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PROSECUTING CRIMES AGAINST HUMANITY:  
SUBSTITUTING JUSTICE FOR DESPAIR

BY

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Delivered at Chautauqua, New York  
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## **Introduction**

It is hard to imagine, on this beautiful summer day, experiencing the delights of a Chautauqua summer – the brilliant blue of the sky, the verdant green of the trees, the laughter of children playing, the beauty of the music that surrounds and infuses this very special place, the delicious smells of cooking and flowers and trees in bloom, and the calming presence of the lake – that far away, on the other side of the world, things could not be more different. That in remote places with exotic names the same sun shines upon a landscape adorned not with trees and flowers, but with ruined buildings, destroyed crops, polluted waters, and inhabited by human suffering and unimaginable tragedy.

In the Central African Republic, rape is an instrument of war, and sexual violence has reached staggering proportions. In Northern Uganda, the Lord's Resistance Army led by Joseph Kony, abducts children and forces them to fight, destroys villages and kills or mutilates all those they find there. In the Ituri region of the Democratic Republic of the Congo, observers have reported thousands of civilian deaths, as well as a pattern of torture, rape and forced displacement. And in Darfur, the latest manifestation of the terrible violence afflicting Sudan, the situation is so bad – with an estimated 400,000 persons killed since 2003 and 2 million displaced -- that the United Nations Security Council referred the case to the International Criminal Court. What is our moral – and

legal -- obligation to those who are suffering from war crimes or crimes against humanity? That is the subject of my reflections today.

Earlier this summer I toured the Anne Frank House in Amsterdam with my 14 year old son, Sam. It was upsetting to realize that Sam was just about Anne's age when she was deported, and to relive through the extraordinary museum created in memory of her life, how Anne had died, as much from heartbreak, as from the awful conditions of imprisonment she had to endure. Although I was raised a Christian, and although my family is Arab – and Muslim on my father's side – Sam's father is Jewish, as was my mother, and I realized that, truly, there but for the grace of God, went he and I, had we been unlucky enough to have been born at another place and time. It caused me to wonder, as well, how is it that despite the searing presence that the Holocaust has in our collective consciousness, we somehow cannot translate that experience into preventing genocide in Rwanda, or perceive the little Palestinian children of Gaza and the little Hebrew children of Tel Aviv to be equally deserving of our protection. Why isn't the United States willing to put its weight behind the campaign to end the commission of atrocity crimes; and what can be done to change this?

Perhaps several hundred years ago, one could have argued that what happened in one country was of little import elsewhere. Time and space separated the peoples of the world in a way that seems unimaginable now, but even then, trade was extensive, colonization began, and the nations and peoples of earth began to be interlinked. Now that is even more true – as *New York Times* journalist Tom Friedman notes, markets, nations and technologies appear locked together in an inexorable process of integration, permitting individuals, businesses and governments to reach around the world, “farther,

faster, deeper and cheaper than ever before.” Yet the prosperity that globalization has brought to us has a dark side – and one of the challenges of our time is to accept our responsibilities as global citizens – who, with 4 % of the world’s population, consume 25 % of its resources.

In his *mémoire*, *A Lucky Child*, my friend and colleague – now-International Court of Justice Judge Thomas Buergenthal – writes of his experiences as a ten-year old child incarcerated at Auschwitz. He recounts an experience at a freight station in Berlin, when a train taking him back to Germany, stopped for a few hours before moving on the concentration camp that was to be his final destination. Soon after the train halted, he “heard a German woman exclaim for all to hear: ‘Es stinkt schon wider von Juden!’ (It stinks of Jews again.)” About an hour later, he writes, “our new SS guard climbed off the train and got himself a cup of coffee. He must have seen me looking longingly at his cup. Without a word, he handed me the coffee and got himself another cup.” This was little Tommy’s first warm drink in that cold winter. Judge Buergenthal notes that he has never been able to reconcile these two events to his own satisfaction. But it seems clear that the first woman could not see the humanity in Tommy’s little eyes, his little face. To her, he was a “Jew,” not a human being. One can imagine all sorts of things about what the SS guard might have been thinking – that he had a little boy at home that looked just like Tommy, that Tommy was just a little boy, after all, who was cold and thirsty and far from home – but there is no doubt that the guard looked at Tommy and saw his humanity.

