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When You Get to the Fork in the Road, Take It: Reflections on Fifteen Years of Developments in Modern International Criminal Law

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LOYOLA UNIVERSITY CHICAGO INTERNATIONAL LAW
SYMPOSIUM KEYNOTE ADDRESS

WHEN YOU GET TO THE FORK IN THE ROAD, TAKE
IT: REFLECTIONS ON FIFTEEN YEARS OF
DEVELOPMENTS IN MODERN INTERNATIONAL CRIMINAL LAW

David M. Crane*

It is a real pleasure to be here, and I want to thank the sponsors: Professor Moses, thank you for that nice introduction, and also thank you to the Loyola University Chicago International Law Review and the students who work so hard to make this happen, particularly Paula Moreno and the Symposium Editor Tracie Pretet, who has worked so hard to get me here.

What I really want to do here is step back and reflect on modern international criminal law, which as I'm talking about is the fifteen years since 1993-94, in general. And then I want to talk about the International Criminal Court, which is seven years old, almost eight years old as we speak. The title of my remarks is "When You Get to the Fork in the Road, Take It," and I'll explain that a little more as we go along, but I think we're kind of at a situation here where this can go very well or this can go. . . differently.

Modern international criminal law - it has been an amazing fifteen years. I mean just an absolutely amazing 15 years. But it hasn't been a perfect fifteen years. In fact, all of this started at the end of what I call The Bloody Century, the 20th Century. Just think, historians in the room, of the horror that took place during that century. I've done some calculations, it's certainly not scientific by any means, and I'm probably off fifteen to twenty-five percent, but I calculate about 215 million human beings were killed by various means other than natural causes or disease in the 20th Century.

You know we started out the 20th Century with a king in Europe, King Leopold II of Belgium, who along with other cynical monarchs, carved up various portions of the world, including Africa. He wanted the Congo for his own personal fiefdom and during the decades that he controlled that part of the world, between eight and fifteen million Congolese were killed by various means during this time frame. You know then we had World War I, and we had the three pashas as they began to merge politically in Turkey and we saw the Armenian Genocide. What was done to these individuals? Well not really very much. Though we see at the Armenian Genocide period some discussion about investigations and doing something. In fact, we even see the words "crime against civilization" for the first time. But still, the only way the world knew about most of these were through authors actually, Mark Twain, Sir Arthur Conan Doyle,

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When You Get to the Fork in the Road, Take It

Joseph Conrad wrote novels about some of these horrors, particularly in the Congo.

The world paused for a little bit after World War I; in the 1920's we even thought about outlawing war. We even created a family of nations called the League of Nations to maybe try to settle our disputes peacefully. Of course, throughout all this time, Russia has imploded, it's now the Soviet Union and we have a new individual who is starting to destroy his own people, and that is Joseph Stalin. Now throughout his reign, in the 30's all the way up to the early 50's, we calculate that about 34 million Russians and various other members of the Soviet Union were destroyed during his reign. Of course we had World War II and the obvious horror that that was. And then the world paused.

The reason I'm giving you this history lesson is because I think it's really important for all of us to stop for a moment and reflect, to use this as the cornerstone as we continue to discuss the rest of the story today. Right in the middle of this darkness, and I certainly underscore darkness, for a period of four years we see the international military tribunal at Nuremburg. The world actually said wait a minute, I think we have to do something about this. So they assembled at Nuremburg and prosecuted individuals for new crimes, crimes that had never been put together, crimes that in reality had never been charged before. And we know the history of the Nuremburg trials.

But also during this time frame we see the creation of the United Nations, the U.N. charter, another attempt to settle our disputes peacefully, and followed very quickly by the Universal Declaration of Human Rights. You know, for the first time in the history of mankind, we had international precedent that said a human being that is born has a right to exist. And that truly is an amazing concept. These are all cornerstones to modern international criminal law and precedents that my colleagues, the Chief Prosecutors in Rwanda, Yugoslavia, Cambodia, what they have used to prosecute individuals for gross violations of international humanitarian law.

