



Cour
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Criminal
Court

Le Président
The President

Judge Piotr Hofmański

President of the International Criminal Court

*Key Note Speech – European Criminal Bar Association
Spring Conference*

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Ladies and Gentlemen:

I am very pleased to be here today, in my native Poland, to contribute to the European Criminal Bar Association's Spring Conference.

I always enjoy participating in discussions on the rule of law, and I thank the organisers for their invitation.

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The rule of law is a nebulous concept. Often heard in the lexicon of politicians, or seen in dignified international instruments like the Universal Declaration of Human Rights, it enjoys widespread support and popularity. And yet, many of those who invoke it would struggle to clearly define it. In spite of this, its popularity endures, I think, because we can instinctively see the value of the concept and what it seeks to achieve.

Over the years, many have spoken about the value of law and what it means to be 'ruled' by it.

In *Leviathan*, for example, Thomas Hobbes spoke of a willingness of people to join together in societal units in order to be protected from anarchy in the state of nature. In this social contract, it is submission to the laws of a sovereign that protects the individual.

Similarly, John Locke later wrote of the way in which the law protects the individual, by acting as a protection against interferences with liberty, whether they emanate from another individual or from the exercise of arbitrary government power.

The golden thread running through these and other discussions of the rule of law, is that the law, at its very essence, serves to protect the individual and affirms the values of the collective. Support for the rule of law thus derives from an understanding that submission to the rule of law is essential to any society that values the rights of its individuals and the betterment of the collective.

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Those of you here today, like myself, have spent your careers working as criminal lawyers. As old as civilisation itself, criminal law serves to address transgressions against community norms and values. The criminal law is therefore indispensable to any society that submits itself to the rule of law.

The development of an international rule of law and indeed international criminal law mirrors this trend. Many times throughout history, states have made an effort to mitigate the brutality of an anarchical world order characterised by war, conquest and a struggle of all against all.

In other words, as states recognised the existence of common interests and each other's equal right to peace and security, they conceived of themselves as a *community*, bound by a common set of rules that would govern their relations. And so, an international rule of law began to develop.

These laws which governed the 'society of states', as Professor Hedley Bull would call it, were laws for the conduct of *states*, and not their citizens. Gradually however, throughout the 20th century, the individual started to be considered as a subject of international law with rights, but also obligations under it.

The establishment of international tribunals – in Nuremberg and Tokyo – to prosecute those responsible for the most heinous atrocities in World War II crystallised a shift which had already been initiated by attempts to try Kaiser Wilhelm II following the First World War. A shift which moved beyond the state-centred application of international law and constituted individuals as international legal actors.

At the same time, the establishment of the United Nations formalised the aspiration toward a new international order, centred around peace, security and the recognition of global human rights. The adoption of numerous treaties in the fields of international humanitarian law and international human rights law soon followed. An international society, governed by the rule of law, had taken significant steps forward – at least on paper.

Sadly, the reality of world affairs showed time and again – and still does! – that the mere existence of rules and principles is not sufficient. The world continued to witness numerous bloody conflicts, with crimes against humanity, war crimes and genocides being committed with impunity.

Much like any domestic society wedded to the rule of law, the international community requires mechanisms of enforcement and accountability, including in the field of crimes under international law.

The end of the Cold War opened new possibilities in this respect.

The first significant step was the creation, by the UN Security Council, of the International Criminal Tribunals for Yugoslavia and Rwanda, in 1993 and 1994. These were seen as a revival of the spirit of the Nuremberg and Tokyo tribunals.

And soon afterwards, encouraged by the swift commencement of work by the two *ad hoc* tribunals, the international community adopted, in 1998, the Rome Statute of the International Criminal Court.

The necessary 60 ratifications were acquired in record time, and the ICC came to existence only four years later, in 2002.

