Reinforcing the Rule of Law in International Relations:
The Key Role of Parliamentarians

Parliamentary Hearing at the United Nations
20 – 21 November 2007
United Nations, New York

Summary and Main Conclusions

The 2007 parliamentary hearing took place at United Nations headquarters in New York on 20 and 21 November and was attended by some 200 parliamentarians from almost 70 countries and several regional parliaments. Before the interactive sessions, the meeting was addressed by the President of the Inter-Parliamentary Union, the President of the United Nations General Assembly and the Secretary-General of the United Nations.

Opening Remarks

Mr. Pier Ferdinando Casini, President of the Inter-Parliamentary Union (IPU), opened the hearing and welcomed the participants. He noted that the parliamentary hearing has evolved from being an event organized solely by the IPU in the margins of the General Assembly, to become a joint meeting that will feed directly into the Assembly's substantive discussions, providing greater political input to its consideration of the major international concerns of the day, and offering an opportunity to examine the role that parliaments can play in reinforcing the rule of law in international relations.

While all recognize the rule of law as a foundation of peace and democracy, it is also necessary to recognize the strains impeding its application. For example, the great bargain of the Nuclear Non-Proliferation Treaty, whereby states without nuclear weapons would not seek to acquire them, in exchange for receiving peaceful nuclear technology from the nuclear-weapon States, has all but come to naught, despite people's overwhelming desire for peaceful coexistence with others.

The international criminal justice regime is also under strain. The international tribunals seem to be battling an inadequate understanding of their role and mandate, particularly in the context of national sovereignty. It is also a reality that political considerations may lead to lenient treatment of those involved in fallen regimes, for the sake of reconciliation, but is that truly a legitimate consideration?

Even in the fight against terrorism, there is insufficient evidence of action to implement adopted commitments. Some actors seem to have become bogged down with questions of definition or, worse, have used terrorism as a wedge issue to address various unrelated grievances. He described the present meeting as an opportunity to set aside politics and focus on practical steps that nations can take together to implement commitments such as the United Nations Global Counter-Terrorism Strategy.

H.E. Srgjan Kerim, President of the United Nations General Assembly, characterized the assembled parliamentarians as powerful opinion formers, whose support is essential to promote more effective international relations based on the rule of law. Enhancing United Nations cooperation with legislators is crucial to strengthening international policy and ensuring compliance with international commitments. He therefore welcomed the fact that from now on the hearing will be held as a joint UN-IPU event, which sends a clear political signal that the United Nations is committed to working closely with parliamentarians in tackling the tough global issues of our times.

> ***Respect for the rule of law is the cornerstone of peaceful relations among nations.***
>
> H.E. Srgjan Kerim, President of the United Nations General Assembly

The rule of law is a basic human right that forms the bedrock of society by guaranteeing the well-being, freedom and dignity of all of its members, in a climate of mutual respect for the rights and sovereignty of all. The increasing complexity of today's global change and interdependence is

putting a strain on those values and testing society's commitment to them. Asymmetrical conflicts between States and non-State actors are increasing. The threat of global terrorism is not receding. Climate change is impacting the whole world, but a binding legal solution is not in sight. Given the indivisible nature of those challenges, nations need to have the courage to rise above their own self-interest in pursuit of common goals of benefit to all. Member States have demonstrated their commitment to translate those principles into functioning international mechanisms. The heavy caseload of the International Court of Justice is evidence of Member States' commitment to solving their disputes peacefully pursuant to international rules. Through their commitment to those values and principles, nations have the opportunity to forge a new culture of international relations, in which human security is not inherently less important than national security.

H.E. Ban Ki-moon, Secretary-General of the United Nations, said that the rule of law rests on the notion that everyone – individuals and States alike – is accountable to laws that are publicly promulgated, equally enforced and independently adjudicated.

The United Nations has always striven towards that goal. From the Organization's earliest days, Member States have worked together to codify and develop a body of international law. Today, the international community can justifiably point to a wide body of international legislation that exemplifies its collective commitment to, and belief in, the rule of law. Upholding that legal regime is crucial to the cause of peace. It can help prevent or resolve conflicts and check weapons proliferation. It can protect people from genocide and other crimes against humanity. And it can aid the fight against terrorism.

That is why the United Nations has made promoting the rule of law a priority at both the national and international levels. Over a dozen departments, agencies, funds and programmes are involved in that work, which means that the UN must do its best in strategic planning and coordination so as to prevent duplication or overlap. That was a call made loud and clear by Member States at the 2005 World Summit. Earlier in the year, the United Nations Secretary-General had established the Rule of Law Coordination and Resource Group, which brings together the heads of the eight leading United Nations entities engaged in rule-of-law work.

He hoped that parliamentarians would remain steadfast allies of the United Nations in all of its work, from human rights to peace and security, from development to the environment and climate change. Turning to the latter challenge, he recalled that on his recent visit to South America and Antarctica, he saw up close how some of the most precious treasures of the planet are being threatened by mankind's own activities. Shortly after that journey he had launched the latest report of the Intergovernmental Panel on Climate Change. As the report made clear, there are real and affordable ways to deal with climate change: what is missing is the political will. Parliamentarians can work to change that, rallying support in national capitals and making the fight against climate change a truly global effort. Action is needed now, for the price of inaction far exceeds the cost of action.

Session I: Priorities, challenges and objectives of the new United Nations management team

Panellists: Mr. Lynn Pascoe, United Nations Under-Secretary-General for Political Affairs, and Mr. Nicolas Michel, United Nations Under-Secretary-General for Legal Affairs

In their examination of the work of the new United Nations management team, Mr. Pascoe concentrated on the changes that the Secretary-General is making in the area of peacekeeping and peacemaking, while Mr. Michel discussed the evolving system of international justice. Mr. Pascoe also said that he would keep his presentation very short, in order to leave more time for discussion with the parliamentarians. Their remarks are summarized below.