So we have the Universal Declaration of Human Rights, we also have the Genocide Convention, which specifically highlights a specific international crime, never again, no more. Well we'll see about that. Then again of course we had the Geneva Conventions of 1949, the cornerstone of applying the rule of law on the battlefield, and I might say as an aside it's the only international treaty that all nations of the world have actually signed. It's absolutely essential to modern international criminal law. And then after 1949 the world went to hell in a hand basket.

Mutually assured destruction, the Cold War, two major powers having a death grip on each other, looking at each other and hoping that the other one would blink. What this did is it locked the world into one side or the other and the challenge was that we as one side would accept countries and regimes that had terrible records of violations of human rights, yet they declared they were pro-Western versus pro-Soviet. And we would accept these individuals, and the list is a little bit embarrassing. But these individuals, they understood this too by the way, that as long as I mouth the words that I'm anticommunist, then I can get away with what I'm doing in my little corner of the world. And so this went on

When You Get to the Fork in the Road, Take It

for decades, until amazingly we found out that the Soviet Union was somewhat a Potemkin village. Remember those heady days, when we watched the wall fall? I can remember when I was in the military, standing there at Checkpoint Charlie, with the tanks, the guards, the guns, the smell and tension of the place, but to see that - and I've been back to Berlin many times now, and walked through the Brandenburg Gate, as opposed to just look at it, because there was a minefield there - it was just incredible. So the wall falls and the world begins to reconsider what do we do with individuals who commit these horrific crimes.

And this was put on our plate immediately with Yugoslavia and the Balkans. And we see that the I.C.T.Y., the International Criminal Tribunal for the Former Yugoslavia is created. One year later, we had no idea this was going to happen, but we have a horrific situation in Rwanda, and we created another tribunal, but largely under the wing of the I.C.T.Y, because the Chief Prosecutor was the Chief Prosecutor of both. The appellate court was essentially the same. I really wasn't pleased with that, frankly. It made for some inefficiencies as far as organizational management, to have the Chief Prosecutor in the Hague with the I.C.T.R. down in Arusha, it caused some problems, and that particular court drifted. Then of course we develop along, we see other problems in Sierra Leone, we have to account for the killing fields in Cambodia, the world is now starting to build precedent, the world is starting to build a methodology, a willingness, a political willingness to create these courts. And of course throughout all of this we have the International Criminal Court, which we'll talk about in a few minutes.

Now, the panelists that you're going to see here - I like coming to these because it's in some ways old home week, we have an alumni, we've been around for fifteen years, so we have Minna Schrag, and Sara Criscitelli and David Scheffer, these people were at the beginning. These people are like the people who were at the American Constitutional Convention, and they were there when they set up the I.C.T.Y. I mean that's going to be fascinating, and I encourage you to ask them what it was like. Because the last time, in 1993, the last time we considered crimes against humanity, or doing something against people who do bad things was at Nuremberg, and frankly Nuremberg was the only time before them. What a fascinating thing to do. We had the same issues related to Sierra Leone - a brand new court, different concept, different perspective - where do you go to find the law?

We've got some good news here. So what are the legal victories? The first one is, frankly, that we're doing something. I know that sounds trite. But we're doing something, right or wrong, and it isn't perfect, and I really want to footnote here: don't put any of these institutions so high on the pedestal that they're always, in your mind, failing. We tend to put it: Robert Jackson, opening statement, Nuremberg. You know, it's just a group of dedicated human beings with a statute, procedures, and a willingness to step forward and seek justice for victims of atrocity. It's not complicated, it's not magical, nothing happens when you're appointed to these places, you don't get an ash mark on your forehead or a secret handshake. You're just lawyers, investigators, paralegals, clerks who have the privilege - well, you think you have the privilege, until you really start getting

When You Get to the Fork in the Road, Take It

into it and some days you don't think it's much of a privilege at all - but you do have the real, true privilege to seek justice for individuals.

