The 2012 Wolfgang Friedmann Memorial Award, given annually to an individual who has made outstanding contributions to the field of international law, was presented to M. Cherif Bassiouni on April 3, 2012 in New York City. The award is given in memory of Professor Wolfgang G. Friedmann, founder of the Columbia Journal of Transnational Law. Professor Bassiouni is the thirty-eighth recipient of the Award.

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Professor Bassiouni played a leading role in the formation of the International Criminal Court, and has served as Independent Expert on the Rights to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms, and as co-chair of the Independent Committee of Experts on Drafting the Convention on the Prevention and Suppression of Torture.

In addition, Professor Bassiouni has served as Chair of the UN Security Council established Commission to investigate international humanitarian law violations in the former Yugoslavia, the UN Commission of Inquiry for Libya, Independent Expert of the Commission on Human Rights in Afghanistan and, most recently, the Bahrain Independent Commission of Inquiry. The U.S. Departments of State and Justice have also benefited from Professor Bassiouni’s expertise on projects relating to international drug trafficking and international control of terrorism. In 1979 and 1980 he consulted for the State Department, providing guidance for the defense of the American hostages in Iran. He is the author of twenty-four, and the editor of forty-four, books on international criminal law, comparative criminal law, human rights and U.S. criminal law. He is also the author of 265 articles published in law journals and books.

In 1999, Professor Bassiouni was nominated for the Nobel Peace Prize for his contributions to international criminal justice. Among many other distinctions, his honors include the Special Award of the Council of Europe (1990) and the Adlai Stevenson Award of the United Nations Association (1993). Professor Bassiouni earned an L.L.B. from the University of Cairo, a J.D. from Indiana University, an L.L.M. from The John Marshall Law School and an S.J.D. from The George Washington University.
Thank you for this Award, for your warm applause, for your support and, more importantly, to the many friends who have come to this event, thank you for your friendship. This is obviously an emotional moment for me and it is difficult to smoothly shift gears into an academic or semi-academic speech, so I ask for your indulgence.

I. SHOOTING DOWN INJUSTICE

I begin with an experience I had as a child. We have all experienced certain significant childhood events and in many cases they have significantly impacted our lives. Mine was life-shaping. It was during World War II in Egypt, in 1942. Field Marshal Rommel’s forces were advancing on a point that would later be known worldwide as the Battle of El Alamein near Alexandria. If the German forces had prevailed at El Alamein, they would have occupied Egypt and rolled all the way to the Suez Canal. There, they would have occupied the Canal, cut the lines of communication between Europe and Asia and—especially of importance for Britain—with India. The tide of the war would have changed. At the time the Germans were occupying Greece and it would have been easy to make a link between Egypt and Greece, and the Eastern Mediterranean would have been totally controlled by the Nazi forces. El Alamein was sort of the last stand for the Allies, and it was a very important stand.

The German army, the Africa Corps, was by then weakened. They were not well supplied because the British Air Force was preventing supplies from coming by sea from Italy. As a result, the German forces were stretched thin. But they had a few planes and, just before the Battle of El Alamein, they sent a squadron of planes to bombard Cairo as a show of force. It was more a symbolic bombardment than anything else, and not of true tactical significance. Some of you, I am sure—like Professor [Richard] Gardner, who is here and of my generation—will remember the bombardments of that period in Europe.

The planes did not fly very high, searchlights criss-crossed the sky and the hissing sound of the falling bombs was frightening. The warning sirens wailed as the searchlights lit up the night sky. It was scary, and that night my father was away on a mission for the Foreign Ministry. My mother and the nanny decided to take me down to the cellar for safety. We went down the stairs in the dark.
But on the ground floor, in the confusion caused by fleeing tenants, I sneaked away and went out the building’s entrance. I had a toy gun and it was a moonlit night. I went into the middle of the street, pointed my toy gun at the sky and waited to see a plane overhead, while my mother came running out of the building to pick me up and bring me to safety. I fought her, saying—in the way young Egyptian boys were taught to say whenever they referred to elders, always calling them an Uncle or an Aunt—“Leave me, leave me, I want to shoot down Uncle Hitler!” I was five years old going on six.

