



**Keynote Address by David Tolbert
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Strategies to Narrow the Impunity Gap: Improving the Effectiveness of International Criminal Law and Exploring Alternative Forms of Accountability

**The International Community's Commitment to Human Rights and Accountability
at the Crossroads?**

Thank you for the kind introduction, and I must say it is a great pleasure indeed to be back at the Salzburg Law School (SLS) after so many years. I recall giving lectures at the summer school 15 or so years ago when spirits were running high on the back of the adoption of the Rome Statute. Salzburg has lost none of its charm, but time has moved on (as is obvious by one look at me...). It has also moved on in that we have lost the great Otto Triffterter.

Otto was a pillar of the international justice movement and one of our most perceptive legal commentators. I can remember him posing important and interesting legal questions to many of us throughout the ICC negotiation process. In particular, he would call me from time to time and just start in with a penetrating question – sometimes without a Hello! or Guten Tag, and I would struggle to answer his query and thereby sharpen my own thinking. Moreover, his Commentary on the Rome Statute, brought together many of us who were either directly involved or observed the negotiation of the ICC before, during and after the Rome conference to write the Commentary. It was a major contribution to the field and showed great foresight and judgment. The Commentary was an invaluable effort, particularly given that there was no *travaux* of the Rome Statute. Thus, the Commentary has been essential reading for those working at or following the ICC.

We were fortunate to have Otto when we did, and I will miss him as a colleague and a friend.

My task today is to address the question: The international community's commitment to human rights and accountability at the crossroads? I would note that this is framed as a question, which is the right punctuation mark in my view, as I think this is a subject worthy of debate and probing. In this sense, it is a question that is meant to provoke an argument or discussion and not one with a clear or simple answer. Indeed, we/I would like for the answer to be a straightforward one: that we are moving toward a world with greater respect for human rights and accountability for human rights abuses. Unfortunately, I don't see much evidence of this as present, and, if anything, a good bit of evidence pointing in the other direction.

In this regard, I recently heard a senior UN official give a speech at a major conference, saying we have entered an “age of accountability”. This official cited the work of the ECCC (with its three convictions versus 1.7 million killings), the SCSL (with 9 convictions and over 50,000 dead), the ICTY (with its 161 indicted (out of an estimated 10,000 perpetrators in Bosnia-Herzegovina alone) versus 100,000 victims), the ICTR (61 convicted versus one million victims) and the ICC (with two convictions out of countless victims and perpetrators alike) as evidence of this “age of accountability”. I was a bit stunned: what about Syria, CAR, and South Sudan, amongst many others? I thus pushed back (rather gently as is my wont) in my presentation later in the session. One of my colleagues was less soft spoken when he compared the official’s remarks to the Age of Aquarius (one may need to be of a certain age to understand the unflattering comparison).

So, what I will try to do is to honestly look at where we are — in rather unvarnished terms — in the fight against impunity, which I would posit is the key issue for those of us who are working for accountability for the most serious crimes and human rights abuses through the Rome Statute, national prosecutions and transitional justice processes more broadly. I do not think it is useful for us to dodge these questions or try to soften them up — we owe it to ourselves to be honest and, more importantly, we collectively owe an honest assessment to the victims of these abuses. We should not play the role of Pollyanna.

Of course, by taking a critical or unvarnished approach to the current state of affairs, we should not overlook the current successes. The Habré case recently got started in the Extraordinary African Chambers in Senegal, a groundbreaking achievement thanks to the courage of both local and international actors, particularly Reed Brody and our friends at Human Rights Watch. Moreover, regardless of the criticisms that I make today, there have been many other breakthroughs: the establishment of the ICC, the *ad hoc*s, hybrid tribunals, some 40 truth commissions in the last four decades, much improved human rights machinery in Geneva and a strong human rights movement, including significant steps in terms of gender equality in many countries as well as other areas of human rights. My concern today is, however, the current state of the fight against impunity and the movement for accountability.

