

## **Beyond the Hague: The Challenges of International Justice**

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During the 1990s, the international community took unprecedented steps to limit the impunity all too often associated with mass slaughter, forced dislocation of ethnic groups, torture, and rape as a weapon of war. Along with two genocides and many other widespread crimes, the decade was marked by the creation of international criminal justice mechanisms and the application of universal jurisdiction to hold perpetrators of the most serious crimes to account. Due to inherent difficulties in rendering justice for these crimes, there have been failings, but the new approaches have nonetheless made great strides.

In the last few years, opposition to this nascent “system” of international justice has intensified and today the landscape is less hospitable to the types of advances that took place in the 1990s. In this context, those supporting efforts to hold the world’s worst abusers to account need to take a hard look at recent experiences to chart the path forward. The victims who suffer these crimes, their families, and the people in whose names such crimes are committed deserve nothing less. In so doing, it is necessary to emphasize that although international justice mechanisms provide imperfect remedies, they are a vitally necessary alternative to impunity. This essay proposes a perspective of the road ahead in light of both the successes of the recent past and current obstacles to further progress.

### ***A Developing System of International Justice***

Soon after the end of the Cold War, with the horrors in the former Yugoslavia and Rwanda and the stark failures of national court systems freshly in mind, the United Nations, a number of governments, and many citizens groups and international nongovernmental organizations (NGOs) worked to create international criminal courts. The Security Council created two ad-hoc international criminal tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994, to try alleged perpetrators of genocide, war crimes, crimes against humanity, and other serious violations of international humanitarian law in those particular conflicts.

Affirming the viability of international criminal mechanisms after a fifty-year hiatus, the tribunals held perpetrators of crimes in the former Yugoslavia and Rwanda accountable. Suspects were arrested and tried before these tribunals regardless of their official status, leading to the first indictment of a sitting head of state, namely Slobodan Milosevic by the ICTY, as well as the indictment of the former Prime Minister of Rwanda, Jean Kambanda, by the ICTR. The Rwandan and Yugoslav tribunals revitalized an international criminal jurisprudence that had not developed since the Nuremberg and Tokyo trials.

In response to shortcomings in their performance, described in more detail below, the ICTY and ICTR improved their practice over time. By 2002, between four and six trials were taking place each day in the three courtrooms at the ICTY. Changes were also implemented to improve the functioning of the ICTR where major problems had persisted. In 2002, the capacity of the Rwandan tribunal increased when the Security Council amended the ICTR Statute to permit ad litem judges to serve in trial chambers. After a long delay, two senior posts in the ICTR Office of the Prosecutor were filled and a new president and vice-president were elected. In September 2003, the Security Council separated the ICTY and ICTR prosecutor posts and appointed a separate ICTR prosecutor.

The experience of the ad hoc tribunals revived an idea that first gained currency after World War II: the creation of a standing forum where justice can be rendered for the gravest crimes when national courts are unwilling or unable to do so (the latter limitation on jurisdiction is known as the “complementarity principle”). In 1998, more than 150 countries completed negotiations to establish the International Criminal Court (ICC), a permanent international court charged with prosecuting war crimes, crimes against humanity, and genocide in such circumstances. Reflecting the dynamism of efforts to limit impunity during this period, the necessary sixty states ratified the court’s treaty—known as the Rome Statute—to bring it into force in July 2002, less than four years after it had been opened for signature. The establishment of the ICC, a huge step forward for human rights, has the potential to focus international attention on impunity for the “most serious crimes of concern to the international community,” as noted in the preamble of the Rome Statute. The court has engendered great expectations.

While the ICC will face many obstacles in bringing justice, the most immediate threat to its effectiveness comes from the ideologically motivated hostility of the Bush administration. The U.S. government’s campaign against the court, while both shameful and damaging, has nevertheless failed to derail the considerable momentum behind the

ICC's establishment. To date, ninety-two states have ratified the Rome Statute and nearly fifty more have signed it.