The antecedent to shooting down this “Uncle Hitler” is, however, more telling because, as a small child, I had no idea who “Uncle Hitler” was.

Approximately a week earlier, my father, a career diplomat who was on the career fast track in the Ministry of Foreign Affairs, was asked by the Minister to receive somebody privately and establish what is known as a backdoor-channel to Jewish leaders in Palestine. My father’s career was quite bright as his father was President of the Senate, which of course helped, but he was truly gifted and hard working. He announced to my mother that we should stay in the private quarters of our house because he was going to talk to this important foreign gentleman. We were told not to disturb them, which only made my mother curious. There was a small corridor leading to the front part of the house, so she moved near it and hid behind the curtains to eavesdrop. Seeing my mother doing that made me curious too, and I did the same. She couldn’t very well get rid of me because my father would hear her. So, there I was, listening but not really understanding any of it too well.

The doorbell rang and the guest came in. He was short, stocky and sort of square looking, like he was made of one whole piece with a head stuck on it. He was rather nondescript, the type of person who could stand in the middle of an empty room and you wouldn’t notice him. He came into our house, and he spoke with a strange accent that I couldn’t understand, though I spoke English well. I whispered to my mother, “What is it?” She said, “It’s a German Jewish accent.” I didn’t really know what a German Jewish accent was. So, this man starts talking, and at a certain point my father does a gesture of disbelief with his hand. Now, please remember that we are speaking about the year 1942. It turns out that this visitor was describing a German death camp to my father, and my father said, “Oh, that’s absurd. It’s impossible. That can’t be!” In 1942 nobody in Egypt believed that such camps existed.

Fast forward to 1958: I was doing graduate work at the University of Geneva. My professor was Paul Guggenheim, who had
left Germany in the early 1930s. Professor Guggenheim confirmed to me that he and others had gone to Alan Dulles in Bern—in 1943—with pictures showing the railroads and some descriptions of what was happening at the death camps, in particular at Auschwitz. Alan Dulles was skeptical. The objective, at least according to Professor Guggenheim, was to get General Eisenhower to bombard the railroad tracks leading to these camps. Eisenhower found that there was no strategic value to diverting Allied planes to do that. So much for saving human lives as a “strategic” goal. Things have not changed much since then, even in this globalized age.

Returning to 1942: My father was telling the visitor that what he was saying was impossible. Slowly, the gentleman stood up, took his jacket off, rolled up his sleeve and showed a tattoo. Obviously, my mother got much more out of this gesture than I did and she started crying. And then I began to cry because my mother was crying—still not really understanding what was going on. My mother took me back to my room and said, “You know, what you saw was something terrible. Here is a human being who was treated like an animal, branded like an animal.” I asked, “Why?” And she said, “Well, they brand them like this when they want to kill them.” And I kept asking the usual questions that a six-year-old would ask, obviously exasperating her. But I got the message and it affected the course of my life.

At that point I decided that this “Uncle Hitler” was a bad person. So, at the first available opportunity—when that raid came over Cairo—I stood in the middle of the deserted, moon-lit street trying to shoot his plane down. This feeling has stuck in my mind, and over the course of time it has only been reinforced. It has made things I read about the world not only more meaningful, but it has forged a connection we must all have between what’s in one’s head and what’s in one’s heart. The problem we all have as human beings is, how do we connect what’s in the mind and what’s in the heart? How do we make meaningful an emotion and a thought? How do we convert feelings into thoughts that we can put into action? How do we become actors and not observers? Above all, how do we avoid being indifferent?

