Transcript

First Peace, then Justice: Dilemmas of Human Rights Enforcement in our Times

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Professor Bereket Habte Selassie:

I. Introductory Remarks

The essence of the theme of my lecture is summed up in the subtitle – dilemmas of human rights enforcement – and the main title – First Peace, then Justice – is an expression of the attitudes of most rulers, particularly in Africa. This condition may be summed up as the dialectic of peace and justice, as I will explain later. As part of the theme of this lecture, it is important to point out that even in states that have constitutions with a Bill of Rights, and where human rights charters have been ratified, as in much of Africa, the security imperative is often made to override the demands of justice.

Before I address the topic of my lecture, let me make a few general observations, by way of introduction. Peace is an essential condition in the life of any social order. Indeed, its vital importance is captured in some common expressions in several languages. We are all familiar with the Latin Pax Vobiscum (Peace be with you) uttered several times a day in some Christian religious services. Its Arabic equivalent, Assalaamu Aleikum (Peace be with you) is uttered by every Muslim and, in many countries, even by Christians, as a form of greeting, followed by the response, wa aleikum ‘asalaam (and also with you). There is also the Hebrew, Shalom. It is a great irony that the region that gave us these words and the three great religions of the world has been the scene of what seems to be an unending state of war.

Some parts of Africa that have been engulfed by conflict, like the Horn Region and the Great Lakes Region, have become the testing ground for the operation of the dialectic of peace and justice. A crucial question facing leaders and policy makers in general, in situations where there have been genocidal atrocities as in Rwanda and the Congo, is this: should leaders who have committed crimes be brought to justice even where national leaders insist that peace and reconciliation must be given priority, prevailing over justice? In Uganda, the political leaders have been known to accept such a compromise contending that peace and national reconciliation demands that the leader of the Lord’s Resistance Army, who has been charged as a war criminal by the International Criminal Court (ICC), be spared prosecution in the interest of peace and national reconciliation. Unfortunately, the leader of the LRA rejected the offer of reconciliation and moved to Eastern Congo where he is committing more atrocities.
In Rwanda, in the face of the enormity of the problem following the 1994 genocide, the government of Paul Kagame modified the demands of justice in two ways. First, in place of following the ICC criminal process, they resorted to traditional processes of justice – the *gacaca* – which places a high premium on peace, reconciliation and a consequent social harmony. Secondly, they let many of the minor offenders in the genocide go free, or with minimal punishment. Then there is the much celebrated South African model of Truth and Reconciliation. Perpetrators of crimes committed during the apartheid regime were forgiven on condition of a plea of guilty accompanied by remorse and apology to the victims of the crime, or to their surviving relatives.

In these cases, the demand of justice was sacrificed in the interest of the imperative of peace and national reconciliation. In both the *gacaca* judicial process of Rwanda and the South African Truth and Reconciliation, a traditional African concept of justice is at work in a process that substitutes rehabilitation and restitution of social harmony for punishment. But remorse of the culprit and a ritual of apology and readiness to make amends is a precondition for forgiveness, whereas in the ICC and Eurocentric judicial process in general, punishment is the governing concept.

**Dilemma of Human Rights Enforcement**

Let me now focus more narrowly on the theme of my lecture, the dilemma of human rights enforcement in our times. The theme involves two clusters of issues.

1. First there is the issue of the balance between liberty and security in the application of human rights principles. The main topic of my lecture, ‘First Peace, then Justice’ represents in short hand the question: how much of the citizen’s liberty may be limited in the name of security? Or alternatively, can peace, or the security imperative, be allowed to dispense with liberty?

2. Second, there are issues related to international humanitarian law. These issues concern the restraint imposed by international agreements on the behaviour of state actors in military conflict situations, in terms of their treatment of war prisoners and wounded as well as civilian populations. I will address the two sets of issues separately, beginning with human rights. To that end, I will begin by
citing a couple of cases to put the lecture in the context of current controversy.