And recognizing – and remembering – our common humanity is what can ultimately begin the change we wish to see in the world. As President Obama noted in his *New Beginnings* speech given at Cairo University earlier this year,

When a financial system weakens in one country, prosperity is hurt everywhere. When a new flu infects one human being, all are at risk. . . . When violent extremists operate in one stretch of mountains, people are endangered across an ocean. When innocents in Bosnia and Darfur are slaughtered, that is a stain on our collective conscience. That is what it means to share this world in the 21st century. That is the responsibility we have to one another as human beings.

In our time together, today, I would like to build upon these ideas and suggest that practical efforts to build and apply the rule of law can help to tame a wretched world – that we can substitute justice for despair. I would also like to suggest that Americans have special talents to bring to this endeavor, as well as a special responsibility to help improve the lot of those less fortunate than themselves – a responsibility that has not only a moral dimension, but a legal one as well. I will start with the birth of international criminal law after the great wars of the last Century, briefly discuss efforts to build a system of international criminal justice, and finally, talk about the United States and why it should not only support, but one day lead, the new International Criminal Court, and the world, in ending impunity for the commission of crimes against humanity.

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### **The Nuremberg Paradigm**

The modern era of international criminal justice began with the holding of the Nuremberg Trials after World War II. But the foundations for those trials actually date back to World War I. Since time immemorial, in most societies, a privilege of the sovereign was the making of war. During the middle ages, monarchs waged wars and after the rise of the nation-state, States did the same, with little or no regard for the welfare of their people. This began to change slowly in the 19<sup>th</sup> Century, and the Hague

conventions of 1899 and 1907 suggested that international disputes should be settled by arbitration – as opposed to war – and set out rules for land warfare that attempted to limit the degree to which a nation could wage total war. But those treaties – which are still in force today – had no enforcement mechanisms other than the payment of reparations for breach and the ink was hardly dry on them when the first World War broke out, bringing with it the death of millions. Angry and upset, an international commission proposed, over American objections, that an international high tribunal should conduct war crimes trials, even of the German Kaiser himself. This was a revolutionary idea. Prior to that, international law applied only to States, not directly to human beings, and under the Westphalian system set up in 1648, with limited exceptions, only States had rights under international law. However, the Kaiser was never extradited by the Netherlands, and the whole effort was generally considered a fiasco. The League of Nations was established – without United States support, although it was an American idea – to try to make it impossible for the slaughter to be repeated. But although the League had many accomplishments, ending war was not one of them: its enforcement power was simply too weak, particularly without U.S. participation.

When Hitler rose to power, the unsuccessful attempt to prosecute the Kaiser after the First World War was once again evoked. This time, it was the Americans who argued, over British objections, that trials of the major Axis war criminals should be held. It was understood that the primary response to the Nazi plan of total war and their so-called “final solution” of the Jewish question was, of course a military one: without the defeat of Hitler's Germany, no freedom-loving people would be safe. At the same time – as Justice Robert Jackson, Chief Prosecutor for the United States, argued before the

International Military Tribunal at Nuremberg – it was also necessary to establish, as a legal principle, that in the age of modern warfare no individual had the right to devastate another people by waging aggressive war against them; and no leader had the right to exterminate, or otherwise commit atrocities against, any nation, including his own. International law, stated the Nuremberg Tribunal, imposes duties upon men, not just upon nations, for the breach of which they may be tried and punished. What an extraordinary breakthrough; the Nuremberg and to a lesser extent the Tokyo trials spawned not only the creation of a system of international criminal justice, but the notion of international human rights, as well – after all, if human beings can acquire duties under international law, they may have rights, too.

### **Building a System of International Criminal Justice**

Following the Nuremberg Trials and the establishment of the United Nations, an effort was made to codify and build upon the Nuremberg legacy. The United States participated in international efforts to codify the crime of genocide and to elaborate the four Geneva Conventions. There was also immediate support for the creation of a permanent international criminal court that could deter future war criminals. However, the cold war took precedence over the construction of the international legal order, and other than the adoption of treaties addressing specific problems such as torture, apartheid and terrorism no real progress was made on the establishment of an effective international criminal justice system. On the human rights side of the equation, many human rights treaties and declarations were adopted, but their enforcement mechanisms were weak.

