Dear students, professors and guests of our meeting at this famous and impressive law faculty at Addis Ababa University.

It is an honour and a pleasure to be here and to discuss important issues of justice and peace with you. I really feel honoured, that the President of the Addis Ababa Bar Association will be chairing our discussion. Being a lawyer for more than 30 years of my life I know quite well how important especially this profession is not only for the fair and efficient implementation of any justice system, but as well for the building and the role of civil society in every country.

I additionally want to extent my thanks to my dear friend Dr. Sabine Fandrych, the director of the Friedrich – Ebert- Foundation here in Addis Ababa, who took so many burdens to organize this evening and will invite you for a reception afterwards.

As I mentioned, we will be discussing urgent questions of peace and justice tonight. I was asked to talk in my lecture about a very important element of the global justice system – the ICC, the International Criminal Court in Den Haag/ Netherlands, that, based on the Statute of Rome of 1998, has taken up in 2002 its work to indict and prosecute leaders responsible of worst crimes again humankind. This is an issue with lots of different and very specific aspects – which we will be able to discuss at length. I am looking forward to this
discussion. In my introductory remarks, that will take about 40 minutes of your time, I’ll touch the questions
- of justice being vital to sustainable peace, that justice requires an efficient and rule of law abiding justice system in our nation states and why this is so;
- secondly, why our national courts and justice systems are not sufficient and why – as a consequence – international courts, especially international criminal courts within the globally new understanding of shared responsibility and shared sovereignty are necessary in our globalized world;
- thirdly, what the new and specific elements of the new International Criminal Courts are and where the problems lie and – towards the end of my remarks –
- I’ll touch the fourth question, why it is highly favourable for all the countries, that have not yet joined the ICC – many of the African states are members - to do so.

II.
So I come to my first question the interdependency of peace and justice. Anyone will acknowledge that justice is vital to sustainable peace, meaning peace not to be understood in a very restricted sense as only a condition where the shooting or slaughtering of people just has stopped, but as conditions allowing citizens to live together as individuals or groups in a state of equality. This understanding of peace, upon which we presumably all will agree, does require laws including human rights and the rule of law; it requires additionally a strong state system to protect civil rights, including an independent professionally acting judiciary.
Immanuel Kant, one of the most famous German philosophers living in the era of enlightenment in the 18th century, on whose findings citizens all over the world rely to our times, put the light to the meaning of justice for peace, in saying:
“One may say, that creating of enduring peace is not only a part but the essential goal and core of law and its implementation”.

And even if Kant said so, having the national situation and the international community of his times more than two centuries ago in mind, today in every discussion with older or younger people all over the world we learn and realize that there is a broad consensus on this idea. This is exactly what any human being desires for his or her life: We all want living conditions that enable us to live in dignity and justice without arbitrary acts of uncontrolled and not controllable power executed by state authorities or individuals. We all want to live under conditions that enable us to make something out of our lives, to care for our families and children and to participate in the shaping of our society and our future.

I think it is most important to realize, that these feelings and wishes do exist everywhere, be it in Africa, in Asia, Europe or other parts of the world. This consensual feeling and these common interests are the reasons for including the respect for Human Rights, for the Rule of Law and for participation in most of our national constitutions and, additionally, in numerous Global Conventions and International Law Covenants. The most important of them will be the UN- Charter of 1945, the General Declaration of Human Rights of 1948 with its following more specific Human Rights Covenants, namely the Civil Rights Covenant, the Covenant on Social and Cultural Rights, the Covenant against Torture or the Conventions against war crimes and, recently, the Millennium-Declaration of 2000 with its Development Goals. All of them support the universal importance and interdependence of justice, human rights and peace.

Anyone will understand that realizing those wishes and ideas and implementing international and constitutional laws requires respected and implemented national rules to restrain the powerful and to protect the weak and vulnerable. This is, this should be the purpose of national

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1 „Man kann sagen, dass die allgemeine und fortdauernde Friedensstiftung nicht bloß einen Teil, sondern den ganzen Endzweck der Rechtslehre...ausmache.“
laws, based on human rights and the rule of law, implemented by an efficient state administration and an independent justice system.

Consequently the implementation of laws requires that they have to be observed by everyone. This is a very basic and important principle, absolutely necessary in any society. As conflicts between individuals or groups often arise they have to be settled in a fair and equal manner in favour or against everyone. In our every day life most of these conflicts arise because different interests exist, added by misunderstandings or different views about what the laws say or about what state authorities may or must not do. In all these cases the access to court is vital for justice and peace, even if systems of extra-judicial mediation exist and may be useful in one case or the other.

To come back to our questions of International Criminal law: criminal courts have the task of prosecuting criminals; this is an important part of every day life of our judiciary since the beginning of time. Courts have had and still have to deal with criminal perpetrators, today they are doing it by investigating criminal acts, by indicting, prosecuting and sentencing perpetrators according to the strict procedures prescribed by the rule of law.