One case concerns the recent indictment of the Sudanese President, Omar al-Bashir, by the ICC, which has made the question of sanctions for human rights violations frontline news. The creation and work of the ICC is one of the most exciting, if controversial, matters of recent years. The other case of interest is the case of Binyam Mohamed, a former internee at the Guantanamo Bay Detention Centre and his treatment at the hands of US interrogators. This case has also refocused attention on the issues of human rights violations at international levels. The case of Binyam Mohamed, a Muslim convert of Ethiopian origin, became a subject of dispute between American and British authorities because he is a UK resident. Mr Mohamed claims that he was tortured by American interrogators at Guantanamo Bay, and that British intelligence operatives supplied the American interrogators with information on how to deal with him during interrogation, and are thus accomplices in the charge of human rights violation contrary to the UN Convention against Torture, and US law on the prohibition of torture.

There have been a few test cases coming out of the Guantanamo detention of “Afghanistan” prisoners. Most of the Guantanamo detainees were captured in Afghanistan by American troops following the defeat of the Taliban by American-led forces in the 2002 Afghanistan war. Although called Afghanistan prisoners, several detainees were nationals of other countries, including Yemen and Saudi Arabia. In the case of Hamdan vs. Rumsfeld, the detainee, who was charged in the Guantanamo military tribunals, was a Yemeni national. His lawyers argued that the military tribunal at Guantanamo lacked jurisdiction over Handan’s case and took the case all the way up to the US Supreme Court. The Supreme Court accepted the argument and ordered the case closed, much to the chagrin of the Bush administration, whose contention was that the security of the United States required ‘Afghanistan’ detainees to be tried by military tribunals. In many other cases, where American law enforcement or intelligence gathering organisations like the CIA could not find evidence to support their case, sent the detainees to countries known for practicing torture in a procedure known as rendition, in order to extract evidence.

It has also been alleged that, after Ethiopia’s invasion of Somalia in 2006, Ethiopian authorities captured and handed over to American intelligence operatives, several people of Somali origin, including citizens of Canada and some European countries, on suspicion that they were members or
collaborators of Islamic extremists fighting the government of Somalia, allied to Ethiopia.

In the case of Sudan’s President, Omar al-Bashir, the ICC charged him with war crimes and crimes against humanity for ordering the Janjaweed militia to commit atrocities on hundreds and thousands of people in the western Sudan region of Darfur. It is interesting to note that the indictment does not, to my knowledge, include the crime of genocide, an issue that has occasioned a great deal of controversy among some scholars and between them and some American journalist and human rights activists who claim that genocide has been committed. The acts of the Janjaweed are tantamount to ethnic cleansing of the kind for which Slobodan Milosevic of Yugoslavia faced similar charges at The Hague, and it is a matter of interpretation whether these constitute genocide. Before it charged al-Bashir and issued a warrant for his arrest, the ICC sought legal cover from the UN Security Council. Earlier, China had consistently sided with Sudan in the demands for sending UN peacekeeping troops to Darfur. It is therefore very hard to imagine China not exercising its veto power in the ICC’s demand for charging al-Bashir.

II. Human Rights

I now come to human rights, its meaning and scope. First, then, what is human rights and how is it related to peace and stability as basic values that sustain a social order?

Human rights have become part of humanity’s common legacy, enshrined in almost all modern constitutions. The texts of most constitutions seek to strike a balance between liberty and security. In this respect we need to make a distinction between constitutions and constitutionalism. Constitutions are the written texts containing the basic principles pertaining to the powers and responsibilities of government, and the rights and duties of citizens. Constitutionalism is the operation of constitutional principles as interpreted by the courts of law and followed by the other two branches of government.

Constitutionalism is linked to democracy and the rule of law in the sense that all are equal before the law and that no one is above the law.

Throughout human history there have been assertions of human rights in one form or another, but the 1776 American Declaration of Independence, and the Declaration of the Rights of Man (Le Droit de l’Homme et du Citoyen) coming out of the French Revolution, thirteen years later, sought to codify and universalise human rights. The latest expressions of such codification are
found in the Charter of the United Nations, in its Universal Declaration of Human Rights of 1948, and several other international legal instruments, notably the 1966 Covenants on civil and political rights and on social, economic and cultural rights.