The fall of communism in 1989 brought with it the possibility of using the United Nations for the purposes originally intended by the framers, particularly as regards the waging of war and the making of peace. When Iraq invaded Kuwait in 1990, President George Bush (41) went to the Security Council of the United Nations for resolutions condemning the invasion, and, ultimately, permitting the use of force against the invader. The war in the Former Yugoslavia was another matter entirely, however, and the disintegration of Yugoslavia into component parts – accompanied as it was by ethnic cleansing, war crimes, the establishment of concentration camps and mass rape – engendered a proposal to establish a war crimes tribunal for the Former Yugoslavia that could try persons accused of genocide, war crimes and crimes against humanity. The first international war crimes tribunal since the International Military Tribunal at Nuremberg, the ICTY has grown from a small seed into a major international organization with more than 1000 staff members, representing 86 different nationalities, and a budget of approximately 170 million dollars per year. It is strongly supported by the United States, both financially and in terms of personnel, as is its sister tribunal, the ICTR – which is slightly smaller – established to try the perpetrators of the Rwandan genocide.

Together, the Yugoslavia and Rwanda Tribunals have tried or are currently conducting proceedings against more than 235 accused, including virtually all the highest-ranking perpetrators of the war in the Former Yugoslavia and the genocide in Rwanda. Indeed, the relative success of these two tribunals led to the creation of others – the Special Court for Sierra Leone, which is now trying former Liberian President Charles Taylor in the Hague; the Khmer Rouge Tribunal to try some perpetrators of the

Cambodian genocide; the special court for Lebanon to try those indicted for the Hariri assassination; and the Special Crimes Unit in East Timor. There has also been an explosion in the development of related initiatives – dozens of Truth Commissions set up to investigate human rights abuses all over the world, and national court cases based either on universal or territorial jurisdiction to try those accused of atrocity crimes – like the cases brought against General Pinochet in England, Spain and Chile, or the case now pending against former Chadian dictator Hissène Habré in Senegal. We have also witnessed the creative use of indigenous methods of post-conflict justice, such as the Gacaca tribunals in Rwanda which implement a Rwandan method originally designed by local elders to settle property disputes, to try perpetrators of the Rwandan genocide in a timely fashion and thereby bring closure and healing to the victims of that conflict. All of these initiatives reawakened desires to fulfill the Nuremberg promise by establishing a permanent international criminal court, particularly given the fact that all the international criminal tribunals now in existence are temporary – created, like the International Military Tribunal at Nuremberg, for one specific conflict – and all of them except the ICC will be closed in the next few years.

Let me now turn to the International Criminal Court and its establishment in the Summer of 1998. I participated in many of these negotiations and three things, I think, are what ultimately caused them to be successful.

First, global civil society weighed in as never before. Victims, religious and humanitarian organizations banded together under the auspices of the Coalition for the International Criminal Court – which now boasts more than 2,500 members, and which through email, lobbying and information campaigns, made the establishment of an

effective, independent and impartial Court a priority. The CICC still exists, and its website is probably the best source of available information about the Court. I urge you to consult it at [www.iccnw.org](http://www.iccnw.org).

Second, a group of about 60 countries – known as the Like Minded Group of States – came to decide that the establishment of the Court was a priority. The Like Minded Group included European States, Latin American States, African States, Canada and other western democracies; and as the negotiations progressed, they developed a common aspiration to see the century-old dream of an international criminal court become a reality.

Finally, there was just some plain old-fashioned good luck. The ICC negotiations took place at the right time, in the right place, and were conducted by a team that was incredibly competent, talented and able, allowing the negotiations to bear fruit. This was true not only of the leaders of the Diplomatic Conference itself – particularly its Chairman, Ambassador Philippe Kirsch of Canada, and its drafting committee Chair, Professor Cherif Bassiouni of DePaul University – but of the hundreds of delegates participating during the years of negotiations leading up to Rome, including the U.S. delegation led by then-Ambassador-at-large for War Crimes David Scheffer.

The Rome Diplomatic Conference was an extraordinary event that I will never forget. The conference was held in the Food and Agricultural building of the United Nations, *la Fao*, in Italian, which was a very ugly Mussolini-era building that was easy to get lost in – and I often did. Its only saving grace was the splendid terrace on the 8<sup>th</sup> floor, from which one could ingest a delicious espresso or cappuccino after lunch and gaze out over the Palatino, taking in the ruins of the Forum and Castel san Angelo.