In the brief period since the Rome Statute's entry into force, the ICC has moved from an institution on paper to a permanent court staffed with highly qualified judges and an experienced prosecutor and registrar. ICC officials familiar with the experience of the two ad hoc tribunals consciously drew on the lessons of those mechanisms to create a more efficient court. In July 2003, one month after taking office, the prosecutor announced he was following closely the situation in Ituri province of the Democratic Republic of Congo (DRC). Since there is incontrovertible evidence that the DRC currently lacks capacity to adjudicate cases involving serious human rights crimes, the situation there is precisely one of the scenarios the ICC was intended to address.

Over the past decade, several European states also began to meet their obligations to prosecute those found on their territory accused of atrocities. Using domestic universal jurisdiction laws in domestic courts, Switzerland, Denmark, Belgium, Germany and other states have tried such individuals far from the countries where the crimes were committed.

In October 1998, the United Kingdom arrested former President Augusto Pinochet on a Spanish warrant charging the former dictator with human rights crimes committed in Chile during his seventeen-year rule. As a result, four states, Belgium, France, Spain, and Switzerland, litigated the right of their courts to try Pinochet. The arrest of Pinochet sparked litigation before the United Kingdom's highest court, the House of Lords, that resulted in the landmark decision that Pinochet, as a former head of state, could face prosecution for acts of torture in relation to crimes committed after 1988, when the United Kingdom became a party to the U.N. Convention against Torture.

A synergy developed between efforts to bring justice at the international level and access to national courts where the crimes occurred. There was a profoundly important "spillover" effect: national courts began to take on litigation of previously barred cases. The Pinochet litigation prompted an opening of the domestic courts in Chile to victims who had been denied access to remedies. In August 2003, trials of military officers responsible for gross violations of human rights during Argentina's "dirty war" were reopened in Buenos Aires. A Spanish judge prompted this development when he issued warrants for the extradition of forty-five former military officers and a civilian accused of torture and "disappearances" in Argentina so that they could stand trial in Spain.

The spillover effect has been particularly pronounced in countries that have undergone a thorough transition from authoritarian rule to democracy, such as in Chile and Argentina. But also in Chad, victims were emboldened by international efforts to indict former dictator Hissène Habré, leading them to bring cases before their national court against former Habré associates.

These different developments taken together have formed the components of a new, fragile, yet unprecedented system of international justice consisting of ad hoc tribunals, the permanent ICC, and various other international mechanisms. These institutions promise an end to the impunity that perpetrators of some of the world's worst crimes have long enjoyed.

### ***A Changing Landscape***

By 2001, steps to enhance international justice began to encounter broadening political opposition. Electoral changes on both sides of the Atlantic brought in political leaders less supportive of these courts. The Bush administration's unilateralist policies were hostile to international institutions. The election of several new governments in Europe reduced the willingness of the European Union to stand up to such hostility. The attacks of September 11, 2001 further contributed to a shift away from support for international justice, with efforts to combat terrorism taking precedence over international law.

In May 2002, the Bush administration launched a worldwide campaign to undermine and marginalize the ICC. After repudiating the U.S. signature of the Rome Statute, the Bush administration threatened to veto all U.N. peacekeeping operations unless Security Council members passed a resolution exempting citizens of non-ICC states parties involved in U.N. operations, such as the United States, from the reach of the ICC. The Bush administration also played hardball to pressure individual ICC states parties to sign bilateral immunity agreements exempting U.S. citizens—and foreign nationals working under contract with the U.S. government—from ICC jurisdiction. These agreements put states parties in violation of their treaty obligations to the court. The actions of the United States—in effect threatening economically vulnerable states with sanctions for supporting the rule of law through the ICC—marked a perverse low point in U.S. human rights policy.

Washington's efforts to undermine the ICC coincided with a rising level of disenchantment among some powerful Security Council members towards the ad hoc tribunals it had created due to their cost and slow-moving procedures. As entirely new entities with only the Nuremberg and Tokyo tribunals as institutional precedents, the ad hoc tribunals for the former Yugoslavia and Rwanda, not surprisingly, had their share of difficulties. With Security Council members increasingly skeptical of the utility of the tribunals and concerned with rising costs, political and financial support waned. This culminated in pressure to adopt a "completion strategy" with a 2010 deadline regardless of whether this date allows the tribunals to fulfill their mandates.

