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## The Prosecution of International Crimes: Prospects and Pitfalls

Louise Arbour

*International Criminal Tribunal for the former Yugoslavia (ICTY)*

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# The Prosecution of International Crimes: Prospects and Pitfalls

Justice Louise Arbour\*

*The following essay is based on a presentation given by Justice Louise Arbour as the Holocaust Memorial Lecturer at Washington University on 28 October 1998.*

On February 25, 1998 the Canadian General Romeo Dallaire, Commander of the United Nations mission to Rwanda in the first part of 1994, testified before the International Criminal Tribunal for Rwanda in Arusha, Tanzania.<sup>1</sup> He said: “[I]t seems to be unimaginable that every day in the media we see people being massacred and yet [we] fold [our] arms, [we] remain unperturbed, [we] remain isolated without wanting to come to aid, [without wanting to come] to their assistance.”<sup>2</sup> He went on to say the following:

In my opinion, it has always been very easy to accuse the United Nations of not having intervened, but the United Nations [is] not a sovereign country. [We are] the United Nations, all of us, and if the United Nations [does] not intervene this means that by extension all of us failed . . . that all of us have a responsibility for the genocide that continued in Rwanda for almost four months.<sup>3</sup>

The fact that General Dallaire spoke these words in a court of law

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\* Justice Arbour was appointed the Chief Prosecutor for the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda by the United Nations Security Council in 1996. Justice Arbour is on a leave-of-absence from her position as a Justice of the Ontario Court of Appeals, where she has served since 1990.

1. General Dallaire testified in the case of Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T [hereinafter *Akayesu*].

2. Transcript of testimony of General Romeo Dallaire before the Rwanda tribunal, Feb. 25, 1998, at 197, lines 9-13, available at <Error! Bookmark not defined.>.

3. *Id.* at lines 15-23.

before an International Tribunal, as a witness in the case of a man who has since been convicted for his participation in that genocide<sup>4</sup> and sentenced to imprisonment for life, is the subject of my talk before you today.

More has been achieved in the last five years than in the preceding fifty to bring to account in their personal capacity some of the worst human predators in modern history.<sup>5</sup> They are men, usually in positions of great power, influence, and control, that killed or oversaw the killing, rape, torture, and persecution of their fellow human beings. They chose to deprive their victims of their very humanity. These same men had every reason to believe that they were immune from scrutiny, immune from accountability, and clothed with the impenetrable veneer of state sovereignty, which they conveniently appropriated to themselves as the embodiment of absolute power.

Measured against the performance of the preceding decades, it is undeniably true that much has been accomplished in the last five years. There are over sixty persons in custody before the two International Criminal Tribunals awaiting trial or appeal to answer for their participation in genocide, widespread or systematic murders, persecutions on ethnic, racial, or religious grounds, and the previously unspeakable sexual violence that often accompanied the carnage.<sup>6</sup> The

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4. *Akayesu*, *supra* note 1, Judgment of Sept. 2, 1998. A summary of the Akayesu judgment is available at 37 I.L.M. 1399 (1998). The entire judgment is available on the Rwanda Tribunal website at <**Error! Bookmark not defined.**>.

5. In addition to the activity of the International Criminal Tribunals for Yugoslavia and Rwanda, a treaty establishing a permanent International Criminal Court was opened for signature on July 17, 1998.

6. See Annual Report of the Secretary-General on the Work of the Organization, U.N. See GAOR, 53d Sess., U.N. Doc. A/53/1, ¶¶ 176-179 (1998) [hereinafter Secretary-General Report]; *Third Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, U.N. GAOR, 53d Sess., Agenda Item 50, at ¶ 1, U.N. Doc A/53/429 (1998) [hereinafter *ICTR Report*]; *Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina*, U.N. Doc. S/1998/862, at ¶ 31 (1998) [hereinafter *ICTY Report*]. For an updated list of persons indicted by the Yugoslavia Tribunal, see <**Error! Bookmark not defined.**>, visited May 6, 1999. For an updated list of persons indicted by the Rwanda Tribunal, see <**Error! Bookmark not defined.**>.

former Prime Minister of Rwanda has pleaded guilty to six counts of genocide and admitted his criminal role in the extermination of more than half a million people.<sup>7</sup> Others denying their culpability, as is their right, have been convicted in an open and transparent process before an international court applying widely accepted international standards of criminal justice.<sup>8</sup>

Modest as it may appear to some, the progress of the last five years is by some measures in the range of the truly remarkable. I do believe that there are few in this audience who will be prone to underestimate the determination and the potency of the many interests that can congregate to curtail the reach of the law. Leadership is not always open to scrutiny and censure. Abusive leadership is considerably less open than the average, more benign power. Criminal leadership is flatly uncooperative and obstructive, and that is on good days. On the international scene where some view the concept of state sovereignty as deserving of blind protection regardless of what it serves to hide, abusive and indeed criminal leadership often finds itself a bedfellow with convenience.

