Madam Justice Louise Arbour: Mr. President, Ladies and Gentlemen,

I am very honoured to have been invited to deliver this lecture, and to have in addition the pleasure and the privilege to spend a few days with the University of Alberta community. In particular, having spent a large part of my career as a law teacher, I am delighted to visit the law School that its own students rank as the very best in the country, according to a respectable news magazine. I must confess that an occasion like this one allows me to put the work that I have done in the last three years in perspective, which is quite a luxury considering the pressing demands of the workload of the Supreme Court. I am therefore very grateful that you have provided me with this opportunity to think out loud about the incredible progress that have been made, in the last decade, in fact in the last five years, in the field of human rights on the international scene. I think that we are collectively becoming more conscious of the need to develop a framework within which the most basic human needs and values will be protected and nourished, not only in our own communities, but everywhere. My colleague Justice Claire L'Heureux-Dubé is the President of the International Commission of Jurist. Her work, as well as the one I did immediately before joining the Court, reflects, I believe, an increased awareness of the unique contribution that the Canadian legal community can, and must make, to the advancement of the Rule of Law worldwide.

For three years, from 1996 to the fall of last year, I have dealt on a daily basis with some of the worst excesses of intolerance and injustice. But I have done so in an environment where, despite the set backs, the scepticism and worse, in my view, the wide spread indifference that often surrounded our work, commitment, determination and the vindication of hope prevailed at all times.
I cannot therefore claim much of a calm intellectual detachment when I speak to you tonight about international criminal justice. I want to explore the new direction taken by international law in dealing with the most basic and fundamental human rights: the right to life, to physical integrity, to be sheltered from rape, torture and extermination, by looking at various models — some historic, others developing — where the focus has been and is enforcement. Along the way in this journey into what can be described as "Third Era" of international justice, I will discuss how criminal law can bring reconciliation in post-conflict societies; how the ad-hoc tribunals and the International Criminal Court are enforcement venues, born out of democratic will, that are critical to the evolutionary movement of enforcing human rights. Before I begin, allow me a bit of background, in the form of a broad overview, to set the stage for my comments.

Let me first explain what I mean when I say international justice is entering its "Third Era".

At the outset of what was to become international humanitarian law, international law served the basic purpose of laying down the "law of war". It addressed itself essentially to states, and declared when it was permissible to wage war, and what form of belligerent conduct was acceptable to the communities of nations. The first era of international justice saw a progressive passage from regulating inter-state relations to recognizing human rights; efforts to humanize war through law evolved beyond regulations on the conduct of hostilities to converge on a protection regime for the most vulnerable. The seeds of the ideal of "justice" were planted. The building of the edifice of international justice, spanning across several centuries, brought a more contemporary focus on standard-setting "humanitarian law".

This led to the second era of international justice: articulating, codifying and enshrining rights. Notable milestones include, of course, the 1945 Nuremberg and Tokyo Charters, from which the concept of crimes against humanity emerged; the 1948 Genocide Convention; the 1948 Universal Declaration of Human Rights; the 1949 Geneva Conventions and their two Additional Protocols in 1977; and several other instruments targeting the elimination of discrimination and torture.
At this stage, the progress of international justice took on a "declaratory quality". The impact of these declaratory instruments cannot be minimised. The basic tenets of human rights were established, and served as a model for many national adoptions of Codes and Charters of rights accompanied, domestically, by sometimes very strong enforcement mechanisms. This certainly has been true of the Canadian Charter of Rights and Freedoms of 1982. On the international scene, the broad strokes of the ideal of "justice" were painted but enforcing the codified rights, for instance through attaching an international criminal sanction to the deliberate violations of these fundamental human rights, seemed for a long time completely out of reach.

Many calls for international enforcement mechanisms were made over the course of the second era. However, it seemed the international community had exhausted its collective will to push the issue further than plain proposals.

Unconscionable atrocities had to reoccur, and bring shame to the "Never Again" undertaking of the Nuremberg era to act as effective catalysts and revive the call for international criminal justice. Events of unprecedented barbarism, unthinkable after the excesses of the Second World War, mass genocide in the Great Lakes region of Africa, ruthless ethnic cleansing in the former Yugoslavia brought the idea of judicial enforcement to the forefront and paved the way to the third era of international justice; one concerned prominently with enforcing the now universally recognized human rights standards.