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The International Criminal Court is the first permanent international tribunal established to hold individuals accountable for the most serious international crimes. I should stress that the ICC is not a replacement for national courts. On the contrary, the ICC's role is to step in when – and only when – the national justice systems are not acting, whether for reasons of inability, unwillingness, or something else. Therefore, the ICC's purpose is to prevent impunity and provide accountability where it is otherwise lacking.

The Preamble of the ICC's Statute refers to the resolve of the international community to “guarantee lasting respect for and the enforcement of international justice”.

Since its inception, the ICC has worked hard to do exactly that. The 17 situations we currently have operative on four continents are a clear indicator that there has been significant demand on the Court's mandate. In 20 years since its creation, cases involving a total of 53 suspects have been opened. Accused persons have been convicted, and others acquitted, in each case after meticulously fair trials.

The ICC has ushered in a victim-focused concept of criminal justice. Victims are entitled to participation in proceedings, and reparations for harm suffered when

there is a conviction. Over 21 thousand victims have participated in ICC proceedings with the assistance of professional counsel, and thousands of individuals have received reparations. More than 100,000 thousand people have benefitted from projects carried out by the ICC's Trust Fund for Victims.

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Ladies and gentlemen,

Equally important to ensuring accountability is that, in our determination to punish those guilty of crimes, we are not blinded to the experience and rights of those on trial.

In fact, this requirement goes back the very reason that international criminal tribunals exist in the first place – that individuals not only have rights and obligations *vis-à-vis* the State, but are subjects with rights and obligation under international law.

And so, just as in domestic tribunals, the fundamental rights of the accused must constantly be considered and vindicated. As members of the ECBA, which strives to promote the fundamental rights of suspects, accused and convicted persons, I am sure you will all agree. I take the opportunity to commend you for your important service to society by securing one of the key aspects of fair trials and the rule of law – an effective defence.

Indeed, ensuring fair trials is an inseparable part of criminal justice. I am pleased to note that all internationally recognised rights of the defence are enshrined in the ICC's legal framework.

Furthermore, at the ICC, there are numerous special considerations to take into account in this context, some of which will never arise at domestic level.

- For one, the ICC's reliance on the cooperation of States Parties to carry out its mandate can create difficulties in respect of expediency, a key component of fair procedures.
- Securing the cooperation of States with defence teams is another challenge.
- Keeping suspects in detention far from their home countries can create issues in terms of cultural differences and the maintenance of family links.

- And, finally, we have seen that finding a state willing to accept an acquitted person may be difficult if the person cannot return to their country of origin.

In addressing any of these challenges, the role played by independent defence counsel is crucial.

Indeed, there cannot be fair procedures without counsel for the defence, and there cannot be a successful ICC without fair procedures. Hence, the independence and quality of defence counsel is of paramount importance to the International Criminal Court. In this light, the work done by associations such as the ECBA is much appreciated.

Over the last 20 years, many other organisations have also made important contributions, such as the International Criminal Bar and the International Bar Association.

And in 2016, the ICC welcomed the founding of the *International Criminal Court Bar Association*, which was established to support the work of the Defence and Victims Counsel and represent their interests in the institutional dialogue with other organs of the ICC. The ICCBA is now the officially recognised representative body of defence and victims' counsel at the ICC.

The work done by professional organisations of lawyers has significantly reinforced the defence as a pillar of international criminal tribunals, strengthened the equality of arms, enhanced the quality of justice at the court and ultimately, contributed to the supremacy of the rule of law.

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Ladies and gentlemen,

Before I finish, I would like to appeal to all of you to consider joining the *list of counsel* admitted to practice at the ICC. As our activities expand to more and more part of the world, also the need for variety among defence and victims' counsel increases, in terms of language skills, legal background and specific expertise.

The information about the list of counsel is easily accessible on the ICC website. Please have a look, and think about it. Speaking from my own experience, a

career – or a professional “excursion” – in international criminal law can be highly rewarding.

With that, I wish you all fruitful and meaningful discussions for the remainder of the conference.

Thank you.