The Security Council of the United Nations created two International Criminal Tribunals. The first, the International Criminal Tribunal for the Former Yugoslavia (ICTY),<sup>9</sup> some said, was born of the frustration of having exhausted all other measures to stop an incredibly brutal war except the measures that took too much courage to generate consensus. The second, the International Criminal Tribunal for Rwanda (ICTR),<sup>10</sup> other cynics might suggest, was born of the sheer guilt of having done little more than count the hundred days that it took for half a million people to be killed by their countrymen

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visited May 6, 1999.

7. Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgment and Sentence of 4 September 1998, available at 37 I.L.M. 1411 (1998) [hereinafter *Kmabanda*].

8. See, e.g., Akayesu, *supra* note 1; Prosecutor v. Dusan Tadic a/k/a "Dule", Case No. IT-94-1, Judgement of May 7, 1997; Prosecutor v. Zejnaldelalic, Judgement of November 16, 1998 ("Celebici").

9. Established by S.C. Res. 827, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/827 (1993) [hereinafter *ICTY Statute*].

10. Established by S.C. Res 955, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/955 (1994) [hereinafter *ICTR Statute*].

somewhere in Africa.

This is often put to me, aggressively at times, as though we should be ashamed of partaking in an otherwise laudable project yet which has this kind of pedigree. I have spent my entire professional life working with, in, or around criminal law. I believe that I have a realistic sense of what it can and cannot do and what it should and should not do. Recourse to criminal law enforcement is often an implicit admission of failure. It is a failure of one or more of the many social institutions designed to protect a society from self-destruction. Examples of these institutions include decent education, shelter and nourishment, access to essential mental health services, adequate child care and child protection agencies, responsible corporate citizenry, and caring families, neighborhoods, or other social units. As with everything, it is all a question of balance. A society that would be complacent about the bankruptcy of most of its important institutions and that would be content to use criminal law to maintain a semblance of order would quickly fall into an autocratic state where the quest for power would be the only possible desirable goal. On the other hand, the criminal sanction should work in parallel with the revamping of the deficient social-welfare institutions that may have served to prevent the harm that criminal law is asked to redress. In the international environment in which the two Tribunals operate, the ratings of other institutions, indeed in some cases their total absence, is all too apparent. It leaves criminal justice to meet the sometimes unrealistic expectations about the contribution that it can make to social peace and harmony, to the eradication of hatred, and to the reconciliation of previously warring factions.

Meanwhile, the long debated ideal of establishing a permanent forum in which to call to account those who offend against the peace of the whole world took a life of its own in the last five years.<sup>11</sup> It also, against the expectations of many, led to the adoption in Rome last June of the text of a treaty that, if not derailed, will lay the foundations

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11. *See generally* M. CHERIF BASSIOUNI, *THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A HISTORICAL DOCUMENTARY* (forthcoming).

of a credible and promising institution.<sup>12</sup> It is not a perfect one but one much better than many of us feared would be born of the incredible pressure to compromise impressed upon those who were so tired of waiting that they might have been seduced by any deal at any cost. I believe that it is of critical importance that we define appropriately the role of international criminal justice, that we fully empower the courts to do what they are designed to do, and that we resist the temptation to use them as inadequate substitutes for the many other ways in which civil societies must be reconstructed after war and sustained in their search for peace.

Quite apart from the obvious practical difficulties in conducting investigations and obtaining custody of the accused, the marriage of international law and criminal law and the merging of vastly different legal systems is a great challenge. The concept of state sovereignty is at the crossroads of public international law and criminal law—a meeting point where these two unlikely partners are trying to merge into what may develop as a truly novel branch of public law. International law, which is primarily interested in relations between states, is first and foremost political, profoundly consensual, and extremely deferential to state sovereignty. Criminal law, by contrast, is coercive and authoritarian, yet concerned with, if not outright suspicious of, the unlimited powers of the state and well aware of the pitfalls of political interference and abuse of power.