To achieve this, judges and lawyers have to be professionally educated and trained, personally and institutionally independent, only subject to the law and very much committed to that, and, – of course -, not corrupt or open to any influence by the financial, military or political powerful. This principles are not only required by abstract rules and ethics; there value shows every day in political analysis and practice, as every citizen all over the world, asked about their wishes, points to justice, to a fair an independent justice system implementing laws and human rights as vital pillars of a stable society and state.

So the first goal always is to build such a judiciary system. It is their task to prosecute criminals.
II.
Now to my second question, why – in addition to all of that required on the national level with its priority – an international justice system is required?
You all, so I presume, will be well informed about the International Criminal Tribunal for Rwanda in Arusha, Tanzania, and its valuable work of indicting and prosecuting military or political leaders accused of committing worst crimes against human kind during the horrible period of slaughtering in Rwanda.
This Tribunal exactly makes us understand, when and why national criminal courts are not enough:
Of course, mass murder, mass rapes and other atrocities during war times or internal conflicts are outlawed by most of our national criminal codes and also by international law, by conventions of humanitarian law and specific compacts, as, by example, the well known Geneva Conventions. These and other important International covenants are included by most of today´s Nation States as Ethiopia or Germany into their national laws and justice systems.
Despite of that very obvious and transparent legal situation, history shows, that especially political and military leaders ordering those crimes and therefore responsible for them have gone unpunished and free, not even having been indicted by national courts.
The reason, why this was and sometimes still is so: The principles of impunity and immunity were – and sometimes still today are - working in their favour.
This of course constitutes a very serious violation of justice and has made more and more people, victims and there relatives, demanding to support the campaign against impunity of leaders, allegedly accountable of committing or ordering worst crimes against humankind. This campaign became more and more powerful and strong in the last decades. It has won impressive victories – but there has to be achieved more.
Let us look to some of the examples I am talking about:

In my country and, so I believe, all over the world, everyone remembers the horror of the Nazi Crimes in Germany: The holocaust, the concentration camps, genocide, ethnic cleansing and many other atrocities are not forgotten. Nor the fact, that the worst responsible leaders had to be indicted and prosecuted after the defeat of the Nazis by the Nuremberg International Military Tribunal, instituted by the victorious powers USA, S.U., GB and France, as national courts did not exist or had been part of the criminal system. Thousands of “smaller fry” went unbothered.

The Nuremberg Tribunal on the other hand became the mother of modern Criminal UN- Tribunals, which today constitute one of the types of the International Criminal Justice System. The International Criminal Court –ICC- , as the most advanced International Criminal Court has included the most important Nuremberg Principles, decided by the UN General Assembly in 1946, but represents a permanent and independent type of global criminal court, as we’ll see later on.

A very well know example at the beginning of the 1990 leads us to South Africa: There the white political and military leaders allegedly accountable for the crimes of Apartheid could not be indicted or prosecuted by the courts of the new post Apartheid, as the post conflict agreement Nelson Mandela had to close as a prize for avoiding a bloody civil war excluded this. The remaining power of apartheid leaders and supporters did not allow but the introduction of the well known Truth and Reconcilation Commission, led by Archbishop Tutu. This Commission mainly pursued three purposes: The truth about the heinous character of the apartheid crimes should become public completely – this was achieved by the complete covering of all sessions of the Truth and Reconcilation ‘Commission by national television. Secondly: the victims of those heinous crimes and there relatives should have the opportunity to speak up in public and blame the perpetrators. And, as third purpose, perpetrators confessing their crimes in public should go free.
Additionally there was the demand to introduce some recompensation for victims and their relatives – a goal not achieved until today. Looking back to this Commission and assessing the situation now I think one can say that the Truth and Reconciliation Commission met the feeling of South Africans at the end of the Apartheid terror. I you discuss the feelings of South Africans today you will find, that impunity becomes more and disputed.

Other examples, where impunity first had been the usual attitude which, as the years after the end of the dictatorship went by, no longer was to be tolerated are the cases of the former criminal dictator in Chile, Pinochet, and the case of Pol Pot the former leader of Cambodia accused of millions of murders. The former military dictator of Liberia, Charles Taylor, will be known to you as an African leader accused of worst crimes against humankind as well as former Chad president Issen Habré.

All those dictators could not be indicted and prosecuted by their national criminal courts, even though the crimes they allegedly committed or ordered, were worst violations of human rights and outlawed by the respective national criminal codes, requiring to have them investigated and prosecuted by national criminal courts. But, as we know, the system of impunity of military and political leaders prevailed, the political conditions did not allow an indictment as the respective national justice system were either not strong enough or not independent or – as a result of the conflict in question – simply not existent.