Imposing increased political and financial constraints, the U.N. Security Council then made efforts to bring international expertise to bear on questions of justice in ways that were less politically controversial and costly. These factors prompted the emergence of a diverse "second generation" of international criminal justice mechanisms: "hybrid" national/international tribunals that utilized varying degrees of international involvement.

A U.N. International Commission of Inquiry on East Timor recommended that an international tribunal be created to try those responsible for atrocities committed by the Indonesian army and Timorese militias backed by Indonesia at the time of the vote for independence in 1999. However, Indonesia promised to prosecute individuals responsible for these crimes. As a result, Secretary-General Kofi Annan did not endorse and the Security Council did not implement the Commission's recommendation. In August 2001, an Ad Hoc Human Rights Court on East Timor was established in Indonesia. To try alleged perpetrators who remained in East Timor, the U.N. transitional administration appointed international judges to the newly created Dili District courts. Even after East Timorese independence on May 20, 2002, panels comprised of one East Timorese and two international judges, known as the Special Panels for Serious Crimes, adjudicate these cases.

The U.N. Mission in Kosovo took a similar approach to try serious crimes committed during the armed conflict in 1999. The ICTY lacked the resources and the mandate to act as the main venue to bring justice for these crimes. Although a justice system was reestablished in Kosovo following the conflict, underfunding, poor organization, and political manipulation plagued the newly ethnic-Albanian-dominated system. The new U.N. administration initially appointed a limited number of international judges to sit on panels with a majority of Kosovar judges without restrictions on the cases that these panels could adjudicate. Subsequently, the U.N. administration provided, pursuant to

Regulation 2000/64, for panels comprised of at least two international judges and one Kosovar judge to adjudicate cases where “necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice.” These panels are known as Regulation 64 Panels after the regulation that created them. They generally adjudicate cases involving serious crimes committed during the conflict. As discussed in the following section, the hybrid mechanisms in East Timor and Kosovo have faced serious difficulties in administering justice in such cases.

In 2002, taking a different “hybrid” approach, the United Nations signed an agreement with the government of Sierra Leone to create the Special Court for Sierra Leone. The Special Court was mandated to bring to justice those “most responsible” for atrocities committed during the country’s internal armed conflict. Like the two ad hoc international tribunals, the Special Court has its own statute and rules of procedure. It does not operate as part of the national courts of Sierra Leone. Unlike the Rwandan and Yugoslav tribunals, the court is situated in Sierra Leone, has jurisdiction over some crimes under Sierra Leonean law, and has judicial panels composed of international and Sierra Leonean judges. The court is expected to try between fifteen and twenty alleged perpetrators of the horrific crimes of the conflict.

Due to Herculean efforts by the staff of the Registry and Office of the Prosecutor, the Special Court was established in war-ravaged Freetown, Sierra Leone, in the space of a few months in 2002 and 2003. To date, the prosecutor has issued nine indictments. While the Special Court aroused great expectations, including strong support from the United States due to its low cost and enhanced national character, it too has encountered disenchantment among some Security Council members and the U.N. Secretariat. These attitudes congealed as the cost of the court’s operations began to rise beyond initial budget projections. The reservations took a qualitative leap when the prosecutor unsealed an indictment against former Liberian President Charles Taylor while the latter was attending peace talks in Ghana in June 2003. The appropriateness of unsealing the indictment during peace talks generated considerable objections, although no one denies that Taylor’s long awaited departure took place soon thereafter. At this writing, the Special Court was facing serious budgetary problems due to the voluntary nature of its financial support.

