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## FREDERICK K. COX INTERNATIONAL LAW CENTER LECTURE\*

### ACCOUNTABILITY FOR STATE CRIMES: THE PAST TWENTY YEARS AND THE NEXT TWENTY YEARS

*Aryeh Neier*<sup>†</sup>

When Saddam Hussein was captured by US forces last December in a hole in the ground in Iraq, he joined a select group of former leaders of countries who will face justice, or who have already faced justice, for their crimes against humanity. Others in that group include most of the officials of the Rwandan government who were principally responsible for the 1994 genocide, including the Prime Minister at the time, Jean Kambanda, who has been convicted of the ultimate crime and is serving a life sentence. This group also includes individuals who had the main responsibility for the great crimes committed in ex-Yugoslavia during the 1990s, including the former President of the Federated Republic of Yugoslavia, Slobodan Milosevic; a former Prime Minister of Serbia, Milan Milutinovic; a former President of Republika Srpska, Biljana Plavsic; and most likely at some point, a fugitive from justice, Radovan Karadzic, another former President of Republika Srpska – who will be apprehended because his arrest is required in order that the international community can wind up and stop paying for the International Criminal Tribunal for the Former Yugoslavia; and a former President of Argentina, Jorge Videla, who was convicted in the 1980s, subsequently pardoned and was rearrested in 2002. Another former head of state, Charles Taylor of Liberia, has been indicted by the Special Court for Sierra Leone, but remains a fugitive from justice at this time, protected – for now – by the government of Nigeria. The struggle to bring former President Hissein Habre of Chad to justice in Senegal, where he took refuge, did not succeed, but it has led to legal proceedings in Chad against some of his top associates. Another former dictator, Augusto Pinochet of Chile, was also spared the need to face justice because the

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courts of his country have held that the elderly general is no longer fit to stand trial. Yet the case against Pinochet led to the prosecution and punishment of a number of Chilean military officers responsible for disappearances and other atrocious crimes. Also, a new court is getting underway to try the surviving leaders of the Khmer Rouge who were responsible for the Cambodian holocaust of the 1970s.

Plainly, there are many more heads of state and former heads of state who deserve to be prosecuted and punished for crimes that inflicted great suffering on their own citizens and the citizens of other countries. Yet what has been accomplished up to now is not negligible. It is now the case, as was never true previously, that leaders who are responsible for crimes against humanity face a realistic possibility that they will be held to account in a court of law, most likely an international court. It is still, of course, far from certain that they will face justice. Nor are we yet near the point when we can say it is a probability. But it is enough of a possibility that one guesses that it crosses the minds of some of those who commit such crimes. They can no longer be oblivious to the fact that others like them who once exercised what seemed to be unlimited power, and who could act with what appeared to be unrestrained cruelty, have been forced to defend themselves against criminal charges. How did we get to this point? And where do we go from here?

The contemporary struggle for accountability began just a little more than twenty years ago. If a precise date can be fixed, it would be April 28, 1983, when the military junta that had ruled Argentina for the previous seven years, on the eve of a transition to democratic government, issued what it called a "Final Document on the Struggle Against Subversion and Terrorism." The purpose was to put to rest debate over the "disappearances" that had been the method by which the armed forces had prevailed over both their violent left wing antagonists and over their peaceful critics in Argentine society: that is abductions by men in civilian clothes, using unmarked vehicles, who took their victims to clandestine detention centers, tortured them to reveal the names of others, secretly and summarily executed them and then buried them in undisclosed locations or dumped their remains out of airplanes at sea. At least nine thousand persons disappeared in this manner in Argentina according to a government commission that subsequently compiled information about the disappearances and that said the number was probably a lot higher. Estimates go as high as twenty to thirty thousand.