In order to address these questions, the first step is to reflect on the path that has been taken over the last forty years or so, so that we can try to understand the trajectory of the fight against impunity. As that great philosopher Neil Diamond once said: “You don’t know where you are going unless you know where you are coming from.” While the Nuremberg trials are and continue to be an important marker in the fight against impunity, in the 1980’s we saw the commencement of a sustained movement to fight impunity for massive human rights abuses. This movement has its modern origins initially in Latin America, as a significant number of countries underwent “transitions” from authoritarianism and repression to much greater respect for human rights, the rule of law and more democratic governments.

In Argentina, President Alfonsín’s brave step in 1983 to set up CONADEP, a national commission which examined enforced disappearances during the Junta period, was a seminal initial step in the fight against impunity and ensuring accountability for crimes committed by the state. The Commission’s subsequent release of the *Nunca Mas* (or “Never Again”) report marked the opening of accountability efforts, leading to the opening of mass graves, getting to the truth of the abuses committed during the Junta period and leading to the important Junta trial which began on April 22, 1985.

The impact of *Nunca Mas* went far beyond the borders of Argentina or of Latin America for that matter and impacted a significant number of other countries across the world. While we saw the early efforts to address an abusive past in Latin America (e.g., Chile) in the 1980’s, other parts of the world began to take some of that experience and apply it in their own contexts. In post-1989 Central and Eastern Europe

transitions from authoritarian regimes to democratic states took place that took human rights seriously. These countries' approach was somewhat different as they addressed the abuses of the past in a variety of ways, primarily focusing on opening state archives, coming clean on abuses by the state, adopting lustration laws which exposed those who committed human rights abuses and shedding light on past abuses through commissions and other steps. In South Africa, we saw a transition from the authoritarian *apartheid* state in South Africa to a democratic one headed by Nelson Mandela. The South African transition was marked by the very well-known Truth and Reconciliation Commission as well as a number of other processes in terms of reparations and memorialization. The step of offering amnesty for truthful testimony that occurred in South Africa, of course, has been (and, in my view, rightly) widely criticized, both in principle and in practice. International law no longer allows for amnesty for serious crimes (crimes against humanity, war crimes, genocide), although it is worth bearing in mind that amnesties are called for in some instances for other crimes, i.e., as provided for in Protocol II of the Geneva Conventions. However, I do think that regardless of what international law says, the question of amnesty is still a live one, and we see provisions (whether de facto or de jure) for amnesty proposed or adopted in a number of contexts, and this remains a live question in the peace and justice debate, which I will be glad to discuss later during questions and answers.

Obviously, the transition to democracy and the rule of law took different paths in these countries as well as a plethora of others. Some societies were more effective than others in addressing the abuses of the past, but we saw a variety of approaches that have emerged out of these experiences. These approaches primarily included some variation of truth seeking processes, i.e., Truth Commissions or Commissions of Inquiry (there have now been more than 40 truth commissions), criminal prosecutions, reparations programs and reforms, including of the security sector but also of the judiciary and other governmental structures. These measures or mechanisms — truth, prosecutions/criminal justice, reparations and institutional reforms — have often been referred to as the “four pillars” of transitional justice, but I fear that in many ways this otherwise useful analytical formulation has engendered a much less admirable formulaic approach in some instances. Thus, in the hands of some the four pillars approach has become a kind of “check the box” approach that is formulaic or “paint by numbers” in nature, whereas transitional justice is anything but formulaic — it needs to be responsive to the local conditions and situation. In particular, transitional processes are driven by what we at ICTJ refer to as active social forces (by this we mean not just civil society as is usually formulated, e.g., victims groups, human rights activists, but also unions (in Tunisia, for example), religious groups (the church in Latin America and Eastern Europe) and other social groupings in that society).

If I look at the situations where we are called to work in and societies that seek ICTJ's help, very few of them today fit the classic transitional paradigm of moving from authoritarianism to democracy. Tunisia, which is now facing very serious internal challenges in its transition, in a number of ways has fit up to now into that category. It is undergoing a tumultuous transition from dictatorship to democracy that is employing a number of transitional justice measures, including a landmark Truth and Dignity Commission, specialized Human Rights Chambers in its court system and examining reparations and various reforms. In Colombia, where there are historic peace negotiations occurring in Havana between the Colombian government and the FARC guerillas, a number of transitional justice measures are on the table, including a truth commission, prosecutions (the scope of such prosecutions is a critical question), reparations and reforms. Earlier this year I was in Colombia with Kofi Annan to launch our organizations' joint study on truth commissions coming out of peace processes, and the question of transitional justice — and what it means — was on everyone's lips. Indeed, we had 1,200 attend our conference and Colombian President Santos gave an important speech on the fundamental role that transitional justice will play in the process.