Secretary-General Ban has moved fast and firmly to leave his stamp on the United Nations. He wants it to be an organization that produces solutions; he wants to see issues resolved; he wants to see the United Nations shed its reputation as just a talk shop. In the areas of peace and security, development and human rights it is critical that the Organization should be seen to show results.

In the peace and security area, the Secretary-General upon taking office clearly felt that the Organization was overextended: the UN has close to 100,000 peacekeepers deployed, to which must be added the numbers that will eventually be sent to Darfur. He has therefore sought and received the approval of the

General Assembly to divide the peacekeeping function into two components, a policy component and a support and logistics one.

A second area where the Secretary-General is making efforts to improve the outcomes of the Organization is in the area of preventive diplomacy, within the Department of Political Affairs. Here the need is to change the culture so that the department will be ready to move at very short notice to resolve situations before they blow out of control. Preventive diplomacy costs about 1% of the cost of peacekeeping operations: success in peacemaking not only saves lives, but saves money as well.

International law is implemented through national legislatures, and it is parliamentarians who scrutinize the actions of governments. Thus, parliamentarians are uniquely placed to play a key role in promoting the rule of law at the international level.

One of the major challenges facing the United Nations is how best to maintain international peace and security, and although much of its work is focused on the tragic consequences of conflict and on pursuing justice for its victims, the Organization's primary aim must be to prevent conflict. Parliamentarians can play a key role in urging governments to choose the path of respect for international law and the peaceful settlement of disputes, whether by negotiation, arbitration or reference to a regional or international tribunal. The International Court of Justice (ICJ) lies at the heart of the international system for the peaceful settlement of disputes. With the 2005 World Summit having called for increased acceptance of the Court's jurisdiction, parliamentarians are well-placed to press governments to implement that commitment.

> ***The question for the United Nations is not whether justice should be pursued, but when.***
>
> Nicolas Michel, United Nations Under-Secretary-General for Legal Affairs

Another key challenge is that of bringing an end to impunity. While genocide and other terrible crimes continue, there is growing international sentiment that impunity for them cannot be tolerated, and that there can be no lasting peace until the perpetrators are brought to justice. The International Criminal Court (ICC) is now the centrepiece of a system of international criminal justice. The referral by the Security Council of the situation in Darfur to the ICC is highly significant, demonstrating as it does the strength of the international community's resolve to end impunity and, where necessary, to overcome well-known political differences in order to do so. With the current year marking the fifth anniversary of the entry into force of the Statute of Rome, the Secretary-General has called on States not yet parties to the Statute to accede to it. Parliamentarians can repeat that call to their governments. They can also highlight the need for cooperation by States in the implementation of arrest warrants issued by the ICC.

An important development at the 2005 World Summit was the commitment to the new doctrine of the responsibility to protect. This is the responsibility that falls to the international community, if a particular State is unwilling or unable to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, to do so in its stead. How to operationalize this unanimous commitment by Heads of State and Government, the conceptual foundation of which is "sovereignty as responsibility", is a major challenge that is currently under study within the United Nations, and parliamentarians should press for the same close attention to the issue within their own countries.

In the ensuing discussion several parliamentarians raised the issue of enlargement of the Security Council. Since Article 108 of the United Nations Charter stipulates that the composition of the Security Council may be amended only after ratification by all of its permanent members, there is deadlock, because reform can only occur with the consent of five States who have little interest in such reform. In particular, the countries of the South do not feel represented in the Council. If, then, international tribunals are established by what some parliamentarians see as an undemocratic body, the tribunals themselves cannot be regarded as democratic. Consequently, the General Assembly might be a more appropriate forum in which to consider establishing international tribunals, as then all Member States would have a voice.

In response, it was pointed out that while the first generation of international courts – the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda – were established pursuant to a Security Council decision, the second generation had been established by

bilateral agreements. The Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia were approved by the parliaments of those countries; thus the democratic dimension was present. Additionally, the International Criminal Court is governed by the Statute of Rome which in most cases is ratified after discussion by Parliament, and this in itself is a democratic act which lends legitimacy to the ICC.

In response to a question about the progress of the Special Tribunal for Lebanon, it was explained that an agreement is under negotiation with the Netherlands on a site for the tribunal, but that it cannot start operating until the financing is actually in place for the first year and has been committed for the second and third years. In the meantime, the process of selection of the judges is continuing: four will be Lebanese and seven international.

The question was raised of why the United Nations Mission in the Democratic Republic of the Congo (DRC), known as MONUC, is not capable of disarming the various armed bands, who are after all not major military forces. Should the UN review the rules of engagement for the peacekeepers, to allow them to be more proactive? MONUC also seems unable to stem the floods of small arms and light weapons into the country in small aircraft. It was pointed out that over and above the contribution of the armed peacekeepers, establishing peace in the DRC is ultimately a matter of resolving political issues.

Of the 100,000 peacekeepers, what percentage are women? Security Council resolution 1325 calls for greater involvement of women in peacekeeping operations, recognition of the needs of women in peacekeeping situations, and appropriate training. Ensuring at the national level that those demands are met is part of the responsibility of parliamentarians, but the Security Council too has a responsibility to urge contributing countries to take measures accordingly. It was viewed as particularly outrageous that some peacekeepers have sexually abused women and girls, already traumatized by the conflict. In response, it was pointed out that, while women do undoubtedly have an important role in peacekeeping, the actual composition of the peacekeeping forces is a decision for the contributing State. However, with regard to sexual abuse by peacekeeping forces, the United Nations has a strict zero-tolerance policy: offenders are to be returned to their home country and tried under its jurisdiction.

