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Former French Minister of Justice, former President of the Constitutional Council

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Thank you very much. We will also return to Russia later in the debate. It is now all Robert's – the voice of international justice.

Robert BADINTER, Former French Minister of Justice, former President of the Constitutional Council

Thank you Dominique. My subject is obviously different, but it has a direct bearing on the preoccupation of Thierry de Montbrial and the direction taken by the work we've had on globalisation. I am going to say a few words about a situation which is generally not fully appreciated, and which is a real, almost Copernican revolution in the sphere of justice, one which gives a person of my generation enormous satisfaction at the progress made towards a seemingly unattainable objective: the birth of true international criminal justice. I must remind you that, from the beginning, that is to say the very moment when we drew up and voted for the Universal Convention of Human Rights, there was a vote for a convention against genocide, and in that convention which is from the end of 48, the indication was already there: we shall create an International Criminal Court to try the perpetrators of the worst crimes against humanity. That is to say genocide and other forms of these crimes.

And then time passed. Time passed. The jurists continued to work. It was academic. With the end of the cold war, what was essentially an intellectual exercise became a real possibility politically, the possibility of ensuring that the perpetrators of the worst crimes that could be committed, that is to say crimes against humanity, genocide, forced population transfer, mass rape, massacres, etc... the list goes on, are brought to trial. Centuries of experience had shown that these trials were invariably not being held by national authorities, far from it, and that they should be held at an international level, that a system of international criminal justice should finally be established to ensure punishment for whoever strikes against the very essence of humanity. This is a very great cause. I would simply like to remind you how much the victims of genocide or the families of victims of genocide, when one has had the opportunity to hear them, support the idea punishment for these crimes.

There is a demand for justice there which is inherent in mankind and which is not always satisfied. To see the perpetrators of these massacres quietly growing old among their grandchildren or going fishing in the nearby lake, honoured and even mayors of their town, is just not tolerable. This was the harsh reality that arose in the events following the crisis and the war in former Yugoslavia. That was what – and I really want to pay tribute particularly to President Mitterrand who understood this human demand very well and to Boutros Boutros-Ghali – that was what brought about the movement which has been going on now for twenty years, and which has made considerable progress, albeit insufficient, in the field of international criminal justice. That is, to ensure that the main individuals responsible for the greatest crimes are hunted down and tried.

The steps are easy. We realise that. First we had the international criminal court for the former Yugoslavia. Today it can be easily assessed. I have it here. 161 people were indicted. 126 cases were tried. 64 people were convicted. Some were transferred to their national jurisdiction. A number of cases are still going on. Actually what we did there was to establish, with many difficulties for reasons that are known, a genuine system of international criminal justice situated in The Hague. The same thing, with even more difficulty, for the former Rwanda, and we have the succession of *ad hoc* jurisdictions. I would just mention those of Sri Lanka, Cambodia and Sierra Leone. All of that to get to our real common aim, the creation, not merely of jurisdictions that come into being after the fact to convict the perpetrators, the standard model being Nuremberg, but a jurisdiction that is international, on a world scale and permanent.



Permanent, meaning that those who commit these crimes shall know, since they are not extinguished by lapse of time, that one day they may also find themselves at The Hague, under arrest and having to answer for their crimes.

Unlike these *ad hoc* jurisdictions that I have mentioned, the International Criminal Court was not a creation of the Security Council. It was not a chapter 7 resolution, it was a treaty. It was the Treaty of Rome. Today, we have 116 States which have ratified it. Not the largest ones, which is significant. Neither the United States, which has always loathed international jurisdictions, except when it controls them, nor Russia unfortunately, nor the Indies, nor China and I could go on, are members of the Treaty of Rome. The Treaty of Rome and the United Nations are linked organically because the Security Council can use the International Criminal Court at will, if it so decides, through the prosecutor. Now, nearly ten years have passed since the Treaty of Rome was implemented. That was in June 2002. In these ten years, what has been the outcome?

We had many problems in the beginning. Today we have 7 situations which have been referred to the International Criminal Court. I use the term situation deliberately because it means a series of crimes to be tried. It does not indicate the number of cases under way, but situations which the International Criminal Court is dealing with at present. These situations correspond in order to the different methods of referring cases to the Court. Three of them have been placed in terms of traditional crime under the control of the International Criminal Court in their own right. They have been placed. They have been referred because it can try what has been done. Then you have two situations which have been referred by the Security Council. You know them. It is Darfur and in recent days and weeks, Libya. These were unanimous decisions by the Security Council, thereby showing that it regarded the International Criminal Court as a legitimate jurisdiction that met the requirements of the law.

Finally, we have two which relate to a power of the Court to act on its own authority in territories that come under the treaty and here it was after investigations by the prosecutor, himself approved by the Investigating Division, and we are clearly talking here about Kenya. The very last is the Ivory Coast. Everyone thinks of Mr Gbagbo who is now where he should be, in a cell in The Hague. I will not look at the results. I simply want to show that it is an irresistible movement because it meets, and I say it again, a profound need of the human conscience and of man's sensibility. It is, in the light of the past and in a dimension of global perspectives, a true radical transformation of all transfers of sovereignty, outside the military sphere, and even in my opinion beyond the monetary sphere: the transfer of the power to judge. The King holds in his hand the sword of justice which is the symbol of his power and the most compelling one at that.

The third is that one does not pass judgement without laws stating why you are judged. What are these laws? Why do we try these men? Because the International Community, and especially the 116 States that signed the treaty, and even the great powers on the Security Council when they have resorted to the International Criminal Court, agree to recognise that it is on the basis of the fundamental texts reprimanding the worst attacks on human rights that we agree that the worst crimes should be tried. When you, Thierry, mentioned yesterday the values that we lack or are obscured, I listened. Indeed, I said to myself: that's true, but here there is a very significant reassuring factor. We judge these atrocious criminals for the worst crimes. What are these worst crimes? The worst attacks on human rights. In this regard, in the very difficult development of this justice, which is also inegalitarian because there are immune States, obviously those who hold a veto in the Security Council, let's not delude ourselves, there is real progress here that brings hope. Believe me, from someone who has followed this for such a long time, that is to say 28 years.

To finish, the International Criminal Court depends ultimately on nation States. Why? Because it has no autonomous authority. There are no international judicial police to act as enforcers for the prosecutor. In conducting its investigations it depends entirely on the facilities that are placed at its disposal, because it has a budget and it obviously needs that budget to achieve its objectives. In the periods that we are familiar with, it has not been so easy to get these resources. But they are essential. I would add, and this will be my note of reservation, that it is a fact that for an international criminal justice system to be totally credible it must be universal. That is to say that its prosecutions must be in accordance with the seriousness of the crimes committed and not according to the political interest of member States. There are still too many States which, thanks to the Security Council, have the benefit of complete immunity. When I say States, I think of the criminals who are at the head of these States and who, I hope, after losing power, will end up losing their freedom for life in the cells at The Hague. Thank you.