KEYNOTE ADDRESS

*Juan E. Méndez**

I am very grateful to Rutgers Law School for the invitation to speak at this important conference. It is a great pleasure to be here this afternoon in the company of such distinguished panelists and a committed audience.

My presentation concentrates on the importance of the prevention of mass violence and international crimes, including genocide, and I will present mainly from the perspectives of the International Center for Transitional Justice (ICTJ) programs in several countries, and also from my experience between 2004 and 2007 as the Special Adviser to the Secretary-General of the United Nations on the Prevention of Genocide.[1]

Breaking the cycle of impunity and fostering accountability are crucial components in the prevention of future violence and mass atrocities: no prevention efforts can take place without a serious attempt to break the cycle of impunity for past human rights violations, especially if they are so widespread or systematic as to constitute war crimes, crimes against humanity, or genocide. If perpetrators feel shielded from prosecution or investigation for the crimes they already committed, they have an incentive not only to commit them anew, but also to raise the stakes and perpetrate even more serious crimes. Failure to do justice to the victims usually leads to sentiments of revenge, and thus, to the likelihood that more crimes will occur. Accountability is essential not only to halt the vicious cycle of revenge, but also to enable the victims to make their own decisions as to their protection and well-being, so that they are not merely passive recipients of the international community's efforts. Finally, accountability for past crimes is also important so that the victims, their families, and their communities can distinguish between their victi-

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* Keynote Speaker. President of the International Center for Transitional Justice and Former Special Advisor to the Secretary-General on the Prevention of Genocide. The author gratefully acknowledges the contributions of his ICTJ colleagues, Marieke Wierda, Cecile Aptel, and Richard Bailey, and of his former colleagues at the United Nations, Ekkehard Strauss and Andres Salazar.

1. *See* Press Release, Sec'y-Gen., Juan E. Méndez of Arg. Appointed Special Adviser on Prevention of Genocide, U.N. Doc. SG/A/880 (July 14, 2004), http://www.un.org/News/Press/ docs/2004/sga880.doc.htm.

mizers and the communities they claimed to represent and that the blame for the atrocities is not placed on innocent descendants of those perpetrators.

It must be understood, however, that prevention of genocide will require more and different measures; bringing the perpetrators to justice will not be enough. Prevention of genocide will require early warning and reasonable suggestions for early action. The office I held for thirty months at the request of Secretary-General Kofi Annan was the first attempt by the United Nations to apply lessons learned and to correct the structural weaknesses that led the United Nations to prevent genocide in Rwanda and Srebrenica in the 1990s.[2]

As a very preliminary observation, my experience demonstrates that early warning and early action can serve important purposes. Still, the bottleneck is the political will to act that is almost never present from the start. In that sense, the role of the Special Advisor was primarily directed to contribute to shape and to create that political will, in conjunction with public opinion, caring institutions, and willing democratic states. I am also glad to report that, following a strong report from the Advisory Committee on Prevention of Genocide, of which I continue to be a member, the new Secretary-General has appointed a full-time Special Representative and named the distinguished jurist Francis Deng to the post.[3] In addition to his full-time duties, he has been assigned more resources and his job has been elevated to the rank of Under-Secretary-General.[4] The latter is crucial to ensure direct contact with Mr. Ban and through him to the Security Council, since the latter is—through its Resolution 1366 of 2001—the source of the Special Advisor's mandate.[5]

The task enjoys great legitimacy because of the universal recognition that the Convention to Prevent and Punish the Crime of Genocide of 1948 is *jus cogens*.[6] In addition, the Outcome Report of the 2005 Summit offered a source of legitimacy to prevention of genocide

2. *See id.;* Press Release, Sec'y Gen., "Risk of Genocide Remains Frighteningly Real", Sec'y Gen. Tells Human Rights Commission as He Launches Action Plan to Prevent Genocide, U.N. Doc. SG/SM/9245 (July 4, 2004), http://www.un.org/News/Press/docs/2004/sgsm9245.doc.htm.

3. Biographical Note, Sec'y Gen., Sec'y Gen. Appoints Francis Deng of Sudan as Special Adviser for Prevention of Genocide, U.N. Doc. SG/A/1070 (May 29, 2007), http://www.un.org/News/Press/docs/2007/sga1070.doc.htm.