The "Final Document" did not serve its purpose. The debate did not end. Indeed, the document had the opposite effect. In the short term, it led to the election of a President in Argentina later in the year, Raul Alfonsin, who called for the invalidation of an amnesty that the armed forces decreed for themselves, Alfonsin established what became known as a "truth commission" and also ordered the trial of the military's top commanders including two men who served as Presidents of Argentina, Roberto Viola

and Jorge Videla. In the longer term, the inadvertent consequence of the "Final Document" was to focus the attention of the international human rights movement, which was still in its infancy in 1983, on the question of accountability for great crimes. In the two decades that have elapsed since then, that question has risen to the top of the agenda for the international human rights movement. It is the efforts of that movement that have brought us to the point where a number of former heads of state, and several hundreds of their top collaborators, have faced or now face criminal prosecution and punishment for crimes against humanity.

In a number of ways, developments in Argentina put their stamp on the way that the struggle for accountability evolved internationally during the past two decades. One way was in the choice of terminology to describe the forms of accountability.

Well before the issuance of the Final Document, one of the demands of those concerned about the fate of the disappeared, particularly from a group known as "The Mothers of the Plaza de Mayo," had been for information about their missing children. The armed forces put out a variety of explanations for the disappearances, most notably that those who were missing had left the country or had gone into hiding with a left wing guerrilla group. However, the mothers rejected these explanations with protests every Thursday afternoon in front of the presidential palace in Buenos Aires and demanded the "truth." Truth was particularly meaningful in Argentina because the methods by which disappearances were carried out were chosen for purposes of deception. The military junta resorted to deceit to maintain a pretense of legality, both domestically and internationally. It did all it could to be able to deny culpability for its crimes. Accordingly, when President Alfonsín established a National Commission on the Disappeared, it quickly became known to Argentines as the "truth commission." Thereafter, when such bodies were established in other countries, the word truth was generally incorporated in their official titles.

At the same moment that Alfonsín announced a commission on the disappeared, he also ordered prosecutions. As the one effort was focused on truth, Argentines said the other was concerned with justice. Ever since, those struggling for accountability have tended to differentiate those mechanisms that seek to reveal truth from those that are intended to do justice.

For a time, the course of events in Argentina seemed to suggest that while truth was feasible, justice was too difficult. That was because after the top commanders of the Argentine armed forces, including the two former presidents, were convicted and sentenced to prison, a series of military revolts in protest against trials that threatened lower level officers – who claimed that they were only following orders – led President Alfonsín to call a halt to the justice process. His successor, President Carlos Saul Menem, went further and pardoned those military men who had been

convicted. As a consequence, in such countries as neighboring Chile, which underwent a transition to democracy more than six years after Argentina, no attempt was made to secure justice. The democratic successors to President Augusto Pinochet established what they called a Commission on Truth and Reconciliation, but did not bring any prosecutions. To do so, they feared, risked military rebellions such as those that had shaken Argentina and might undermine their effort to build a lasting democracy. The Chilean Commission was followed by a United Nations sponsored truth commission for El Salvador that identified those on both sides responsible for the ghastly crimes committed during twelve years of civil war in that country. There too, no trials were held. The Salvadoran courts were incapable of doing justice, the commission itself said. To make certain, the Salvadoran government responded to the publication of the truth commission's report by adopting an amnesty law – one of a series of such laws in that country – prohibiting prosecutions.

About the time that El Salvador adopted its amnesty, a provision for amnesty was also incorporated in the Temporary Constitution under which a transition to democratic government took place in South Africa. Without an amnesty, by then a popular device, a peaceful transition from apartheid might not have been possible. But the government of President Nelson Mandela that took office in 1994 found a more elegant way to deal with the question of an amnesty than had been discovered previously. Under the leadership of Mandela's Minister of Justice, Dullah Omar, it took the position that amnesty would be granted individually, not collectively. Only those who acknowledged their crimes and fully disclosed them to a Truth and Reconciliation Commission – named after the post-Pinochet commission in Chile – would qualify for amnesty. Those who did not acknowledge and fully disclose would remain subject to prosecution, and could also be sued civilly for damages.