As one of the very important reforms resulting from the 2005 World Summit was the creation of the United Nations Peacebuilding Commission, it was asked what specific action parliamentarians could take to truly assist the whole agenda of peace, including involving women in every aspect of it.

Mr. Anders Johnson, Secretary-General of the Inter-Parliamentary Union, responded that parliamentarians play a major role in countries emerging from conflict. In every case, an important step is to hold elections to establish a parliament, which should then legislate to create an inclusive society in which there is no longer a need to resort to conflict. However, there is a tendency for the international community to forget the parliament once the election is over, and to concentrate all its attention on the executive. The Peacebuilding Commission is making a conscientious effort to redress that tendency, by giving newly-formed parliaments as much attention as possible, and it is vital that parliamentarians should provide support to the parliaments of post-conflict countries. With the Peacebuilding Commission being occupied primarily with Burundi and Sierra Leone at present, and with both countries attending the current hearing, he suggested that parliamentarians should discuss with those delegations how they could help in building up their institutions.

Session II: Observing the rule of law in the implementation of key international commitments in the area of disarmament and non-proliferation

Panellists: Senator Rosario Green Macías, Chair of the Foreign Affairs Committee, Senate of Mexico; H.E. Mr. Tibor Toth, Executive Secretary of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO); H.E. Mr. Peter Burian, Chairman of the Security Council Committee established pursuant to resolution 1540 (2004); Ms. Hannelore Hoppe, Deputy to the United Nations High Representative for Disarmament Affairs; and Mr. Jonathan Granoff, President, Global Security Institute

In the panel's examination of the area of disarmament and non-proliferation, Ms. Green reviewed the history of the various Independent Commissions in the process of nuclear disarmament; Mr. Toth

discussed the role of the Comprehensive Nuclear-Test-Ban Treaty; Mr. Burian described the impact of Security Council resolution 1540 on prevention of proliferation; Ms. Hoppe discussed the current situation; and Mr. Granoff placed all of their contributions in an overall context.

Introducing the session, Mr. Granoff said that how the world decides to deal with nuclear weapons may well determine whether there is a future or not. The issue links the moral imperative, of rejecting of such weapons on ethical grounds, with the survival imperative, since with every passing year nuclear weapons make the security of mankind more precarious.

> ***We have become the first generation to have to consciously decide whether we will be the last generation.***
>
> Jonathan Granoff, President, Global Security Institute

The first three Independent Commissions that sought to move forward the process of nuclear disarmament were called into being by events both positive – the optimism over the indefinite extension of the NPT – or negative – the nuclear tests of India and Pakistan – but ultimately the momentum of their efforts was lost over the refusal of the United States to sign the Comprehensive Nuclear-Test-Ban Treaty (CTBT). Very rapidly, the window of opportunity opened by the end of the Cold War closed again.

This brought into being the fourth Independent Commission, which in its report "Weapons of Terror" revealed such horrifying statistics as that there are still 27,000 nuclear weapons in existence, 12,000 of them actively deployed. The only way to reduce the threat of such awesome potential destruction is, as the report puts it: "All states possessing nuclear weapons should declare a categorical policy of no-first-use of such weapon… [specifying] … that this covers both pre-emptive and preventive action, as well as retaliation … ."

The CTBT was opened for signature in 1996, its objective being to ban all nuclear test explosions in all environments. The CTBT has been signed by 177 States, and ratified by 140, but ten remaining listed States must ratify it for it to come into force. By preventing future testing, the CTBT is intended to be the first step in a broader disarmament agenda adopted in 1995 when States decided to extend the Nuclear Non-Proliferation Treaty (NPT) indefinitely. Although it is not yet fully in force, its unprecedented verification regime, comprising over 300 sensing stations, is largely complete. Progress in arms control efforts is scarce at present. The CTBT, however, is multilateralism at its best, with nearly 90 States hosting monitoring facilities.

In October 2006 the Democratic People's Republic of Korea (DPRK) conducted a nuclear test, breaking an 8-year global moratorium on testing. This constituted the most serious challenge to the CTBT, and also provided an unexpected performance test for its verification system. Within 25 minutes, 22 monitoring stations had recorded the event, including one as far away as Bolivia. Within two hours, CTBT Member States had received the time, location, magnitude and depth of the explosion. At the very least, the explosion was a validation of the verification potential of the CTBT, and it brought nuclear testing back into international attention, underscoring that the CTBT is unfinished business.

With nuclear energy once again being favoured to solve the world's energy needs, differentiating between permitted and prohibited nuclear activities becomes an increasing challenge, but a nuclear test provides undeniable proof of a State's intentions. Thus the CTBT is the barrier between the peaceful, legitimate use of nuclear energy and its misuse.

The adoption in April 2004 of Security Council resolution 1540, on the prevention of proliferation of weapons of mass destruction, was a timely response to the growing threat of terrorism posed by hybrid networks like Al-Qaida and the troubling revelations about Abdul Qadeer Khan's nuclear black market. Those revelations demonstrated that non-State actors including terrorist organizations might have easy access to even the most advanced weapons of mass destruction. The likely expansion of civilian nuclear programmes also provides an opportunity for terrorist groups to access fissile and radioactive material which they may then use to create nuclear weapons or dirty bombs: in 2006 alone, the International Atomic Energy Agency (IAEA) registered more than 260 cases of lost or stolen nuclear materials.

Adoption of resolution 1540 was thus a necessary step towards addressing the gaps in international non-proliferation systems and building a comprehensive global system of prevention and protection. The resolution establishes a binding obligation on all States to take measures against proliferation. Since its

adoption, 137 of the 192 United Nations Member States have reported to the Committee on measures they have taken to implement it.