4. Letter from Ban Ki-Moon, Sec'y Gen., to President of the Security Council, Security Council, U.N. Doc. S/2007/721 (Dec. 7, 2007), http://daccessdds.un.org/doc/UNDOC/GEN/N07/633/41/PDF/N0763341.pdf?openelement.

5. S.C. Res. 1366, U.N. Doc. S/RES/1366 (Aug. 30, 2001).

6. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15 (May 28).

in the form of the adoption of the responsibility to protect doctrine.[7] Nevertheless, sources of legal and moral support are, unfortunately, qualified. In the case of the Genocide Convention, disputes over the definition and about whether the facts on the ground constitute genocide have often become a substitute for serious action.[8] In our activities, we had to stress frequently that our task was to *prevent,* not to adjudicate; it follows that my office was not called upon to make such a judgment, but rather to generate action *before* all the elements of the definition were in place. For that reason, it was imperative to act on situations of mass violence against vulnerable populations defined by their ethnicity, race, religion or national origin, whether or not the attacks they suffered amounted to genocide, and to let a court of law eventually decide what they amounted to. With respect to responsibility to protect, regretfully there are now many revisionist theories about what the relevant documents mean to say.[9] Some states express distrust that responsibility to protect is just a new code word for *humanitarian intervention* and, therefore, in their view, a rationalization for super-power non-consensual interventions.[10] This debate last year hampered the creation of an office of the Special Advisor to the Secretary-General on the responsibility to protect, which only materialized earlier this year, and operationalized the responsibility to protect doctrine: this is a clear indication that there is still a lot to be done in the battle of ideas.[11]

In terms of early action, the challenge is to come up with suggestions that are practical, but at the same time are not just token gestures. In that sense, non-consensual military intervention should never be ruled out absolutely because in some cases it will be the on-

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7. *See* G.A. Res. 60/1, ¶¶ 138-139, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

8. *See* Scott Straus, *Darfur and the Genocide Debate*, 84 FOREIGN AFF. 123 (2005) ("[M]uch of the public debate in the United States and elsewhere . . . has focused not on how to stop the crisis [in Darfur], but on whether or not it should be called a 'genocide' under the terms of the Genocide Convention.").

9. *See, e.g.*, Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT'L L. 99, 101 (2007) ("The text of the Outcome Document of the World Summit, which is arguably the most authoritative of the . . . documents [on the responsibility to protect], leaves considerable doubt concerning whether and to what extent states intended to create a legal norm.").

10. *See, e.g.*, Diane Maria Amann, *The Course of True Human Rights Progress Never Did Run Smooth*, 21 HARV. INT'L L.J. 171, 174 (2008) ("[S]tates sometimes have labeled as 'humanitarian' interventions [those that are] actually undertaken for non-altruistic reasons.").

11. *See, e.g.*, HOUSE OF COMMONS LIBRARY, INTERATIONAL AFFAIRS AND DEFENCE SECTION, REINVENTING HUMANITARIAN INTERVENTION: TWO CHEERS FOR THE RESPONSIBILITY TO PROTECT?, 2008, H.C. 08/55, at 34 ("It is . . . telling that anti-interventionists pushed heavily for the Security Council to be the authorising body for [responsibility to protect] interventions, given the ability of any of the [five permanent members] to veto an intervention.").

ly way to save lives. But before advocating use of force, we must be certain that we are not going to do more harm than good, and that is always contingent on the facts on the ground and their context. Between inaction and invasion, there exists a wide spectrum of actions that can and should be taken on a timely basis. In my experience, primarily on Darfur but extrapolating it to other situations as well, I have learned that effective prevention must rely on acting simultaneously and in a concerted way in four areas: physical protection of the population at risk; humanitarian relief; promoting peace talks to end the underlying conflict; and breaking the cycle of impunity for the crimes already committed. I stress that in each of these areas the actions must change and be adapted to evolving circumstances. More importantly, they should be implemented simultaneously and in coordination with one another. We should not allow them to become a vicious circle, like in Darfur, where each one of these actions became so dependent on obtaining consent for the other that even four years later they are not fully implemented. I would like to concentrate on the fourth and last of these areas—that preventive action.