In Cambodia, efforts to create a stand-alone “hybrid” court to bring members of the Khmer Rouge to justice have been less successful. The United States, France, Japan, and others pressured the United Nations to conclude an agreement with Cambodia to establish a Khmer Rouge Tribunal that lacked fundamental protections to ensure that

the tribunal would be independent and impartial. The proposed tribunal would have a majority of Cambodian judges and a minority of international judges, working alongside Cambodian and international co-prosecutors. Cambodia's judiciary has been widely condemned by the United Nations and many of its member states for lack of independence, low levels of competence, and corruption. There are serious concerns about this mechanism.

There are other post-conflict situations where the permanent members of the Security Council have yet to address impunity. These include Afghanistan, Liberia, Côte d'Ivoire, as well as the Democratic Republic of the Congo. In Afghanistan, a national human rights commission, rather than an international commission of inquiry, was given the task of addressing past abuses committed during two decades of war despite its very limited capacity. This was largely due to resistance by the newly established Afghan government, the U.S. government, and the U.N. Assistance Mission in Afghanistan to a serious accountability process that might upset the political transition. To date, the national human rights commission has not made meaningful progress to address past crimes, a result of inadequate training, resources, and equipment, and threats against commission members.

The accountability process in Iraq marks another missed opportunity for the international community. The Iraqi Governing Council has drafted a law to establish a domestic war crimes tribunal to prosecute the former Iraqi leadership for crimes including genocide, crimes against humanity, war crimes, torture, "disappearances," and summary and arbitrary executions committed during Ba`th Party rule. The United States has backed such an "Iraqi-led" tribunal to try these crimes and many Iraqis have expressed support for this approach. However, Iraqi jurists have not had experience in complex criminal trials applying international standards. In the face of very limited United Nations involvement in post-war Iraq, the Security Council, for its part, even shied away from a proposal to establish an expert group comprised of Iraqi and international experts to assess how to best bring justice for Iraq. There is real concern that the projected trials in Baghdad could end up as highly politicized proceedings, undercutting the fairness and legitimacy of the process.

In the last several years, although some states continued to meet their obligation to prosecute the most serious international crimes through their national courts, the application of universal jurisdiction laws also has been scaled back somewhat. While there are a number of pending cases involving mid-level officials before national courts in Europe, there has been no increase in prosecutions of senior officials.

In the so-called Yerodia case of February 2002, the International Court of Justice (ICJ) held that a sitting foreign minister was immune from prosecution in another country's court system regardless of the seriousness of the crimes with which he was charged. Although the ICJ noted that such officials would not be immune to prosecution before international criminal courts where these courts have jurisdiction, its decision went against recent trends to deny immunity for serious human rights crimes.

In 2003, Belgium was forced to revise its universal jurisdiction law in response to intense economic and diplomatic threats by the Bush administration. This included the Bush administration raising the possibility of moving NATO headquarters elsewhere unless Belgium capitulated to its demands. The Belgian law had a particularly expansive reach: the absence of a jurisdictional "presence" requirement in the law together with a provision allowing private individuals, known as "parties civiles," to file complaints directly with an investigating judge resulted in the indiscriminate filing of a spate of cases against high profile officials from around the world. This attracted enormous media attention and opposition even though the investigative judge had the power to, and undoubtedly would have, ultimately dismissed patently unfounded complaints. The revised law restricts the reach of universal jurisdiction to cases where either the accused or victim has ties to Belgium, making it similar to or more restrictive than the laws of most countries that recognize universal jurisdiction.

### ***A Way Forward***

The backlash against the developing international justice system, while dismaying, is hardly surprising given the extent to which the significant advances of the past decade have begun to constrain the prerogatives of abusive state officials. The challenge now is to work effectively in a more difficult international environment while many national courts remain unable and unwilling to prosecute the most serious human rights crimes. The gains engendered by international justice institutions need to be preserved and the international system strengthened until many more national courts assume their front-line role in combating impunity.

We see three critical steps: make a sober assessment of the challenges facing international justice today; analyze and draw lessons from experience to date; and take strategic, measured steps forward. This essay concludes with separate descriptions of each of these steps, including specific recommendations on how to implement them to maximize the effectiveness of existing institutions.