Indeed, scattered all around the building were symbols of the ravages of war. What better place to argue, on behalf of all humanity, that those who commit war crimes and crimes against humanity should be punished?

Delegates from more than 165 countries and 250 NGO's attended the ICC negotiations. The conference was a major happening in the City of Rome – the proceedings were carried live on *Radio Radicale duo*, and the city was plastered with posters with the words “we expect concrete results.” Amnesty International set up a huge tent just outside the conference venue as a host for the multitude of groups attending, and indeed the diplomatic conference had all the trappings of a modern-day constitutional convention – like Philadelphia must have been in the summer of 1787. It was even hot! Victims came to demand that governments put a stop to the impunity of those committing atrocity crimes – that governments resist the temptation to support the rich and powerful and, instead, do the moral thing, and commit themselves to prosecuting even heads of state who violated international humanitarian law. The debates were heated and, unsurprisingly, those with the most to lose from changing the status quo resisted the most. The very talented United States delegation contributed greatly to the substance of the treaty, but at the end of the day, largely because there was no iron-clad “American exception” to the Statute, it led the world not in supporting the Court’s establishment, but in attempting to prevent it. In the final hours of the conference, both India and the United States moved to amend, thereby threatening to kill the adoption of the treaty before the time set for the negotiations was up. A vote of no-action was proposed by Norway, which passed overwhelmingly. Then, in a move that surprised many observers, rather than allowing the conference to act by consensus, the United States demanded a vote on

the treaty itself. In an emotional and extraordinary response to the U.S. initiative, a vote was taken and the United States was outvoted, 120 to 7, with the delegates of virtually all the free countries of the world clapping, cheering and crying as the Statute was adopted, while the humiliated American delegates sat stonily in their seats. Although the vote was unrecorded, it is widely believed that Iraq, Libya, Israel, and China also voted no.

### **The United States and the ICC**

Why did the United States delegation call for a vote it was sure to lose? The answer is not entirely clear, but certainly, by instructing its negotiating team to vote against the ICC statute, what the United States government – then headed by President Clinton – either did not understand or did not care vis-à-vis the Rome negotiations, was the tremendous moral fervor that the international criminal court idea had unleashed. The fall of communism had opened a window of opportunity through which new political institutions could emerge – in order to help build a world premised on the force of law, as opposed to the law of force. A surge of optimism and renewed faith in international law was sweeping the world – fueled, ironically, in large part by the money and effort being spent by the US and other democracies to support the ICTY and the ICTR. Countries supporting the ICC did not become stronger or richer for doing so; international justice costs money, and building the international criminal court would take time, money, legal talent and perseverance. But what they gained was legitimacy and a sense of doing the right thing. If the wars of the 20<sup>th</sup> Century had taught any lessons at all, it was clear that to meet the challenges of a world in which the commission of atrocity crimes is all too common, we need three things: rules, institutions and enforcement. Rules that govern

human behavior, institutions that apply those rules, and institutions that enforce those rules. We know that as individuals, we are prone to forgetfulness and that the veneer of civilization is very thin – indeed, many of the individuals committing terrible crimes during the Second World War were so-called “ordinary men,” not pathological monsters. Rules and institutions help us to remember our collective responsibilities, absorbing and transmitting information not just at a particular place and time, but serving as repositories for wisdom that can guide human societies over generations. In other words, evoking your theme for this week, institutions can help “make us moral.”

Recognizing this is why Tom Buergenthal, little Tommy, became a lawyer, a law professor and a fierce advocate for human rights. He writes that he “tends to believe that had today’s international human rights mechanisms and norms existed in the 1930s, perhaps many of the lives that were lost in the Holocaust might well have been saved.” Europeans have come to understand this, and have placed their national governments under the umbrella of the European Union; steeped as they are in the sorrow of three devastating wars taking place in a Century’s time they have learned the hard way of the destruction that racism and nationalism can bring about. America, it seems, has not yet caught on, or come to see how vital are international institutions like the ICC; and how powerful the forces are that would undermine the fragile peace we now enjoy.