Accountability for war crimes and crimes against humanity must be comprehensive, balanced and holistic, meaning that policies and practices must address the need to discover and disclose the truth, to bring perpetrators to justice, to offer reparations to the victims, and to promote deep reforms in the institutions through which State power is exercised. In cases where the violence has clear ethnic dimensions, like in Darfur, they must be accompanied by reconciliation initiatives aimed at fostering serious inter-communal conversations, without outside interference, about return to homes and villages, property restitution, water, grazing, and passage rights. While criminal prosecutions should not be the sole response to impunity, there is no doubt that they must play a central, indispensable role in any policy of accountability.

Prosecutions also represent the State's fundamental obligation to give victims access to justice. In addition, concerning international crimes, States have a clear international legal obligation to ensure that justice is done.[12] This is particularly the case for serious violations of international humanitarian law.[13] In relation to war crimes, the Geneva Conventions of 1949 and Additional Protocol I establish a duty for States to prosecute and punish those responsible for "grave breaches" of international humanitarian law.[14] Although it was once understood that the category of "grave breaches" applied only to international conflicts, a customary international law norm is emerg-

12. ANTONIO CASSESE, INTERNATIONAL LAW 262 (2001).
13. *Id.* at 104.
14. *Id.* at 207.

ing that also applies to conflicts not of an international character.[15] If a State-Party is unwilling or unable to prosecute war criminals, it must hand them over to be prosecuted by another State-Party (under the "aut prosequi et judicare, aut dedere" principle).[16] In the post World War II era, therefore, international humanitarian law created a new set of obligations, which in turn paved the way for the enforcement of these norms.[17]

To foster accountability for such crimes, a dual approach should be favored. On the one hand, the international community must pay more attention to helping States live up to this obligation by building independent, impartial judiciaries that can prosecute mass atrocities with full respect for due process of law and fair trial guarantees. On the other, our support for the International Criminal Court and other international or hybrid criminal jurisdictions must be oriented not only towards supplementing the absence of will or capacity to produce fair trials domestically, but also to help generate that capacity in the near future.

In addition to the 60th Anniversary of the Genocide Convention, we have just celebrated the 100th anniversary of the 1907 Hague Rules, as well as the 30th anniversary of the 1977 Additional Protocols to the Geneva Conventions.[18] In the seventy years that elapsed between these two dates, 1907 and 1977, the world suffered world wars, the Holocaust and other genocides, and many terrible war crimes. But, these years also marked the codification of the body of international humanitarian law, the materialization of the principle of individual criminal responsibility at the international level, and the strengthening of all forms of accountability for these crimes.[19] The near-universal ratification of the Geneva Convention bears witness to this reinforcement of international law, and in particular of international humanitarian law.[20]

We simply have to look back less than fifteen years to see how far we have come from the pervasiveness of impunity for grave human rights crimes and from the permissive attitude towards that impunity by the international community. Since 1993, we have nota-

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15. *Id.* at 247.

16. *Id.* at 261.

17. *See id.* at 260-62.

18. Hague Convention (IV) Respecting the Law and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1910 U.K.T.S. 9; Protocol Additional (I) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of International Armed Conflicts Protocol, June 8, 1977, 1125 U.N.T.S. 3.

19. *See* CASSESE, *supra* note 12, at 245-72.

20. *See* INTERNATIONAL COMMITTEE OF THE RED CROSS, ANNUAL REPORT 2007, at 458-59 (2008), http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/7EUGK5/$FILE/icrc_ar_07_annex.pdf.

bly witnessed the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, of the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and other hybrid mechanisms in East Timor, Bosnia-Herzegovina, Kosovo, and recently, Lebanon and Guatemala.[21] Important too are efforts to prosecute these crimes at the domestic level in Argentina, Peru, Colombia, Rwanda, and Ethiopia.[22] The creation of the International Criminal Court in 1998 was the high point of this evolution, signaling that accountability for war crimes, crimes against humanity and genocide is now paramount.[23] However, the Rome Statute is not only the culmination of a clear historical and normative trend; it is also the means to establish an instrument that makes justice possible when the national domestic jurisdictions are unable or unwilling to afford it.[24] And yet, for each situation in which the International Criminal Court (ICC) has acquired jurisdiction, we hear voices calling for amnesty, withdrawal of indictments or other forms of exercising discretion and avoiding prosecutions, supposedly in the name of peace.[25]