## ***Assessing the Challenges Facing International Justice Today***

The system of international justice has made several singular advances. At the same time, as described below, the ad hoc international tribunals have not been as effective or as efficient as envisioned. The achievements of the courts in Kosovo and East Timor have been similarly mixed. Grasping the combination of the inherent institutional limitations and the objective difficulties to international justice is crucial in evaluating the performance of these tribunals and continuing efforts to more fully assure justice for atrocities.

Prosecuting senior officials for serious human rights crimes where there are a large number of victims is a complex and expensive process regardless of whether the cases are tried before national or international courts. These prosecutions tend to involve massive amounts of evidence that must be analyzed and classified by crime scene, type of crime, and alleged perpetrator. Such cases require a sophisticated prosecution strategy. Trials must comply with international human rights standards to ensure their legitimacy and credibility. Ensuring the fairness of these trials—including their compliance with human rights standards—often results in a slow process.

Cases brought before international criminal tribunals or in national courts (based on universal jurisdiction) are often tried far away from the crime scene and thus are less accessible to victims and those in whose name the crimes were committed. These trials sometimes lack the visibility in the country where the crimes occurred that a local trial would have. The state where the crimes occurred, whose government may include accused war criminals or their confederates, may oppose the prosecutions, resisting cooperation and making it difficult to obtain custody of the defendants or obtain evidence. Gathering evidence for crimes that occurred hundreds or thousands of miles away makes it more difficult to meet the level of proof required for a conviction and for the accused to develop a comprehensive defense. Another downside to distance includes a lack of familiarity with the cultural and historical context in which the crimes occurred. The need for translation services also slows the pace of trials and makes them more costly.

International criminal tribunals, as global institutions, also face their own unique institutional challenges. Bringing together judges, prosecutors, and other court personnel from different backgrounds and legal cultures creates obstacles to efficient

trials. Reconciling the civil and common law traditions to establish and implement rules of procedure and evidence is time-consuming and costly.

The Yugoslav and Rwandan tribunals are illustrative of some of these problems. After approximately seven years of work, the ICTR has completed only fifteen trials. This is due to a variety of factors including an overly ambitious prosecution strategy that pursued too many suspects; poor coordination between investigators and prosecutors; and failure to fill some long vacant posts. The slow pace of trials has resulted in unusually long pre-trial detentions that raise human rights concerns. Although significantly more efficient, cases at the ICTY have also progressed slowly, in some part due to indictments overloaded with numerous counts. The cost of the tribunals has been extraordinarily high, reaching U.S. \$100 million a year.

At the ICTR, there have also been ongoing problems with witness and victim protection. Witnesses and victims have described being treated with a lack of sensitivity due in part to lack of communication with victims and witnesses and inadequate follow-up. Major indicted war criminals of both tribunals remain at-large due to a failure of cooperation and assistance by the states where they are located and other states with the capacity to arrest them.

The national component of the hybrid mechanisms offers the potential advantage that the trials will leave a more lasting legacy in the countries where the crimes occurred. In theory, the existence of national staff working alongside internationals with expertise in adjudicating complex criminal trials could over time enhance the capacity of national courts. The proximity of the court to the site of the crimes could make the trials more accessible to victims and those in whose name the crimes were committed. However, the local component of these mechanisms also presents particular challenges. Security risks may be increased, local staff hired to work on these cases may be linked to past abuses, thereby re-traumatizing victims and witnesses, and national staff may be subject to political interference or lack the expertise to ensure that cases are tried fairly and effectively.

The work of the hybrid mechanisms in East Timor and Kosovo up to this point has been far from ideal. Representing “justice on the cheap,” they have been seriously underfunded by the international community. In both situations, cases have progressed slowly and the administration of justice has suffered from a range of problems including: lack of qualified staff to investigate, prosecute, and adjudicate cases; arbitrary or lengthy pre-

trial detention and ineffective defense counsel; lack of effective translation services and support staff; and allegations of political interference or intimidation.