Underlying these expressions is a noble idea that has spread by its own power and is flourishing in our time, the idea that certain fundamental rights are inherent to all humanity. This idea is among those that humankind always struggled to assert, values that individuals intuitively felt belonged to each person as part of natural existence.

Even in societies ruled by monarchs, historically, a system of checks on arbitrary exercise of power has been prevalent. Rebellions occurred where the monarch was abused, or exceeded the limits of his authority, as King John of England did leading to the revolt of the barons, which produced the Magna Carta, to cite just one illustrious example; there are many other examples.

There is no need for me to give details of the contents of human rights. All modern constitutions detailed provisions on the right to life, liberty, and equality as well as on a host of other rights. I will cite two examples that are invoked more often. The first concerns equality guarantee. In terms of this right all person are equal under the law. No person may be discriminated against on account of race, ethnic origin, language, colour, gender, religion, disability, age, political view, or social or economic status. This right is the foundation of democracy; in fact it constitutes the intersection of democracy and human right. Put another way, democracy is a fundamental human right.

The second concerns right to human dignity. According to this fundamental right, the dignity of all persons is inviolable, and no person may be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. Moreover, no person may be held in slavery or servitude, nor required to perform forced labour not authorised by law.

Human dignity is the aspect of human right that lies at the intersection of faith, law and morality. It is generally accepted now that religious belief supports commitment to a moral and legal regime of human rights. This partly explains the fact that many human rights NGOs are members of the faith community.

The principles contained in these two sets of rights – equality and human dignity – are so clear that I do not need to explain them further.
To round up this part of my remarks, let me stress one obvious fact. Human rights as a set of universal values must be based on justice and depends on concrete procedures for sanctioning its breach. Legal rights need machinery for their enforcement. In this respect, national laws, starting with the constitution, are more effective than international law. Indeed the problem of enforcement constitutes the principal challenge of international law. As the international law of human rights has depended on national laws for enforcement, naturally, problems occur when national governments are themselves subjects of violations of human rights. The case of Omar al-Bashir is a perfect illustration of the problems of international law as regards its enforcement. For as long as President Bashir does not leave Sudan, he will be secure from apprehension. But if, for any reason, he is outside of Sudan, for example in Europe, he could be arrested and brought to trial at The Hague. This is one of the most exciting and promising features of the treaty that created the ICC, and also its principal challenge. The challenge comes first due the opposition of some governments, as well as some repercussions caused by the reaction of the government of the accused. In Sudan, Bashir has expelled all foreign relief organisations, putting the lives of the recipients at risk.

It sounds unbelievable, but the arrests of Milosevic and Charles Taylor have shown the way for the future development of international law. For the time being, this development has been frustrated by the refusal of the United States, Russia, China and India to sign on the Rome treaty, establishing the ICC, which is empowered to try anyone who is charged with committing genocide, war crimes and crimes against humanity. The refusal of the United States is based on domestic political reasons, where there would be no sufficient vote in the US Senate to ratify the treaty. On the other hand, from its birth the United States accepted international law – or ‘the law of nations’ as it was then called – as part of US law. This fact is borne out by the Aliens Tort Statute enacted by the first Congress of the United States in 1789. That Statute, as amended a few times, has been invoked by nationals of other countries to bring suit against individuals of other countries in US federal courts for violations of their human rights. For example in the case of Abebe-Jire vs. Kelbessa Negewo (1996), three Ethiopian women brought suit in the district court in Atlanta against a police officer alleging that he had tortured them during the time of the military government. The officer was found guilty and deported to Ethiopia to face trial and ordered to pay damages. Other foreign officials, like the former Nigerian military strongman Abusallam Abubakar, and Ghanaian leader Assasie-Guiamah, were forced to flee the US
after action under the Alien Torts Statute was initiated against them. I can, therefore, see a time soon when the United States will sign onto the ICC treaty.