II. INDIFFERENCE IS A CONSTANT

When I was in the former Yugoslavia¹ I was investigating

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crimes committed in Sarajevo, and drove up in the surrounding mountains near the town of Pale. There, I was taken to a small motel described to me by a man whom I had interrogated for killing nineteen women. He had repeatedly gone to that motel—a place where the Serb soldiers and paramilitary brought women to be raped. I went into that motel, that lodge, which had a wood-paneled lobby and a little side area with a reception desk and little boxes for the keys to each room.

With the narrative of the man I had previously interrogated in mind, I noticed that the boxes for the room keys were empty. And I imagined the keys. I imagined men coming into the motel and the man at the desk pulling out a key and handing it out, saying “Let me give you Number 9. Number 9 is a very cute one . . . .” This thought made Hannah Arendt’s famous words “the banality of evil” come to life, because this was the most banal of acts—reaching for a key at a motel. It was a banal gesture, done many times in so many hotels, by so many people around the world. And yet, behind this very banal act lay a striking evil because its transfer meant that a woman would be raped, and in some cases subsequently killed. Simple acts have great effect. This is something that I believe each and every one of us must remember—that we must remind ourselves of. But not merely in abstract intellectual terms. Remind yourself by feeling it, by transposing yourself into that position. Above all, remind yourself of the position that you may be in—not as a perpetrator, not as a victim, but as a bystander. And the question you must ask is: “What would I do?” Once more: “What would I do?” The atrocities we have seen throughout the history of humankind, and certainly the worst of them—the Holocaust—would have never happened if there had not been the amount of indifference in a world that watched as it happened and did nothing for so long.

Indifference is a constant. In 2006, I decided to find out how many conflicts had occurred in the world and how many casualties there had been. I could not find the answer. So, from 2006 to 2008, with about forty-one researchers, I tallied a total of 313 conflicts that had taken place between 1945 and 2008. These conflicts resulted in ninety-two to 101 million people killed. That is twice as many as in both of the World Wars put together. This figure, quite suddenly,


3. Id.
brings a phrase to one’s mind: “Never again.” But it happens again and again. Ninety-two million people—how did this happen? How did this go by? How did the world watch Rwanda happen? How did everybody look the other way when we had General Dallaire saying that it was going to happen? How did we watch approximately eight hundred thousand people be slaughtered? How did we look the other way between 1975 and 1979 when an estimated two million Cambodians were killed? How did we remain disinterested because of the Kissingerian rationale that “the enemy of my enemy is my friend,” or something like that?

How did each and every one of these conflicts occur? How did we depersonalize things? How did we suddenly become desensitized? Because that’s what it is—after every tragedy we accept it as a baseline and are motivated to react only if the next tragedy is greater than the prior one. In 1915, 200,000 or more Armenians were killed by the Ottoman government. (Later on that figure became a million, because if it wasn’t a million, it wouldn’t have interested anybody!). So now we have become so desensitized that anything under one million does not really move us. It is only when it gets to this level that, suddenly, we feel the urge to do something about it and not simply make speeches. Whatever happened to “one is too many”?

I think this is an important issue that we have to constantly rekindle in our hearts. And I use “we” here not in the generality of everybody in the world, but “we” as jurists. We are the ones who have really spent some time learning about the rule of law and about the importance of having a legal system mediate between barbarism and civilization. The question is: What is the responsibility incumbent upon us to ring the bell; to raise the red flag; to take action; to make sure others take action; and above all, to prevent, and certainly to intervene in order to mitigate the harm produced by human conflict?

As I looked through these 313 conflicts, I started asking some questions and one question was a rather basic one, because the most fundamental of human truths are basic. They do not require too much “intellectualization.” That question was: “How many people

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does it take to kill ninety-two million?” So I did some modeling and I looked at the Nazi model, and I concluded that it took a minimum of three million. I did the same modeling concerning the Stalinist era, and I concluded that it would probably take three to four million, looking at the whole chain of the bureaucrats and others who were involved in the mass production of this vertically integrated system of destroying human beings. So, let’s assume that we are dealing with a minimum of six million perpetrators cumulatively who killed ninety-two million, and at least one million others for all the conflicts that took place since 1945.