This brings to light two fundamental concepts of international law, State sovereignty, or territoriality, and exclusive state liability, both of which had to be overcome or accommodated to bring about a regime of supra national criminal justice.

State sovereignty confines territorial matters to the exclusive realm of domestic jurisdiction. That is to say, human rights violations that occur within one country’s borders are to be handled by that country and only that country. Despite the world’s exposure to the grossest human rights violations, states protectiveness of their own
sovereignty made them reluctant to contemplate the inevitable yield of exclusive power that would attach to the creation of a supranational forum.

Criminal law, with very few exceptions, is domestically applied and reaches only modestly outside national border. Therefore, prior to international justice’s third era, the norm remained that the only entity with jurisdiction to prosecute the violations of international law was often the perpetrator itself.

The second hurdle to enforcing international criminal justice was the concept that only states participate in international affairs. Since States can only act through their officials, they themselves are granted some of the attributes of the state, such as privileges and immunities. Under that general construct, these individual actors do not engage their own personal responsibility, but only that of the state, with the convenient result that individuals could escape altogether any form of criminal accountability at least outside their own borders.

The third era of international justice attempts to effect changes on those concepts. The Judgments of the Nuremberg and Tokyo Tribunals repudiated the legal fiction that states were the exclusive perpetrators of breaches of international law. And the Statutes of the International Tribunals explicitly provide for personal criminal responsibilities.

This is essentially where we now stand, at a critical moment in the development of fundamental concepts of international justice as it relates to human rights, on the eve of the establishment of an effective international criminal jurisdiction. The past half-decade has witnessed more positive incentives towards enforcing human rights than the last half-century. Fifty years after the advent of the UN Charter and the Declaration of Human Rights, this new era is marked by the dramatic passage from declaring rights to enforcing rights. This of course is not true of all human rights and fundamental civil liberties, neither is it true that this idea of enforcement is universally embraced. It is clear, however, that in the context of international humanitarian law, the body of law that regulates warfare and therefore seeks to protect the most basic human rights when they are the most jeopardized, in that context, international criminal justice has indeed
created an unprecedented, and, I believe, an unexpected breakthrough. Justice is asserting itself as a partner to peace and security. It must still articulate the proper place that it seeks to occupy in that partnership.

I will now turn to three broad models of enforcement. I will, of course, place a special emphasis on international criminal forums since it is the model with which I am most familiar and the model which, in my opinion, has the better claim to universal application.

South African Archbishop Desmond Tutu, who delivered this last year’s lectureship in Human Rights, has presented cogent arguments for restorative justice rather than retributive justice in a post-conflict society. After decades of Apartheid, South Africa chose the path to long term peace and progress in part through the establishment of a Truth and Reconciliation Commission. Even though it is perceived as promoting forgiveness rather than revenge, that process is very much an exercise in justice. It aims less at punishment and deterrence but just like criminal law, it is an authoritative pursuit of the truth, an investment in the notion that if the future can be built on pardon rather than on restitution, it cannot be built on deception. The power of revealing the truth is particularly acute with respect to human rights violations upon which the reconstruction of human dignity, self-worth and true equality must rest. This idea of the importance of establishing a form of recognizable acceptance of historical facts was well expressed in the foreword to Lawrence Weschler’s book: A Miracle, A Universe: Settling Accounts with Torturers. Weschler says the following:

People don’t necessarily insist that the former torturers go to jail- there’s been enough of jail- but they do want to see the truth established. Fragile, tentative democracies time and again hurl themselves toward an abyss, struggling over this issue of truth... Often everyone already knows the truth - everyone knows who the torturers were and what they did, the torturers know that everyone knows, and everyone knows that they know. Why, then, this need to risk everything to render that knowledge explicit?
Thomas Nagel, a professor of philosophy and law at New York University, almost stumbled upon an answer. "It's the difference between knowledge and acknowledgment. It's what happens and can only happen to knowledge when it becomes officially sanctioned, when it is made part of the public cognitive scene." "And that transformation is sacramental".