For what the drafters of the Rome Statute for the International Criminal Court intended was not to make war impossible, but, to paraphrase Justice Jackson, to put international law and its precepts squarely on the side of peace. As Dag Hammarskjöld wrote about the United Nations itself, “the United Nations was not created to take humanity to heaven, but to save it from hell.” The same can be said of the international

criminal court. Imagine what our country would be like if there were no police, no courts, no jails and no enforcement whatsoever to rules prohibiting assault, murder and sexual violence.

There are now 110 States Parties to the International Criminal Court Statute – all of Latin America and Europe, almost all of Africa and the Western World, and growing participation from Asia and the Middle East. Alone in the Western hemisphere the United States stands outside the ICC regime – there is no US judge on an international court, for the first time in modern history. During the Bush administration, an effort was made to destroy the Court by boycotting its meetings, attempting to “unsign” the Statute, adopting federal legislation preventing cooperation with it, using bilateral agreements to wrest exemptions for the United States from ICC party States, and punishing States with economic sanctions if they refused to cooperate. The United States did not vote for the Security Council referral of the Darfur situation to the Court, and has refused to allow the United Nations to pay for the investigation and prosecution of those wanted in Sudan’s genocide. While other major powers such as China and Russia have also resisted inclusion in the ICC regime, none of them have so dramatically and deliberately attacked the Court and its mission, hiding their own lack of commitment to human rights behind the U.S. opposition to this beloved international institution.

Perhaps we are once again in a “League of Nations” moment, a juncture in history where U.S. support could either help prevent another convulsion of cataclysmic violence in the world, and U.S. indifference (or even hostility) could embolden pathological leaders bent upon war and the commission of atrocities. Perhaps the window that opened in 1989 is about to slam shut. I do not have a crystal ball, but imagine the strength that

the International Criminal Court would have if the United States threw its weight behind it and helped make the promises of “never again” a reality – by contributing money, expertise, logistical support (particularly in arresting defendants), and political support. The ICC represents a very powerful idea – but is actually a very small and fragile institution, with only 18 judges, a modest budget, and no police force. It represents the hope of millions of victims around the world – but it will handle only a fraction of the possible cases that could be brought. The rest of the work will have to be done by national court systems, which look and have been looking to international courts for practical guidance, training, and inspiration. One has to wonder why the United States spends nearly one trillion dollars on a defense budget that is greater than the military spending of the next 16 countries combined – including Russia, China and Western Europe. If your heart is where your treasure is, America’s resource allocation suggests that it prefers war over virtually every other means of international engagement.

President Obama has yet to take an official position on the International Criminal Court, but has appointed individuals supportive of the Court and its mission to many key posts. In 2010, the ICC will hold a review conference, taking stock of the Court’s operations since its establishment, considering amendments to the Statute proposed by States Parties, and considering the inclusion of the crime of aggression in the Court’s Statute. The Court has faced some significant challenges in its first years of operation, and is just beginning its first trials. A major challenge, of course, has been the resistance of Sudanese President Al Bashir, who not only has defied his indictment by the ICC, but expelled humanitarian aid groups in response to the issuance of the arrest warrant against him, and attempted to muster African countries’ support against the ICC. One wonders

whether the chairs behind the designation “United States of America” will remain empty, as they have been for the past eight years, or whether the United States – the engine behind the Nuremberg Revolution – will help turn the goal of ending impunity, for the commission of war crimes, genocide and crimes against humanity, into a reality.

### **But What Makes us Moral?**

There are a host of reasons why the United States should ratify the International Criminal Court treaty and attend the ICC Review Conference – reasons of self-interest, principles of justice and morality, and finally, questions of faith. In terms of self-interest, the Court could serve as a tool of U.S. coercive diplomacy, aiming at leaders that are disrupting international peace and security and U.S. prosperity, and making the world safer for the international trade that fuels our high standard of living. While military force will probably continue to play a central role in the conduct of foreign affairs, coercion without legal authority lacks legitimacy and breeds resentment. The ICC is also important in the fight against international terrorism. Indeed, several key features of the Court’s legal regime are the same elements that the United States needs enforced in the counterterrorism area, including:

- the duty of states to try or to extradite international criminals;
- the obligation of states not to give safe haven to international criminals; and
- the right of the international community to act together, if states are unable or unwilling to fulfill their obligations.

Under international criminal law, the rules applicable to the genocidal killers of Sudan, Rwanda or the former Yugoslavia also cover bin Laden and his ilk.