However, if I look at the other countries we are engaged in and indeed look across the world, I see very different situations where there is a partial transition or an on-going conflict, as in the DRC, or a simmering stalemate, as in Lebanon. In a number of cases, our supporters are asking us to provide assistance—that is our comparative experience in transitional justice situations—in failed states, in the midst of conflict (e.g., Syria) or where there is no transition (e.g., Uganda) or where there is little political will (e.g., Sudan, Kenya). I would underline that I do think that transitional justice may have a role in some of these contexts, but it is indeed a different one than it has played historically. Moreover, we have to be very careful of transitional justice being instrumentalized for nefarious purposes, such as to avoid accountability or use amnesties for serious crimes.

I would also point out that one element of these new demands/requests is that we are being asked to help in situations where there are very weak or nonexistent institutions. If we think about Latin American states or Eastern European countries, they had strong institutions, too strong in many cases, so the effort was to reform or reconstruct those institutions so that they would be accountable in the future, respect human rights and follow the rule of law. This is radically different from countries where they have very weak or non-existent institutions. So, I think that transitional justice approaches are relevant to these societies, but in a different and much longer term way, and those carrying the banner of justice must work much more closely with other actors, in, e.g., the development and rule of law communities.

I would return to the core question before us today—whether we are speaking of the ICC, international criminal justice or transitional justice more broadly: the fight against impunity. Accountability for these abuses is our primary method of ensuring that in societies where human rights abuses have occurred, these violations will be addressed with a view to ensuring that human rights will be respected and protected in the future. It does seem to me that for that to happen or at least to make recurrence less likely, and to build a society that respects human rights, impunity cannot reign. I would stress at the outset that framing this struggle in terms of accountability and the fight against impunity does not imply that I am not only focusing on the ICC or on criminal justice. Obviously, criminal justice is an important element in the fight against impunity, but so is truth—one could argue that it is even more crucial—and the same could be said for reparations, which address the victims' suffering and losses more directly. Moreover, reforms, not just of the security sector but also of the institutions of the state, including the courts and the constitution have often played a critical role, not only in addressing the abuses of the past but in building responsible and trustworthy institutions for the future. In particular, I would note that ensuring justice for marginalized groups, particularly women who often suffer sexual violence as well as discrimination, indigenous groups and sexual minorities, is a key element in ensuring that impunity is fought. Also, the special needs and situations of children, and here I think of the child soldier phenomenon in particular, must be given special attention.

All of these measures or approaches are important; they make accountability real and get at different underlying issues.

If we look at the fight against impunity, there is much to be concerned about and thus much to worry about in our field, that after quite imperfect but tangible progress in the fight against impunity from the time of Nuremberg up until September 11th or thereabouts, we are now going backwards in important respects. Call it what you will—when I published my article on this subject in Project Syndicate, they entitled the piece “Wrong Turn for Human Rights”. As I speak, atrocities are mounting in South Sudan, the Central African Republic, Syria and many other places, with scores of brutal killings and widespread displacement, which are also being swept by an epidemic of sexual violence. We have witnessed horrific atrocities by Boko Haram, with only a token response by the national authorities or international

community. The bloody handiwork of ISIL/S relentlessly grabs headlines, and there seems to be no coherent strategy to address its barbarity.

The Syria conflict rages month after merciless month, with untold civilian casualties as a divided UN Security Council sits on the sidelines, in a chilling reminiscence of Rwanda's recent history. Gaza is struggling to recover after its umpteenth destruction. Eastern Ukraine is rocked by daily attacks on civilian targets, and very few seem to remember the outrageous downing of a civilian airplane there, in which 295 people died.