Viewed in that perspective, Truth and Reconciliation Commissions are very much a justice process. These commissions are particularly well suited when the historical events under scrutiny reach far into the past. In such instances, the very exacting standard of criminal proof beyond reasonable doubt, along with the fundamental protections afforded to the accused, such as the presumption of innocence and the right against self-incrimination, seriously impair the effectiveness of criminal process as the forum of choice for the acknowledgement of the truth of historical facts.

In contrast, a Truth and Reconciliation Commission can achieve the result described by Weschler: that of official acknowledgment of the truth, without the roadblocks erected by the adversarial criminal process to ensure its own integrity. This model of confession, forgiveness and reconciliation cannot be exported everywhere. There has to be at least a modicum of political will to reconcile, and this, in turn, requires a trustworthy and courageous leadership. Nelson Mandela is a truly exceptional man. One can only hope that his legacy and the wisdom of his political choices, will inspire others, particularly in Africa, to embrace the emergence from oppression with a true desire for peace and progress.

In Rwanda, for instance, those who advocated it was acceptable to kill and rape so long as the victim was from a different ethnic group or from an opposition party are unlikely to arrive at any form of reconciliation and acceptance unless they learn new values, including their own responsibility, and the survivors cannot be expected to embrace the ideal of reconciliation and forgiveness unless they are assured that their very survival is no longer imperiled. In parts of the former Yugoslavia the short term
prospect of reconciliation and integration is equally precarious in a post inter-ethnic conflict environment where indicted war criminals still exert power.

Rebuilding a state of law and order, and arriving at true reconciliation requires the eradication of the culture of impunity. If forgiveness is one element that can break the cycle of violence, criminal justice is often a prerequisite. Prosecuting international criminals does not guarantee an absence of retribution. But criminal law, if it operates fairly, transparently and with the safeguards necessary to ensure the integrity of the process, can create an environment within which truth, trust, and eventually reconciliation may take root.

Criminal trials provide a public forum in which we collectively demonstrate our commitment to the impartial exposure of the truth, and in which we restate, time and again, the values upon which we have constructed our will to live together as a civil society.

The classic exercise of criminal jurisdiction is, of course, by the State within the area of its domestic competence. States can resort to their own court systems under two options: national or universal jurisdiction.

As I mentioned earlier, a state is sovereign inside its territorial boundaries. Criminal law, with very few exceptions, is based on territoriality — which means that it is only enforceable by the state within its own territorial boundaries. The prosecution of an individual is left to the state which has a territorial link to the crime.

However, the boundaries between domestic and international prosecutions are not always readily apparent. Take for instance the case where the United States and the United Kingdom demanded the extradition of two Libyan suspects accused of the bombing of PanAm Flight 103 over Lockerbie, Scotland, in 1988. The suspects were finally transferred to the Netherlands in February of last year. The trial on charges of conspiracy to murder, murder and breach of the Aviation Security Act will be held at Camp Zeist in the Netherlands, a former U.S. airbase, temporarily ceded to Britain for
the detention of the accused. For the duration of the case, Camp Zeist will be treated as Scottish soil. The accused will be tried by Scottish judges, under Scottish law. The special court’s personnel and the police force detaining the accused are all Scottish. If found guilty, the accused will serve their sentences in a Scottish prison. The trial is scheduled to begin early this Spring.

The Lockerbie case demonstrates how national jurisdiction can be rendered effective to allow a state to enforce its own criminal law with the assistance of intense international pressure and logistical support. Even though the domestic jurisdiction of Scotland, through imaginative international intervention and cooperation, took some of the trappings on an international forum, it remains a classic case of national justice, rather than an example of enforcing violations of international law before international courts.

States may also enforce international norms by invoking their universal jurisdiction to try a suspected offender over which they have no territorial claim in the narrow, traditional sense. This is a true exception to the territorial limitation of criminal law. Under universal jurisdiction, a concept that was crystallised by the Nuremberg and Tokyo Tribunals, every state is competent, regardless of where the act is committed and regardless of the nationality of the victims and perpetrators. Only specific crimes may trigger the exercise of universal jurisdiction, and they are usually enshrined in international instruments. Those crimes for the most part reflect once again the grossest violations of the most fundamental human rights, embodied in international humanitarian law, among which are crimes against humanity, crimes against peace, "war crimes" and genocide.