Though only a handful of South Africans have been prosecuted and punished for the many great crimes of the apartheid era, the decision to make amnesty only available individually to those who acknowledged and disclosed their crimes made the South African truth commission the most notable such body that was established anywhere in the world. It provided those who had been responsible for crimes with a powerful incentive to come forward and confess what they had done. By now, there have been truth commissions in more than thirty countries that have undergone transitions from dictatorship and tyranny to democracy, most of them in Africa and Latin America. Some of these commissions, such as those in Guatemala and Peru, have performed very effectively. Others, such as the one in Haiti, have been of no discernible value. But it is the South African commission that usually comes to mind when such bodies are discussed because it presented riveting images of former torturers and murderers testifying in explicit detail about their crimes, and sometimes demonstrating techniques, often with families of their victims looking on, in order to

qualify for individually granted amnesties. Getting them to abase themselves by providing such testimony to avoid prosecution had a psychological impact that may be as great – or, in some cases, even greater – than the effect of having them go to prison for their crimes. To the extent that there is a sense in South Africa that justice was done, it is more attributable to the testimony that was obtained from those who acknowledged and disclosed their crimes in exchange for amnesty than to the handful of prosecutions and convictions of those who remained eligible for such punishment because they refused to confess.

The trend to rely mainly on the revelation of truth and to avoid efforts to do justice out of fear that it would bring about reprisals, which lasted close to a decade, came to an end with the work of the International Criminal Tribunal for the Former Yugoslavia. Established by the UN Security Council in 1993, it was not taken seriously in its first two or three years. Some of those who sought its establishment – I among them – were human rights advocates seeking a means to hold accountable those responsible for the genocidal slaughter in Croatia and Bosnia. Others, however, were government officials who were glad to join in supporting the Tribunal as an alternative to taking more robust measures to stop the carnage. At least one of those in the latter category, the United States Secretary of State during the final months of the first Bush Administration, Lawrence Eagleburger, played a crucial role in launching the Tribunal by putting the weight of the U.S. government behind it.

The circumstance was as follows. Three weeks after losing the November 1992 election to Bill Clinton, President Bush announced his decision to send American troops to deal with one of the two headline international crises of the period, Somalia. That made it plain that nothing would be done about the other, Yugoslavia, because a lame duck President could hardly intervene militarily in two places. Eagleburger, as a former U.S. Ambassador to Yugoslavia who knew the country well, spoke the language and had done extensive business with the country when he was out of government, apparently feared that he would be blamed for the failure of the United States to deal with the disastrous situation there. Accordingly, soon after Bush's announcement about Somalia, on December 16, 1992, Eagleburger, who never previously or subsequently manifested any interest in the question of accountability for crimes against humanity, announced his support for the establishment of a U.N. criminal tribunal for Yugoslavia. He named ten persons – including Slobodan Milosevic – who should be tried by it. As it happens, Eagleburger's timing was inopportune as it took place on the eve of elections in the Federal Republic of Yugoslavia and helped tilt the results against a pro-Western candidate. But the Secretary of State's statement insured the unanimous adoption of a UN Security Council resolution two months later calling on the Secretary General to draw up a plan for a tribunal.

The International Criminal Tribunal for the Former Yugoslavia did not amount to much during its first two or three years, both because of the way the Security Council dealt with it and because it seemed to have no way to obtain custody over defendants. The Security Council's attitude was demonstrated by its failure to designate a Chief Prosecutor for fourteen months after its unanimous adoption of a specific plan for the Tribunal submitted by the Secretary General. As for defendants, for a long period it had only one in custody. He was a low level Bosnian Serb camp guard who had emigrated to Germany to avoid military service, was recognized on the streets of Munich by former inmates of the camp and was arrested and turned over to the Tribunal.

