It may be tempting to conclude, after more than a decade of operation by the Ad Hoc Tribunals for Rwanda and the Former Yugoslavia, the creation of the Special Court for Sierra Leone as well as the Tribunals for East Timor and Cambodia, which the struggle against impunity is not progressing, that the war is not being won.

Even as these tribunals struggle to deal with the tragedies of the past, new ones have sprung up. Never again! The world community had vowed in 1945 and then in the case of the Balkans and then in the case of Rwanda. Yet again and again, new tragedies continue to confront us – in Uganda, in the DRC, in the Sudan – all crying for the intervention of the world community.

Yet to reach such a conclusion would be wrong, not supported by our collective experience. We need to remind ourselves what the struggle against impunity is more immediately about. It is about accountability, it is about ensuring that persons – particularly those who occupy positions of leadership – and who commit such horrendous crimes do not walk away from any judicial
accountability at a national or international level; it is about ensuring that those persons who because of their power or influence – or because of the weakness of national systems – escape accountability at the national level are brought to account before an international jurisdiction.

Crime prevention remains the ideal; particularly for the kinds of egregious violations we are dealing with. But we must recall that even in the most efficient and best organised national systems crime prevention/elimination remains the ideally; we remain guided by the principle that the certainty of detection and of punishment remain the best weapons for deterrence.

Set against this background, the emergent system of international criminal justice has recorded significant successes in bringing to account persons who barely a decade ago could not be contemplated as prisoners in any dock. Heads of state, Heads of government, former Cabinet ministers, senior military and political leaders have faced trial before the international courts in the past decade for crimes committed by them. The ICTR alone has concluded the cases of senior figures including a former Prime Minister, five former Cabinet ministers, eleven senior administrators and three senior military officers amongst others. Currently on trial are six former Cabinet ministers, eight senior military officers, three leaders of the former ruling political party and three senior administrators amongst others. Leaders of similar rank have also occupied detention cells of the ICTY and the Special Court for Sierra Leone. Former President Milosevich and Former President Charles Taylor are striking examples.

The success of the ad hoc tribunals has spilled over to the national systems – with more countries willing to exercise jurisdiction for offences committed abroad; with more countries lifting the veil of immunity which had hitherto
shielded some perpetrators. The language of law and legality is more and more being resorted to by leaders at all levels. The cases of Pinochet, Hissene Habre, Charles Taylor, Milosevich, Jean Kambanda are major milestones in the fight against impunity. When the Heads of State of the African Union member states discussed the case of Habre at their summit in Banjul, The Gambia earlier this year, the debate was not about whether their former colleague should be prosecuted for crimes against humanity. It was solely about how and where he should stand trial: whether to be brought to account before the courts of Senegal where he had taken residence or before a specifically convened court of the African Union. In the end, Senegal was requested by the Summit to arrange for his prosecution in the Senegalese courts. This was a remarkable development which a decade ago would hardly have been entertained in such a forum.

Admittedly there are other situations in certain parts of the world crying loudly for the reach of the international criminal justice but alas to no avail. The system is hardly perfect but we must remember that some decade and a half ago, there was no international criminal justice system to deal with any situation of genocide, crimes against humanity or war crimes. Today, there are four ad hoc tribunals and the International Criminal Court dealing with a variety of such situations. We look forward to the day – and it will come – when a permanent universal system will exercise jurisdiction over all such cases, without distinction.

The ad hoc tribunals, with the experience developed in investigations and trials and all aspects of international judicial management – together with their records have demonstrated that the system of international criminal accountability is feasible, workable and absolutely necessary. That endorsement has progressed us beyond ad hoc arrangements to a permanent international system of criminal justice.
It is not however without its challenges and difficulties. By its nature, the international system can deal with only a limited number of cases – leadership cases. The rest must not however go unpunished – that would be bad for our struggle against impunity. The Ad Hoc Tribunals seek to share the burden with national systems through a process of referral of cases. The permanent court will rely on its system of complementarity. Both approaches require the development of the necessary political will and technical capacity in national systems to share the burden.

The progress of war against impunity depends so much on the level of state cooperation. We are – and perhaps will continue to be – dependent on state cooperation for the success of the system. In several critical areas – the arrest of fugitives, the tracking and location of witnesses and evidence, the facilities for detention and imprisonment, etc., the majority of states live up to their legal obligations to cooperate. Those who fail in their responsibilities need to be encouraged and ultimately coerced into compliance. State cooperation is our strength but it is also the Achilles heel of the system. We need to continue to find ways of ensuring it is available. In some idealistic moment, I entertain the hope that someday the system of international criminal justice will be freed from this dependence. Perhaps someday we will envisage a system with its own international and independent authority with a police force, prison and all the support facilities which a national justice system enjoys.

Often, perceptions of the national interest – political, strategic – may stand in the way; it is our challenge to develop a universal consensus on the fact that justice at home and abroad are the best guarantees for national and international peace and security.
The edge enjoyed by the municipal system over the national system in the area of deterrence lies in the greater certainty of detection and punishment that exists in the former. We must strive to give the latter more teeth to have greater deterrence effect.

The judicial process is an important and necessary complement of the struggle against impunity. One would be naïve to close down the ICTR beyond 2010 and go away with the belief that the judicial process of the past decade or so is by itself enough to prevent a recurrence. We must however recognise it is not enough. We must embark on effective preventive strategies. Bad government lies at the root/heart of these great humanitarian tragedies with which we are grappling. Good governance based on a government truly of the people, the rule of law, respect for human rights enforceable by an independent and effective judiciary together with effective national oversight institutions need to be encouraged in all member states as the first line of defence against mass tragedy.

The Action Plan of the Secretary General to combat genocide, launched in the 10th anniversary of the Rwandan genocide, provides further elements – an early warning system of impending tragedy, an effective rapid response mechanism to prevent or halt these massive violations of human right and judicial intervention to ensure accountability of the perpetrators. The plan needs the active support of the international community. It provides a holistic approach to prevention of mass tragedy. It needs to be implemented. The gains so far made in combating impunity can thus be consolidated and improved upon by strengthening the international judicial process through more effective state cooperation and a resort to other non-judicial preventive as well as remedial measures.

Thank you.