Although their legal authority to do so was established, States have long been reluctant to rely exclusively on their universal jurisdiction to prosecute war crimes or genocidal acts. We may now be witnessing the beginning of a radical change in attitude in that respect, and regardless of its ultimate outcome, the case pursued by Spain against General Augusto Pinochet, and in particular the decisions of the House of Lords in that case, will have marked a turning point in the enforcement of human rights, through criminal sanctions at the international level.
Relying on its jurisdiction under the Torture Convention, Spain brought charges of torture and conspiracy against Pinochet and requested his extradition from the United Kingdom where he was undergoing medical treatment. Meanwhile, magistrates from France, Belgium and Switzerland also brought charges against him and sought his attendance before their national courts.

In a watershed judgment, on November 25, 1998, the House of Lords decided that the extradition process could follow its course. Britain’s top court confirmed, on March 24, 1999, that diplomatic immunity did not extend to a former head of state for offences that were otherwise extraditable under the law of the concerned countries. In practical terms, this meant that Pinochet could be extradited to Spain on charges of torture and conspiracy to commit acts of torture, but only for those acts after December 8, 1988, date at which Spain, Britain and Chile were all parties to the Torture Convention.

Subsequently, as you know, General Pinochet was declared unfit to stand trial and returned to Chile where it was recently announced he may be tried. Whatever the outcome in Chile, the initiative of the Spanish magistrate and the decisions of the British courts have nevertheless marked a fundamental change in international law, demonstrating an increasing willingness by many states, or at least by the judiciary in many states, to recognize the universality of human rights abuses, and the need to expand the reach of the law to counteract the de facto impunity of those who should be the most, not the least, accountable.

Already we are seeing other countries follow suit. Senegal is the first African state where a prosecution was initiated against a former head of state, Hissène Habré of Chad, who has been in exile in Senegal since his destitution in 1990 and has been charged in that country with torture and crimes against humanity. Meanwhile, the United Nations is continuing to explore with the Government of Cambodia an acceptable formula, and an acceptable forum, before which several remaining members of Pol Pot’s Khmer Rouge regime can be investigated and tried for their leadership role in one of the most horrendous slaughters of our generation. The involvement of the United Nations in putting in place an appropriate prosecution mechanism for the Khmer Rouge leaders
reflects the severe limitations faced by national courts, including their perceived lack of credibility and legitimacy, as well as the commitment of the international community to ensure that criminal accountability becomes the norm, rather than the exception.

Independent enforcement mechanisms for the most elementary international norms, such as basic human rights, are of paramount necessity. If only because of the intensely political climate in which decisions to prosecute are often made in post conflict societies, relying on state goodwill is simply not enough when crimes of horrendous proportions have been committed either at the hands of a State, or through its collusion or impotence.

This brings me to the last and most novel model of enforcing international criminal justice: international courts. In the common law tradition, a crime is a breach of the peace. This explains why law enforcement officers are often called peace officers. The link between criminal law enforcement and the restoration of peace and order, which is so obvious in a domestic environment, is still being challenged on the international scene by many who argue that justice can be an impediment to peace. This, I believe, is a misguided view which simply equates peace with absence of open warfare, and which focuses only on the short term admittedly disturbing consequences of the exposition of the truth through criminal prosecutions.

The world’s best known attempt at enforcing international justice happened after World War II, when the international community’s indignation toward the Nazi regime’s criminal deeds resulted in the creation of an ad hoc multi-national Tribunal. Ad hoc means "for that particular purpose". The Nuremberg and Tokyo Tribunals were entrusted with the prosecution of the most serious wartime offences. National courts retained complementary jurisdiction, which meant that states could investigate and prosecute the crimes on the same footing as the multi-national Tribunal.

The well-known Nuremberg Tribunal was not truly an international forum. It was more appropriately described as a multi-national military court. It was the creation of the four victorious Allied powers: the United States, France, Britain and the USSR. But this does
not undermine its significance, considering the options that were being examined at the time of its creation, and considering its monumental legacy. The question of whether the captured Nazi leaders should be put on trial rather than summarily executed was seriously debated at the highest political levels in the US and in Britain, with many advocating the execution of thousands and the virtual destruction of the German state. Stalin was said to be a particularly keen proponent of the firing squad.