In April 2006 the Committee presented to the Security Council a comprehensive report on its first two years' work, identifying several important gaps in the implementation of the resolution, especially in the areas of accountability, physical protection, border control, law enforcement and national export and trans-shipment controls. The report also notes that even those States that have made significant progress need to regularly enhance their national systems, to prevent terrorists from identifying weak spots in them.

No single State or institution can cope with the threat of proliferation alone; the challenges and complexities of implementation can only be addressed through the broadest degree of international cooperation and interaction. To that end the 1540 Committee is developing its ties and cooperation with other bodies such as IAEA, the Organisation for the Prohibition of Chemical Weapons, the World Customs Organization and CTBTO. Together with the United Nations Office for Disarmament Affairs, the 1540 Committee has held several regional seminars, serving not only to raise awareness but also to identify the areas where the Committee can do a better job of facilitating assistance. The Committee is also developing its role as a clearing house to facilitate contacts between countries requesting assistance and those offering assistance.

More generally, cooperation both among parliaments and between parliaments and the United Nations will be increasingly important in the fields of disarmament and non-proliferation. Over the last six decades, hundreds of General Assembly resolutions on the issues have been adopted, while States have concluded several bilateral and multilateral treaties in which they agreed not to seek or acquire weapons of mass destruction. Extensive international cooperation is essential not just because of the global implications of the use of such weapons, but also because of the global scope of the market for the various commodities needed to make them. Thus, while national legislation alone cannot reach the world's disarmament and non-proliferation goals, individual legislatures have an indispensable role to play in ratifying treaties, enacting legislation to ensure consistency between international commitments and domestic law, and overseeing implementation.

> ***Proliferation is a consequence of a failure on the part of the Member States of the United Nations to implement the treaties, agreements and conventions that they have signed.***
>
> Hon. Theo-Ben Gurirab, Speaker of the National Assembly of Namibia

Unfortunately, significant obstacles remain. The relevant multilateral treaties continue to lack universal membership, there are occasional allegations of non-compliance and there are risks of States exercising their legal right to withdraw. Overcoming such obstacles requires understanding and support from legislatures and civil society. Parliamentarians can call for strengthening the multilateral regimes for non-proliferation and disarmament; through legislation, they can promote disarmament and non-proliferation education in schools and universities; and through questions and hearings they can actively monitor progress.

The rule of law represents the common ground that the parliaments of the world and the United Nations share. Both seek to promote the development and strengthening of legal norms, and both seek to enhance security, particularly through extending the notion of the rule of law into the realms of disarmament and non-proliferation.

In the ensuing discussion, some participants felt that the NPT embodies a double standard, in that it allows some countries access to nuclear weapons and prohibits it to others. They pointed out that such inequality is bound to have a destabilizing effect. Others questioned the utility of ratifying the NPT, given that its provisions might simply be ignored by one of the major powers, leading to a destabilizing inequality. Unless ratification is universal, there can be no absolute guarantee that nuclear weapons will not find their way into the hands of terrorists.

On the other hand, all Parties to the NPT are bound to pursue negotiations towards nuclear disarmament, and it is in fact the only international treaty that contains such a stipulation. Further, the third part of the

grand bargain in the NPT is that it secures all Parties' inalienable right to the benefits of the peaceful use of nuclear energy.

The following additional points emerged during the discussion:

- With the loss of the fear of the Cold War, the urgency of achieving nuclear disarmament has also been lost, having latterly been supplanted by the so-called war on terror. It is up to parliamentarians to recapture that sense of urgency, mobilizing political will by working with grassroots organizations and constituents to raise awareness of the horrendous dangers of the 27,000 nuclear warheads still deployed around the world, and of the enormous cost of maintaining such an arsenal.
- The nuclear threat should be placed at the top of the international agenda because it is more dangerous than terrorism, and because it is the ultimate environmental threat as well. Further, the logic of mutually assured destruction does not apply to terrorists in amorphous non-State groups. The way to prevent terrorists from acquiring nuclear weapons is to eliminate such weapons from the planet.
- Thirty-two members of the IPU still need to sign or ratify the CTBT, and parliamentarians should urge their governments to do so without delay. They should also encourage their governments to adopt the measures necessary to prevent and penalize nuclear explosions. Some States have already done this, while others have linked the effective date of the legislation to entry into force of the CTBT, but universal adoption of such measures with immediate effect would be preferable.
- Likewise, parliamentarians from countries that have not yet reported to the 1540 Committee should urge their governments to do so soon, because the report gives the Committee a clear picture of where a country might face difficulties in implementation and need assistance, whether from international organizations or from specific countries.
- There have been several instances of unilateral renunciation of nuclear weapons by countries such as Kazakhstan, Libya and South Africa. In each instance parliament played an important role in building support for disarmament among the people.
- There are many practical legislative steps by which parliaments can impact the overall culture of weapons acquisition. For example, they can institute laws prohibiting investments by government pension funds in industries that build nuclear weapons. It is parliamentarians' responsibility to exercise their oversight function with regard to government budgets and policies on arms.
- Parliamentarians should exchange experiences with their colleagues from other countries, for example through groupings such as the Parliamentary Network for Nonproliferation and Disarmament (PNND).
- Parliaments should be vigilant whenever governments agree to transfer nuclear energy technology to others. Such transfers should be allowed under strict conditions such as the requirement that the recipient countries ratify all applicable treaties. That will also help address the ambiguous question of dual-use nuclear energy.
- With the politics of non-proliferation today, too much attention is brought to bear upon a few perceived rogue nations that may be trying to acquire nuclear weapons and not enough on those countries that are not giving up the weapons they already have. The situation is further distorted by the outdated composition of the United Nations Security Council and the powers vested in its permanent members. Parliaments should work for the implementation of all General Assembly resolutions, including those calling for nuclear-weapons-free zones in the Middle East.
- More generally, parliaments should support efforts by their governments to declare nuclear-weapons-free zones, as Mexico has done, for example, though the Tlatelolco Treaty.
- Parliamentarians should track disarmament debates at the United Nations to know how their governments have voted.
- Efforts are also needed to stop the spread of other weapons which, although not of mass destruction, cause indiscriminate harm, such as cluster munitions. Parliamentarians can help to build consensus

for a legally binding instrument that will prohibit such weapons, towards which many States are working in the Oslo Process.