If we look at the United States, we see that many months after the publication of the US Senate Intelligence Committee's partial but damning report on the CIA's Detention and Interrogation Program, not a word has been said about bringing the perpetrators of torture to justice, much less bringing redress to their victims.

This somber list could go on and on.

What I find most disturbing —perhaps the better word is disgusting— is the fact that thirty years after Argentina's Never Again and more than a decade after the establishment of the International Criminal Court, shockingly little is being done to stop these abuses. Perhaps even more importantly, in the face of these atrocities, impunity reigns. Moreover, the prospects of the victims ever getting justice, let alone bringing the perpetrators to account, seem ever more remote.

The response by the international community to these horrors has been one primarily of lip service and well-worn shibboleths. Indeed, powerful states often seem to be casting support to whichever group of killers best suits their interests, with only faint rhetorical nods to human rights.

I express these concerns not only professionally but personally. I joined the United Nations in 1993 to work on issues in Palestine and started my new job on the very day the Oslo Accords were signed, marveling both at the apparent breakthrough and my seeming good fortune to be part of an era of peace-building.

Several years later I joined the International Criminal Tribunal for the former Yugoslavia and later sat across a jail cell desk from one of the principal architects of the Balkan tragedy, Slobodan Milosevic, whose prevarications were then being made from behind bars, far from the halls of power.

In 1998, I was in Rome for negotiations on the International Criminal Court; I was both awe-inspired by the apparent flowering of international justice and a bit nervous that the world perhaps did not understand fully the implications of such a groundbreaking step.

Thus, like other human rights activists and supporters of this generation, I was a witness to some key moments— sometimes from afar and sometimes up close, beginning with the transitions in Latin America (that I have discussed) in the 1980s and followed by the 1990s, a decade in which there was an upswing across the planet in responding to massive human rights abuses. It was hardly enough. One need only recall the agony in the Balkans, the genocide in Rwanda, and many other abuses. Nonetheless, while the international community may have responded in agonizingly slow manner (just ask General Delaire or the dead of Srebrenica), at least there were some responses in some situations.

We saw the establishment of UN-backed courts and tribunals in the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia. A decade before, the establishment of these tribunals would have been unthinkable. The ICC, with jurisdiction over atrocities committed in 123 member states, was established to try cases referred to it by state parties or the Security Council, and opened its doors in 2002. For the first time, an international court was established with wide jurisdiction to prosecute those responsible for war crimes, crimes against humanity, genocide, and perhaps in the future, for the crime of aggression.

Even a darling of great powers, former Chilean dictator, Augusto Pinochet, was arrested in 1998 in London for violating the Torture Convention and other abuses, thus tearing at the edifice of head of state immunity.

On the national level, some 10 truth commissions were established in that decade (the 1990s) across every geographical region as well as other important initiatives, including reparations programs, national prosecutions and other reforms, providing a measure of justice to victims and accountability for some of the worst perpetrators.

I would be the first to say that these responses were fitful and erratic and that they were far from perfect. In fact, reflecting back on Argentina, the *Nunca Mas* report and the Junta trials were later followed by the Full Stop Act, the Due Obedience Act, and Menem's pardons in 1989, all of which blocked Argentina's struggle for accountability for years; three permanent members of the UN Security Council the United States, Russia, and China— have not ratified or acceded to the Rome Statute; Pinochet returned to Chile and died before being convicted of any crimes. Even the International Criminal Tribunal for the former Yugoslavia, where I spent a considerable part of my career, and which had an impressive record at least until recently, prosecuted 121 individuals while national courts also prosecuted hundreds more, but these numbers pale in comparison to the estimated 10,000 estimated perpetrators in Bosnia-Herzegovina alone.

Nonetheless, these and other efforts did begin to close the impunity gap, and they also gave victims a voice and recognized their suffering, while signaling to culprits that their crimes will not be forgotten. These efforts have also deeply affected, and in some cases transformed, public discourse for the better.

I think it's fair to say that not so long ago, the moral arc of our universe, in the words of Martin Luther King, Jr., seemed, perhaps ever so slowly, to be "bending towards justice."