For a time, human rights advocates who fought to establish the Tribunal feared that it would be abolished as part of a peace arrangement before it accomplished anything. Indeed, this was suggested by some of the government officials involved in peace negotiations. That prospect was thwarted by the man finally chosen as the Tribunal's prosecutor, Richard Goldstone of South Africa, by indicting Radovan Karadzic and General Ratko Mladic in July 1995, about the time of the massacre at Srebrenica; and by indicting them again for that massacre on the eve of the November 1995 Dayton peace talks. The indictments made it impossible for Karadzic and Mladic to travel to Dayton for fear they would be seized for trial. Without them present, the idea of abolishing the Tribunal was not pressed, and it survived. But it still lacked custody of defendants.

That changed, however, when Tony Blair became Prime Minister of Britain in 1997 and designated Robin Cook as his Foreign Secretary. Blair and Cook began the practice of having British troops in Bosnia seize indicted defendants – proving that it could be done, and that threats that NATO forces patrolling the country would face reprisals for arrests were empty. That made the Tribunal credible, getting us to the point we are at today, where most of the defendants indicted are in custody awaiting trial, or are on trial or, in a large number of cases, already convicted and serving sentences and, in a few cases, acquitted after trial.

The *ad hoc* Yugoslavia tribunal inspired the creation of a similar tribunal for Rwanda and, subsequently, variations in Sierra Leone, East Timor and Cambodia that have both a United Nations and a domestic component. And, of course, the *ad hoc* tribunals led to the establishment of the permanent International Criminal Court, which is now in operation in The Hague and will probably issue its first indictments later this year. Most likely those indictments will concern crimes that are being committed, or that have been recently committed by various militias, in the Democratic Republic of the Congo (“DRC”). Another case under active consideration involves Uganda. The government there has asked the ICC Prosecutor to address the crimes committed by a bizarre rebel group, the Lord's Resistance Army, which is notorious for its atrocities. An ICC prosecution would probably be more effective than one brought in the national courts of

Uganda because neighboring governments would feel a greater obligation to turn over for trial leaders of the Lord's Resistance Army who operate from their territory.

As you know, the ICC is only able to bring prosecutions for crimes committed subsequent to its creation. Unlike the *ad hoc* tribunals in various parts of the world, it does not have retroactive jurisdiction. Also, it is limited to crimes committed on the territory of countries that have ratified the treaty for its creation or by nationals of such governments. (An exception could occur in a case referred to the ICC by the UN Security Council, but as one permanent member of the Council, the United States, is vehemently hostile to the ICC and could veto a referral, the chance that such a referral will take place while the present administration holds office is vanishingly remote.) Another limit on the ICC is what is called "complementarity." That is, it may only exercise jurisdiction if the national courts in the country where the crime was committed fail to do so, refuse to do so or do so in a manner that is intended to cover up a crime.

These jurisdictional limits mean that there are only a handful of situations in the world that could lead to an ICC prosecution. Many situations in which grave crimes are committed are ineligible because the governments involved have not ratified the treaty. It is not in the interest of governments that practice gross abuses of human rights to become parties to the ICC and, thereby, eligible for prosecution. Aside from the cases in the DRC and Uganda now under active consideration, the situations in countries that have ratified the treaty that seem most appropriate for a prosecution are Afghanistan, where those indicted could be various warlords; and Colombia, where left-wing guerrillas and right-wing paramilitary groups are especially responsible for crimes that fall within the jurisdiction of the ICC. It is noteworthy that in each of these situations, the government is not the main agent committing crimes within the jurisdiction of the Court, clearly a factor in its readiness to ratify the treaty. The DRC seems an appropriate first target, both because of the scale of the abuses there and because of the utter incapacity of the government itself to bring appropriate prosecutions.