Let me now repeat the question I posed earlier: whether there is such a thing as absolute right, or are there limits, and if so, what are they? This is an area where power and rights intersect. For example, in the United States, this subject has occasioned a great deal of debate in recent years since September 11, 2001 and the Iraq war. With respect to the controversy concerning human rights and security and the limits to be placed on them, there are generally accepted constitutional guidelines. Most constitutions also make exceptions to the limits. There are certain rights in constitutional law that we call non-derogable rights. An example of non-derogable right is the right to human dignity; that is to say, no one is allowed to humiliate or torture anybody under any circumstances. Thus the infamous images we saw at Abu Ghraib in Iraq are prohibited under this constitutional rule as well as under the UN Convention against Torture. Similarly, the rights to a fair trial and to an order of Habeas Corpus are non-derogable. Everyone has the right to a fair trial, to confront and challenge his accusers and to the use of a lawyer of his choice.

As to the nature and scope of human rights, scholars of the subject of human rights divide them into first generation rights, second and third generation rights. This division has now been rationalised by the 1966 international treaties known as Covenants; there are two of them:

1. The International Covenant on Civil and Political Rights (ICCPR), and
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR).

The first covers the classical (or first generation) rights such as the right to assembly and freedom of press, of movement etc. The second covers what became known as second and third generation rights, including the right to economic and social security, the right to food and to clean air.

The Covenants are supported by Optional Protocols geared toward their general application.

In Article 1(1), these treaties provide a uniform clause that has wider and deeper (one might even say revolutionary) implications. This common Article of the two treaties lays down a general principle as follows:
‘All persons have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic; social and cultural development.’ Concerning enforcement of these rights, ICCPR established the Human Rights Committee to act as the entity to hear complaints of violations of human rights. The Committee, which consists of 18 experts appointed by the UN General Assembly, has given interpretation of the treaty in the process of entertaining complaints against states accused of violation when the alleged violator state has declared its acceptance of the Optional Protocol.

Some 70 countries have agreed to permit individual citizens to petition under the Optional Protocol. ICCPR in particular makes provisions for complaints of non-compliance to be heard by the Committee when instituted by other states. Individuals claiming to be victims of violation may lodge complaints. In addition, the Committee makes periodic observations on the meaning of parts of the treaty, and reviews periodic reports on compliance, which parties are required to present and to explain before the Committee. The ICC has also a victims’ protection section, an important feature of its function.

In addition to these international covenants, there are regional conventions and charters providing for the protection of human rights. Examples are the European Human Rights Convention and the African Charter of Human and Peoples Rights – I understand that there was an event here at Chatham House on Africa’s new Human Rights Court. As I said earlier, there is no lack of charters or constitutions; the problem is a lack of compliance. For example, can victims of human rights abuses sue African leaders? To quote Miss Eliza Doolittle of Pygmalion fame, not bloody likely!

Next I will deal very briefly with the second cluster of rights, namely international law of human rights.

**III. International Humanitarian Law**

International humanitarian law is applicable in situations of armed conflict. As in human rights in general the same spirit of care and concern is at work in the case of the life and well-being of victims of armed conflict. Historically, the better angel of human nature prompted some people to pioneer the idea of defining a neutral space and separating those engaged in armed combat from innocent civilian populations who become victims of the conflict, on the one
hand, and those wounded or taken as prisoners. The end of World War II revealed millions of victims of the horrors of war, including hundreds of thousands of refugees. The post-war international community convened a meeting to deal with these issues and, as a result, the Geneva Conventions of 1949 and the Convention on Refugees of 1951 were adopted. We are only concerned with the Geneva Conventions here. The Geneva Conventions is a codification of international law governing armed conflict, also known as international humanitarian law, which was traditionally called the laws and customs of war, or the law of armed conflict. The aim of such laws is to reduce unnecessary human suffering in situations of armed conflict.

The reason why the plural is used is that there are four Geneva Conventions. They are as follows.

A. The Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (Convention I).

Generally speaking, the Geneva Conventions are related to international conflicts. But in 1977 the Additional Protocol II to the Geneva Conventions was adopted to provide for the protection of victims in non-international armed conflict. The Additional Protocol together with Article 3 of the Four Conventions (known as the Common Article) provide for protection of all victims of military conflict between or among forces within nations.

All those involved in armed conflict are bound, at a minimum, by the following rules.

--Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms, and those put out of action by sickness, wound, detention, or any other cause, must in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, or any other similar criteria. To this end, the
following acts are prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

i. Violence to life and person, in particular murder of all kinds, mutilation and torture;

ii. Taking of hostages;

iii. Outrage upon personal dignity, in particular humiliating and degrading treatment;

iv. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees, which are recognised as indispensable by civilised peoples.

Moreover, the wounded and sick must be collected and cared for. It is worth repeating that these rules apply to international as well as non-international conflicts.

In conventional international armed conflict the parties to the conflict must include two or more states. In non-international conflict, such as Iraq’s insurgency, only one side (the US and Coalition forces) is a state. The general consensus of expert opinion in this respect attaches importance to the phrase ‘each Party to the conflict’ used in Common Article 3 of the Geneva Conventions and the Additional Protocol. The argument is that armed groups must have a minimum degree of organisation and discipline. According to this argument, the term ‘each Party’ binds a non-signatory Party. For example, the UN Security Council has passed a number of Resolutions reminding the warring parties in Somalia of their obligations under the Geneva Conventions.

Apart from the Geneva Conventions, the Additional Protocol and the 1966 Covenants, the international community has provided more muscle to the enforcement of international rules governing human rights. The creation of the ICC is the latest sign that the development of international law on human rights is on the right track.

IV. Conclusion

The development of international law has been incremental, though there have been decisive moments that precipitate change, moments inevitably
following a disastrous war. As mentioned earlier, the Geneva Conventions came into being following World War II, as was the Charter of the UN. Similarly, the Treaty of Westphalia in 1648 was adopted at the conclusion of years of war among Europe’s powers. That treaty ushered in an era in which the European nations pledged to abide by the doctrine of international law, known as *pacta sunt servanda* (treaties must be observed), enunciated by Hugo Grotius, the father of modern international law. On the other hand, many modern treaties, including the ICC treaty, have come as a result of rational and peaceful process. The fact that four powerful countries including the United States have not signed on to the treaty establishing the ICC is a clear indication that we are not out of the woods yet in this matter. In the absence of a general American acceptance of all the rules of international law, there is no possibility of enforcing international law, such as the rules governing the ICC and its judgment. We may have to wait a long time before America can accept the ICC. Not even a popular President like Obama can do this because he would need the support of the Senate of the United States to ratify the Rome treaty.

But it must also be remembered that there has been a dispute on the universality of the idea of human rights. Some maintain the view that it is a Western idea, e.g. former Chinese President Jan Zemin was engaged in a verbal exchange with Bill Clinton. Jan Zemin, when challenged on China’s record of human rights, told Clinton that the idea is a Western invention to which Clinton peremptorily responded that Jan Zemin was on the wrong side of history. He might have added that China is signatory to the UN Charter and a permanent member of the UN Security Council; and that Article 55 of the Charter states that the UN shall promote ‘universal respect for and observance of human rights and fundamental freedoms for all’.

Sudan’s President, Omar al-Bashir, made a similar statement to that of China’s former President, in response to the warrant issued for his arrest by the ICC. Al-Bashir is the first sitting President in Africa to be charged for war crimes and crimes against humanity. So far, the ICC has launched four major investigations – in Sudan, the Congo, Uganda and the Central African Republic. It has issued 12 arrest warrants, and four of the accused are in detention while trial has begun in one case. Most of these concern African leaders, which has raised the question whether the ICC is interested to deal with offenders in developing countries only. Clearly there is much work that remains to be done.
Q&A

Q: The Ogaden region poses an important question. Has the Ethiopian government respected human rights law and human rights regulations?

A: Let me disabuse you of the idea that I am Ethiopian. I am not. I do not represent the Ethiopian government – and so as to the question of why the government has changed its policies, I do not know. In the early days, the Ethiopian government was willing to accept NGOs, and it instituted a regime of free press. Presumably, now there is a feeling that the NGOs and the press have been critical of the government. This is regrettable, as Ethiopia had real promise.

Q: What do you think about the relationship between truth and reconciliation? Are trials or amnesties the answer?

A: I am of the persuasion that amnesty and forgiveness is the best policy. There are always demands for justice, and all those who commit crimes must be brought to justice.