- A dedicated committee or working group could be created within the IPU to address non-proliferation and disarmament.
- While some might see the present concentration on non-proliferation as evidence of a lack of progress towards disarmament, and of a need to rethink the whole mechanism, it is important to keep the overall vision of the two aspects as a continuum and of how non-proliferation serves the ultimate goal of disarmament.

Session III: The legacy of the international tribunals and the future course of the international criminal justice regime

Panellists: Mr. Juan Méndez, President, International Center for Transitional Justice; Ms. Fatou Bensouda, Deputy Prosecutor, International Criminal Court; Hon. Abel Stronge, Speaker of the Parliament of Sierra Leone; H.E. Mr. Yukio Takasu, Ambassador Extraordinary and Plenipotentiary and Permanent Representative of Japan to the United Nations and Chairman of the United Nations Peacebuilding Commission; Mr. Larry Johnson, United Nations Assistant Secretary-General for Legal Affairs

This session examined, in the light of the Secretary-General's report *The rule of law and transitional justice in conflict and post-conflict societies* (S/2004/616), the contributions of the international criminal justice regime to the restoration of peace and to the establishment and strengthening of the rule of law in societies emerging from conflict. Mr. Méndez emphasized the link between reinforcing the rule of law and ending impunity for mass atrocities and human rights abuses. Ms. Bensouda outlined how the jurisprudence of the United Nations ad hoc tribunals for Rwanda and the former Yugoslavia inspired the Rome Statute of the International Criminal Court and its prosecutorial practices, and offered some perspectives on the future of the international criminal justice regime. Mr. Stronge reviewed the legacy left by the various international tribunals, starting with the International Military Tribunal at Nuremberg and focusing in particular on the Special Court for Sierra Leone. Mr. Takasu highlighted the relationship between the pursuit of justice and the achievement of peace and national reconciliation in post-conflict situations. Reinforcing the comments made by Mr. Michel in Session I, Mr. Johnson stressed that the position of the United Nations Secretariat with regard to the prosecution of war crimes, genocide and crimes against humanity is not "truth *versus* justice", but "truth *and* justice" and reiterated that the UN cannot support amnesty for the perpetrators of such crimes. The panel also reflected on the role that parliamentarians can play in support of the international criminal justice regime. The main points of the panellists' presentations and their recommendations for action by parliamentarians are summarized below.

The Nuremburg Military Tribunal was a landmark in several respects. First and foremost, it established decisively that individuals can be held criminally liable for serious crimes at the international level, marking a turning point in the history of international criminal law. Before Nuremburg, States only prosecuted crimes committed in their territories, which meant that many heinous crimes against humanity went unpunished. In addition, the Nuremburg Charter, the Tribunal's statute, created two new categories of crime – crimes against humanity and crimes against peace – and established that the commission of such crimes could entail individual criminal responsibility. The Nuremburg Charter also extended the limits on acceptable forms of conduct for public officials, stipulating that heads of State and senior government officials implicated in the commission of an international crime would not be absolved from individual criminal responsibility or have their punishment mitigated. Moreover, it established that an individual could not be absolved of criminal responsibility simply because he or she was acting pursuant to an order of a government or a superior. Another extremely important aspect of the Nuremburg legacy was the inclusion in the Nuremburg Charter of various guarantees of fair trial for the accused, notwithstanding the enormity of the crimes for which they stood charged. Lastly, by exposing the extent of the atrocities committed by the Nazi regime, the Nuremburg Tribunal triggered outrage in people far and wide, leaving a moral legacy that emboldened those seeking a permanent, effective system of international justice.

The legacy of the Nuremburg Tribunal has been carried on by the international criminal tribunals for the former Yugoslavia and for Rwanda and the various hybrid courts, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, established since 1990. Those institutions have made significant contributions to the development of international criminal law. Their jurisprudential impact with regard to the responsibility of State officials for international crimes and the prosecution of crimes of sexual violence as crimes against humanity has been particularly noteworthy.

The legacy of the ad hoc international tribunals and the hybrid courts extends beyond their contribution to international jurisprudence, however. They have also played a crucial role in promoting peace, stability and national reconciliation; rebuilding institutions and putting in place an effective judiciary; and upholding and strengthening the rule of law in war-torn societies. The Special Court for Sierra Leone, for example, in addition to carrying out its mandate to prosecute persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, is striving to leave a lasting legacy in four areas identified by its Legacy Working Group: promoting the rule of law and accountability in Sierra Leone, promoting human rights and international humanitarian law, enhancing the role of civil society in the justice sector and developing the capacity of national legal professionals.

The international community underwent a veritable paradigm shift with the creation of the ad hoc international tribunals, signalling very clearly that it would not countenance impunity – even if it was presented as the price to pay for peace – and paving the way for the historic deliberations that led to the Rome Statute of 1998 and the establishment of the International Criminal Court. The wording and prosecutorial policies included in the Rome Statute were largely inspired by the experience of the ad hoc tribunals, particularly with regard to rape and other sexual crimes. The Rome Statute is the first international treaty to identify acts of sexual violence as crimes against humanity, war crimes and, in some instances, genocide.

