases within its jurisdiction. As the Registrar indicated, our already limited budget is under close scrutiny from the Assembly of States Parties. I say this not to criticize the Assembly – it is their proper role to oversee the Court - but I say this to emphasize the need for realistic expectations for what the Court can accomplish. It will take all parts of the system, working together within their respective mandates, to have the maximum impact. To use the parallel of Justice Goldstone, who referred to the NGO's and press as family, I would like to say it will take all of our extended family to ensure this Court develops into full maturity. Specifically, I see three main areas for common action:

- First, the reach of the Rome Statute system can broaden through the addition of new States Parties. This will not only extend the geographical reach of the Statute, but further enhance perceptions of its legitimacy. Each country will make a sovereign decision on whether to join the Rome Statute. It is important that this decision is taken not on the basis of myths and misperceptions, but of facts. We must all continue to fight ignorance about the Statute which, unchecked, can corrode support for it. Global ratification is something that all parts of the international criminal justice family can, are and should continue working on.

- Second, the Rome Statute system can strengthen through enhanced cooperation. Cooperation should come to be regarded as routine, not an exercise of extraordinary political will. This applies to States Parties and also States not yet party. The ICC does not have the tools to enforce its own decisions. It is up to the States who created it and its other supporters to ensure that they are enforced.
- Third, the Rome Statute system can deepen by enhancing the capacity of national jurisdictions. As the ad hoc tribunals wind down, there will be increasing expectations for the Court to act around the world. In the words of Professor Bassiouni: "In a couple of years the ICC will be the only show in town and all critical eyes will be upon it". Indeed, the existing expectations – following decades of impunity – are already very daunting. The ICC is a court of last resort. It will only ever be able to handle a relatively small number of cases at a time. We must continue to work to ensure a realistic view of what the Court can do, but, more importantly, we must ensure that national courts are willing and able to act. They have the primary responsibility to investigate and prosecute crimes, not the ICC. Earlier today the Registrar outlined what the Court can do in respect to building national capacities. It is very limited. Our mandate is to investigate, prosecute and carry out trials of individuals. We do not have and indeed, should not want, the mandate to develop national capacities. Even the Court's ability to cooperate with and provide assistance to States Parties conducting investigations or trials is limited. The bulk of the work of developing national capacities will therefore fall to states, NGO's and international organizations.

I do not mean in my remarks to be overly pessimistic or to dish out the burden to other actors. We can make a real difference in putting an end to impunity, and the Court will do its part to the best of its ability. But as President of the Court, it is my duty to be frank with you and to be very clear on what we can and cannot do. The Court, States, international institutions, NGOs and academia all have a role to play in improving the system, but to do so effectively we must fully understand each other. In organizing this conference, the Hauser Center and MacArthur Foundation have provided a wonderful opportunity for true dialogue, and I wish to take full advantage of this.

I see this conference as part of a dialogue which will continue at the fall session of the Assembly of States Parties, through the Review Conference next year in Kampala, Uganda and beyond. The Review Conference will provide a critical opportunity to reflect on where the system stands and where it is headed. I am very pleased by the commitment States Parties have made to making a stock-taking exercise a central part of the Review Conference, and I hope that the Review Conference will take a similar approach to our gathering this week. A thorough stock-taking exercise should go beyond looking at the Court. It should look at the entire system of international criminal justice, including how national capacities can be strengthened. It should look at what challenges States face in providing cooperation, enacting

implementing legislation and carrying out domestic investigations and proceedings. It should identify realistic timetables for the further development of the system. It should fully include civil society and affected communities in the process.

The continued development of international criminal justice will be an ongoing process. It may move faster at some times and slower at others, but it must keep moving. The changes we see on a day-to-day basis may be gradual, but the underlying move from a purely State-based system of international law to a global culture in which individuals expect and can be expected to be held accountable for their actions is truly revolutionary. The seeds were laid at Nuremberg, they sprouted after the Cold War, and we are already starting to see the first fruits, but, as any gardener will tell you, to care for a living thing is an ongoing process.

The ICC always will offer a last hope for justice in response to humanity's deepest depravity. We must work toward the day when there is a realistic chance of justice for every atrocity. Then the ICC will underpin a system that fulfils justice's promise to deter crime. Few will then doubt that justice sustains peace.

Thank you.