Although he viewed the prospective trials as laying the foundation for a new legal order, Justice Robert Jackson, the United States Chief Prosecution Counsel at Nuremberg, was very conscious of the risk associated with this innovative and daring enterprise. Expressing a concern that in my view is just as acute today as it was then, he reportedly went so far as to declare that it would be better to execute summarily the Nazi leaders than to discredit our trial process and our judicial system by holding "farcical trials".

Nuremberg and Tokyo shook the core of international law by crystallizing the idea of universal jurisdiction to enforce the basic tenets of humanitarian law through criminal sanctions, and therefore dismantling the legal fiction that personal criminal liability was not an option at the international level. Attribution of personal criminal liability had become a potentially very powerful weapon in the arsenal of peace. In rejecting the defences of state immunity and obedience to superior commands, Nuremberg also planted the seed of a permanent international criminal court, along with the hope than none would ever be needed.

Unfortunately, that hope was very short lived. Warfare, and in particular internal armed conflict, plagued the second part of the 20th century. Ethnically motivated atrocities in Rwanda and Yugoslavia, to speak of those with which I am the most familiar, belatedly prompted the world into action.

Again using the ad hoc formula, the United Nations' Security Council created two International Criminal Tribunals to deal with horrendously violent large-scale criminal attacks on human life. The first one, the International Criminal Tribunal for the former Yugoslavia, was created at the end of May 1993. Its sister institution, the International
Criminal tribunal for Rwanda, was launched in November 1994. Once created, the ad hoc Tribunals, independent from the Security Council, revived the idea, which had been dormant since Nuremberg, of international judicial intervention offering victims of the conflicts in Rwanda and in the former Yugoslavia access to independent and impartial international forums of justice, as an alternative to revenge, and as a long term investment in rebuilding their damaged societies.

The fact that the Tribunals are subsidiary organs, judicial organs of the Security Council of the United Nations has considerable legal significance. All member States of the UN have voluntarily undertaken to be bound by the UN Charter. Through Chapter VII of that Charter, member States have voluntarily surrendered a part of their sovereignty by agreeing to be bound by decisions of the Security Council in matters related to world peace and security. This gives the Tribunals considerable power since they derive their authority directly from the Council. Tribunal decisions are binding on all states and prevail over national law. The jurisdiction of the ICTY was challenged very early in the Tadic case, and that challenge failed.

In a dramatic fashion, therefore, in 1993, where a state was unable or unwilling to accommodate the superior international interests in upholding fundamental human rights, at least in circumstances that threatened international peace and security, state sovereignty was made subservient, not through force, but through legal process.

The ICTY and ICTR are very different from the Nuremberg and Tokyo Military Tribunals. Examining their important differences is useful in suggesting the magnitude of the pragmatic challenges facing an eventual permanent international criminal court.

While Nuremberg and Tokyo were multi-national undertakings, ICTY and ICTR truly reflect an international effort, with all the complexities that this entails. The war was over when the Nuremberg Tribunal was created. The allies’ prosecutors controlled the territory where most of the investigations had to be conducted. Most importantly, despite the massive destruction of records undertaken by the falling Reich, the
prosecutors had access to a wealth of documentary evidence which would make the trial probably the greatest documentary case in history.

By contrast, the Bosnian war was still raging when the ICTY was launched, and access to the territory was difficult if not outright impossible for a long time. The same became true last year in Kosovo when the prosecution staff of ICTY, which clearly had jurisdiction over that territory, was completely denied access by the authorities of the Federal Republic of Yugoslavia.

Criminal Procedure and Evidence has developed considerably since the ’40s. While the Nuremberg trials were conducted under a rudimentary set of Rules, the judges of ICTY and ICTR put in place 125 intricate rules of procedures and evidence, which had to be frequently amended to reflect an unfolding and unpredictable reality. These rules strive to reflect the most exacting standards of modern criminal procedure, merged from the diverse national legal systems.

In Nuremberg, the death penalty could and was imposed; trials could and were held in absentia — without the accused being present — and no right of appeal existed. When Germany surrendered, most of the defendants were immediately apprehended and held in custody pending trial. The ICTY and ICTR had to compose with all of the indicted war criminals on the loose at the outset, and many still. Today, close to 70 persons are in custody, either in The Hague or in Arusha, the seat of ICTR, awaiting trial or appeal, to answer for their participation in these international crimes.

