

**“International Criminal Law Enforcement:  
Rule of Law, Anti-Corruption and Beyond”**

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Thank you for inviting me to join you today. It is a tremendous honor to speak here at the Council on Foreign Relations. Since its founding in 1921, the CFR has contributed enormously to the debate on foreign policy from a reasoned and diverse point of view. I am so pleased to be able to share with you today how the Criminal Division seeks to promote the Rule of Law in our increasingly global society.

But first let me begin by discussing what we mean when we talk about the “Rule of Law.” This is, of course, a phrase that seems to be on everyone’s lips. But is it more than a catchphrase? Does it have any real meaning any longer?

Or what if instead of “Rule of Law” having no meaning, it is really a code for something else? Is it just “nation-building” – itself criticized by many – by another name? Does it necessarily carry with it the values of a particular political system, rather than universal principles? When we speak of “Rule of Law,” are we opening ourselves to charges that we are engaged in a form of disguised cultural imperialism? Or worse, rather than protecting individual rights, does “Rule of Law” really mean a system designed simply to protect societal power relations?

These are interesting questions, to be sure, but I would submit that, at least for me, the Criminal Division offers some answers.

Within my first weeks at the Department, I met a man named Karl Clark. Karl, who was a high-ranking police officer in the United States, now works in Pakistan for the Criminal Division’s International Criminal Investigative Training Assistance Program, known as ICITAP. Karl has left behind his family, and put himself at personal risk, to work around the world to establish not simply police investigative practices, but what police practices best protect both citizens and the rights of citizens.

Karl is just the first of the courageous men and women of the Criminal Division whom I have met, and who have committed their lives to helping to build the Rule of Law internationally, through ICITAP and its companion office, OPDAT – the Office of Overseas Prosecutorial Development Assistance and Training.

OPDAT and ICITAP have stationed Department of Justice Resident Legal Advisors and Senior Law Enforcement Advisors in 37 countries around the world – from

Colombia, to the Balkans, to Iraq and Afghanistan, to Kenya, and to Indonesia. Their job is to provide advice and guidance to their host countries on how to establish and sustain fair and transparent justice systems, police services, and prison facilities. There probably is no group of individuals more focused on the real meaning of the Rule of Law than these individuals, and their colleagues at the Criminal Division in Washington.

In fact, the Criminal Division's work in this regard can be seen as having three prongs, all of which are necessary to give "Rule of Law" substantive as well as formal content – but, importantly, substantive content that is universally agreed upon, rather than a reflection of simply the U.S. legal system. Those three prongs are:

First, over the past twenty years, in partnership with the State Department and our foreign counterparts, the Department of Justice's Office of International Affairs has helped create, through multilateral instruments, a consensus view of what steps nations must take to ensure that their justice systems can achieve the Rule of Law in areas ranging from corruption, to transnational crime, to trafficking in humans, to terrorism.

Second, the Criminal Division's prosecutorial arms have sought to give meaning to those conventions by prosecuting those who violate their agreed-upon Rule of Law norms.

And finally, it is those universally agreed-upon principles that our overseas legal advisors work, in partnership with their foreign counterparts, to put in place in the laws and practices of their host countries.

Perhaps in no area has the Criminal Division's three-pronged approach had more dramatic results for the international Rule of Law than in that of corruption. It is worth examining this in some detail, for it exemplifies how we build international consensus, and then seek both to enforce that consensus through our own criminal justice process, and to help ensure that other nations have the legal capacity to do so as well.

### The Rise of a Universal Anticorruption Principle

While it is now widely accepted that corruption is not simply a fact of life that must be accepted – this was not so in the very recent past. When the U.S. enacted the Foreign Corrupt Practices Act in 1977, and as recently as the 1990s, some developed countries continued to argue that a certain amount of corruption might be desirable in developing nations; and it has been only in the last decade that some developed countries have eliminated tax deductions for foreign corrupt payments.

The change in attitude can be linked to a number of intervening factors, including the emergence of a civil society voice against corruption, led by Transparency International and others; the fall of the Soviet Union, exposing institutionalized corruption; news media attention; and finally, the development of models of how corruption could successfully be fought, among the most powerful of which was the

Hong Kong experience, including the creation of the Independent Commission Against Corruption.

All of these factors are critical, but I believe credit also must be given to a particular group of individuals: the career Criminal Division lawyers and State Department and Treasury officials who pushed forward the idea of universally condemning and criminalizing corruption in international fora such as the OECD, the OAS, the Council of Europe, and finally the UN itself.

The result has been an ever-accelerating, and expanding, set of international conventions: beginning with the 1994 OECD recommendation to criminalize bribery of foreign public officials, to the 1996 OAS convention – the first multilateral convention against corruption – to the 1998 OECD anti-bribery convention, the 1999 Council of Europe convention, and most recently the UN Convention Against Corruption, the first global anti-corruption convention.