Many have spoken about the extraordinary significance of the establishment of the International Criminal Court (ICC). The Secretary-General of the United Nations, Kofi Annan, has referred to the ICC as “the gift of hope for future generations and a giant step forward in the march towards universal human rights and the rule of law.”<sup>13</sup> It is truly an occasion to celebrate the further progress of the rule of law over the rule of force and the repudiation of state sovereignty as pretext for impunity of powerful criminals. It is also an occasion to demonstrate that the legal process can contribute to

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12. Rome Statute for the International Criminal Court, U.N. Doc. A/Conf. 183/9, July 17, 1998 [hereinafter *ICC Statute*].

13. *Secretary-General Says Establishment Of International Criminal Court Is Gift Of Hope To Future Generations*, U.N. Doc. SG/SM/6643 L/2891 (1998).

dispute resolution, even in an environment previously dominated almost exclusively by diplomacy or military intervention with the limited success evidenced by current events in Kosovo,<sup>14</sup> the Democratic Republic of Congo,<sup>15</sup> and elsewhere throughout the world.

The ICC is, however, only a work in progress. The statute requires sixty ratifications for it to come into force.<sup>16</sup> Many issues need to be agreed upon further, such as the definition of the crime of aggression<sup>17</sup> and the elaboration of the Rules of Procedure and Evidence.<sup>18</sup> The ratification process will likely keep the debate on the role of the Court at the forefront of the international agenda for years. Meanwhile, the work of the two ad hoc Tribunals for the former Yugoslavia and for Rwanda will continue to serve both as a procedural and a practical laboratory for the enforcement of the laws of war. Much more importantly, however, it will serve as a test of the true will of the international community to allow the criminal process to unfold, stressful as this process obviously is at times, for those who are called upon to contribute.

As with most institutions, particularly novel ones, the Tribunals are required to meet many expectations, some of which are more realistic than others. I am pleased to report that the early expectation of total failure, shared principally by those who had every interest to see criminal justice fail, has now been replaced by the more realistic acknowledgment that the work of the Tribunals will not cease. The critical issue for me is now the pace and the quality of the work. We are indicting persons who possess the appropriate level of responsibility to be made answerable before an international jurisdiction.<sup>19</sup> Most of the persons indicted by the Rwanda Tribunal

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14. See, e.g., *Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council*, U.N. Doc. S/1998/1221 (1998).

15. See, e.g., S.C. Res. 1234, 54th Sess., U.N. SCOR, 3993d mtg., U.N. Doc S/RES/1234 (1999).

16. *ICC Statute*, *supra* note 12, art. 126. As of May 4, 1999, 82 States had signed the Statute and two had ratified it.

17. *Id.* art. 5(2).

18. *Id.* at Annex I, ¶ F(5).

19. See *ICTY Statute*, *supra* note 9, arts. 1, 7; *ICTR Statute*, *supra* note 10, arts. 1, 6.

are in custody in Arusha.<sup>20</sup> More than half of those publicly indicted by the Yugoslav Tribunal have also been arrested,<sup>21</sup> the most recent one at the end of September 1998.<sup>22</sup> Indictees and suspects in both institutions have surrendered voluntarily to the jurisdiction of the Court.<sup>23</sup> Some have pleaded guilty, including Jean Kambanda, the former Prime Minister of Rwanda, who was sentenced to life imprisonment on September 4, 1998 for his admitted participation in the 1994 genocide.<sup>24</sup> Two days before, the Arusha Tribunal issued a landmark decision in the case of the Prosecutor vs. Jean-Paul Akayesu,<sup>25</sup> convicting him of genocide and crimes against humanity. It laid out, in a scholarly and persuasive fashion, the foundations for the prosecution of sexual violence as genocide,<sup>26</sup> crimes against humanity,<sup>27</sup> and violation of the laws and customs of war.<sup>28</sup>

The two Tribunals continue to depend immensely on international assistance and support. In the case of the Tribunal for the former Yugoslavia, several issues continue to test the determination of the international community to support fully an international criminal jurisdiction. The first such issue is the arrest of the remaining indictees, including that of Radovan Karadic and Ratko Mladic.<sup>29</sup> Although more than half of the publicly-indicted accused have been surrendered to the jurisdiction of the Tribunal, none must be allowed to escape the reach of international sanction, particularly those whose previous position of power should make them more answerable for their alleged criminal actions.