So it is unsurprising that most democracies have decided that supporting the ICC serves their self interest. But even putting aside narrow questions of self interest, your theme this week – “what makes us moral” – is broader than that. Having led efforts to try the Nazis at Nuremberg and having supported the *ad hoc* tribunals, is it moral for the United States now to reject the International Criminal Court because of a theoretical – and, I should add, highly remote – possibility that the ICC could try Americans? The real question is whether the United States is willing to apply to itself the rules it seems willing to apply to others – and to abide by its international obligations to follow the Geneva conventions, the torture convention, and the genocide convention. Is it acceptable, in other words, to have international legal rules that apply to all the countries in the world except us?

The great legal philosopher John Rawls offers an interesting perspective on that question. In his “*Theory of Justice*,” Rawls argues that one should evaluate the fairness – justness – of social rules from behind a “veil of ignorance.” Put succinctly, the idea is that everyone should choose the rules that apply to them to produce the highest payoff for the least advantaged position, as if they did not know whether or not they would be born weak or strong, poor or rich. From this original position, as he calls it, rules that promote social equality are the most desirable as they protect everyone. Extrapolating this to the international arena, the question we should ask as Americans when considering what system of international justice we prefer, is not what system we as American citizens might like to maximize our freedom to do as we please, but what system would protect us if we were born in a different place and time – and unlucky enough to have been Jewish during the Holocaust, Tutsi during the Rwandan Genocide, a wearer of eyeglasses during

the Khmer Rouge regime or a Masalit or Fur tribe member in contemporary Darfur. Sudan. Under such conditions, would we not choose an international justice system capable of restraining the Pol Pots and Hitlers of the world, rather than the indifference our foreign policy now projects?

As Martin Niemoller wrote,

[F]irst they came for the Communists. I was silent, for I was not a communist. Then they came for the trade unionists, and I was silent, for I was not a trade unionist. Then they came for the Jews. I was silent. I was not a Jew. Then they came for me, and there was no left to speak up.

Indifference to the plight of our fellow human beings is perhaps the worst punishment we can inflict upon them – as Edmund Burke once remarked, the only thing necessary for the triumph of evil is that good men do nothing. Elie Wiesel made the same point in this amphitheatre earlier this week.

Taking a Rawlsian approach would not only be consistent with our self interest, it would also produce a more just and peaceful world, one that would be deeply grounded in virtually all religious traditions, including the three Abrahamic faiths. Modern international law is heavily tied to religious tradition, and its morality – as well as its legal force – is grounded in its universality. One can find, as Bruce Feiler does in his study of Abraham, support in all three Abrahamic faiths for the ideas of universal rules and caring for all human beings, especially in the notion of a God who is portable – who is the God of everyone, everywhere. We also find parables in all three faiths teaching us to be kind to strangers – to welcome the “other” into our hearts and homes – for that stranger may even be a prophet or the son of God that we meet on the road to Emmaus. Yet there is a shadow side to the Abrahamic story as well. The Abrahamic faiths can be intolerant of each other, each claiming special status and special rules applicable only to

their chosen people. Indeed, the Bosnian war was a religious conflict, and it is a sobering fact that in all three Abrahamic faiths, the narrative of a father preparing to kill his son is central to their self-understanding, the question becoming, “would I kill for God?” For peoples of the book, like myself, wishing to make the world a better place, careful distillation of our respective religious texts is necessary in order for understanding to prevail over intolerance, peace to take the place of anger, and kindness to take the place of indifference. As an aside, I am deeply grateful for the pioneering work the Chautauqua Institution is doing in this regard, and was moved by the Oasis of Faith Sacred Song service on Sunday evening. Like the institutions I am talking about building on the international plane, your institution is helping to “make us moral,” by teaching tolerance and respect for others – no matter what form their spiritual journey may take.

Can we take the next step forward and support the establishment of international institutions that will enforce the moral values that we say we share? Or are we unable to do so unless we ourselves have felt the kind of despair that comes from being the victims of atrocity crimes? Can we walk in the shoes of our brothers and sisters around the world, whose appeals for help appear in the faces of the artwork surrounding this amphitheatre and can we put our money, our American ingenuity, our material support and our legal talent behind those initiatives? The answer has to be yes, and here is my final thought about America and the international criminal justice system.