The next question: How many of these one million were prosecuted? To my utter surprise, out of 313 conflicts, 156 resulted in total amnesties. In other words, in almost half of the conflicts, governments, in the name of realpolitik, in the name of peace (or whatever it is called), sacrificed justice. But again, I am not speaking as somebody who is putting justice above everything else. Even if you took justice in the context of peace, in the context of reconciliation, fifty percent of the cases resulted in total amnesty. What message are we sending to the perpetrators? What are we telling the victims? What are we saying about ourselves when we allow this? Who are we to let perpetrators of such heinous crimes benefit from impunity?

Next I asked how many actual international prosecutions took place. In the aftermath of World War II, the International Military Tribunal at Nuremberg indicted twenty-four individuals (of whom twenty-two were tried) while the International Military Tribunal for the Far East at Tokyo indicted twenty-eight. In Europe it is estimated that the United States tried and convicted 1,814 Germans (including the 185 tried at the “Subsequent Nuremburg Proceedings”), the United Kingdom tried 1,085 and France 2,107, and the U.S.S.R. tried as many as 45,000 in their respective Occupation Zones. There were no recorded Allied prosecutions of Italians or Austrians in their respective zones. Domestic prosecutions in Europe by the Allies numbered no more than 1,000, although Germany initiated proceedings against 61,000 Germans and Austria also proceeded against roughly 28,000. In the Pacific, the Allies prosecuted an estimated 5,700 class B and C criminals at forty-nine locations across the region, including 1,229 by the United States, primarily at Yokohama and Manila, 504 by China, 777 by the United Kingdom, 969 by the Netherlands, 198 by the French, 133 by the Philippines, 844 by Australia and twelve by the U.S.S.R.\(^5\)

\(^5\) For a comprehensive overview, see M. Cherif Bassiouini, Introduction to
One of the most glaring examples of the realpolitik that followed World War II is the treatment of the Class A defendants of the Tokyo tribunal. By 1954, all twenty-eight of the defendants, who had been found guilty, were released. Not a single person remained in prison. And that same year, two of those convicted at Tokyo were elected to political office—one became prime minister and the other foreign minister.

When you look into international criminal proceedings you see what could be called the "Potemkinization" of international criminal justice, the creation of Potemkin tribunals to give the appearance of international criminal justice. This does not mean that nothing comes out of them. But the prosecutions are so few in comparison with the number of perpetrators that one feels left with an illusion of justice. It reminds me of a book called *The Leopard* by Tommaso di Lampedusa, in which he describes the situation in Sicily in the 1800s, and in which he concludes: "It is important for some things to change in order for things to remain the same."

When you look at many of the international criminal justice institutions, you will find that what we have there is the takeover by realpolitik of the agenda of international criminal justice. Realpolitik can no longer openly fight international criminal justice as it had at the end of World War I. At that time, there was a provision in the Treaty of Versailles to establish a tribunal to prosecute the Kaiser. It didn't happen. Other articles provided for the creation of a war crimes tribunal. It didn't happen. Instead, a national tribunal was established in Leipzig, and a few token people were prosecuted. By the end of 1923, everything ended with only twelve people tried, of whom five were convicted. The greatest sentence was four years in prison. And when you think about that particular crime, it was for

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8. Treaty of Peace Between the Allied and Associated Powers and Germany (Treaty of Versailles) art. 227, June 28, 1919, 2 Bevans 43.


two lieutenants who shot the survivors of the torpedoe ship *Llandovery Castle*. In terms of war crimes, and certainly naval war crimes, this was a pretty serious one. In another famous case at Leipzig, the commander of the submarine that sank the *Dover Castle* was acquitted despite having knowingly attacked a hospital ship carrying the wounded.\(^{11}\)