These cases made it quite clear for everybody all over the world, that international conventions on international criminal law are not enough. They showed, that institutions and international criminal courts were required, if the old system of impunity and immunity should come to an end.

Maybe some of you will have heard the name of Gustave Moynier – one of the first presidents of the International Conference of the Red Cross. He lived in the 19th century – and foresaw in his first speech to the newly founded ICRC, in 1864, I think, that without creating an International
Criminal Court to prosecute military and political leaders for their violations of the new International Conventions on the law “in bello” and “de bello”, i.e. all those acknowledged and necessary **Red Cross** and **Geneva Covenants** to protect combatants, refugees, civilians and other people that have to be protected, would only be written on paper and not be implemented.

President Moynier postulated an International Criminal Court and personal accountability - so since those times the call for this court lay on the table.

III.
In the first decades of the 20th century it was not possible to create such an institution.
The Tribunal of Nuremberg, whose principles were taken up by the UN-General Assembly in 1946, became the first International Criminal Tribunal and renewed the call for a permanent International Criminal Court.
So since 1946 the creation of an international justice system stood on the international agenda, to no avail before the end of the cold war at the end of the 80ties and the beginning 90s. In the long years between 1946 and the opening of a new window of opportunities nevertheless International Criminal Law was elaborated more and more.
And as the mentioned window of opportunity opened in the 90ties two types of international criminal courts arose:
At first International Tribunals were introduced by the UN-Security Council; then, in 1998 the Global Conference of Rome agreed on the Rome Statute for the International Criminal Court – the ICC.
Both types, though courts, are very different. That brings us - question III-, to the differences between the UN- Tribunals and the ICC followed by the question, why the ICC is preferred by 105 states.
So which are the specifics of the UN- Tribunals?
The International Criminal Tribunal for Rwanda, - ICTR-, the International Criminal Tribunal for Yugoslavia-ICTY-, as well as the Tribunal for Sierra Leone and that for Cambodia are ad hoc courts,
created for the indicting and prosecuting of worst crimes in an accurately defined special historical situation and exclusively for that. After doing so, the courts are dissolved: the ICTY will end its rulings in first instance at the end of 2008 and so will the ICTR. So this tribunals are not permanent, but ad hoc courts; the rule of law usually does not accept ad hoc courts, but requires permanent courts – because only those can ensure the equal rulings permanently.

The ICC is a not an ad – hoc, but a permanent court – so, following the principles of the rule of law preferable and from a pragmatic view better, as ICC - judges can and will rule following their case law and so ensure equality in every future case .

It is not only the question of being an ad-hoc court that flaws the Tribunal type of International Criminal Court in principle. It is additionally the fact, that these tribunals are instituted by UN- Sec Council resolutions. The UN-Security Council, as we all know, is a political council, not a judiciary entity. It acts out of political motives and interests of its member states. Among the member states there are obviously states of different importance: Normal members and five permanent members, the so called P5- States with their veto - power. Resolutions of the UN- Security Council require on one hand the majority of the members of the Council; they additionally require, that none of the Permanent Council Members, the P 5, are vetoing it. Consequently UN-Tribunals only are instituted, if and when these requirements are there. We all can imagine situations, where the allegations of the most horrible crimes against humankind are there, but the UN- Security Council is not prepared to decide on such a Tribunal. This was the case during long years with Cambodia; it is only in the last years, that a Tribunal became politically possible. This is the explanation, why some Tribunals became introduced quite quickly, others not. So one has to state, that Tribunals depend on political motives, interests and the different political weight of “normal” and P 5- members of the Security Council and so are selective to a certain extent, this not being desirable for a court and a judicial system.
Now to the ICC: The International Criminal Court has not been founded by the UN, but by the independent Assembly of member States, that have agreed to and signed the Rome Statute of 1998. After 60 countries had deposited their ratification documents the Statute came into force on the 1st of July, 2002.

Until today 105 UN-member states have ratified the Statute and so become members of the ICC, so committing themselves to not only obey to the Rome Statute, taking up all the respective important International Covenants, defining worst crimes against human kind, and compulsory rules of procedure, but committing themselves to cooperation with the ICC. An important share of the African States – many neighbours of Ethiopia – are among them, as well as the majority of the UN-General Assembly.

Other states as the US do not belong to the members but are more or less fighting the ICC – because they feel, their national government should be able to influence the Court and its ruling.

In this question, the question of influence, lies a third important difference between the ICC and the UN-Tribunals. The latter of course cannot be influenced in their individual ruling by the UNSR, and especially its Veto-Powers. To avoid any misunderstanding: The Tribunals are and act as courts, not as political entities.

But there quite obviously exists a dependency of the Tribunals to the UN Security Council in all matters of their statute, financing, appointment of judges and procurator generals, as examples have shown. And this is in my mind a problem for a court.