At some point, what it takes to do the work of combating atrocity crimes – whether it is serving as a forensic pathologist examining the bodies in a mass grave site; serving as a U.N. fact finder establishing evidence of atrocity crimes; coming to work as

the prosecutor or defense counsel in preparing a case; becoming an international judge by leaving home to live in The Hague for months or years at a time; working as an intelligence officer gathering satellite photos and cell phone intercepts to be used as evidence at trial; risking one's life as an humanitarian aid worker responding to the needs of the victims or as a Red Cross worker visiting a prisoner – what it takes to do this work, the hard work, the practical work of international justice, is faith. Faith that one can make a difference, faith in the possibility of a better world, faith in the hope of justice as a remedy to despair. There are thousands of people doing this work now – some paid, some volunteer – each of whom is trying to make a difference in the lives of someone they probably never met before, and may never meet again.

So I can stand here and list, until I am literally blue in the face, all the reasons why it is in America's self-interest and the right thing to do to support the International Criminal Court, and yet at some point, one has to take a leap of faith. The real question is whether we have faith in a future where men and women from all the countries in the world can live together under the rule of law. Our lectures this week have told us that doing so means overcoming some hard-wired cerebral programming – and a great deal of study, reflection, reinforcement and help. Yet if faith is the substance of things hoped for, the evidence of things unseen, we as Americans must take our deep faith in the rule of law to the international stage, and put our energies into creating positive and constructive solutions to international problems. Law is not a panacea for the world's ills, and yet legal rules create a framework for solving problems and avoiding misunderstandings. Legal institutions, as Eleanor Roosevelt once said of the United Nations itself, provide a “bridge upon which we can meet and talk.” Even if we cannot

force ourselves to feel empathy for individuals located in far corners of the globe, we can develop methods of interaction that will prove productive and stabilizing in the long term.

The ICC by itself, of course, is not enough to prevent the commission of atrocities – we need to do more in terms of conflict resolution, peacekeeping, and solving some of the problems that lead to the commission of atrocity crimes. But the ICC is a very important piece of the puzzle. There is good evidence that world leaders – and rebel leaders – are already modifying their behavior in response to the Court’s existence, for fear of an ICC indictment. But that is a fragile normative shift, one that will easily be replaced by cynicism if the United States and other countries don’t start putting some muscle behind the Court’s arrest warrants. The ICC has also given victims around the world hope – the hope that no one is above the law and that their despair can be salved with justice – that somebody will listen to their tales of horror – that they are not alone. Finally, there is evidence that post-conflict justice can lead to reconciliation even in situations that seem impossible; many of the perpetrators in the Bosnian conflict have apologized to their victims and there can be no denial that genocide took place during the Bosnian war, thanks to the work of the Yugoslavia Tribunal. The same is true in Rwanda.

Thus we see that little by little, incremental step by incremental step, we can make progress in dealing with the problem of mass atrocities. Can we continue to advance the ball, building upon the success at Rome, or is the pendulum now destined to swing back in the other direction? Like Anne Frank, I continue to have faith in the peaceful future of humankind and to believe, as she did, that people are basically good. I also believe in America’s ability to help bring about such a future, but faith has to be combined with

action. As director of the Whitney R. Harris World Law Institute, I have the honor to lead an institution with a direct and personal tie to the Nuremberg legacy, as my dear friend and colleague, Whitney Harris, is the last living member of Justice Jackson's podium prosecutorial team. We are currently leading a project to develop a crimes against humanity convention – a great unfinished work of the Nuremberg Trial – and I will be representing the small and recently independent country of East Timor during the ICC Review Conference held in Uganda next year as pro bono legal counsel. We are also proud to cosponsor, along with our good friends at the Robert Jackson center in Jamestown, the third annual International Humanitarian Law Dialogs, that will bring together the world's living war crimes prosecutors and leading figures in a conference on international justice, to be held here in Chautauqua at the end of August.

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In any event, let me say in concluding, my dear Chautauquans, that by your presence here today, by your support of the arts, your religious devotion, your commitment to dialogue and to interfaith understanding, by providing this uplifting space for the presentation of ideas, and by listening not only with your minds but with your hearts, you too are helping to advance the cause of humanity. I am deeply honored to have been invited here to speak on this important topic, for the Chautauqua Institution is one of our great national treasures – and I can think of no better place than here to address this very important question.

I humbly thank you for listening; and I will be delighted to answer any questions you might have.