

**Celebration of the 40th Anniversary of the
International Institute of Humanitarian Law (IIHL)
Round Table on “Global Violence: Consequences and Responses”
San Remo, 9 September 2010**

**Statement by Ms. Patricia O’ Brien
Under-Secretary-General for Legal Affairs,
The Legal Counsel**

Your Highness, Prince Albert of Monaco,
Ambassador Moreno (President of the IIHL)
Dr. Kellenberger (President of the ICRC),
Ladies and Gentlemen,
Distinguished Guests,

It is my pleasure to speak to you today at this auspicious gathering to celebrate the 40th anniversary of the International Institute of Humanitarian Law. The San Remo Institute has long been a lead Institute in the field of promoting the understanding, development and dissemination of international humanitarian law, and one with which the United Nations Secretariat, and the Office of Legal Affairs, in particular, has had a long tradition of cooperation.

The theme for this year’s round table is **“Global Violence: Consequences and Responses”**. In light of the recent events in places as diverse as Darfur, the Democratic Republic of the Congo, Guinea, Sri Lanka, Kyrgyzstan, Afghanistan, Gaza and elsewhere, this topic has become ever more acute. In many of these places and situations the consequential, and almost inevitable effects of violence have been the targeting of civilians, sexual violence, forced displacement and denial of humanitarian access – for the most part these acts are carried out with impunity.

The United Nations is uniquely placed to spearhead the international effort while the response to global violence must, of course, be the joint effort of

States, non-State entities, international organizations both governmental and non-governmental and civil society at large,. In crafting a response to global violence and its consequential effect on the civilian population, the question at the centre of the debate is: how to prevent the violence and to punish those responsible for its consequences. In the practice of the international community, including the United Nations, however, prevention and punishment – “two distinct yet connected obligations” in the words of the ICJ in the Genocide case - have too often been seen as “punishment as prevention”. One of the most effective ways of preventing criminal acts, according to so many great legal philosophers and jurists and according to the ICJ, is to provide penalties and to impose them effectively on persons who committed them. But while punishment as a deterrence or a form of prevention has been the purpose of all international criminal jurisdictions – one, perhaps, among many – in reality, punishment alone seldom prevents.

Ever since its groundbreaking response to the mass atrocities in the former Yugoslavia and Rwanda in the early to mid-1990s, the United Nations has established a panoply of international and mixed tribunals, beginning with the International Criminal Tribunals for the former Yugoslavia, and for Rwanda, the Extraordinary Chambers for Cambodia, the Special Court for Sierra Leone and, as of late, the Special Tribunal for Lebanon. For almost two decades international criminal tribunals have contributed to the eradication of impunity, and the prosecution of those responsible at the political and military leadership for commission of serious, large-scale crimes. In so doing these international judicial mechanisms have also contributed to the revival and development of international criminal law and jurisprudence, and will have left a legacy to guide generations of national and international jurisdictions and members of the legal profession at large. It remains questionable, however, as to how much tribunals of all kinds have done to prevent future crimes.

In the last two decades, as well, Commissions of Inquiry, established by the Secretary-General to investigate serious violations of human rights and international humanitarian law have become the foremost non-judicial accountability mechanism and a tool – both legal and political – to bring a message of accountability to post-conflict societies. Throughout the years commissions of inquiry to investigate serious violations of human rights and international humanitarian law were established in the former Yugoslavia, Rwanda, Burundi, Cote d'Ivoire, Darfur, Guinea and East Timor, to mention but a few. Commissions of inquiry were also established to undertake criminal investigation under the national laws of the requesting State, and notably the Commission of Inquiry into the assassination of former Prime Minister Hariri in Lebanon, the Commission to investigate organized transnational crimes in Guatemala (known by its Spanish acronym of "CICIG"), and more recently the fact-finding commission into the assassination of former prime Minister Benazir Bhutto. Some of the "traditional" commissions of inquiry have paved the way for the establishment of judicial accountability mechanisms, i.e., the ICTY and ICTR and the ICC following a referral of the Security Council. For the many which have not, however, their reports remained a testimony, the only one perhaps, for the events.

The record of the Security Council in establishing judicial and non-judicial accountability mechanisms has, no doubt, been impressive. Yet, the "obligation to punish" applies first and foremost to the States where the crimes were committed and where, for the most part, victims and perpetrators continue to co-exist. International judicial accountability mechanisms do not substitute national mechanisms; they only complement them with respect of the most serious crimes of genocide, crimes against humanity and war crimes.