That same feeling is the same way here if you're prosecuting in Cook County. It's the same thing, and the rules really aren't that different. It's a familiar feel when you stand in the courtroom, it looks like this – and this would be a great international tribunal I might add. But again, nothing magical. I'm always asked "What do I need to do to be a prosecutor in the International Criminal Court? I have a PhD in human rights, I've been a social worker, et cetera." I say I don't need you. I need somebody from Cook County who has been an Assistant State's Attorney, who has been prosecuting from Loyola School of Law, starting with D.U.I.s and working up to major felony cases in a period of ten to fifteen years, and is a damned good trial lawyer. Those are the people I was hiring in Sierra Leone, and I will tell you that's what they're hiring even to this day.

I hope I'm not bursting too many bubbles here, but take a lot of criminal procedure, get in the courtroom, do moot court work, because if you really want to get in there and put bad guys in jail, that's what you've got to do. You can take courses in international humanitarian law, and it's important because you have to understand this concept, but certainly what we're hiring is trial lawyers, defense as well as prosecutors. So moving along, we're doing something, right or wrong. The thing that I'm particularly excited about, now that we've moved beyond the early days of 1993, we have robust rules of evidence and procedure, we have rules we can count on and more importantly count on the judges to actually follow them! I can remember going into the courtroom in Sierra Leone thinking that my tribunal is not actually working from the same rules that I am. They were, but sometimes the sophistication of the judiciary at the international level is potentially problematic. But again, we do have consistent, robust rules of procedure and evidence and that is so critical for many reasons. One is it gives the appearance that the tribunals are up and running; two, that they're fair and there will be a fair result. That's absolutely critical when you're prosecuting in places where there is absolutely no respect for the law. So if you have good, solid rules of procedure and evidence, that goes a long way. And of course along with this you have solid jurisprudence now. In 1993, there was nothing other than Nuremburg, and there were some great stories we were telling last night about the books we used to create the I.C.T.Y – there weren't any, were there? The form book, the rules of procedure and evidence, where was that? Again, we have come a long way in fifteen years. Now we really do have quantifiable law and procedure, which we can prosecute individuals with, and those individuals can be assured of a fair trial. We're not making it up anymore. It is there, it is open, defense counsel and accused have it in front of them, they can rely on it, they can use it to defend themselves openly and fairly in court.

The truth is the jurisprudence is amazing. Concepts like war crimes apply to both internal and international armed conflict. We kind of knew that with the Geneva Conventions and the protocols, but in reality that hadn't been jurisprudentially settled. We see that that actually applies now, and that's important because we don't have much international armed conflict any more. You're not going to see the United States Army and sixty-two other nations in Iraq taking on

When You Get to the Fork in the Road, Take It

the Iraqi National Guard tank to tank. Armies in the field maneuvering, the World War II scenario, those aren't the conflicts we're going to be fighting in the 21st century. A lot of these dirty little wars are internal, but that doesn't mean anything, because we can still choose to prosecute those who choose not to follow the laws of armed conflict, which is essentially if you violate that, a war crime. We've been fleshing out crimes against humanity, which in my mind is one of the key international crimes by which we hold people accountable. You can prosecute a great deal based on the principles of crimes against humanity, the widespread and systematic actions of governments against their own people, and we've been fleshing that out since 1993 and that is so important.

We have some exciting developments. We have an initiative going on where we might even be putting together a convention related to crimes against humanity. This is a very important step forward. One that I am particularly pleased to see is that we're really starting to get serious about gender crimes and prosecuting people for gender crimes. We've had some incredible cases come out that have solidified principles like rape as a tool of genocide, which is absolutely critical, and I think over time a huge deterrent. The bottom line is we're not going to let these individuals, particularly in these dirty little wars, these internal armed conflicts, get away with this, because really the true victims, I have found, and I certainly saw it in spades in Sierra Leone, the true victims in this are always women and children. It's the non-combatants that suffer the most. And up to the 1990's we all acknowledged that, we all knew that, we did it somewhat in Nuremburg, but we never went after these individuals individually and held them individually criminally responsible for what they did to children and women.