I am afraid that we cannot say that today. Instead, we seem to be going, in too many instances, in the other direction: towards silence, amnesia, and impunity.

Not to put too fine a point on my argument but it does seem that the international community appears to be backsliding on its human-rights commitments. The world's emerging powers lack any sense of urgency in addressing the ongoing abuses, preferring the pursuit of narrower, short-term interests to investing in long-term peace and justice.

Now, to be fair, I would admit that my argument is a work of advocacy and that there are other different and perhaps more nuanced views on this critically important subject.

Some may argue that if we adopt a long-term perspective, our time is one which is gradually but consistently moving towards justice. Yes, there may be setbacks but the big picture of the 20th and early

21st centuries, when compared to the 19th or 18th century, is that we are moving towards accountability for massive human rights violations.

Some voices may posit that the fight against impunity is not the right lens to examine the question posed and that, instead, economic, social, and cultural rights should come to the fore and progress on human rights should be measured in these terms.

Others may say that the focus of the argument is too narrowly construed or that it does not take into account the advances made in recent years. Indeed, the rollback has not been across the board and there are some bright spots out there. I have already mentioned Colombia and perhaps Tunisia and there are other indicators, such as the Habré case referenced earlier, that are more positive, and others like the successes in development side as a result of the Millennium Development Goals which ultimately may rebound in favor of accountability efforts. Moreover, there are other bright spots in the fight against impunity, such as the recent resumption of Operation Condor in Italy, and Argentina and Chile have been relentlessly working on bringing the perpetrators of crimes against humanity to justice.

I am afraid that I, however, find these as small victories against a background that looks distinctly negative compared to a decade ago. To take this argument further, a few months ago we held an online debate on ICTJ's website, precisely on this topic: 'Is the fight against impunity being abandoned?' We had a wide audience with a reach of 100,000 and a number of outstanding participants, including UN High Commissioner Zeid, Michael Ignatieff, who is one of the 'big thinkers' on human rights (and who, I might add, is more pessimistic than I am). Also participating were the Prosecutor of the ICC, Fatou Bensouda, former President of Open Society Foundation, Aryeh Neier, Kenyan activist, Betty Murungi, and academic James Stewart (a leading expert on crimes relating to natural resources and the crime of pillage). While some pointed to the "glass being half full" as some advances have been made in the UN Human Rights Council and other fronts, there was much concern expressed all around. What was more interesting to me is what might be done to address what many feel to be a "wrong turn" for human rights. Put simply, even if we all agree that advances were made during the 90's, the last decade has seen some disheartening setbacks that cry out to be addressed.

We cannot hardly be satisfied with many innocents being disappeared in Mexico, Nigerians being murdered with impunity by Boko Haram —I will just say the word "Syria" again— and with prisoners having been tortured by Western intelligence agencies with no accountability in sight.

In an important sense in the field of transitional justice we are addressing the past for the future. By that I meant that when as the Argentinean Truth Commission some thirty years ago cried out 'Nunca Mas', it was looking to the future. The states gathered in Rome in 1998 echoed the same sentiment when they adopted the International Criminal Court treaty: they were also looking to the future. So in the 90's, when the ICTY and the ICTR issued their first judgments, and the ICC was established, we were once again looking at past atrocities while looking at the future and saying: never again. Never again will the international community stand by while mass murder is being committed. Never again will atrocities go by unaccounted for.

And here we are in 2015 in beautiful Salzburg also looking towards the future and asking how the fight against impunity can be reinvigorated.

Before we look to the future, it is perhaps useful to understand some of the forces that caused the "wrong turn" and then look at what might be done to begin to reverse the course. I will say that these are

tentative ideas, some of which I draw from our on-line debate, so I look forward to your feedback, your comments and your (not too harsh) criticism.