In this connection, the Kampala Declaration adopted at the close of the ICC Review Conference this June, expressed the resolve of the States' parties "to

continue and strengthen effective domestic implementation of the Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity". The principle of complementarity has thus become the bedrock of international criminal justice system.

In the final analysis, however, justice is a nation's choice. In its realization, the United Nations as well as other international criminal jurisdictions can, to a certain extent, assist. But the fight against impunity will not be won at the international level. It must be fought and won inside the States, with the political will of the Governments and in the hearts and minds of the citizens. Only then will we truly see the dawning of an age of accountability.

Judicial accountability mechanisms of all kinds hold the promise of "prevention by deterrence". It is nevertheless in its efforts to prevent global violence that the resolve of the United Nations and the international community as a whole will ultimately be tested. In its efforts to prevent the occurrence of large scale violations of human rights and international humanitarian law, the UN has undertaken a variety of activities in the promotion of the rule of law, fostering development, institution building, training police and monitoring elections. All of these activities have the capacity to contribute in various different ways to the creation of more stable societies governed by the rule of law, and to preventing the outbreak of conflict. The use of "good offices" in times of crisis has also succeeded in bringing about a political resolution to a dispute before conflict breaks out.

Against the background of the 1990s' and the international community's inaction in Rwanda and Srebrenica, the doctrine of so-called "Responsibility to Protect" has emerged in 2001, to be embraced only a few years later by the entire community of States. At the 2005 World Summit, Heads of State and Government unanimously affirmed their "responsibility to protect",

consisting of three pillars: First, they acknowledged that each individual State has the responsibility to protect its populations from genocide, war crimes, and crimes against humanity, as well as ethnic cleansing. Second, that the international community, through the UN, has the responsibility to use appropriate diplomatic, humanitarian, and other peaceful means to help States protect their populations from such crimes. Third, they resolved to take collective action, in a timely and decisive manner, through the Security Council and in accordance with the Charter, when peaceful means were inadequate and national authorities were manifestly failing to protect their populations.

The Responsibility to Protect doctrine does not create any new legal basis for the use of force, and is not – as popularly misconstrued - another way of conceptualizing “humanitarian intervention”. It is nonetheless an important political acknowledgment that sovereignty entails responsibility, and that the international community has a responsibility to act to assist States to protect their populations. When this concept was debated in the General Assembly last July, most States agreed that the UN’s role should focus, at the outset, on prevention, including through long-term activities in the promotion of the rule of law, building good governance institutions and reforming the security sector. In so doing, our challenge is to work out how the UN can best assist States in protecting their populations effectively - and how to get the various branches of the UN system to work quickly and coherently in crisis situations when States are either unwilling or unable to protect their populations.

The strength of R2P concept lies in the obligations that it places both on individual States and the international community to take action before atrocities on a large scale are permitted to occur. It is, however, the political will of the Security Council and the community of States, more generally, to act for the protection of the civilian population where all protection measures fail or not resorted to, which will remain forever our greatest challenge.

And while the Outcome Document concluded the legal debate over the possible use of force for humanitarian purposes outside the framework of the United Nations Charter, the moral or philosophical debate over the protection of civilian population in dire existential risk continues to obtain. In response, however indirect, to the challenge of R2P, the Security Council has, since 1999, mandated peacekeeping operations to protect, by force if necessary, civilian population under imminent threat of violence.

In the Democratic Republic of the Congo, Liberia, Cote d'Ivoire, Darfur and Chad – to name but a few, peacekeeping operations have been mandated to protect civilians within the limitations of their area of operation, available resources, and without prejudice to the Government's responsibilities. In a strategy known as "protection by presence" they monitor the observance of human rights, patrol IDPs' camps, escort women in their daily business as well as humanitarian convoys.

In north Kivu, DRC, UN peacekeepers have on a number of occasions been engaged in offensive operations against armed groups and in so doing provided critical protection to civilians in imminent danger. At times, however, we fall short of our ability, capability, and the expectations of the victims who trusted us and the world that observes us. Our failures, however, do not discourage us. They only strengthen our determination and resolve to protect civilians and prevent future atrocities.

Almost two decades after the first international tribunals were established and in this "era of accountability", the United Nations is determined not to let the relative success of punishment of those responsible for the so-called "R2P crimes" obscure the serious and much more difficult challenge of prevention – the only truly mature and honest response, perhaps, to global violence and its consequences.