The second issue that continues to illustrate the dependence of international justice on the goodwill of states is the question of access

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20. See *ICTR Report*, *supra* note 6, at ¶ 1.

21. See *ICTY Report*, *supra* note 6, at ¶ 31.

22. *Id.*

23. See *ICTR Report*, *supra* note 6, at ¶ 1; *ICTY Report*, *supra* note 6, at ¶ 31.

24. *Kambanda*, *supra* note 7.

25. *Akayesu*, *supra* note 1.

26. *Id.* at ¶¶ 507-08.

27. *Id.* at ¶¶ 563-98.

28. *Id.* at ¶¶ 599-637.

29. Prosecutor v. Radovan Karadzic and Ratko Mladic, Case No. IT-95-18 (Nov. 16, 1995) (Indictment) [hereinafter *Srebrenica*]; Prosecutor v. Radovan Karadzic and Ratko Mladic, Case No. IT-95-5 (July 25, 1995) (Indictment).



to evidence. Both the states that were directly implicated in the conflict within which the crimes were committed, and to a lesser degree the states that played a peripheral role, either through their involvement in peacekeeping operations or simply as third party observers, have been reluctant in varying degrees to provide the evidence required to support the work of the Prosecutor.<sup>30</sup> Committed as they purport to be to the ideal of international criminal justice, they are often unwilling to make the concrete contribution required of them, particularly if they are asked to disclose information that they view as politically embarrassing or adverse to their diplomatic or other interests. The same, unfortunately, is also true of international organizations, which advance the superior claim of their operational needs so that they may decline to come forward with evidence relevant to our proceedings.

This inertia or, at worst, the actual obstruction of the Tribunal's work is a major impediment to the ability of the Prosecutor to develop investigations in a timely and relevant fashion. Allegations of massive violations of human rights cannot realistically be investigated to the standard required of a criminal investigation without the assistance of sovereign states.

In the case of the International Tribunal for Rwanda, the excellent cooperation of many states, particularly African states such as Cameroon, Kenya, Benin, Togo, Mali, Cote d'Ivoire and, of course, the host country of the Tribunal, Tanzania, have facilitated the timely arrest of many high ranking indictees. I believe that in the ICTR we can prove the existence of a sophisticated conspiracy to commit genocide, and I will do everything in my power to prosecute, preferably jointly, those responsible for this vast common criminal enterprise. Despite the difficulties of the task, the Tribunal continues to strive to dispense justice visibly and expeditiously, in accordance with the legitimate expectations of the people of Rwanda and of all those elsewhere who care.

The crimes investigated and prosecuted before the ad hoc

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30. See, e.g., Justice Louise Arbour, Press Conference by Prosecutor of International Tribunals for Former Yugoslavia and Rwanda, March 5, 1999; S.C. Res. 1207, U.N. SCOR, 53d Sess., 3944th mtg., U.N. Doc. S/RES/1208 (1998).

Tribunals, as well as those which will fall within the jurisdiction of the ICC, are the most horrendously violent large-scale attacks on human life; they include genocide,<sup>31</sup> widespread or systematic persecutions on racial, ethnic, religious, or political grounds;<sup>32</sup> murder;<sup>33</sup> rape;<sup>34</sup> torture;<sup>35</sup> deportation;<sup>36</sup> and the enslavement of civil populations.<sup>37</sup> These crimes inflict unspeakable harm upon the social fabric of the societies in which they are committed and often even to the social group to which the perpetrators belong.

The achievements of the two Tribunals to date are truly remarkable achievements in a world that tolerates the grossest violations of human rights by political or military leaders. Despite the far-reaching potential of the ad hoc Tribunals of the ICC, there are huge obstacles to overcome. There is a great distance between the establishment of a criminal jurisdiction on paper and rendering it operational and effective. The pragmatic dimensions of setting up such an institution should not be overlooked nor should their difficulty be underestimated.

In creating a permanent court many difficult issues will arise, including the location and construction of suitable physical premises such as courtrooms and detention facilities, the formulation of rules of procedure and evidence that reflect the diverse legal systems, and the recruitment of qualified investigators and prosecutors. The prosecutors of the court will be required to work with interpreters and in a cultural environment unfamiliar to them. They also must gather witness testimony and evidence in several states where refugee populations are

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31. *ICTY Statute*, *supra* note 9, art. 4; *ICTR Statute*, *supra* note 10, art. 2; *ICC Statute*, *supra* note 12, art. 6.