Even though no prosecution has yet been brought, the ICC already appears to have had a beneficial impact on the situation in the DRC. Until 2002, the country was a battleground for five other African states. Rwandan forces had entered the country in pursuit of Hutu militias they considered responsible for the 1994 genocide. The Rwandans were joined by Ugandan forces. In turn, they were opposed by forces from Angola, Namibia and Zimbabwe. All these armies sustained themselves and enriched their governments – or leaders of their governments – by plundering the rich natural resources of the Congo. Then, on April 11, 2002, the date when the treaty for the International Criminal Court went into effect because it obtained 60 ratifications (it actually reached sixty six that day, as ten countries ratified simultaneously) the DRC was one of those that ratified.

Whether a cause and effect relationship can be established is not certain, but over the course of several weeks following ratification, each of the five other African countries with troops in the DRC withdrew them. It appears that, none of their leaders – President Kagame of Rwanda, President Museveni of Uganda, President Dos Santos of Angola, President Nujoma of Namibia or President Mugabe of Zimbabwe – relished the prospect of being the first person to be indicted by the International Criminal Court. By July 1, 2002, the date from which the Court's jurisdiction began, all or almost all their troops were out of the DRC.

Though the ICC may already have had a useful impact on the DRC, it is important to recognize its limitations. It is generally believed that it will be able to bring prosecutions involving no more than about three situations at a time. There are formidable difficulties in dealing with even that small number of situations. It requires getting to know the circumstances of each of those conflicts very well and achieving the capacity to conduct complex investigations involving a number of different languages in widely separate parts of the world. To establish its own evenhandedness, the ICC will be required to look at the conduct of those on all sides of conflicts, like those in the DRC, Colombia and Afghanistan, that may involve a range of combatant forces. It will be necessary to gather sufficient probative evidence to bring successful prosecutions not only against those individuals directly engaged in crimes but also against their superiors who may have ultimate command responsibility for criminality. It would not do for the ICC to replicate the early experience of the International Criminal Tribunal for the Former Yugoslavia by focusing on the low level camp guard over whom it managed to obtain custody early on. Given the expectations that have been aroused by the ICC, indictments will have to deal with those much higher up. Yet, inevitably, gathering evidence of their culpability sufficient to warrant a prosecution will be an arduous process. It cannot simply be inferred from a pattern of abuses.

The nature of the effort that is required also ensures that only a relatively small number of persons will be indicted by the ICC for the crimes committed in each situation on which it will focus. It is hard to envision that investigators for the ICC will obtain the information necessary to prosecute more than about a score of persons in each situation. Just that amount of information would require an enormous amount of evidence. Then there is the matter that almost sank the International Criminal Tribunal for the Former Yugoslavia: obtaining custody of those it indicts. Ultimately, the ICTY succeeded because NATO forces occupied Bosnia and one of the governments that furnished troops to NATO, the United Kingdom, led the way in apprehending those who were indicted. Thereafter, the governments in ex-Yugoslavia, all of which depend on international assistance, came under intense pressure from their donors to turn over indicted persons they were harboring. Though some indicted defendants have not yet been turned over to the ICTY, most notably

Radovan Karadzic and General Ratko Mladic, the handwriting is on the wall, even for them. The circumstances in which the ICC will operate will vary greatly. Wherever it focuses, it is essential that its efforts should command sufficient respect to provide a strong incentive for the governments that control the territory, and for other governments that can exercise influence, to collaborate with the Court. This is the only way that it may gain custody of defendants. Inevitably, however, regardless of the ICC's own performance, lacking a military force of its own or an international force on which it can rely, there will be many places where it is likely to encounter difficulties. It is here that the hostility of the United States could cause havoc for its operations for Washington has the most clout – politically, economically and militarily – to get governments that may be harboring defendants to yield them to the ICC. If it fails to do so, it could leave the ICC with no means of moving beyond indictments to actual trials and the possibility of convictions and punishment.