Analytically, one can certainly argue that understanding the underlying causes of the apparent waning commitment to human rights is key to finding remedies as well as setting our sights on a better course. Some voices will probably point to the impact of the attacks on September 11th and its ensuing fallout, particularly in the approach of the United States and some of its allies, including the use of “extraordinary renditions,” “black sites,” torture, and other dark arts employed at detention facilities in Guantánamo Bay and Abu Ghraib. The alleged ‘war on terror’ has certainly switched the priorities of the international community, driving them away from accountability and towards an ill-conceived quest for ‘security’. Obviously, the US-led invasion in Iraq has had many negative consequences as well. It broke the Western alliance, undermined the international rule of law and deeply damaged the US’s reputation regarding respect for human rights and rule of law (much less competence, which is another issue). Moreover, it gave potency to the argument of Western hypocrisy.

A somewhat related phenomenon is the rise of a more aggressive group of non-democratic states and their active disregard for human rights; this factor is increasingly prominent and should be taken into account. Thus, we see Putin’s pawns committing acts of aggression and emboldened tyrants around the world.

I think we also must recognize that the disappointment and rather poor performance of the ICC is also a factor. The hopes were too high on a single court in The Hague with a complicated mandate to hang the entire responsibility for the fight against impunity. I think this reliance on the ICC as the principal factor in the fight against impunity to be misconceived on several counts. The Court was always intended as a court of last resort and to complement national courts and judicial systems. I think we have to be honest with ourselves that for the purposes of criminal accountability, this has to be primarily at the national level and that there is a very long way to go in this regard. So, I say support the Court— indeed, I do strongly, but we need to do much more.

To take the point a bit further, in light of the mass atrocities that are currently going on, many point to the very limited deterrent effect the ICC has had; a concern I certainly share.

Whatever our specific view, the critical question is: what is to be done so that accountability starts becoming more of the norm and less of the exception?

I think that we must first be honest with ourselves and acknowledge that the primary energy and innovation for taking the fight against impunity forward must be at the national or regional level, led by active social forces. The Inter-American Court of Human Rights has been advancing precisely in the direction of accountability at the domestic level, ordering national courts to prosecute the perpetrators of state-sponsored atrocities. This stance has had profound effects in Latin America. Judgments handed down in cases like Velasquez Rodriguez; Gelman; Almonacid Arellano, and Barrios Altos have been major benchmarks in the fight against amnesties and impunity.

Therefore, the first step in the process of advancing the battle against impunity is to make clear that the fight against impunity is not seen as only about the ICC and, more generally, not only about criminal justice.

We must be aware that the focus on the ICC is too narrow a lens to view the fight against impunity. The Rome Statute itself makes clear that the ICC is intended to be a court of last and very limited resort. Even an efficient ICC will be able to deal only with a handful of cases from a given situation.

So, I put this on the table: let's be clear that the fight against impunity is not limited to the ICC and that if the ICC stumbles, the fight against impunity is somehow imperiled as well. As important as the ICC is, the fight against impunity remains primarily about national processes.

Thus, if we are serious about criminal accountability, the complementarity principle must develop real teeth. At this stage we see a great deal of lip service paid to this idea but virtually no action aside of from some South American examples, like Chile, Peru and Argentina. National governments, at best, wave complementarity as a proverbial flag to cover their own intended inaction: one can point to a number of countries, ranging from Kenya to Uganda and beyond; and also, by analogy, recall what happened or did not happen in Indonesia and its promise to prosecute those responsible for the crimes committed in East Timor during the scorched earth campaign in 1999.

Moreover, donor countries are unwilling to expend the political capital or provide the necessary investments to make national prosecutions a reality. I fear that the principle of complementarity is in danger of becoming a charade.

More fundamentally, in my view we need to reframe the fight against impunity to take into account the centrality of victims, and the best ways to create stable democratic institutions and enduring peace. Otherwise, we leave many victims out of the justice equation, and the fight against impunity becomes a very narrow struggle with the forces of human rights leaving important tools on the sidelines, including the rights to truth, the right to a remedy and reparations.

There is a case to be made, of course, that criminal justice should be broadened in its scope so that corporations are held liable for their part in the perpetration of atrocities, particularly as they relate to exploitation of natural resources and pillage. There is no doubt that we urgently need to address this impunity gap. However, even if and when we broaden the scope of criminal justice, we must remember that in cases of mass atrocities, only a limited number of perpetrators will be brought to the bar of justice. Criminal law is not capable of dealing with radical evil by itself: the fight against impunity cannot be fought only in courts.