As the Special Court for Sierra Leone has yet to begin trials, it is too soon to evaluate its success as an accountability model. However, it appears so far to be operating efficiently.

In establishing the Yugoslav and Rwandan tribunals, the international community faced specific challenges that resulted from their *sui generis* nature. The only models from which they had to work were the Nuremberg and Tokyo tribunals, courts conducted by the victors of World War II, fifty years ago, and in which trials and sentences were quickly carried out. While not absent, fair trial safeguards in these prosecutions would probably not pass muster under today's standards. Most strikingly, there was no right to appeal. The establishment of the Yugoslav and Rwandan tribunals thus occurred without any pre-existing adequate model and high start-up costs could have been expected.

Objective institutional problems have also been aggravated by a tendency to misunderstand the immediate impact of the Nuremberg trials. The short-term effect of Nuremberg has, unfortunately, been inflated over the years. At the time the trials were conducted, they were enormously controversial among Germans. While illuminating to the international audience, the German people initially dismissed the proceedings as political show trials. The International Military Tribunal (IMT) that conducted the Nuremberg trials did not significantly enable Germans to come to grips with the horrific crimes that were committed by the Nazi government. This reckoning only occurred decades later when a new generation began to ask questions about individual responsibility during the Third Reich. At that time, the IMT's record provided an invaluable and incontrovertible reference point of past crimes. Nevertheless, conventional wisdom about the Nuremberg trials is that they quickly enabled the population of Germany to confront what had happened under the Nazi Party. This idealized view has led to unrealistic expectations for war crimes trials. We need to better calibrate our expectations given the experience of the last half-century.

The international community, moreover, is only beginning to reap the benefits of its investment in the Yugoslav and Rwandan tribunals. It has drawn on the lessons of the two tribunals in establishing the ICC and hybrid mechanisms, and can also be expected to benefit from this experience in structuring future justice mechanisms.

## ***Learning from Experience***

National courts are not about to become uniformly capable or willing to bring justice for atrocities in the immediate future. This is particularly true in post-conflict situations where justice systems have been either partially or completely destroyed. As a result, international justice will remain a crucial last resort that must continue to be fortified against efforts to undermine it.

The achievements and failings of the ICTY and ICTR need to be thoroughly assessed. While it may be unrealistic to expect that full-scale ad hoc international tribunals will be created in the current environment, the lessons of these tribunals can help inform other efforts, including the development of hybrid justice mechanisms. Similarly, the record of existing hybrid mechanisms must be evaluated so that the benefits of national participation can be fully realized while better achieving fair and effective trials. The effects of differences between existing hybrid courts, including the extent to which they operate more as national courts, as do the Regulation 64 Panels in Kosovo, or as international courts, as does the Special Court for Sierra Leone, should receive particular scrutiny. Hybrid mechanisms should not be established simply because they are an inexpensive alternative if an international mechanism would be more appropriate.

In addition, we need to evaluate situations in which international mechanisms are rejected notwithstanding serious concerns about national capacity and willingness to pursue justice, as in Indonesia for crimes in East Timor and as is likely to be the case in Iraq. The consequences of failing to address impunity at all, as appears likely in Afghanistan, must also be documented. Such efforts will help build support for international justice.

More countries should be encouraged to adopt and implement universal jurisdiction laws. This could be accomplished as part of their adoption of ICC implementing legislation. Politicized use of universal jurisdiction against high profile figures, however, will only weaken the credibility of international justice efforts and should be avoided. In general, prosecutors and investigating judges should initiate cases against lower-rank defendants found on their territories. This will allow the jurisprudence and practice to be built from the bottom up. This could lead over time to the successful application of extra-territorial jurisdiction against more prominent figures. However, where a strong legal basis exists, cases against more prominent figures must also be pursued.