I do not mean to minimize the significance of even a handful of prosecutions before the International Criminal Court. Moreover, as happened when the Tribunal for ex-Yugoslavia acted against Karadzic and Mladic in 1995, even indictments that turn defendants into fugitives can have a valuable impact. As noted, even prior to getting to the point where it could issue indictments, the ICC appears to have had a beneficial impact on developments in the DRC. Also, the Chief Prosecutor for the ICC, Luis Moreno Ocampo, puts great emphasis on complementarity. He believes that one of the primary – if not *the* primary – goals of his office should be to get governments to fulfill their own responsibility to prosecute war criminals in their own jurisdiction. Again, I believe the attention that has been given in the last few years to the crimes within the jurisdiction of the ICC – war crimes committed pursuant to a policy or on a large scale, crimes against humanity and genocide – has already had an impact worldwide that is likely to diminish the number, frequency and severity of such crimes. It is already difficult to imagine that a European government would again engage in a policy of ethnic cleansing – and such manifestations of that policy as the murder of the hospital patients at Vukovar, the prolonged and murderous siege of Sarajevo and the massacre at Srebrenica – as took place in ex-Yugoslavia in the 1990s. Similarly, it is hard to believe that an African government would again commit a genocide such as the one in Rwanda just ten years ago.

Of course, before those crimes were committed, hardly any of us thought them possible. Yet they did take place, making clear to us the extent that state barbarism was still possible during the last decade of the twentieth century. The international community showed itself in a very bad light by its unwillingness to intervene in a timely manner to stop those crimes as they were taking place. But the human rights movement's insistence that those principally responsible should face prosecution and punishment means that we have at least diminished the chance that

anything comparable will take place during the first decade of the twenty first century.

It is also impossible to believe that the United States would again allow its forces to commit war crimes such as those committed by American soldiers in Vietnam just a generation ago. In Vietnam, American troops established free fire zones in populated areas. We dropped napalm on civilians. We bombed indiscriminately. We organized systematic assassinations in what was called the Phoenix Program. An unknown number of massacres of civilians were committed by our troops. Our conduct in the recent wars in which we engaged – Kosovo, Afghanistan and Iraq – can be criticized for shortcomings, such as the use of cluster bombs or the fact that in the Kosovar case, we bombed exclusively from a high altitude, thereby avoiding any casualties to American troops but increasing civilian casualties on the ground due to mistakes. Yet we also demonstrated a degree of care to avoid civilian casualties that was a great advance over our conduct in that earlier conflict. We have changed, and the rest of the world has changed. I believe those changes are largely attributable to the wide-ranging discussion of crimes of war inspired by the international human rights movement, its focus on accountability and its impact in securing the establishment of the various UN sponsored *ad hoc* tribunals and of the International Criminal Court. The U.S. government insists that our soldiers may never be prosecuted by the ICC, but we have also altered our conduct in ways that suggest that, if they were subject to the Court's jurisdiction, there would be scant basis for bringing a prosecution against them.

Though changes have taken place, if they are to be sustained, and if we are to reach a point where those committing crimes against humanity face not just a possibility of prosecution and punishment but a probability that they will be held accountable, more is required. The challenge for the international human rights movement in the next two decades is two-fold: first to make the International Criminal Court effective; and, second, to see that its work is supplemented by other bodies – including national courts such as the one that will be convened in Iraq to try Saddam Hussein – that can deal both effectively and fairly with a larger number of situations where great crimes are committed, and a larger number of the perpetrators of such crimes.

One important way to assist both the international tribunals and national courts dealing with the same kind of crimes would be to establish an effective funding mechanism. Up to now, the prosecutors and presiding judges of these tribunals have had to devote a great deal of time and effort to making sure that these bodies can pay their bills, preventing them from devoting full attention to the issues they were appointed to address. Depending on appropriations from a perennially underfunded United Nations or on contributions raised *ad hoc* from friendly governments is not satisfactory. Fortunately, a good model for a multilateral funding