Thus, other approaches and measures have evolved to address, in particular, the needs of victims, including reparations programs, which seek to recognize and acknowledge materially and/or symbolically the injuries that victims have suffered. I do not think I can stress enough the importance of acknowledging victims, their suffering, their heroic struggle, and the fact that they have been wronged.

Therefore, as much as criminal prosecution is an essential step in the fight against impunity, it should never be the only one. Rule of law building, reparation measures, serious guarantees of non-recurrence and, of course, truth commissions are tools that have worked on the national level. How they are used and/or sequenced will depend on the conditions on the ground and to national actors.

Needless to say, truth commissions have played an important role in many contexts to uncover facts, identify root causes of human rights abuses, propose critical reforms, and in some contexts award reparations and/or uncover important evidence for criminal investigation and trials. Moreover, they can transform our understanding of past violence by putting the emphasis on the victims.

Reforms can also play a key role in fighting impunity, by ensuring that institutions, including the courts, the police, the military and other authorities, do not commit abuses again and become part of a democratic government based on the rule of law.

Finally, there are particular measures that can be taken that do not call for major expenditures of funds, such as the annulment of sentences handed down against victims of human rights violations on trumped up charges; the removal of symbols and monuments that glorify perpetrators of atrocities or their regimes (think here of Spain and its willed amnesia); and public apologies by the relevant institutions, among others.

While every situation is context driven, I would argue that ensuring accountability, acknowledgement, and reform on the national level are generally at least as important as often-symbolic prosecutions at the international level.

Another key element in re-thinking the fight against impunity is that we need to bring together the intertwining elements of transitional justice theory and practice into better alignment. By this I mean that we seek two broad aims in transitional justice. On one hand, we are seeking a consolidation of peace and/or democracy and on the other focusing on addressing human rights violations through accountability to help re-establish the social contract between the citizen and the state and restore civic trust. I would argue that these two propositions are complementary: they combine the essential elements of human rights and justice in the context of political and social change.

In this regard, it is clear that impunity cannot somehow be the “price to pay” for political stability. It is difficult to sustain peace on the basis of a willed amnesia about the past or a renunciation of accountability. Challenging these assumptions might mean initiating a bitter public discussion among political actors, but long-term stability is more likely to be ensured on the basis of respect for human rights and addressing the past. If we approach the argument —this ongoing debate about peace and justice— to advance the demands of justice depends on the possibility to extricate the discussion from the political merry-go-round and frame it in terms of the legal rights and obligations arising from universal principles of human rights, we are, in my view, more likely to have peace and justice on the long-term.

I want to take a moment to approach this subject on a more personal note, on a subject much closer to my home. In the U.S. we often think of human rights abuses or of dealing with historical injustices as something far from home, that happen elsewhere, across the Atlantic or in developing countries. We often think about dealing with the past as only in nations that are moving away from authoritarian regimes and into the path of democratization. Although our primary focus in our field is on countries that have experienced massive human rights in the context of repression or armed conflict, many societies which are now more peaceful states and operate at one level or another with the rule of law have human rights abuses both past and present.

If we think about the United States for a moment: there is also a lot to answer for, and I'm not only referring to the recent report on torture.

As a North Carolinian whose primary school was racially segregated, I am often struck by the failure to address the history of slavery and segregation, the deepest and gravest human rights abuses committed in the United States. For example, in Washington, DC, there are museums or memorials to virtually every war, cause, and prominent statesperson —including many slaveholders— but very little about slavery or

its millions and millions of victims. There is a Holocaust Museum (and a good one, nothing against that) for horrors which happened in Europe but not much dedicated to the horrors of slavery (this is now finally being rectified a bit by an addition to the Smithsonian). In addition, many other historical injustices still await an encompassing and profound official recognition, critical reflection, and response for the victims: the violation of the rights of people of Japanese descent who were interned in camps in the United States during World War II, which has only been partially addressed, is particularly relevant in this regard.