The Rome Statute created a comprehensive global criminal justice system that has shown itself to be effective in stopping impunity for war crimes, crimes against humanity and genocide. Nevertheless, that system faces a number of challenges. The Rome Statute does not enjoy universal support, having been ratified by fewer than two thirds of the world's countries. In addition, as the International Criminal Court does not have the authority to execute warrants directly on the territory of States, it must rely on the relevant States to arrest and surrender suspects. Where those suspects are able to move across borders, there is a need for coordination between States and organizations. Eradicating support networks that provide assistance to persons sought by the Court is also crucial to enhancing the prospects for arrest, without which they cannot be brought to trial. There is a strong need for States to criminalize any activity that serves, directly or indirectly, to harbour such suspects; freeze the assets of persons sought by the Court; and cooperate in carrying out searches.

> ***It is not the decisions of the International Criminal Court which undermine peace processes and conflict resolution initiatives… It is the lack of enforcement of the Court's decisions which is the real threat to enduring peace.***
>
> Fatou Bensouda, Deputy Prosecutor,
> International Criminal Court

Another formidable challenge facing the Court is ensuring the enforcement of its decisions in situations in which the international community is trying to achieve many objectives at once: re-establishing security, providing humanitarian assistance, promoting political dialogue between the parties to a conflict and preparing for reconstruction and development. Moreover, there are those who seek to pit the Court's justice mandate against the requirements of peace and security, portraying the ICC as an impediment to peace processes.

Justice and peace must be regarded as complementary. International justice, national justice, the search for the truth and peace negotiations are not alternative ways to achieve a goal; they can be integrated into one comprehensive peacebuilding strategy. Ensuring equitable access to justice, promoting human rights, taking action against impunity and facilitating consensus on the modalities for establishing an operational transitional justice mechanism are key aspects of such a strategy. Nevertheless, it must be recognized that the various facets of the peacebuilding process cannot all be carried out at the same time; they must be sequenced in an orderly process that includes fair trials for those who have committed

serious crimes. Fairness of the justice process is an essential prerequisite for pursuing both peace and justice.

The justice process should take place at the national level to the greatest extent possible, as international courts have limited capacity and limited jurisdiction. Hybrid courts will continue to be needed in cases where domestic courts are unable to prosecute perpetrators of serious violations of human rights and international humanitarian law while adhering to the highest standards of due process and fair trial; however, the temptation to create ad hoc international tribunals should be resisted, since the ICC was established to serve as a permanent international criminal tribunal. The idea that the ICC is a Northern or Western creation should also be resisted. The Court is the creation of the international community as a whole, with strong input from developing countries, and the Rome Statute on which it is founded is a comprehensive and well-balanced reflection of legal traditions and cultures from all around the world.

In the ensuing discussion, strong support was expressed for the international criminal justice system in general and for the work of the International Criminal Court in particular. Parliamentarians from countries which have not yet become parties to the Rome Statute were urged to encourage their governments to do so. However, some participants voiced concern about the potential for politicization of the cases taken up by the Court, and some expressed the view that trials, whether at the national or the international level, should occur only after attempts to achieve reconciliation through dialogue and political settlement have been exhausted. One participant considered the Court's actions with respect to Darfur to be an assault on the sovereignty of the Sudan, which is not a signatory to the Rome Statute and does not recognize the jurisdiction of the ICC.

In reply, Ms. Bensouda emphasized that the ICC is meant to be a court of last resort. It will not act if a case is being investigated or prosecuted by a national judicial system. It is true that the Court has no jurisdiction over crimes not committed in the territory of a State Party or by a national of a State Party, but there is one exception: Article 13 of the Rome Statute gives the Court jurisdiction over cases referred to it by the Security Council acting under Chapter VII of the Charter of the United Nations. That is why the Court has jurisdiction in the Darfur case. In all cases, the ICC Prosecutor undertakes an independent investigation in order to determine whether there is sufficient evidence of criminal responsibility to go forward with a trial. The Prosecutor has a duty to investigate not only incriminating evidence but also exonerating evidence, which must be disclosed to the defence. The rights of the accused are fully respected at all stages of the process. The Rome Statute gives the Prosecutor *proprio motu* power to select situations to investigate, but such investigations must be authorized by the Court's Pre-Trial Chamber. By subjecting the exercise of that power to judicial review, the Rome Statute ensures that the selection of cases will not be politically motivated or arbitrary.

The following additional points emerged from the discussion:

- Parliaments should be involved in peacebuilding and reconciliation activities at the earliest possible stage, thus avoiding subsequent pitfalls in rebuilding an infrastructure based on the rule of law. *Making Reconciliation Work: The Role of Parliaments*, a joint publication of the IPU and the International Institute for Democracy and Electoral Assistance (International IDEA), provides insights into the particular role of parliaments in countries transitioning from conflict to peace.

- Parliamentarians can support the international criminal justice regime by working towards ratification of the Rome Statute by all States. They can also help by supporting bilateral programmes to provide capacity-building, promote democratic and accountable government and strengthen the judicial system in fragile societies.

- In addition, as the holders of the purse strings in their respective countries, parliaments can facilitate approval of funding to support the work of international tribunals. Support is particularly needed for the three international criminal tribunals that depend on voluntary contributions, namely those for Cambodia, Lebanon and Sierra Leone.

- Parliaments also have a role to play in scrutinizing the proceedings of the international criminal tribunals to ensure that the money provided by States is being well spent and to assess their effectiveness in promoting peace and ending impunity.