32. *ICTY Statute*, *supra* note 9, art. 5(h); *ICTR Statute*, *supra* note 10, art. 3(h); *ICC Statute*, *supra* note 12, art. 7(1)(h).

33. *ICTY Statute*, *supra* note 9, art. 5(a); *ICTR Statute*, *supra* note 10, art. 3(a); *ICC Statute*, *supra* note 12, art. 7(1)(a).

34. *ICTY Statute*, *supra* note 9, art. 5(g); *ICTR Statute*, *supra* note 10, art. 3(g); *ICC Statute*, *supra* note 12, art. 7(1)(g).

35. *ICTY Statute*, *supra* note 9, art. 5(f); *ICTR Statute*, *supra* note 10, art. 3(f); *ICC Statute*, *supra* note 12, art. 7(1)(f).

36. *ICTY Statute*, *supra* note 9, art. 5(d); *ICTR Statute*, *supra* note 10, art. 3(d); *ICC Statute*, *supra* note 12, art. 7(1)(d).

37. *ICTY Statute*, *supra* note 9, art. 5(c); *ICTR Statute*, *supra* note 10, art. 3(c); *ICC Statute*, *supra* note 12, art. 7(1)(c).

located or in a country devastated by war and often where basic infrastructure such as roads and telephones have been impaired or destroyed. They will not have ready access to documents that are vital to the preparation of cases against suspects, and they will have to translate mountains of information, which may prove useless. Finally, they will have to rely entirely on state cooperation and international political pressure to secure the apprehension of suspects. All of these difficulties are byproducts of operating without any preexisting law enforcement infrastructure.

It might be useful here to recall some of the important differences between the International Military Tribunal (IMT) of Nuremberg<sup>38</sup> and the two ad hoc Tribunals. As the name indicates the Nuremberg Tribunal was a military institution; it was multi-national rather than truly international. It was also composed of the four victorious Allies<sup>39</sup> as part of a political settlement. The war was over when the International Military Tribunal was created. It was still raging in the former Yugoslavia, however, when ICTY was set up. In Nuremberg, most defendants were in custody. The IMT had a staff of two thousand, including one hundred prosecutors, four chief prosecutors and four judges (with four alternates).<sup>40</sup> It had very basic rules of procedure and evidence<sup>41</sup>—only eleven rules—and trials in absentia were permitted.<sup>42</sup> Martin Borman, for instance, was tried in his absence.<sup>43</sup> The IMT could and did impose the death penalty<sup>44</sup> and there was no right of appeal.<sup>45</sup>

In contrast, the two ad hoc Tribunals reflect a huge evolution in

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38. Established by Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, London, Aug. 8, 1945, 8 U.N.T.S. 279, *reprinted in* 39 AM. J. INT'L L. 257 (1945) (Supp.) [hereinafter *IMT Charter*].

39. The Allies were France, the Soviet Union, the United Kingdom, and the United States.

40. *IMT Charter*, *supra* note 38, art. 2.

41. Rules of Procedure of the International Military Tribunal, adopted Oct. 29, 1945, *reprinted in* 1 BENJAMIN B. FERENCZ, AN INTERNATIONAL CRIMINAL COURT: A STEP TOWARD WORLD PEACE—A DOCUMENTARY HISTORY AND ANALYSIS 464-68 (1980).

42. *IMT Charter*, *supra* note 38, art. 12.

43. International Military Tribunal (Nuremberg), Judgment and Sentences, Oct. 1, 1946, *reprinted in* 41 AM. J. INT'L L. 172, 173 (1947).

44. *IMT Charter*, *supra* note 38, art. 27.

45. *Id.* art. 26.

criminal justice standards. This includes, to name one, prosecutorial disclosure obligations of immense proportions,<sup>46</sup> with which we are struggling to comply. More important still, the most precious feature of domestic criminal justice that we must generate and cultivate in the international context, but which we cannot take for granted, is the widespread acceptability and credibility of judicial organs, upon which its coercive powers can safely be based.

In functioning democracies courts generally enjoy a large measure of acceptability. The general population, immediate victims of crimes, and offenders alike generally perceive judges as unbiased and fair and as imbued with knowledge and integrity. This is not universal but sufficiently widely shared to permit the easy functioning of the courts without recourse to massive physical coercion. It is the general consensual aspect of criminal justice that permits it to be coercive against the few recalcitrants. In the international context, unfortunately, there is no preexisting basis of credibility upon which the Tribunal can rest to develop the appropriate coercive powers from a solid consensual base.