I cannot help but think that our willed amnesia about the past is partly to blame for what has been happening in the United States with the recent wave of police brutality and acts of violence rooted in racism (such as the case of Michael Brown in Ferguson, Missouri, the homicide of Eric Garner in New York, the murder of Walter Scott in South Carolina and the many others lost to tragic encounters with the police force). The recent murders in Charleston have galvanized the forces to take down the confederate flag over the state capitol. Symbols matter and the fact that a flag of hatred flew so long over a state capitol is a troubling one.

The United States is hardly alone. I was in Spain last summer and the crimes and abuses of the Spanish Civil War and Franco's dictatorship cry out to be addressed. The same can be said of Australia (or the US for that matter) regarding past treatment of indigenous peoples, to give just a few examples.

In closing, I want to say a few words on how we take this fight against impunity forward and find the energy to reinvigorate the fight. This is one of few speeches I have given on this topic since the end of our on-line debate, so my thoughts are no doubt somewhat tentative, so I am sure your questions and comments will sharpen them up.

The question is then what to do next? I think that we must first acknowledge that the primary energy for taking the fight against impunity forward must be at the national level, led by active social forces.

To this end, Aryeh Neier made an interesting proposal in our debate. He suggested that civil society actors and key governments work towards a new Rome conference for the 20th anniversary of the adoption of the Rome Statute. Moreover, Neier suggested that this conference be preceded by national and regional gatherings of civil society, and that these meetings should look seriously at innovations. Neier suggested that there are a number of ideas to look at: more ad hoc tribunals, the use of in absentia trials.

While Neier makes an interesting point, I would look to the Vienna World Conference on Human Rights of 1993 as a better general model and inspiration for accomplishing the goal of addressing the issues that I believe we need to address. I say this primarily because the Vienna Conference was focused on human rights, and as I have argued the fight against impunity arises from a rights-based approach that posits accountability more broadly, including all of the approaches and ideas of transitional justice, not only criminal justice or more narrowly international criminal justice, as a second Rome Conference might imply.

Moreover, in Vienna in 1993, there were some 800 NGOs represented and more than 7,000 participants overall, and their work led to a common plan for the strengthening of human rights work around the world (officially known as the Vienna Declaration and Programme of Action). In a number of ways, I think we can argue the process leading up to the Vienna meeting led to important development of international law to achieve accountability for human rights abuses, the protection and promotion of the rights of indigenous and minorities and a much greater global understanding of the universality and indivisibility of human rights.

The Vienna Conference is primarily remembered for serving as a catalyst for the women's rights movement, bringing gender issues to the fore and rallying civil society groups to action. Through organized advocacy and lobbying, women's rights groups achieved recognition of several key principles, including that women's rights are human rights and that gender based violence is incompatible with human rights and dignity and should therefore be eliminated.

Furthermore, the conference, and the commitments set forth in the Vienna Declaration, encouraged the goal of universal ratification of CEDAW (Conventional on the Elimination of All Forms of Discrimination Against Women) and promoted the establishment of the Declaration on Violence Against Women as well as the appointment of a special rapporteur on violence against women. This momentum, driven by civil society actors which were energized by the Vienna conference would serve to energize the human rights movement more broadly. It is this energy and spirit of innovation that we need to recover, I think.

In the 1980's and 1990's justice proponents exhibited a great deal of innovation in terms of accountability, including the ad hoc tribunals, the concept and use of truth commissions on a widespread scale, and the Rome Statute itself; regional courts grew much stronger and civil society groups at both the national and international levels grew much more sophisticated.

I am thinking that this kind of energy and innovation are critically needed and that it is likely to come from active social forces on the national level. One thinks of groups like Argentina's Mothers of Plaza de Mayo and the Bosnia's Mothers of Srebrenica who have always bravely led the way; they will, no doubt, continue to do so. While international civil society has a role to play, I think the ownership and ideas need to come principally from the societies grappling with the issues. They have the credibility and the on the ground knowledge. So, we need to think about how the process might move forward. Obviously, my remarks today are just that— remarks, but I hope that as the next generation of practitioners in the fight against impunity, you will be pressing and innovating in order to deal with these issues and generate ideas and energy to propel this important movement forward, so that we will look at the present moment as only a temporary setback in the long struggle against impunity.