The importance of this development to the international Rule of Law cannot be overstated. It is nothing less than the creation of a global consensus that corruption is unacceptable – that it harms the least well-off the most – and that official impunity cannot stand.

#### The Enforcement of Anticorruption Principles

International consensus on fighting corruption is critical, but not sufficient. The second prong of the Criminal Division's approach is to give that consensus meaning through our prosecutions, particularly under the Foreign Corrupt Practices Act.

Since the passage of this historic law, the Criminal Division has had primary responsibility for its implementation. Simply put, Criminal Division enforcement of the FCPA was intended to have – and has had – an enormous impact on the way business is done. Since 2005, the Fraud Section has achieved 36 corporate FCPA and foreign bribery-related resolutions, with fines totaling more than \$1.5 billion. Since that time, the Criminal Division has charged 77 individuals with FCPA violations and related offenses. Forty-six of these indictments have been brought since the beginning of 2009 – more than the total number of indictments brought in the previous seven years combined.

Those charged have included CEOs, CFOs, and other senior corporate, sales, marketing and finance executives; intermediaries; and, where jurisdiction existed here, several foreign officials. This increased emphasis on charging individuals is part of a deliberate enforcement strategy to deter and prevent corrupt practices in the future.

Beyond charging individuals, it is no secret that the Criminal Division is dramatically changing the way we investigate these allegations. Gone are the days when we relied solely on tips from whistle-blowers to build cases. Instead, we are now bringing the tools of organized crime investigations to white collar investigations. We are setting up “sting operations” – such as we did in a recent investigation in which

defendants from the U.S., the United Kingdom, and Israel allegedly tried to bribe the minister of defense of a foreign country to provide arms to outfit the country's presidential guard.

The Criminal Division's efforts have brought heightened corporate board and executive level attention to anti-corruption issues. Indeed, many firms have implemented detailed compliance programs intended to prevent and to detect any improper payments by employees and agents. Ultimately, I believe that the Division's careful prosecution and litigation choices and aggressive strategies have helped to curtail the widespread practice of foreign bribery.

But this is not the only area in which the Criminal Division is doing critical anti-corruption work. The prosecutions brought by our Public Integrity Section send an important message not only domestically, but internationally: they indicate that the United States takes seriously the key proposition that no public official is above the law, be it an elected politician, a political appointee, or a judge.

In addition, the Criminal Division's Asset Forfeiture and Money Laundering Section is committed to working with other countries to ensure that their corrupt officials do not retain the illicit proceeds of their corruption. Working in close cooperation with our law enforcement partners in other countries, the United States was able to repatriate more than \$20 million to the nation of Peru that was looted during the government of Alberto Fujimori and Vladimiro Montesinos. We likewise have forfeited and repatriated more than \$100 million in proceeds of corruption in the judiciary to Italy, and have repatriated several million dollars to the Government of Nicaragua traceable to the illicit conduct of the administration of Arnoldo Aleman.

But we will do more. At last year's Global Forum Against Corruption in Doha, Attorney General Holder announced a redoubled commitment on behalf of the Department of Justice to recover such funds.

#### Building Anticorruption Capacities Overseas

The final prong of our strategy has been to help other nations to build their own capacities to fight corruption, within the framework of the UN Convention Against Corruption and the other multilateral anticorruption conventions.

This work has been carried forward by the federal prosecutors assigned overseas by OPDAT and the senior law enforcement advisors of ICITAP. It also is a central part of the work of the Department's overseas attachés from the FBI, DEA, US Marshal's Service, and the ATF.

This work proceeds at all levels: through the creation of "vetted police units," the members of which are investigated to ensure that they are free from corruption; the establishment of internal controls in police services and prisons, such as Inspector Generals offices; advice on enactment of legislation that will bring the country into

compliance with the UN Convention Against Corruption; and the development, and mentoring of, specialized anti-corruption prosecutorial units.

What we have learned from our “Rule of Law” experience in countries like Colombia and Indonesia is that we must create long-term sustainable partnerships. And we must be sure that we convey the message that we are in these countries as partners, not as “teachers” who have all the answers, or who have solved all similar problems – whether they be problems of corruption, organized crime, or narcotics – within the United States.

### Conclusion

I began by asking whether there is any meaning to the phrase “Rule of Law.” My experience over the past year has convinced me not only that there is content to that phrase, but that nothing is more critical both to our country and to other nations to establishing the Rule of Law. I could not be more proud of the work that the men and women of the Criminal Division pursue – in working on multilateral conventions, in prosecuting anticorruption cases, and in capacity-building abroad – and I am very grateful for the opportunity you have given me to discuss it today.

Thank you again. I would welcome any questions you might have.