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21. *See* Hervé Ascensio, *The Spanish Constitutional Tribunal's Decision in Guatemalan Generals: Unconditional Universality is Back*, 4 J. INT'L CRIM. JUST. 586, 586-94 (2006); Sylvia de Bertodano, *Current Developments in Internationalized Courts*, 1 J. INT'L CRIM. JUST. 226, 226-44 (2004); Extraordinary Chambers in the Courts of Cambodia, http://www.eccc.gov.kh (last visited Nov. 21, 2008); The Special Court for Sierra Leone, http://www.sc-sl.org (last visited Nov. 21, 2008); United Nations, International Criminal Tribunal for the Former Yugoslavia, http://www.un.org/icty (last visited Nov. 21, 2008); United Nations, International Criminal Tribunal for Rwanda, http://69.94.11.53 (last visited Nov. 21, 2008); United Nations Special Tribunal for Lebanon, http://www.un.org/apps/news/infocus/lebanon/tribunal/index.shtml (last visited Sept. 26, 2008).

22. *See* Alejandro E. Alvarez, *Implementation of the ICC Statute in Argentina*, 5 J. INT'L CRIM. JUST. 480, 480-84 (2007); Stephane Bourgon, *Judgments, Decisions, and Other Relevant Materials Issued by International Courts and Other International Bodies on Human Rights*, 1 J. INT'L CRIM. JUST. 555, 570 (2003); Comisión de la Verdad y Reconciliación, http://www.cverdad.org.pe/ ingles/pagina01.php (last visited Dec. 18, 2008); Justice in Perspective, National Commission on the Disappearances of Persons, http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=74&Itemid=111 (last visited Dec. 18, 2008); Inkiko Gacaca, http://www.inkiko-gacaca.gov.rw/index_.html (last visited Nov. 21, 2008); Justice in Perspective, *Office of the Special Prosecutor: The Special Prosecution Process of War Criminals and Human Rights*, http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=14&Itemid=43) (last visited Dec. 18, 2008); The American Non-Governmental Organizations Coalition for the International Criminal Court: Declarations Made by Colombia Upon Ratification of the ICC Statute, http://www.amicc.org/docs/Columbia_decl.pdf (last visited Dec. 18, 2008).

23. *See* International Criminal Court, Establishment of the Court, http://www.icc-cpi.int/about/ataglance/establishment.html (last visited Dec. 18, 2008).

24. *See* Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

25. Press Release, Civil Society Organisations for Peace in Northern Uganda

With the best of intentions, some are urging measures that implicitly give in to the blackmail of the parties to the armed conflict: peace can only come if those accused of atrocities are given guarantees that they will not be touched.[26] We are concerned by the revival of this debate that some of us had hoped would by now be more settled. To those who have followed the evolution of human rights in the last twenty-five years, the debate rings of earlier discussions as to whether fragile democracies could really afford to investigate and disclose—let alone prosecute—the major crimes of the preceding era.[27] The alleged antinomy between justice and democracy, often rephrased today as the tension between peace and justice, is debated in academic circles and also among practitioners.[28] A major conference co-organized by ICTJ was held last year in Nuremberg to discuss this tension and to explore possible ways in which peace and justice indeed can be mutually reinforcing.[29]

In Northern Uganda, while there is a broad recognition that the ICC arrest warrants have assisted in bringing the Lord's Resistance Army (LRA) to the negotiating table, some have portrayed these warrants as obstacles to progressing further with the peace process.[30] We believe, however, that the warrants act as an incentive to keeping the LRA involved in the peace talks.[31] We also welcome the signature of an Agreement on Accountability and Reconciliation by the LRA and the Government of Uganda on June 29, 2007.[32] The Agreement proposes that Uganda should implement its international obligations to prosecute senior leaders of the LRA under national law.[33] Depending on what is proposed to implement it, and what is effectively done,

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[CSOPNU], Point of No Return: Taking Stock of One Year of Cessation of Hostilities in Northern Uganda, 2 (Dec. 18, 2008), http://www.csopnu.net.