This was the last fight of *realpolitik* openly opposed to international criminal justice. By World War II, we see a completely different attitude with the Nuremberg trials, with the proceedings under Control Counsel Law Number Ten, with subsequent proceedings by the Germans doing some token prosecutions, which the Germans resisted quite effectively over the years. Then we see the Tokyo trials. Then the Category B prosecutions in the Yokohama trial.\(^2\) Then the few scattered trials by the Allies in different places in Southeast Asia. And then, ladies and gentlemen, nothing else really happens. When you look at the various countries that have been occupied by the Nazis, in France, there are three cases. These are the three cases for the whole period of the German occupation and the collaboration of the Vichy with the Nazis; we have these three cases. Italy didn’t have a single case. Austria never had a single case. You go research the response in any of the other countries and you’ll find that to be the case. There were no prosecutions for Allied violations for the fire-bombing of Dresden and Tokyo, where an estimated 35,000 and 100,000 were killed, respectively; the atomic bombings of Hiroshima and Nagasaki, where potentially more than 200,000 died because of the blast and its effects; or the Katyn Forest Massacre by Soviet forces, in which 12,000 Polish officers were executed.\(^3\)

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13. At the Nuremberg Trials, the Soviets had the gall to charge Marshalls Keitel and Jodl with war crimes for the massacres that they themselves committed. In 1993 Mikhail Gorbachev acknowledged the crime, but the public record of Nuremberg was not amended, and history will continue to record the crime as having been committed by the Germans as opposed to the Russians.
III. THE POST-WORLD WAR II ERA OF INTERNATIONAL CRIMINAL ACCOUNTABILITY?

We are living in an era of international criminal accountability with the Yugoslavia tribunal, the Rwanda tribunal—the two ad hocstrans—the two ad hoc or mixed model tribunals, namely the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the War Crimes Chamber in Bosnia and Herzegovina, the Special Panels of the Dili District Court, the Special Tribunal for Lebanon and the Regulation 64 Panels in Kosovo and the International Criminal Court (ICC). With the exception of the ICC and the Lebanon Tribunal they are all going to disappear by the end of 2014. Basically, the only game left in town is going to be the ICC. The Lebanon Tribunal has yet to try a single individual. At present, the ICC has close to one thousand employees and an annual cost of some 140 million dollars, more than a billion since its inception. Well, as for its work, it has one conviction, two defendants awaiting a verdict, one at trial, six awaiting the start of their trials and one more in pre-trial proceedings. But at what price do we achieve international criminal justice? The average cost per defendant is more than ten million dollars at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Not per case, per defendant. This is

16. See BASSIOUNI, supra note 5, ch. VI.
17. See id., ch. VIII.
exorbitant.

My suspicion is that maybe there’s a method to this madness. Maybe there is a purposeful intent to make international criminal justice so costly, so cumbersome and so ineffective that people will give up on it. Maybe this thought is too Machiavellian, although frankly, I don’t put anything beyond bureaucracies, whether they are national or international. Bureaucracies have everything to teach Niccolò Machiavelli and not the other way around.

_Realpolitik_ is, in a Metternichian sense, used to settle things after a conflict. If this is the case, then what is it that can be done to satisfy the mounting and rising claims from the general public about international criminal justice and human rights? Well, to paraphrase Marie Antoinette, when she was told, “The people of Paris are hungry. They want bread,” she replied, “Well, just give them brioche!”

Maybe that’s the way “realpoliticians” deal with the world’s yearning for international criminal justice—an institution here and there for a brief period of time and then away it goes.

Maybe the only way to make sure that the ICC will not be what we wanted it to be is simply to let it flourish bureaucratically. Employ a thousand people and pay more than 140 million dollars per year for a few cases with a few defendants until world public opinion gets disillusioned with it. There is nothing like having a budding flower die on the vine.