- Strengthening national law is an essential aspect of establishing the rule of law, and parliamentarians have an obvious contribution to make in that regard. They can help to advance good practices by assisting other parliamentarians in developing the necessary criminal codes and legal systems and in aligning national law with international legal instruments. The IPU can contribute by organizing bilateral and multilateral training events for parliaments in countries where democracy is fragile.
- Parliaments should work to make sure that the right balance is struck by their governments between national reconciliation and the pursuit of justice. They should ensure that justice is never sacrificed, impunity never permitted, in the interests of political expediency, while understanding the need for the appropriate sequencing of stages in a reconciliation process.
- The experience of the past in numerous countries shows that bringing the perpetrators of genocide, war crimes and crimes against humanity to justice can be a major part of the process of reconciliation and healing. Without justice, there continues to be a feeling that "they got away with it". In cases in which the perpetrators have left the country where the crime was committed, universal jurisdiction may be an effective, practical and realistic means of combating impunity.
- The protection of national sovereignty should not hinder the prosecution of those who commit the most serious crimes of international concern. The principle of non-interference can no longer be invoked by any country as an excuse for allowing mass atrocities to be committed on its territory.

> ***In our experience, for reconciliation to occur there must be a trilogy: memory, truth and justice. Memory because we mustn't forget what happened to us and the crimes that were committed. Truth because we can't achieve reconciliation without knowing exactly what happened, and we must know what happened so that it won't happen again. And justice because it is the only path to true reconciliation.***
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> Diego Cánepa, Member of the House of Representatives, Uruguay

- There can be no peace and prosperity without good governance. When government is accountable, State institutions are not prone to failure. Parliaments should be steadfast in exerting their scrutiny and oversight powers in order to ensure the observance of the rule of law and due process.
- It is incumbent on the entire international community to cooperate in enforcing the arrest warrants issued by the ICC and other international tribunals, a task that cannot fall exclusively to the country concerned, which may not have the means to make arrests or may simply be unable to do so because the accused are outside its territory. Parliamentarians can facilitate such cooperation.

Session IV: Towards a global approach to counter-terrorism based on the rule of law

Panellists: Mr. Robert Orr, United Nations Assistant Secretary-General for Strategic Planning and Chair of the United Nations Counter-Terrorism Implementation Task Force; Hon. Carolyn Maloney, Member of the House of Representatives, United States of America; H.E. Dr. R.M. Marty M. Natalegawa, Permanent Representative of Indonesia to the United Nations and President of the United Nations Security Council for the month of November 2007; and H.E. Mr. Robert Hill, Permanent Representative of Australia to the United Nations

The discussion in this session centred around the efforts of individual countries and of the international community as a whole to fight terrorism. Mr. Orr presented an overview of the activities of the United Nations with respect to counter-terrorism, focusing largely on activities being undertaken in order to implement the United Nations Global Counter-Terrorism Strategy and its accompanying Plan of Action, adopted by the General Assembly in 2006 (resolution A/RES/60/288). Ms. Maloney, Mr. Natalegawa and Mr. Hill described their respective countries' approaches to fighting terrorism, emphasizing the need to ensure respect for human rights, civil liberties and the rule of law and to work collaboratively with other countries to combat the global scourge of terrorism. In addition, the panellists highlighted several important roles for parliaments. Their remarks are summarized below.

Within the United Nations there are three major work streams on counter-terrorism. The first is related to the body of resolutions on the subject coming out of the Security Council, notably resolutions 1267 (1999), 1373 (2001) and 1540 (2004), which have given rise to a number of global efforts to combat

terrorism. The second comprises the convention-based counter-terrorism activities being carried out in the framework of the 16 international legal instruments relating to terrorism. The third work stream arises from the Global Counter-Terrorism Strategy.

The Strategy's adoption by consensus by all 192 United Nations Member States – a remarkable feat – is testimony to the broad recognition among the countries of the world that they cannot fight terrorism on their own. The Strategy is built on four pillars: addressing the conditions conducive to the spread of terrorism, preventing and combating terrorism, strengthening national and international institutions to prevent and combat terrorism and protecting human rights and the rule of law in the fight against terrorism. Significantly, it was the fourth pillar that was most easily agreed in the negotiations leading to the Strategy's adoption. Throughout the debate, it was recognized that human rights and the rule of law are cross-cutting issues that are relevant to all parts of the Strategy.

Twenty-four entities from across the UN system and beyond have joined the United Nations Counter-Terrorism Task Force to assist Member States in implementing the Strategy. Very few of them are counter-terrorism entities per se, but it has been recognized that all types of activities within the Organization can contribute to the fight against terrorism, whether or not that is their primary goal. The Task Force is working on a wide array of initiatives, including efforts to humanize the fight against terrorism by drawing attention to its victims, efforts to address radicalism and extremism and recruitment to terrorism and efforts to protect infrastructure and other vulnerable targets of terrorism.

At the national level, countries are also engaged in a variety of activities aimed at thwarting terrorist attacks and shutting down terrorist networks. In the wake of the attacks of 11 September 2001, the United States has undertaken a sweeping reorganization of government, including the creation of the Department of Homeland Security to centralize counter-terrorism efforts. As it was determined subsequently that the 11 September tragedy was caused by a failure in intelligence, legislation has been enacted to consolidate the country's intelligence agencies and require that they communicate with one another. Legislation to enhance transport security and to require scrutiny of the national security implications of all foreign investment has also been adopted. At the same time, legislators have sought to put in place laws aimed at striking an appropriate balance between the need to secure the State and the need to protect the civil rights and liberties of citizens and at ensuring government accountability and transparency.

Like the United States, Indonesia has experienced terrorism at first hand. It, too, is endeavouring to meet the challenge of responding to the terrorist threat in a serious and robust manner while at the same time safeguarding human and civil rights. As a country that has recently undergone a democratic transformation, Indonesia is determined to chart a democratic response to terrorism. It is convinced that a response that is respectful of human rights and the rule of law is the only sustainable way of both combating terrorism and preserving its hard-won democracy. A democratic response means protecting the rights not only of law-abiding citizens, but also of perpetrators of terrorist acts, and it means ensuring that the latter are brought to justice through lawful means, with full respect for due process and fair trial guarantees. Indonesia is also firmly convinced that, in order to be effective, the fight against terrorism must address its root causes. Among other activities, it is therefore promoting interfaith dialogue with a view to dispelling misconceptions about the relationship between terrorism and religion that might fuel future terrorist acts.