26. *See id.* at 3 (suggesting the United Nations Security Council suspend arrest warrant).

27. *See* Charles Mango Fombad, *Transitional Justice in Africa: The Experience with Truth Commissions*, May/June 2008, http://www.nyulawglobal.org/globalex/Africa_Truth_Commissions.htm (describing the delicate transition of fragile democracies).

28. *See id.*

29. Press Statement, The International Center for Transnational Justice, Building a Future on Peace and Justice (June 27, 2007), http://www.peace-justice-conference.info/download/Press%20statement%2027-6-englisch_.pdf.

30. *See* Fombad, *supra* note 27 (encouraging suspension of warrants to advocate peace).

31. *See* Louis Moreno-Ocampo, *The Rome Statute and the ICTJ*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE [ICTJ], May 21, 2008, http://www.ictj.org/en/news/features/1689.htm.

32. Agreement on Accountability and Reconciliation, Uganda-Lord's Resistance Army/ Movement, June 29, 2007, www.fides.org/eng/documents/uganda_agreement_290607.doc.

33. Moreno-Ocampo, *supra* note 31, at 1.

we believe this course of action may be consistent with the Rome Statute.[34] A thorough national accountability process, respecting international standards, could have a wide-reaching impact in Ugandan society. We believe the robust approach to accountability taken in this preliminary peace agreement is an important improvement over past peace accords, and that the pressure brought to bear by the ICC has assisted to achieve this. That is why it is disappointing to see that, since last June, the talks have not progressed much and the Juba peace process may be on the brink of collapse.[35] The international community must stand ready to continue its support to the ICC if either side reneges on the agreement.

There are many examples of the impact that prosecutions—or even the threat of prosecutions—have in preventing crimes, including war crimes.

In Cote d'Ivoire, the prospect of an ICC prosecution of those who used hate speech to instigate and incite others to commit international crimes has arguably kept those actors under some level of control.[36] It is also an important example of the possible preventive role of the ICC.[37]

In Colombia, alternative sentencing and demobilization of the paramilitary groups under the Justice and Peace Law as originally drafted would have left victims with no prospect of justice for the harms they have suffered.[38] The need to offer a semblance of compliance with the international standards set forth in the Rome Statute produced important amendments during the legislative process, then further strengthened by a Constitutional Court ruling based precisely on the need to bring the law in line with the State's international law obligations.[39] While the Justice and Peace Law, as amended by the Constitutional Court, shows important innovations, it also presents some tremendous challenges in dealing with large numbers of perpetrators and victims through a system that encourages cooperation with the law and disclosure as an alternative to

34. *See* Civil Society Organizations for Peace in Northern Uganda, *supra* note 25.

35. *See* U.S. Department of State, Northern Uganda Virtual Process Post, *Peace Process Chronology*, July 12-31, 2008, http://northernuganda.usvpp.gov/peaceprocess.html.

36. *See* U.N. News Service, Statement by the Special Adviser on the Prevention of Genocide, (Nov. 15, 2004), http://www.un.org/apps/news/printinfocusnews.asp?nid=828.

37. *Id.*

38. *See* U.S. Office on Colombia, Paramilitary Demobilization, http://www.usofficeoncolombia.com/Paramilitary%20Demobilization (last visited Oct. 16, 2008).

39. Corte Constitucional de Colombia, Sentencia C-370/2006 (responding to a challenge to Law 975 by several civil society organizations).

full-fledged trials.[40]

In Darfur, which I visited in 2004 and 2005 in my role as Special Advisor to the Secretary General on the Prevention of Genocide, impunity for earlier crimes, notably the massacres of 2003 that cost 200,000 lives, has been for too long a factor of instability and a hindrance to prevention of future crimes.[41] That is why, early on, I joined those who called for a referral of the case to the ICC by the Security Council, a measure of historic significance that was adopted on April 1, 2005.[42]