We see the development of that particularly in Rwanda, and then in Sierra Leone where really almost all of the victims, casualties in this horror story, were women and children. So I had the opportunity, jurisprudentially, to do something about that, and I announced when I was going to Sierra Leone, that the cornerstone of my indictments against these individuals who bear the greatest responsibility was going to be gender crimes. And we had in the statute an ability to do that. We had rape, we had sexual slavery, we had terror, we had those things that you could prosecute somebody for - what they were doing to the women by the tens of thousands in that war-torn country. All of a sudden, as we began to develop the facts, about a year into our work we realized that something different happened in Sierra Leone. You may recall the term "bushwives" where they would gather women and girls and herd them into the bush like cattle, they would brand them, they would breed them, they would work them, they would trade them, and then like any animal, they put them down when they were no longer of use. In fact we don't know how many, but there are still bushwives today. Is that just rape? Is that just sexual slavery? So we were sitting around a conference room one day, we had round table discussions with my trial counsels and investigators and we asked, "What do we do with this?" This was more, we had already indicted most of those who bore the greatest responsibility, so the indictments were already out. We were starting to come up with facts that we just couldn't fit. It was bigger than rape, bigger than sexual slavery. So what do we do about that? We went back to the statute, went back to the law, looked at crimes against

When You Get to the Fork in the Road, Take It

humanity, and in the statute there's paragraph J and it says "and other inhumane acts." Whoa, that sounds like a huge door you could drive a Mack Truck through if you think it through.

So instead of just using it as a category we actually use it as a force of law, and so we amended the indictments to reflect other inhumane acts, in what has now become and has been appealed and upheld both at the trial level and the appellate level, we now have a new gender crime called forced marriage in times of armed conflict. So when we have the bushwives or we have a situation when women are being herded around like cattle, we now have a new crime against humanity. So again, these are important developments.

Head of state immunity, my goodness gracious! If a head of state decides to eat his own people and destroy them – both literally and figuratively – he's not immune. That was a theory in a law review article ten years ago. But starting with the I.C.T.Y., through to the Court for Sierra Leone, we've taken some pretty bad guys down. Heads of state - the cornerstone principle of this now is *Prosecutor v. Charles Taylor*. He made, I think, a huge error when we charged him with seventeen war crimes and crimes against humanity and he contested it at the pre-trial level, even though he was still sitting head of state, and guess what, he lost. So it was only a matter of political time before he was handed over to the court for a fair and open trial. This is a huge development, in my mind this is one of the biggest developments, because now it's the head of state. Remember all of the heads of state I talked about historically? You know, they destroyed, and I don't know if I gave you the number, but at the end of the Cold War the number of people killed by their own governments is around 115 million of that 215 million I told you about from the Bloody Century. Now we can go after sitting heads of state, we're doing this, and it's so important.

Another one that's so important is child soldiers. If you're going to take children and force them to kill, rape, maim, mutilate, pillage and plunder, you're going to be charged for that, be you a head of state or someone who bears the greatest responsibility. So now we have the Special Court for Sierra Leone, which was the first time this crime was charged, since it was the first time we had the crime itself, the unlawful recruitment of children into an armed force under the age of 15. Basically child soldiers. Even though I had the statutory authority to prosecute children between the ages of 15 and 18, I chose not to, because in my mind no child has the mens rea to commit a war crime, not at the international level. Children can do horrible things, but I did not prosecute anybody from the 35,000 child soldiers in Sierra Leone, I chose not to prosecute anybody of that age, and I think I was correct in that.