I spent a year as chairman and then member of the UN’s Commission of Inquiry in Libya, but there is no sign of accountability in the offing except for the cases of Abdullah al-Senussi and Saif al-Islam Qaddafi. Why is Saif al-Islam, Qaddafi’s son, in the hands of the Zintan Brigade? Why has he not been turned over to the government authorities or to the ICC? One speculation is that Saif may have promised the Zintan Brigade some of the millions believed

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23. Though she did not originate the phrase, Marie Antoinette is said to have responded to the fact that the people of Paris had no bread by stating “Qu’ils mangent de la brioche,” commonly translated as “Let them eat cake.” _Oxford Dictionary of Quotations_ 495 (5th ed. 1999).

to have been stashed away in Swiss bank accounts. Another is that the Zintanis will cooperate with the Libyan government when it gets serious about effective prosecution. It is unlikely that there will be prosecutions of those who fought against the Qaddafi forces and who have committed the same categories or types of violations as the others, but maybe not in the same numbers because they didn’t have the time to do it. There will also be no prosecutions or even an investigation of NATO bombings of civilian targets in Libya.\textsuperscript{25}

So much for the even-handedness of the pursuit of accountability.

Turning to Egypt for a moment, there are forty-five cases of corruption that are ongoing against members of the former regime, and seven cases involving police abuse.\textsuperscript{26} But none of these cases involve police abuse or massive violations occurring before January 2011, including extra-judicial executions, torture and arbitrary arrest and detention. The present prosecutions are all related to events occurring between January and March of 2011. Now, Egypt has been the most notorious country in the world, in my opinion, for engaging in systematic torture. For years, there has been an absolute, systematic, consistent practice of torture carried out by the Ministry of the Interior. It had become so systematic, so ingrained, that there was no need for political motivation. Anybody who was arrested got beaten up and tortured. It became the shortcut to solving all types of investigations, but it was also the degeneration of a police culture, and it prevailed in Egypt for all these years. We’re speaking of an estimated 15,000 persons tortured every year in Egypt, probably for thirty years under the Mubarak regime.\textsuperscript{27}


We don’t know how many people have been killed during these tortures either, but again, nothing is going on in that direction. If you look at the institutionalization of corruption in the Mubarak regime and you look at the forty-five cases, they don’t even touch the surface. There are hundreds of individuals who have stolen billions of dollars over the last thirty years and have totally evaded any type of attention. So, we are seeing accountability as a token because only very few have been tried.

The whole thrust of accountability, either as a reflection of the values of national communities and the international community, or as a mechanism for reckoning with the country’s past, for reconciling a country to its past, for laying the foundation for a country’s future, for bringing closure to victims—it is seldom practiced in most post-conflict justice situations, from 1945 through today. In 1998, I was appointed as the Independent Expert on victim compensation by the UN. By 2004, the General Assembly accepted the draft I prepared on the general principles of the right to victim compensation and redress. To date, it has never been applied. There isn’t a single accountability mechanism in any of the conflicts that we have seen so far that is taking into account victim compensation, except the ICC, though only in a very symbolic way. Also, in the report of the Bahrain Independent Commission of Inquiry there is a recommendation

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for victim compensation and redress,\textsuperscript{30} and at the King’s request a law was passed establishing a victim compensation fund.\textsuperscript{31}

IV. ACHIEVING A SUBSTANTIVE OUTCOME OF JUSTICE

So, where do I see us going with international criminal justice, and where do I see us going in general with issues of values?\textsuperscript{32} Well, I don’t think we’re heading in that direction anymore. I think in the age of globalization, the system we have come to know in the post-World War II era of human rights, which was carried by the historical movement of the liberal thought of the 18\textsuperscript{th} century, is coming to an end. We are going to see new dynamics and new processes of globalization, the contours of which we do not yet know. But I suspect that we are going to see the denationalization of decision-making, the loss of the internationalization of decision-making, and we are going to be subject to a whole new set of dynamics and forces that are going to be guiding our new globalized world. Economic, financial and security factors will prevail over all else. But they will not take into account, other than for appearance’s sake, what we have come to believe are fundamental human rights and values. Consider for example that today the World Economic Summit at Davos has a greater impact on the future course of economic and financial matters than the established institutions of collective decision-making bodies we have come to know. You must understand that the systems and values we know and trust are about to break free of international and national control in the next few decades.

