



Briefing to the UN Security Council Arria Formula meeting  
on the 20<sup>th</sup> anniversary of the entry into force of  
the Rome Statute

By

Zeid Ra'ad Al Hussein  
President, International Peace Institute

24 June 2022

Thank you Madame Chair,

In his closing statement before the International Military Tribunal at Nuremberg, Sir Hartley Shawcross, speaking for the United Kingdom on 27 July 1946, ended his summing up by squeezing into one paragraph what the Nuremberg trial was about. He conveyed an eyewitness description:

“Without screaming, or weeping these people undressed, stood around in family groups, kissed each other, said farewells, and waited for a sign from another SS man, who stood near the pit, also with a whip in his hand. During the 15 minutes that I stood near, I heard no complaint or plea of mercy. I watched a family of about 8 persons, a man and a woman both about 50 with their children of about 1, 8, 10 and 2 grown-up daughters of about 20-24. An old woman with snow-white hair was holding the 1 year old child in her arms and singing to it and tickling it ...The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed to the sky, stroked his head and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons ... among them is the family I have mentioned.”<sup>1</sup>

Shawcross then described in the most graphic detail how this family was murdered. When he concluded, the courtroom was stone silent.

A father talking tenderly to his 10 year old son, trying to numb the horror awaiting the little boy, pointing to the sky. Other than silence – like that now, what else could possibly accompany such an image?

Three days earlier, on 24 July 1946, the UN Security Council had convened to consider the credentials of the representatives of Mexico, China and Brazil. Focusing on UN membership was a necessary undertaking perhaps, but it seemed so detached -- too detached, from the events at Nuremberg. Little did its distinguished members know then, but this would be an estrangement with international criminal justice that would last for another 47 years. Only with the creation of the Ad Hoc Tribunals in 1993 and 1994 did the Council become intimately involved with the pursuit of justice, though under very specific conditions. Any hope for its universal application, was made brutally clear to us – not in Rome in 1998, but in the Security Council on 10 July 2002 – 56 years after Nuremberg.

In the open chamber that day, we debated the entry into force of the Rome Statute, and two days later the Council welcomed it, not with a cheer mind you, but with a resounding slap in the face. Resolution 1422 (2002) adopted by 15 votes in favour, and none against, was a disgrace. Because it was adopted under Chapter VII, many of us who spoke on the 10<sup>th</sup>, said we believed it to be *ultra vires*. In what universe of logic, we argued, could a court of last resort with jurisdiction over the worst crimes imaginable to us, be considered a threat to International Peace and Security? And it was not Russia and China sponsoring the resolution, but the US. The Russian

---

<sup>1</sup> Gilbert, Gustav Nuremberg Diary, (London 1948) p.265

representative said the Rome Statute “was one of the most authoritative international treaties of our time” and his Chinese counterpart said it “is the hope of the world’s peoples that this institution [the Court] will ensure the perpetrators of the serious international crimes are brought to justice and will deter future crimes.”<sup>2</sup>

Two years later – in a dramatic confrontation which would be almost unimaginable today, Kofi Annan stepped in, and spoke forcefully against the resolution’s second renewal; the result was the sponsor could not muster the nine votes needed, and the American effort collapsed.

We knew – I think as far back as Rome, the development of the Court and its relationship with the Council would be matter of fits and starts. Indeed, the Bush Administration in its second term did a partial U-turn and dropped its brazen hostility toward the ICC, and the first of the two referrals to the Court took place. Yet over time the uneasiness on the part of Russia and China only grew and soon it was abundantly clear to all of us, the relationship between the Council and the Court would in practice almost become ceremonial. And then Russia and China vetoed in May of 2014, a draft resolution tabled before the Council calling for the referral of Syria to the ICC. To us in the Council at the time, it seemed utterly cruel. What a miserable way to treat those who have succumbed to, or survived, the extremes of human suffering?!

Twenty years after the entry into force of the Rome Statute, the Council is now 76 years old and the Court (having been inaugurated in 2003) is 19, and neither is giving a command performance, with the Council seemingly in a state of partial paralysis.

So what do we do, when it comes to the cooperation and support the Court requires from the Security Council? We are fortunate to have Karim Khan with us today [and he’s addressed the point eloquently] [and I will leave it to him look ahead, and speak of what’s needed in the future.]

For my part, I will restrict myself – after many years spent with both the ICC and the UN, to one last observation: to have any credibility with the millions of people out there, people who need desperately both of these institutions to function, and function properly, the Council and the Court must demonstrate – to the maximum extent possible, consistency. Moral consistency. If the Council saw fit to refer the situations of Darfur and Libya to the ICC, then it must do so with respect to Ukraine and the crime of aggression. Its members must keep trying. This most horrendous act of aggression perpetrated by Russia against Ukraine, also targets the UN squarely, and what the UN represents. It is an aggression by a permanent member almost without precedent in recent times – the unjustified attempted public execution of a neighbor.

Consistency.

---

<sup>2</sup> S/PV.4568

When the ICC itself prioritizes the crimes of the Taliban, and rightly so, it must do so without downgrading markedly, its attention to the alleged wrongdoing by the coalition forces in Afghanistan.

Consistency, because we notice.

The late Canadian song-writer Leonard Cohen used to sing a song called “Everybody knows.” Everybody knows the deal is rotten, went the lyrics. And the deal is rotten when attention is selective, made – it is perceived, rightly or wrongly, on the basis of political considerations; when justice is seen as having become a stick, and no longer thought of as a scale.

Without consistency, what long-term hope is there for us?

This question is as valid today as it was on 10 July 2002, and on 27 July 1946.

We should not be left in any doubt however, that parents of frightened children who are seconds away from being bombed or shot, in far too many conflicts around the world, will still only have the sky to point to; for there will be no salvation for them here on Earth, without consistency.