There were challenges in all of this too, besides some very important steps forward. We've learned, as we learned at Nuremburg, and as we learned throughout the 20th century, that the bright red thread throughout all of this is politics. You know, the decision to do something, to create the court, to develop the statute, to appoint a prosecutor and judges and to actually hand somebody over for trial, that's not a legal decision, that's a political decision. We have to understand that, we have to respect that, and we have to work with that, because I think its naive to not respect that or understand it or work with it. If you keep

When You Get to the Fork in the Road, Take It

lashing out about it and beating your chest about it instead of working with the issue you fail. You won't get your work done. The bright red thread is politics and we have to keep moving that down the road. We have to keep working it. Because at the end of the day we get good results and we get bad results. Rwanda was really a political decision to finally stop it. Handing over Charles Taylor was a political decision – we were ready to take him, that wasn't an issue. But for the majority of my tenure as the Chief Prosecutor, my work was political, building the groundwork to have him actually handed over. And that actually happened when I was speaking at Valerie Oosterveld's university, I think it was March of 2006. I was speaking, my phone rang, it was my former special assistant saying "I'm looking at Charles Taylor being escorted into the jail cell," and she was crying. It was pretty dramatic stuff, when I announced it the whole room stood up and applauded. But that was a political decision, that was not a legal decision, the legal groundwork had been done. So that is a challenge. And that's a potential threat to the whole system we have all put together.

Another problem is, as they found at Nuremberg, when it was called "victor's justice," is we're finding in the modern era the idea of "white man's justice." I remember Charles Taylor ranting and raving "This redneck racist is going after me! The white man is again back in Africa going after the black man!" And that has to be respected, and we always have to be mindful of that. We don't want to be accused of white man's justice. I have this rhetorical question, and I think it's an important one: is the justice we seek, the international community, the Western World, the justice they want? I would posit there are other alternatives to justice than international justice, and we have to be mindful and respectful of that and we have to use it if it allows us to have justice ultimately. Remember, international law is a system of justice, not the system of justice – that's critical in our thinking.

Another challenge we have is peace versus justice. Should we have peace first, and then justice, or justice first, and then peace? Well, that's a dog chasing its tail, and I'm not going to get into it as a specific point this morning, because that could be a whole conference in and of itself and we would still at the end of the day not agree. All I'm saying is that's an issue that is used for and against modern international criminal law. You have to be mindful of it as well. And that's all I'm doing here, is highlighting these issues.

Other related issues I think that are subtle, but important in modern international criminal law are old rules (not that old, 1949) and new battlefields. In other words, as I alluded to at the beginning of my remarks, it's not tank on tank, it's not the United States Army taking on the Imperial Japanese Army. It is subtle combatants who all look the same as civilians. Lawful combatants, unlawful combatants, what do we do about that? Do we apply the Geneva Conventions and international humanitarian law to these individuals? Have the rules changed? I'm not sure. Like peace versus justice, there are important arguments on both sides, but this is going to test and strain our system of modern international criminal law because we prosecute individuals for war crimes, in violation of the laws of armed conflict. So again, be mindful of that.

When You Get to the Fork in the Road, Take It

A lot of the actors are non-state actors, and I'm not just talking about the Taliban or Al-Qaeda, but they are also criminal cartels, multinational corporations, pirates, etc. Again, a question, only rhetorical, but one that we have to address someday, and that is, can a multinational corporation be individually criminally liable for international crimes? Now we have case law and discussion on the civil side, but can we indict a multinational corporation for war crimes and crimes against humanity? I think that's an emerging doctrine, a fascinating discussion, and again possibly a great conference. But again, we're going to have to do something, because I certainly ran smack dab into corporations in Sierra Leone. You see them a lot around Valentine's Day. I won't mention the name, but certainly I considered whether I could indict a certain corporation, but it's like tobacco litigation, you've got to have the right facts. I don't have the law on my side. The facts were probably there, and in these situations you don't want to take on something like this and lose. But someday, some Chief Prosecutor somewhere, is going to have the right facts, with the right law, to do something about it. Because it is a subtle problem that we ran smack dab into in West Africa.