The Tribunals operate within the strict confines of the fundamental principles of justice: impartial and fair proceedings with the utmost respect for the internationally recognized rights of the accused. The prosecution shoulders exacting disclosure obligations and the accused are entitled to procedural fairness in terms very similar to the legal rights conferred upon an accused in Canada under the Canadian Charter of Rights and Freedoms. The death penalty is not available. The accused cannot be tried in their absence and they have a right of appeal. The Tribunals are very complex organizations. In addition to a prosecution staff of around 350 people in The Hague and 150 in Kigali,
the Tribunals operate, under the authority of the Registrar, a detention unit, a legal assistance program for indigent defendants. The total staff of ICTY is now close to 800 people, coming from over 70 different nationalities.

The mere existence of the ad hoc Tribunals marks the further eradication of impunity in the international forum. The statutes of the tribunals explicitly provide that there is no immunity for Heads of State, political and military leaders, and that obedience to orders is not a defence, but simply a factor that may serve to mitigate punishment. In May of last year, for the first time, a Head of State, Slobodan Milosevic, President of the Federal Republic of Yugoslavia, has been indicted while in office, by the international community, for crimes against humanity. The year before that, the former Prime Minister of the interim government of Rwanda at the time of the genocide in 1994, Jean Kambanda, became the first person to plead guilty to genocide, admitting his role in the extermination of over half a million of his own people. He has subsequently appealed his life sentence. Last week, General Tihomic Blaskic, at the time colonel in the HVO, the Bosnian Croat army, was found guilty on 20 counts of crimes against humanity and war crimes, and sentence to 45 years imprisonment.

The Tribunals, however, are still operating against an entrenched culture of impunity where enforcement of humanitarian law is the exception rather than the norm and where dependency on state cooperation continues to be an immense obstacle. Many other pragmatic difficulties plague the ad hoc enforcement structure. But the most fundamental obstacle is the lack of widespread acceptability and credibility. Unlike national courts, the international context lacks this pre-existing basis of legitimacy upon which to rest the Tribunals’ appropriate coercive powers. The establishment of its own legitimacy will be the very first, and most challenging issue facing the forthcoming permanent International Criminal Court which should also come complete with a substantial enforcement capacity and compulsory jurisdiction.

The eyes of the world are now turned towards the logical extension of ad hoc international justice: the permanent International Criminal Court. If ad hoc tribunals
were merely an after-the-fact response to the revelation of shocking atrocities, the ICC aims to lay down permanent roots, and it should be poised to deliver fully the deterrent message that we expect of criminal justice based on personal responsibility.

The legal text at the source of this permanent international court was negotiated in Rome in June and July of 1998. There, 120 states agreed and signed the Rome Treaty establishing the ICC. State cooperation will remain a critical factor in shaping the ICC’s future. Sixty ratifications are required before the Treaty comes into force. The permanent Court will be expected to try military and political leaders for genocide, crimes against humanity and war crimes, like the ad hoc Tribunals, but in addition, the ICC will have jurisdiction over crimes of aggression, which remains to be further defined, and over which the ad hoc tribunals were never given competence. Assuming ratification, state cooperation and compliance will also be the lifeline of the prosecutorial arm of the court.

The movement toward the ICC very much results from the momentum of the ad hoc tribunals, which revitalized the ideal of enforcing international criminal justice and paved the way for the international community to create an institution based on a more permanent foundation. But the ICC will also be different than the ad hoc Tribunals in important ways. First, like the existing International Criminal Tribunals, the ICC will have concurrent jurisdiction of national courts. However, the international tribunals, by the binding decision of the Security Council, have primacy over national courts. This means that the ad hoc Tribunals may require any national court seized of a matter to refrain from proceeding further and yield to the superior claim of the international forum. This power to require what is called a deferral in favour of the Tribunal has in fact been used on several occasions, both by ICTY and by ICTR.