mechanism has been established in another field. It is the Global Fund to Fight AIDS, Tuberculosis and Malaria. It receives applications for funding from all over the world and has been able to respond to these with a minimum of bureaucratic difficulty and, at the same time, has had a very beneficial impact in improving the quality of the health services it supports. A consensus is emerging that the Global Fund itself should be funded on the following basis: one third from the United States; one third from the European Union; and one third from the rest of the world including such important donor governments as Norway and Switzerland, which are not members of the European Union; Japan; and also from private donors. The Global Fund projects that it will give out grants of \$1.6 billion in 2004, and \$3.6 billion in 2005. These sums are a significant multiple of what would be needed for a parallel Global Fund for Justice. For now, a Global Fund for Justice would require only about 500 million dollars a year to meet the needs of both international and national tribunals dealing with systematic war crimes, crimes against humanity and genocide.

Because of the hostility of the Bush Administration to the ICC, it is not now possible to establish a Global Fund for Justice. I trust, however, that at some point within the next twenty years, the United States will adopt a more enlightened posture.

As to what else would make the ICC effective, what needs to be done is fairly obvious. More governments must be persuaded to ratify the treaty establishing the ICC. At this writing, the number stands at ninety-two, only about half the governments of the world. Those that have not ratified include a number of countries with the largest populations: China, India, the United States, Indonesia, Russia, Pakistan and Bangladesh among them. That means that most of the world's population is not protected by the Court. Ratifications have come mainly from three regions: Europe, Latin America and Africa. Only a small number of countries of Asia, the Middle East or the former Soviet Union have ratified.

Here too, the posture of the United States plays a crucial role. To persuade recalcitrant countries to ratify it is important that some opprobrium should attach to the failure to do so. As long as the United States maintains its present stand, it is impossible for that to happen. The key is getting the United States to shift its position. Even if we don't ourselves ratify, mitigating the rabid hostility of the current Administration would have a beneficial effect. As for U.S. ratification, it is worth noting that it took us twenty-six years to ratify the International Covenant on Civil and Political Rights and forty years to ratify the Genocide Convention. Even then, we did so half-heartedly, incorporating reservations, declarations and exceptions that undercut the effect of these treaties. My hope is that ratifying the ICC won't take quite so long. The treaty establishing it allows only full ratification. There is no option, in this case, for half-hearted acceptance of the Court.

The other crucial need is that the Court's own performance should enhance its prestige. This would spur additional ratifications. At least as important, it would increase the likelihood that governments would assist the ICC in obtaining custody of defendants and, thereby, allowing trials to take place.

There is, of course, a close connection between more ratifications and trials. Wider ratification would allow the ICC to deal with a larger number of situations where crimes within its jurisdiction are committed. And, becoming universal, the ICC would gain enhanced capacity to get governments to cooperate in its investigations and to turn over those it indicts.

There are at least two ways to supplement the ICC. One would be for the United Nations to continue the practice of creating *ad hoc* tribunals. Another would be for regional bodies, such as the Organization of American States, the European Union and the African Union to create their own standing tribunals to cooperate with the ICC and to pursue in greater depth crimes within their own territories. If this were done, it would be useful if the ICC were to exercise appellate jurisdiction over cases tried in *ad hoc* or standing international tribunals. A precedent for this is the decision by the UN Security Council to have appeals from the Rwanda Tribunal go to the appellate chamber that had previously been established for the Yugoslavia tribunal. Creating a single appellate process is cost saving, but even more importantly, it helps ensure the development of a coherent body of international law to deal with international criminality.

As yet, the international human rights movement has not focused on these issues. Up to now, getting the ICC off the ground and helping it to become effective have consumed the energies of the international human rights movement. But if one believes, as I do, that by itself it cannot fulfill the expectations it has aroused, the human rights movement will soon be required to think about subsequent steps. It took us two decades to get to the point we have now reached, and I believe it will take us at least another two decades of concerted effort to get to the point needed to ensure that those who commit war crimes on a large scale, crimes against humanity and genocide face the probability that they will be held accountable. Only then will we be able to say that we are able to stop the commission of many of the crimes that are the focus of the debate over accountability.