The United Nations must play a more central and systematic role in post-conflict situations. Although the United Nations has often been pivotal in forging the international response to serious human rights crimes in such settings, the “justice gap” in countries such as Liberia, the Democratic Republic of Congo, and Côte d’Ivoire underscores the need for more systematic U.N. efforts. Over the last decade, the Security Council, the secretary-general, and the General Assembly have convened several commissions of experts to assess evidence of serious human rights crimes and recommend appropriate mechanisms. Such commissions were created for the former Yugoslavia, Rwanda, East Timor, and Cambodia. The U.N. Secretariat should create a permanent post or entity charged with analyzing the work of such commissions, identifying successes and failures, and advising future commissions. Creation of such commissions should become a regular part of the Security Council’s response to post-conflict situations.

### ***Taking Strategic Steps Forward***

The ICC will only realize its potential with the concerted assistance of states, intergovernmental organizations, and NGOs. States parties need to strengthen and defend the integrity of the ICC statute. They should find ways to diffuse attacks on the court by the Bush administration, and continue to provide additional financial and diplomatic support for the court. States parties must also adopt strong legislation implementing the provisions of the Rome Statute into national law.

There likely will be intense scrutiny of the ICC’s performance in the first cases it adjudicates. It will be difficult work to do well and there will be shortcomings. However, the ICC should make every effort to conduct the most fair, impartial, effective, and efficient trials possible so that the court gains legitimacy and credibility.

Even if the ICC achieves its full potential, it realistically will not be able to address all situations in which national courts are unwilling or unable to prosecute perpetrators. Among other factors, there are temporal and other jurisdictional limitations on what cases the ICC can hear. The ICC’s jurisdiction is also restricted to cases in which the state where the crimes occurred is a party to the Rome Statute, the state of the nationality of the accused is a party to the Rome Statute, or the Security Council refers the situation. Even where these requirements are satisfied, the ICC will be able to prosecute only a small percentage of the highest-level alleged perpetrators. Cases of mid-level perpetrators and cases where there are numerous perpetrators bearing

significant responsibility, as in many post-conflict situations, are unlikely to be fully addressed by the ICC.

In light of the constraints on the ICC and other international justice mechanisms, efforts to strengthen weak but politically willing national courts are all the more important. The ICC's operations must leverage the complementarity provisions of the Rome Statute to create a synergy between its work and prosecutions for serious human rights crimes by national courts. The ICC should strive to focus international attention on situations where serious human rights crimes have occurred, both where it is pursuing cases and not pursuing cases. Where it is pursuing cases, such attention could help garner support to enhance the capacity of national courts to prosecute mid-level and lower-level perpetrators effectively and in accordance with fair trial standards. Where it is unable to pursue cases involving serious crimes due to jurisdictional limitations or some other obstacle, such attention could help garner support to enhance the capacity of national courts to prosecute the highest-level perpetrators. This will maximize the ICC's catalytic effect on international support for fair and effective prosecutions at the national level.

Hybrid mechanisms, universal jurisdiction, and other solutions will be essential to filling justice gaps where the ICC and national courts are unable to address serious crimes. The international community should apply the lessons learned from existing hybrid mechanisms to develop new models that are able to bring justice more fairly, effectively, and efficiently. Universal jurisdiction should be applied where appropriate.

The work of the ICTY and ICTR should effectively draw on the lessons of experience to date to complete their work. Given the emphasis the Security Council has placed on a completion strategy for these tribunals to cease operations by 2010, states and intergovernmental organizations should work assiduously to arrest key suspects and prosecute them. The tribunals should continue to amend their rules and improve courtroom management to increase efficiency and effectiveness. Some cases are likely to be referred back to the national courts of the former Yugoslavia and Rwanda as part of the completion strategy. The lessons of the tribunals should be used to increase the capacity of the national courts to adjudicate these cases fairly and effectively by conditioning referral on national courts' compliance with international fair trial and human rights standards.

## ***Conclusion***

The development of a system of international justice to limit impunity for serious human rights crimes has struck at outmoded notions of national sovereignty and the absolute prerogative of states. It would have been unrealistic to expect that progress would occur in a straight line. To address today's more difficult environment, recent achievements must be secured and the system must be refined so that perpetrators of the most serious crimes are increasingly held to account.