Now the concern is that these entities and others don't follow the norms, the norms that we set up in the 1940's. They're either above it and immune or not even in the scheme, never even considered. But again, we have to be thinking about clever ways, us lawyers, to bring them in appropriately to hold them accountable, should they violate the law.

Another challenge is new technologies. What if we have a battle that's only in cyberspace and people die? What if it's a widespread and systematic attack against a particular group of human beings, but it's only done through cyberspace, and you can run through all kinds of scenarios. Does the law apply? Do the rules apply? Again, these are issues that we're going to be facing in the 21st century. And another challenge, and I think this is subtle and may not be an issue but I'm just starting to feel it, and that is the actual application of international humanitarian law. All the hard work we've done over the past 15 years, is it starting to be perceived as applied equally?

Do we prosecute non-Western nations but don't prosecute modern Western nations? Who is actually held accountable? Is justice applied equally, or are we going back to the refrain we heard at Nuremberg of victor's justice? Or might makes right? It's a subtle kind of thought, I'm not saying it's going to be a problem, but if you talk to people south of the equator they raise this question. They ask you very hard questions along the lines of "you're certainly all over us, but what about you?" And you don't really have much of an answer.

Another issue is responsibility to protect – it's a great idea, but I would caution because it's being perceived by some as another tool by which larger Western nations can, for their own morals or what have you, or for some cynical political reason, can use it to intervene in the sovereignty of a nation. I'm not saying that's true, but it's an issue that has to be considered.

So now we've kind of set the general modern international criminal law four corners. Right in the middle of all this is the permanent court. The world has decided that we're going to have a permanent court, like it or not. Who would have thought it? Even in 1993, 1994, did we really think that we would have

When You Get to the Fork in the Road, Take It

within ten years a running international criminal court, working, with over one hundred nations a part of that court? We were probably thinking about it but it was really almost a pipe dream at the time. As they said in the Frankenstein movie, "It's alive!" It's up, it's walking, some people say it's not real pretty, but it is moving and crashing about the village. Again this issue of the International Criminal Court, it's this Holy Grail. When you go to the Hague you always know where the I.C.C. is because there's this light that always shines. . . No. It's a group of people who have an important job, in a very good looking building, but there's nothing magical about it. I have to tell you nobody walks around with a halo. They're taking baby steps. And the reason I overdramatize this is because we've taken the I.C.C. and put it on some pedestal and it isn't going to meet it – we've put the bar so high that everybody is kind of getting frustrated now. This is a permanent court, it's going to be here a hundred years, it has to work its way through it. It has to do what it is going to do.

I love politicians and diplomats because they ask you questions, and I remember talking to the Security Council and talking to the president of the Security Council, and he asked me "If we gave you more money, could you prosecute more people?" How do you answer that in a way that you don't just start laughing? Because again it shows you a mindset of it's cash, money, logistics, when are you going to be over it? It's a war crimes weary world and we'd like to move on. Politicians like to move on. But they've realized with the I.C.C. that it isn't moving on. It'll take it's own time. But it's alive, it's moving forward. In the scenario of crawl/walk/run it's still crawling but someday and certainly soon it will be running. But it needs the luxury of time to spread its wings.

It has survived a rather serious onslaught by the United States of America – boy did we go after it. Can you imagine, it just seems like yesterday Article 98 agreements. That Frankenstein monster, we were running at it with a stake to drive into its heart! It survived, and one of the interesting things about it was that the commanders in chief of the various combatant commands were actually telling the Bush administration you're killing us here. We can't cooperate with nations because we may 1) be violating the law and 2) no one is working with us anymore. And most of these commanders in chief of these various regions do more than just war, they work with armies to try to teach them the laws of armed conflict and how to modernize themselves and how to conduct themselves appropriately on the battlefield, and people stopped working with us. The American Service Protection Act, the Invasion of the Hague Act, I remember President Bush standing before the 10th Mountain Division in New York (I was in the Hague at the time) when he mouthed the words that if anyone seizes an American soldier he will invade the Hague - boy did I have a testy morning. I'm at the international level but I have American written all over my forehead and I also had a bull's eye on me that day.

