Dr. Siegfried Broß
Dr. h.c. Universitas Islam Indonesia – UII - Yogyakarta
Judge of the German Federal Constitutional Court
Honorary Professor at the University of Freiburg, Germany
Chairman of the Executive Committee of the
German Section of the International Commission of Jurists (ICJ)

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Opening words

I. Allow me first of all to thank the organisers, above all you, Professor Safferling, most cordially for the invitation and for providing me with the possibility to address some opening words to you. For current reasons, the 60th anniversary of the adoption of the United Nations Genocide Convention gives us, regrettably enough, grounds to intensify the reflection upon, and the discussion about, the proscription of genocide and its punishment by the judiciary. The proscription of genocide and the fact that numerous states have committed themselves to it by their accession to the Convention – today after all, 129 states, but regrettably, not all United Nations

Member States, have acceded to the Convention – makes apparent the problem that has attracted my attention when I took a closer look at the Convention. When dealing judicially with unspeakable and unimaginable atrocities, one must beware of the following: When the legal rules are laid down, something which is indispensable when the text of a convention, in particular in the context of international law, is created, the level of legal doctrine, and the level of abstraction, should not be too high. On the one hand, one cannot preclude from the outset that in this manner, even the cruelest crimes are presented in a somewhat vague manner, mitigating thereby the aspects that are depressing from the humanitarian point of view. At the same time, strategies of avoidance and evasion might result in attempts at laying open to suspicion the moral and ethical substance which is fortunately, but also of necessity, connected with such an agreement between states.

What is required against this background is the continuous endeavour of all Contracting States of the Convention and beyond this, of all Member States of the United Nations, to outline the shape of the Genocide Convention more distinctly if this is necessary, or to further develop it if such attacks take place against it openly or in a concealed manner.

II. Today, international criminal jurisdiction has its established place in the worldwide community of states, even though its position is not undisputed. Nevertheless, the Nuremberg International Military Tribunal has blazed the trail 60 years ago already. What I see as its trail-blazing achievement is that lessons have been learned from the experience made in 1918. In 1918, when it was left to the respective national state – at that time, Germany – to deal with war atrocities before the criminal courts, this endeavour fizzled out without having any effect, which favoured the emergence of new prejudices and of undesirable trends in patriotism. The fact that the international community of states has gathered in an international criminal court to deal with and punish indescribable wrongdoing and unspeakable crimes against Man gives rise to hope, particularly as the administration of Justice today, that is, under the Genocide Convention, is not characterised by revenge. Already the Nuremberg judgment of 1946 with its highly differentiated verdicts, which even acquitted some of the accused, has shown this very clearly.

However, the precondition of the international criminal courts' acceptance, an acceptance on which the community of states

depends, is that the same standards are applied worldwide and for every state. This demand and basic precondition of punishment on an international level is not based first and foremost on the idea of international criminal jurisdiction. Instead, it is a basic precondition of international law: International law has several basic preconditions, for instance its reliability and predictability and each state's participation with equal status and equal value in legal relations under international law, irrespective of the state's size and economic power. Regardless of the respective national political system and the present situation of a body politic, acts of persons that have consequences for other persons may not be judged differently. It was, for instance, a major mistake of the criminal courts to punish hijacking differently depending on the hijackers' countries of origin. For the people in the plane who were affected by the hijacking, and as far as their mental strain and the mental consequences for them is concerned, the hijacker's country of origin was irrelevant. If our thoughts go back about 30 years, it should strike us even today that terrorists in one country or another in Europe were not regarded very critically, to put it mildly, even by a good neighbour. As regards searches within Europe, there were considerable gaps at that time, to say nothing about states that took

terrorists in on their state territory with the approval of their political leaders, for instance the former GDR.

From my point of view, the indispensable precondition of an international criminal jurisdiction which rightly claims legitimacy is therefore that it be administered uniformly and that all states which have gathered under the roof of the United Nations act in agreement. If just one state pulls out of this basic agreement, this does not yet call into question the legitimisation of international criminal jurisdiction as such if it is delimited regionally and is administered uniformly in this manner. However, this weakens the role of international criminal jurisdiction in global peacekeeping.

Criminal law has a necessary importance for a state or a community of states which is vital for the community on a national and international level. Nevertheless, this is always the secondary level. This means that criminal law and criminal jurisdiction must try to sanction undesirable trends and to prevent their continued existence in the future wherever possible by punishing the perpetrators. This, however, does not spare us from having to answer the question whether such undesirable trends could have been prevented. It will be virtually impossible to give an exhaustive and satisfying answer to that

question. However, I would like to draw your attention to the fact that it is indeed worth considering why in spite of existence of the worldwide organisations such as the United Nations, the International Monetary Fund, the World Bank and the World Trade Organization, it is not possible to stabilise states and societies. Instead, the trouble spots and worldwide terrorist networks are increasing, and it is depressing that the World Bank must state in a study that 26 states worldwide are on the brink of collapse. What this means for the international community of states, and above all, for the people in the countries affected, is something we cannot possibly assess. And ultimately: if one man feels superior to his fellow man, peaceful coexistence is deprived of its basis. The perceived superiority of one man to his fellow man is not only a problem of tolerance in human coexistence but also a problem of the social and economic structure. In this context, more thought must be given to the question of whether, by consolidating the primary level of a state and its society, the secondary level, that is, international criminal jurisdiction, can be reduced again in the future, also after the last-mentioned international organisations have corrected their policies.

III. It is to be wished for that the congress which has been organised on the occasion of the 60th anniversary of the creation of the Genocide Convention will provide sufficient opportunities to promote the spirit of the Convention even more, to increase its effectiveness even further by the accession of more states and to obtain, by lending judicial support, the response worldwide which is necessary to achieve that the Convention and its contents alone, and not just the threat of punishment under criminal law, will prevent such unspeakable atrocities being committed.