The ICC is also intended to be complimentary to the national criminal justice systems but primacy — priority — will rest with the national courts. This means that the ICC will have to decline jurisdiction if a state seizes itself of a matter, unless the Prosecutor can show that the state which has initiated a domestic investigation or prosecution is not genuinely willing or able to carry out the prosecution successfully. This complex
jurisdictional issue, which was the political bedrock upon which the Rome Treaty established the root of consensus, has great potential for mischief. It may paralyze the court in the early years, and will no doubt be exploited by those intent on dragging the court into the political arena, so as to undermine its legitimacy as a judicial institution.

On the other hand, the reach of the ICC will vastly surpass that of the existing ad hoc tribunals. Its jurisdiction will not be limited to specified geographical areas, and it will look to the future, rather than solely to the past as with ICTR. It will pre-exist the conflicts, and its role will be akin to that of ICTY at the height of the Kosovo crisis. The Secretary-General of the United Nations, Kofi Annan, has referred to the proposed International Criminal Court 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".

It is, however, important to develop realistic expectations about the ICC. It will often operate in an environment where there is no free and independent media. We have yet to create an independent and regulated legal profession at the international level, which can articulate and enforce the ethics of the bar. The unconditional endorsement of accountable governments who are required to enforce the laws will need to be secured. And finally, there will have to be a broad-based acceptance of the duty to give evidence before the international court.

To have an efficient court, competent investigators, prosecutors and judges must be able to conduct their statutory responsibilities in a professional manner. They must be allowed to get at the truth. The ICC should not be forced to depend on national authorities to have unhindered and direct access to all potential evidence. It is impossible to run a fair and effective criminal justice system — either domestically or internationally — without the court having the power to control its access to the relevant facts upon which its conclusions will be based. If weak and powerless, the ICC will not only lack legitimacy but it will also betray the very human rights ideals that will have inspired its creation.
It is absolutely critical that we do not harbour unrealistic expectations for the ICC, otherwise it is doomed to failure. Justice, whether domestic or international, operates in close partnership with other institutions. It would be delusional to expect the ICC to end all wars and all crimes within wars. Yet no one would seriously suggest that we should abolish criminal law domestically just because it does not prevent all crimes nor deter all criminals.

It would be naive to minimize the conceptual and political difficulties facing the attempt to prevent and punish violations of fundamental human rights by those who reject the call for their own accountability. While the process of establishing a long-lasting forum for international criminal justice is complex and difficult, the willingness to enforce humanitarian law in an ad hoc manner and the success of the ad hoc Tribunals remain an important and encouraging precedent. It would, however, be inappropriate to be prematurely triumphant. Having worked without the benefit of real precedents, the ad hoc tribunals will no doubt be shown to have been less than perfect. But their very existence, and in my view the quality of their work so far, is the most promising effort this century to give meaning to the large scale enforcement of human rights standards. Through these tribunals, the United Nations has given concrete recognition to the moral and legal entitlement of every human being to seek protection from oppression, even, and particularly, when that oppression comes from their own sovereign state.

This generation of Canadians has had firsthand experience with the evolution of human rights norms, and with mechanisms of enforcement. In the short span of some forty years, we have progressed from the Bill of Rights in 1960, which was declaratory in nature, to the Charter of Rights and Freedoms in 1982, which provides concrete enforcement mechanisms. Canadians are well positioned to take part in this re-shaping of international justice and its enforcement.

Fifty years ago, the Universal Declaration of Human Rights mentioned justice and international peace as inextricably interlinked. Today, we postulate that enforcement of the former guarantees stability of the latter, and that lasting peace requires accountability for war criminals. A retreat from the promises of the third era of
international criminal justice would be a cynical encouragement to those who, until recently, had every reason to believe that they were unanswerable for their crimes, as there existed no authority higher than their own.

In the 1995 preface to a new edition of his 1954 book Tyranny on Trial, Whitney Harris, a junior prosecutor at Nuremberg under the direction of Justice Robert Jackson, the U.S. Supreme Court Judge who led the American prosecution team, expressed that same sentiment in referring to the ad hoc Tribunals and to the ICC. I will close my remarks by quoting what he said:

Some day there will be an international court of criminal jurisdiction to deal with the tyrants of tomorrow. We have put Tyranny on Trial. It is our duty to keep Tyrants under the Law.

Thank you very much.

[ Applause ]