Again, the court is up and running, it's investigating, it's referring cases, there are indictments and trials. It's doing what its rules of procedure and evidence call for. What are the challenges? One of the biggest challenges, and this is like any tribunal: support. They give you the authority, they give you the mandate, and then they say they don't like what you're doing. "Why did you indict

When You Get to the Fork in the Road, Take It

Charles Taylor? You're screwing everything up, dust is in the air. You've screwed up the peace!" It's a strange feeling, they give you the authority and send you off and then they get mad at you for doing what they ask you to do. Well, that's a real problem. And it continues even with the I.C.C. We certainly can use the Al-Bashir case as an example – head of state, peace versus justice, we can't just take him down. But I'll guarantee you, it might not be this month, it might not be this year, but President Bashir will be prosecuted before the International Criminal Court. If they don't, then they might as well just go ahead and close the doors. I'll guarantee you if they're serious about it they'll make a political decision to hand him over. It took almost two years for them to hand over Charles Taylor, but they did, and some time they'll hand over Omar Al-Bashir.

Another challenge is the United States of America. We want to do something with it, we quietly support it, we even have exceptions to ASPA, the Dodd Amendment, we can support it in certain ways, but the U.S. is not part of it. And throughout all of this, as we move towards Kampala and the seven year discussion on aggression through the Princeton Process, the long-term important process of defining the crime itself and setting up a jurisdictional triggering arrangement, the U.S. has not been a part of that. A lot of great U.S. citizens have been a part of it, but officially the United States government has not been a part of it. Now all of a sudden we have a move toward possible cooperation, and they're showing up now. Kampala is three months from now. So you have a 900-pound gorilla showing up in the room with their own opinions. There's going to be some real delicate dancing going on and there's going to be a real challenge because we can't go to Kampala and walk away with a failure – it can't be seen as a failure. What will be seen as success? There's a stock taking exercise that will take place, but I think we should de-link that from the rest of it, from the aggression issue, and work those issues. But the aggression definition and triggering mechanism is going to be a huge problem. I represent the section for International Law at the American Bar Association's efforts on this, and we've been working with both sides, the assembly of state parties and the U.S. government having dialogues back and forth, along with our colleagues at the American Society for International Law. We're trying to find opportunities for the U.S. to compromise, because the bottom line right now is the U.S. will not buy off on the current situation, the definition and the triggering mechanism. What we're trying to do is get them to agree to say we agree with the definition, because really the definition is largely the 1973 General Assembly definition of aggression. Let's just agree what aggression is and have working groups to study further the jurisdictional and triggering mechanisms. The United States will not buy off on the current situation. What that means is this could be used by naysayers of the court as a way to back further away from the court itself versus trying to stay subtly engaged throughout the process.

So, this is only the beginning. Modern international criminal law has been evolving for fifteen years. The International Criminal Court, together with the regional courts and domestic courts will move slowly forward to seek justice for those victims of atrocity around the world. The International Criminal Court will

When You Get to the Fork in the Road, Take It

be the center point for the evolution of modern international criminal law, the standardization of rules of procedure and evidence, and jurisprudence, that will tackle the new circumstances that we will face in the 21st century. It remains to be seen whether any of this will have a direct effect on deterring future atrocities. It remains too soon to tell. I would like to think that in the past fifteen years the rule of law has begun to shine its light into dark corners of the world that are the seedbeds of future atrocity, and shrink back atrocity. I am cautiously optimistic. From Nuremburg, to the ad hoc tribunals, to the international hybrids and the domestic international courts, the International Criminal Court is the new kid on the block. It represents the hard work of the past, the challenges of today and a hope that the future that mankind will be ruled by law and not by the gun.