But, take the case of Rwanda, which is an extreme case. It would take years – hundreds of years – to prosecute all those who were guilty of crimes. The Rwandan body politic would be affected by the strong divide that would be maintained. Instead, they used a traditional form of justice. People who knew the perpetrators could ask them questions publicly, and they would often have to pay penance, but they would be allowed back into society. I don’t think they could have found a better system for Rwanda.

The South Africa model was better in the context of South African history. The leaders, headed by Nelson Mandela, decided that it would be better to forgive. I was in South Africa in 2003, and at Robben Island I interviewed some members of government. They told me that Mandela decided to forgive even before his release.

Q: Why has the Professor conveniently decided not to mention Omar al-Bashir’s trips outside the country? Would Meles Zenawi be guilty of human rights violations for his actions against Somalis of Ethiopian origin and Eritreans?

A: I could have mentioned al-Bashir’s visits to Asmara and Qatar. Why he felt it safe to travel, I do not know. He wouldn’t come to Europe. There was a
case of a Rwandan woman arrested in France under similar circumstances, and this shows that the ICC is taken seriously here [in Europe].

An indictee can be arrested anywhere by anyone. Meles should have been charged for expelling Eritreans, and he lost my respect when he expelled 70,000 Eritrean people. It was an utterly immense, stupid mistake, as was the invasion of Somalia. He felt that extremists in Somalia were undermining his government. It would take one to give a definition of crimes against humanity to answer your question. Is the expulsion of people a crime against humanity? For Meles, it was a politically unwise move. If in the process of expulsion, acts of humiliation were carried out, then of course he and everyone else involved should be brought to justice.

Q: You started your presentation from a constitutional background. How can we judge the success or failure of any constitution if we judge it retrospectively? The first Article of the US Constitution mentions that a black person is 3/5 of a human – it shows that a black person was not seen as deserving in the US at that time. Every constitution has shortcomings and weaknesses. How many African constitutions include local influences? You were in charge of the Eritrean constitution. How much of it was indigenous input?

A: Yes, it is ironic that a man of Jefferson’s genius wrote this. Jefferson owned slaves, and he had children with one of them. It took a civil war for that grave mistake to be corrected.

In Africa, there are people who value Shariah Law, and so some constitution-makers were tested – how could they reconcile the law of the nation and the Shariah Law? People will have to recognise the importance of women’s rights and also principles of justice. This will take a long time.

Q: On the rights of the people – how much right does the indigenous population have to its resources? What recourse to international law do they have, other than violence?

A: I am an academic, but I was also a freedom fighter, so I understand the feeling behind the question. When people are denied human rights, they have the right to revolt. Obviously, this would involve violence. In the case of the Ogaden people, they do have a right to revolt. If you remember, the Eritreans
made many peaceful aims before resorting to violence. The people went to the bush and waited for thirty years. Revolution is not a tea party. Essentially, I am a man of peace. The Ogaden people tried negotiations with the state government and Shell before the revolts. Wherever there is denial of human rights, attempts must first be made peacefully – but people have a God-given right to revolt.

_Q: As an African statesman, your contribution to international law has been great. My question is about international law versus awareness creation. Populations in Africa are not aware of their own human rights. How do we overcome this? Should it be made part of the schools’ curriculum, or should there be a specific learning process?_

A: Your question is about civic education, and I agree entirely. In my constitution-making experience in Eritrea, civic education was thought of highly. Much of the budget was spent on meetings in town halls and villages. Information was put on the radio and in four of the country’s vernaculars. There is no doubt in my mind that creating awareness is key.