The ICC does not have these problems. It is completely independent and not open for dependency and not open to political interests of individual nation states. The Procurator General and the Judges of the ICC have to comply with the Rome Statute – and exclusively with that - and thus implement the principles required by the rule of law.

There are even additional differences between Tribunals and the ICC. I’d like to mention the most important ones:

So the tribunals are prosecuting crimes, that have taken place in the past, in a defined historical period so in times, where the court and its
statute did not exist. Looking to the rule of law, this is a problem. The ICC only crimes committed after the 1st of July, 2002, can be prosecuted as required by the rule of law.

And – additionally – the Tribunals can take up any case with priority. They decide which case, within the given frame their statute of course, they take up themselves and which cases they leave to national courts. This of course affects the national sovereignty much deeper and much more than the ICC does, acting under the Rome Statute principle of complementarity. This principle states, that the International Criminal Court as a global permanent court can act within the frame of the Rome Statute only, if and when the judiciary system of a member state is not willing or not able to act. So the International Criminal Court fully acknowledges that the national justice system is the first in charge. Only if it does not or cannot prosecute then the ICC steps in.

Having said all this let me repeat once more: The ICTY and the ICTR, and presumably the other newer tribunals are doing really important work, and are most helpful to International Justice.

Nevertheless the ICC fulfils the requirement of the principles of the rule of law and the very practical requirements of International Justice much better. And it additionally considers national sovereignty.

This is why I feel, that this type of International Criminal Justice is not only better, but can do more for sustainable justice and peace.

IV.

Now, to the next part: Where are the problems of the ICC. Because there are some. A new institution always has big problems. So I only want to mention some of them in my introductory remarks – but I like to invite you to add some more of them in our discussion later.

First problem: The ICC demands global acknowledgement, but until today only 105 nation states have become members. This is much better in the 10 years that have passed since 1998 – but it is not enough. There are big black holes on the membership map - mostly in Asia and the Arab States. Lately the important Asian country of Japan
has become a member – of course this is a very good sign, but others, like China, should follow. As all regions of the world partici-pated in creating the Rome Statute judges from all legal cultures and traditions should be represented in the ICC.

Second problem: As mentioned before the actual US – government still acts rather hostile to the Court. The reasons for that are obvious – beyond those already mentioned, and often explained by US law professors not agreeing with the political strategy of their government: The Bush-administration not only knows, that under international criminal law Guantanamo, Abu Ghraib and Waterboarding are gross violations and might be brought before the ICC, but they still feel strong enough not to bother with international law. This has to and will change hopefully soon, as the bad model the US currently present, encourages other smaller countries as well and weakens international law and human rights.

There are interesting questions about the crimes against humankind to be taken up by the Rome Statue. As mentioned, today it is genocide, war crimes, crimes against humanity and aggression. Aggression as the 4th type of crimes prosecuted by the ICC is essential – we can see that in the Middle East and in Africa, but – this type of crimes does not have a firm legal base in a consented convention yet. So such a convention has to be elaborated – actually a working group of the state assembly of the ICC is just preparing a draft convention, which has to be adopted at the so called Revision Conference in 2009-2010. The influence of the African states in this process is very important – and there might result an interest of Ethiopia to join in time to influence this convention as well.

To close my introductory remarks I’d like to mention to problems heavily discussed in this part of the world: One affects the case of Darfur/ Sudan, brought to the ICC by a resolution of UN Security Council as we know. Sudan is not a member of the ICC, nevertheless the UN Security Council is empowered by the Rome Statute to bring a case to the ICC. I think that the situation in Darfur required such a resolution – and I am glad, that none of the P5 members of the Council vetoed it, not even the US government. But of course, this – politically motivated – resolution
has two sides: It simply is not a good thing, that the same resolution expressively excludes other non-member-states from prosecution, because this supports a two-class-system, which cannot be tolerated under the rule of law. And additionally, the UN Security Council failed to secure or replace the cooperation of the government of Sudan with the ICC, and now we realize that this court cannot act efficiently without this cooperation. These problems have to be solved.

Second: We all know that peace agreements at first turn depend on political negotiations; courts, be they part of the national or an international justice system cannot replace this. Nevertheless the certainty that there is and will be no impunity for worst crimes against humankind are necessary and useful – they are an efficient deterrent to not commit those crimes, as we have seen in several conflicts of the last years since 2002.

V:
So – to sum it up: The ICC, as independent, permanent, complementary and rule of law following international criminal court is a big step forward towards the twin elements of sustainable peace and justice on the global and on the national level.

Its brings a lot of added value in drawing the red line against violations of worst kinds committed or ordered especially by political and military leaders, and by deleting impunity as the most important deterrent to protect people and human rights.

Thank you.