That is why I appeal to you and other future lawyers to be on guard, to be vigilant and to fight back.

It is my humble observation that humankind hasn’t changed much. Having investigated five armed conflicts, I see that the patterns of human conduct remain the same. The atrocities in Afghani-

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stan, Bahrain, Iraq, Libya and the former Yugoslavia are the same in other parts of the world. Unfortunately, human nature—whether for good or for bad—hasn’t changed much.

The question is: What can we do to maximize the good and minimize the bad? That is the challenge that we have to meet. There are probably two million jurists in the world. Imagine the capabilities of those two million jurists to use their strength, their power and the concept of the rule of law in order to maximize the good.

When I started teaching in 1964, I was in awe of two academics. Myres McDougal was one. He was tall, rosy cheeked, and looked very much the Southern gentleman from Mississippi.33 “Mac”—as he was affectionately called by his friends and admirers—was an astute blender of political realism and values. He taught me what I call “legal skepticism,” the idea that you could only curtail state abuses through legal processes and systems. In short, make it difficult for states to commit human rights violations.

The other one was Wolfgang Friedmann,34 who at an American Society of International Law meeting had a private conversation with me, in which he said something to the following effect:

You know, in the Nazi system, there was due process. People were given an opportunity for a trial. They could have a lawyer. They could present evidence in courts. But the case was already decided by the nature of the law that was to be applied. And if you went through a legal system like the Nazi legal system, which had a very rigid application of the principles of legality, in which the judge could not really interpret the law, but only apply the law literally. If you had to wear a yellow star, you had to wear the yellow star. The violation was not wearing the yellow star. If you wanted due process, you could get it. You could go to court, you could get a lawyer, you could argue it as much as you want. But in the end, you’re going to be guilty of not wearing the yellow star. There is nothing to argue about whether or not wearing the yellow star represents something contrary to the substance of the law.


In the course of time we lost the meaning of this lesson of understanding the difference between procedural due process and substantive due process, the distinction between the *substance* of justice and the *appearance* of justice. This is something that we have to regain. We have to regain it not through an approach of transactional law, and I say that within the meaning of human rights. Human rights cannot become another form of transactional law. It has to be a value-oriented goal approach of achieving a *substantive outcome of justice*.

States have tried, and always will try, to pursue the goals of power and wealth, which they now share with multinational corporations and other non-state actors. As states become more ungovernable, non-state corporate actors will become more effective users and exploiters of power gaps in the name of increasing their wealth. Power will be at the service of wealth acquisition. Other non-state actors at the opposite end of the lawful societal organizational structure will also command their share of wealth through violence, as was evident in African conflicts such as Sierra Leone, or in Mexico today. Organized criminal violence will continue to flourish and use international networking techniques to further their goals. In this case too, states and international institutions will be unable to exercise effective control over them.

In that context, the space for international criminal justice will narrow even further.

**CONCLUSION**

There are three quotes that I would like to leave you with. The first is a Hadith by the Prophet Mohammed, in which he said: “If you see a wrong, you must right it. You must right it with your hand if you can,” meaning by action. “And if you can’t, then by tongue,” by speaking out against it. And if you can’t, then at least in your heart—and that is the weakness of all faith.”

35. Why be weak?

The second is a quote by Pope Paul VI, which recurs throughout the history of Christianity—and the quote is: “If you want peace, work

35. Prophet Mohammed, Hadith (Saying). The quote is attributed as follows:
If you see a wrong you must right it;
with your hand if you can, or,
with your words, or,
with your stare, or
in your heart, and that is the weakest of faith.
For justice.” And the third is the Talmudic statement that “[t]he world rests on three pillars—on truth, on justice, and on peace.” We can’t disaggregate these three.

As lawyers and as human beings, we have a moral and ethical responsibility to uphold these values, to make sure that those three pillars are not disaggregated and to make these three pillars work together to achieve the best outcome that we can.

Thank you.