_Q: There is an argument that there is selective justice in the way that the ICC conducts itself, and questions have been raised about whether proceedings have been correctly followed. My question is with respect to whether justice should come before peace. The Sudan People’s Liberation Movement (SPLM) is one political organisation spearheading the question of why peace should be given a chance. In the case of al-Bashir, a deferral would have calmed the situation in Sudan. NGOs have now been expelled. It will also be difficult to enforce the decisions that the ICC has made._

A: Were the proceedings of the ICC rushed? I don’t know. Attempts to take the matter to the UN were made before the idea of charging al-Bashir was entertained. For at least a year, the thinking was to send in troops. But eighty percent of Sudan’s oil is exported to China, and so China blocked these moves. Whether it was rushed or not, the fact is that the ICC holds the right to arrest anyone it suspects of being guilty. Was the indictment of al-Bashir practically or politically wise? I don’t know. Perhaps not. But the threat of the warrant of arrest will probably be more effective than its actual exercise.
Q: When it comes to the border conflict between Ethiopia and Eritrea, is there a role that the international community can play? What could the UN or the US do? I ask about the US because as part of its War on Terror strategy, it was threatening to put Eritrea on the ‘Axis of Evil’ list. Now there are not so many resources to take action in the region, and the border mission there ended in 2007.

A: Are you saying that the UN failed in the decisions of The Hague? The Hague's decision is clear. The two parties agreed at a summit to commit the border issue to the court at The Hague. The result was a mixed bag. Eritrea was awarded the village which was the bone of contention, and so in that case Eritrea was justified.

The verdict was decided legally and it should have been implemented, but Ethiopia dragged its feet. From a common sense view, it would seem reasonable for the parties to agree together, but the leaders were like two bald men fighting over a comb. They are intelligent leaders, and very successful militant leaders. The whole world held its breath to see what they could do and because the cartography has been technically settled, for the international community the situation was solved. But in terms of people, it is different. I am hoping under Obama there will be some new initiatives.

Q: How does the ICC decide which cases carry more weight? I consider Meles Zenawi and George Bush to be the biggest war criminals, but will charges be brought against them?

A: It is always difficult to decide which case to bring forward first. International law is a new development; a twilight zone. Through the ICC, people would decide on which cases should take precedence; it is very subjective. Will Bush and Blair be brought to trial? No. Will Meles? Maybe, because he is a smaller fish. I would like to believe that the case against al-Bashir was brought because they were outraged by what was going on in Sudan.

Q: The title of your talk was about formalistic peace and justice, but you talked about politics. How far do you see it as a chronological thing – is peace before justice cyclical?
A: Which came first, the chicken or the egg? This is a philosophical question which is not for me to answer. Each government has different priorities – one might think that peace should come first; another might think it should be justice. There are people who would not be happy with either decision. What you are asking is essentially for a value judgement.

Q: Somalia has been suffering because of illegal fishing. International military brigades are operating in the waters, from the same countries that are fishing illegally. What will the solution be? At the moment it seems that the more might you are, the more right you are.

A: On the matter of piracy, I agree. The Somalis who have been capturing ships have a well-deserved case that is not being listened to by the international community. The fish have been affected by nuclear dumping. If the pirates get money from the capture of ships – all luck to them.

Q: As an expert on constitutions, when so many were tried and killed during your time as Investigation Commissioner, why did the constitution of the time not save them?

A: Your question is wrongheaded, misinformed and highly provocative. I was Investigator-General under Haile Selassie when I was very young, and eventually I resigned from the government. Haile Selassie was overthrown by a popular revolution which was hijacked by the military. Many young people died – some of my students included. I stayed in Washington until the leaders of the time asked me to come back, which I did. There was a Commission which I was part of. It was intended to look into the role of the military, but what it did was it investigated the failure of the government. Under the criminal court of the time, the maximum penalty was fifteen years but the military court wanted blood. They wanted to pass a retroactive law that would include the people under our investigation. We had found that only five people should have been subject to the investigation, but before the ink had dried on our report, the Derg had executed sixty people. The Commission had only wanted five people to be prosecuted. The Derg was after me, so I then went to Eritrea and got involved in the struggle there. If you read my memoir, you will find this story in detail.
Q: Human rights are not documents; they are part of the natural law. Even though the US and other countries have not signed up to the ICC, they cannot sign out of human rights. But if wrongs and rights are dependent only on documents, can there ever be peace?

A: No state can truly sign out of the ICC. Being signed in or out of the treaty does not mean that your members cannot be arrested by other states. Having said that, the law always travels with force. There will always be politics, but peace must be based on justice.