Unfortunately, I come away with the impression that we were not always strategic or sufficiently persistent in pursuing a multi-pronged approach to protection, humanitarian assistance, promoting a peaceful settlement of the conflict, and criminal accountability. It has now been three years since the Security Council referral to the ICC, and the Government of Sudan has repeatedly stated that it does not recognize the referral and that it will not cooperate with the Office of the Prosecutor's (OTP) investigations or the arrest warrants issued last year against Ahmad Harun and Ali Kushayb.[43] In that long period, the Security Council has made no effort to remind the Government of Sudan that this was a decision adopted under Chapter VII of the Charter of the United Nations, and, therefore, binding on all member States.[44] Instead, we have let the regime get away with defiance of a resolution adopted in furtherance of international peace and security. As far as I can see, within the United Nations only the High Commissioner for Human Rights and my office of Prevention of Genocide have raised this point from time to time.[45] The

40. Press Release, Int'l Ctr. For Transitional Justice, Brief on Justice and Peace Law Presented to Colombian Constitutional Court (Jan. 17, 2006), http://www.ictj.org/images/content/2/9/296.pdf.

41. *See* Juan Mendez, *Action is Needed to Resolve the Darfur Crisis*, FIN. TIMES, March 7, 2005, at 15.

42. *See* S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005); Mendez, *supra* note 41, at 15.

43. Press Release, Human Rights First, ICC Prosecutor Reports on Sudan's Obstructionism (Dec. 6, 2007), http://www.humanrightsfirst.org/media/etn/2006/alert/179; Press Release, Int'l Crim. Ct., Warrants of Arrest for the Minister of State for Humanitarian Affairs of Sudan, and a Leader of the Militia/Janjaweed (May 2, 2007), http://www.icc-cpi.int/press/pressreleases/241.html.

44. *See* S.C. Res. 1593, *supra* note 42 (indicating that the Security Council acted under Chapter VII); Press Release, Human Rights First, *supra* note 43. Following the presentation of this keynote address, the President of the Security Council issued a statement on June 16, 2008 "urg[ing] the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur." Statement by the President of the Security Council, U.N. Doc. S/PRST/2008/21 (June 16, 2008).

45. Mendez, *supra* note 41.

result is not only that we have not offered the ICC the support it needs, but also that we have given away cards that could have been used to reach a serious peace agreement when negotiating with Khartoum to better protect and assist the three million Darfuris who are now totally dependent on international assistance.

In the Democratic Republic of Congo (DRC), reports of crimes are also still surfacing. Many crimes are still being committed in a widespread manner, particularly against women and girls, notably in the Kivus.[46] The fight against impunity has barely started in this huge country. We hope that the trial at the ICC of Thomas Lubanga Dyilo[47] will soon be followed by other cases, so as to give an account of the many horrific crimes committed in this country since 2002.[48] But there is also an acute need in the DRC to foster accountability for the many crimes committed before 2002.[49] It is critical that domestic courts be enabled and empowered to try those responsible, including those bearing the highest level of responsibility. ICTJ is currently co-undertaking a survey to better understand the extent to which people have been victimized in the DRC.[50] Another project which will pave the way to fostering accountability in the DRC has been developed by the U.N. Office of the High Commissioner for Human Rights with the United Nations Mission in the Democratic Republic of Congo: it concerns the mapping of the serious violations of international humanitarian law and of massive human rights violations which have taken place in the DRC over the last few years.[51] Such mapping will not only gather and preserve crucial evidence, but also provide a new impetus to advocate the need to bring those responsible to justice. The long-term stability of this vast country situated at the heart of Africa is at stake, and much more needs to be done to ensure that

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46. *See* Int'l Comm. Of the Red Cross (ICRC), Democratic Republic of Congo: Update on ICRC Activities in the Kivus–January and February 2008, http://www.icrc.org/Web/Eng/sireengO.nsf/html/congo-kinshasa-update-060308 (last visited Nov. 21, 2008). In the beginning of 2008, the ICRC documented many cases of sexual violence and assault in the Kivu. *Id.*

47. *See* Mike Corder, *Congo Militia Leader Ordered to Stand Trial*, THE BOSTON GLOBE, Jan. 30, 2007, http://www.boston.com/news/world/europe/articles/2007/01/30/congo_militia_leader_ordered_to_stand_trial; *see also* Emma Thomasson, *Global Court Ready for First Trial of Congo Suspect*, WASH. POST, Jan. 29, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/01/29/AR2007012901620.html.