Furthermore, it should be pointed out that the two ad hoc Tribunals are operating against an entrenched “culture of impunity,”<sup>47</sup> where enforcement of humanitarian law is the rare exception and not the rule. It is instructive here to consider the process by which criminal justice affirms and reinforces the norms of conduct that are acceptable and denounces those that are not. Trial courts tend to convey clear and easily understood information. They help to build a social consensus to promote compliance with the law even when the risk of capture and punishment is minimal. It is in this context that the role and ultimate effectiveness of the Tribunals should be understood.

Any assessment of the Tribunal’s deterrence and peace-building capability must consider that, in the conduct of international affairs, impunity from massive human rights violations has traditionally been

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46. *See generally* International Criminal Tribunal for the Former Yugoslavia: Rules of Procedure and Evidence, U.N. Doc. IT/32/Rev.13 (1998), available at <Error! Bookmark not defined.>; International Criminal Tribunal for Rwanda: Rules of Procedure and Evidence, available at <<http://www.ictt.org/rules.html>>.

47. U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/PV.3453 (1994).

the rule, whereas accountability has been the rare exception.<sup>48</sup> Against this prevalent culture of impunity, it is entirely unrealistic to expect that an ad hoc Tribunal, created amidst an ongoing war of exceptional savagery or after a genocide of monstrous proportions, can somehow immediately inculcate civilized conduct among adversaries. Moreover, it cannot bring about an immediate, fundamental transformation of views in a post-conflict situation or even fundamentally alter the values prevalent in international politics. Effective deterrence is part of a long-term civilizing process beginning with the explicit disapproval of mass violence against civilians as a political instrument and ending with a condition of widespread respect for the law, where deviation from fundamental norms becomes the exception and not the rule. Notwithstanding the immediate challenges of the former Yugoslavia and Rwanda, the Tribunals must strive to make a contribution towards eradicating a culture of impunity and must hope to constitute a significant and revolutionary first-step in the establishment of institutions capable of delivering international criminal justice.

In closing, allow me to share with you a few very personal reflections on my own work with the Tribunals. Preoccupied and engaged as we prosecutors are in the present in a very hands-on, operational manner, particularly now in light of the events taking place into Kosovo,<sup>49</sup> we are also intensely reliving the very painful past of the Yugoslav war era. Earlier this month I briefed the diplomatic corps in The Hague on our exhumations work in Bosnia as part of our fundraising effort to secure the financing that will allow us to continue this important forensic work next year. I have attended these exhumation sites and have reviewed the video presentation for the diplomatic briefing. The images are, of course, tragic and disturbing.

As I looked again at the images of the bodies of some of the men killed at Srebrenica<sup>50</sup> emerging from the ground, I was reminded of the

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48. The ICTY, the ICTR, and the ICC are the first major efforts to try war criminals since the Nuremberg and Tokyo trials, notwithstanding the fact that the twentieth century has seen numerous large-scale commissions of atrocities including, perhaps most notably, the massacres of the Pol Pot regime in Cambodia.

49. Shortly after giving this speech, Justice Arbour led a delegation into Kosovo to investigate allegations of war crimes. The Serbs refused to allow the delegation to enter.

50. See *Srebrenica*, *supra* note 29.

powerful tale in Anne Michael's wonderful book *Fugitive Pieces*.<sup>51</sup> Some of you may recall the story of the learned, well respected, and well-known rabbi who disguised himself as a modest beggar while he traveled in a train to a nearby town to give a lecture.<sup>52</sup> He did so to avoid being recognized and disturbed during his trip, so that he could work and think quietly. His fellow passengers indeed did not recognize him and gave him disapproving stares every time they saw this beggar on the train. When he was greeted on arrival as the great master, the train passengers were ashamed and embarrassed at the way they had treated him and asked his forgiveness, but he would not respond. They pursued their request for forgiveness from the great rabbi for months but to no avail. After a year, somewhat angrily, they told him that he had to agree to extend his forgiveness or explain why he would not. The rabbi replied, "All this time you have been asking the wrong man. You must ask the man on the train to forgive you."<sup>53</sup> As we speak of national reconciliation through justice, I often wonder whether we can ask for forgiveness—not from the man on the train but from the men on the buses that left Srebrenica in July 1995.

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51. ANNE MICHAELS, *FUGITIVE PIECES* (1997).

52. *Id.* at 160.

53. *Id.*