48. *See* David Scheffer & John Prendergast, Op-Ed., *Commentary: A Deadly Cocktail Devastates Congo*, L.A. TIMES, Dec. 22, 2000, at B9.

49. *See id.*

50. International Center for Transitional Justice, The Democratic Republic of the Congo, http://www.ictj.org/en/where/region1/646.html (last visited Nov. 21, 2008).

51. UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, HIGH COMMISSIONER'S STRATEGIC MANAGEMENT PLAN 2008-2009, at 59 (2008) http://www.ohchr.org/Documents/AboutUs/SMP2008-2009.pdf.

the plight of the Congolese is addressed in accountability terms.

Ultimately, all these cases demonstrate that the interests of justice and peace cannot and should not be divorced. Justice is an important component of the prevention of future crimes. It is only through justice and enforcement of the law that long-term respect for the rule of law can be built.

This provides us with an important lesson for all international and hybrid jurisdictions: they must seek more pro-actively to build their legitimacy in affected regions, so as to build their own relevance in the lives of those most affected. Most importantly, these jurisdictions are judged on the basis of their impartiality and professionalism. To be seen as legitimate and respectful of universal standards, any perception of selective prosecution, not based on rational choices, should be avoided or at least carefully explained.

Those of us who support these jurisdictions should learn to identify their impact and successes in ways that go beyond the strict confines of the judicial process. In cases such as Cambodia, this will depend on the legitimacy and transparency of the Extraordinary Chambers in the eyes of Cambodians who suffered under the Khmer Rouge and the international community.[52] This broader impact is all the more important for those international or hybrid jurisdictions which are being prompted to "complete" their work in the coming years.[53] It is time to assess their work, but we must do it under a long-term view and not on the basis of their immediate political effect on the ground. It is important to review their legacy and what remains to be done, with a view to help generate incorporation and ownership of that legacy by the national legal culture, and domestic capacity to further their work.

Of paramount importance is to bring to justice the leaders who bear the greatest responsibility for the commission of international crimes. Even heads of States are not beyond the reach of the law. These principles are reflected throughout international humanitarian law, the rule on command responsibility, and in the fact that the official position of individuals does not relieve them of criminal responsibility.[54]

Of essential importance too is the need to continue to support domestic actors as they seek to bring justice outside of the spotlight of international attention or through the United Nations. In this re-

52. *Id.* at 70.

53. *See* UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: MAXIMIZING THE LEGACY OF HYBRID COURTS 16 (2008), http://www.ohchr.org/Documents/Publications/HybridCourts.pdf.

54. *See* Theodor Meron, *The Humanization of Humanitarian Law*, 94 AM. J. INT'L L. 239, 243 (2000) (discussing the shift from "state-to-state aspects of international humanitarian law to individual criminal responsibility").

spect I want to mention again important efforts in places such as Peru and Argentina, as well as the ground-breaking precedent established by the Supreme Court of Chile in ruling in favor of the extradition of former Peruvian President Alberto Fujimori.[55]

The conduct of modern wars affects greater numbers of innocent victims than ever before, and so also greater than ever is the importance of condemning breaches of international humanitarian law and crimes against humanity and finding ways to enforce these norms. But one must recognize that preventing violations of international humanitarian law is an ideal which may never be fully attained. Justice, accountability, and punishment play important preventive functions, but they should not be overestimated. The fact that murders have been prosecuted domestically for centuries has not resulted in the cessation of murders. The fear that individuals have of being possibly punished may have a deterrent effect if it is correlated with the *likelihood* of being punished. And this may be one of the fundamental problems of international justice: it is not yet systematic, and there are still too many ways to escape it. This in turn shows the importance of the complementary approach: the need to foster accountability at both the domestic and the international levels so that they ultimately reinforce each other.

Thank you very much for your attention.

55. *Chile: Fujimori Can Be Extradited,* CNN.COM, Sept. 21, 2007, http://www.cnn.com/2007/WORLD/americas/09/21/chile.fujimori/index.html?iref=newssearch.