> ***The fight against terrorism must be comprehensive. We wish it were as simple as the application of force, but it's not. That's why we do not believe in an analogy of war against terrorism. We must look at the root causes of terrorism, which is not to say that we are trying to find justification or excuses for terrorism. Terrorism can never be justified. But we must find out what it is that makes terrorists tick. Understanding and appreciating the root causes is not being soft; on the contrary, it is being realistic and trying to address the issue head on.***
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> H.E. Marty M. Natalegawa, Permanent Representative of Indonesia to the United Nations

Although Australia has not experienced terrorism on its own soil, it is fully committed to global counter-terrorism efforts. Its citizens have been lost to terrorist attacks all over the world, and Australia therefore has a vested interest not only in ensuring that its national defences are strong, but in assisting other countries in developing equally strong defences. From the Australian perspective, a successful defence against terrorism requires effective domestic laws that guarantee respect for human rights – because otherwise the very values threatened by terrorism will be undermined. It also requires, inter alia, effective police and military forces, sound customs and border controls, a strong emergency response mechanism and a good intelligence system, with sharing of intelligence both among agencies within a country and with the international community. The response to terrorism must also involve the private sector, whose collaboration is key in addressing issues such as terrorist financing and transport security.

All three countries recognize that cooperation and sharing of information among countries is essential. Such cooperation should take place both at the regional level and at the international level through organizations such as the UN and the IPU. The value of joining forces in the struggle against terrorism is evident from the progress made in recent years. While there is still clearly a threat, the international community is much better prepared than it was a few years ago to prevent and combat terrorism.

In the discussion that followed, a number of participants affirmed their governments' support for the Global Counter-Terrorism Strategy and described their countries' efforts to combat terrorism in the legislative and other spheres. Several participants also mentioned their countries' ratification of the various counter-terrorism conventions. Support was expressed for the efforts under way within the United Nations to draft a comprehensive convention on international terrorism, including an internationally agreed definition of it. It was emphasized, however, that such a definition should distinguish between terrorism and a people's legitimate struggle for independence and self-determination. It was also felt that a future convention should address the root causes of terrorism. There was unanimous agreement that respect for human rights and the rule of law is of paramount importance in the campaign against terrorism. The rule of law was seen as the fundamental basis for ensuring harmony in interpersonal relations within society and peaceful coexistence in inter-State relations. Participants also agreed that any attempt to equate terrorism with a particular religion, culture or group of people must be rejected.

It was suggested that the United Nations Counter-Terrorism Task Force could provide a valuable platform for exchanging experiences, best practices and lessons learned in combating terrorism with due regard for the protection of human rights.

The following additional points emerged during the discussion:

- The Global Counter-Terrorism Strategy provides guidance for all Member States as to actions that they can and should take which will help build effective defences against terrorism. It falls largely to parliaments to implement that guidance. Member States must not allow the failure thus far to agree on a comprehensive convention on international terrorism to become an excuse for inaction or insufficient action to combat terrorism. Effective tools and mechanisms for building cooperative defences against terrorism are currently available, and their use should be maximized.
- Parliaments are at the front line of the fight against terrorism, sometimes literally. Parliaments have been targeted by terrorists in various parts of the world precisely because of what they represent: the will of their peoples, which terrorists often seek to silence.
- Parliaments are also at the front line from a legislative standpoint. They are responsible for ratifying counter-terrorism treaties, including the 13 international conventions adopted at the United Nations. They are also responsible for enacting legislation to provide funding for counter-terrorism efforts and to halt terrorist financing.
- The foremost role of parliaments, however, is to act as the guardians of human rights and civil liberties in the battle against terrorism.
- Parliaments should be vigilant in ensuring that governments adopt a balanced approach to combating terrorism that combines a strengthened security apparatus, the protection of human rights and measures to address the root causes of

> ***Terrorism has no religion.***
>
> Mr. Jamal A. Al Kandari, Member of the National Assembly, Kuwait

terrorism. In particular, parliaments should be cognizant of the need to counter-balance strong anti-terrorism legislation with equally strong legislation to safeguard human rights and civil liberties. Combating terrorism requires cohesion and trust between citizens and the State, but that cannot occur unless the State respects the law and the rights of citizens.

- The right to a fair trial must be upheld for all, including those suspected of terrorism.
- Major acts of terror should be investigated by parliament, if necessary through the establishment of ad hoc committees. Parliament should also strive to ensure that all the various actors involved in countering terrorism work together in a coordinated and efficient manner.
- Legislation is needed to fill many voids. For example, legislation is urgently needed to promote international cooperation in the exchange of intelligence. Legislation is also needed to make it possible to exert greater control over the movement of illicit funds that could be used to support terrorist activities and to prevent the use of the media by terrorists to disseminate hate speech or mobilize support for their causes.
- Governments, including parliaments, should seek to address the needs of youth through social development, education and employment programmes in order to eliminate the feelings of marginalization and victimization that make them easy recruits for terrorists. Efforts to counter radicalization and extremism and to promote dialogue between faiths and cultures should also be supported.
- Parliaments should ensure that greater attention is paid not only to the prevention of terrorism but also to its aftermath when it has not been prevented – principally in providing support and compensation to victims, giving them a voice in articulating their grievances and involving them in the quest for solutions to the problem.

The hearing concluded with the presentation of conclusions by the rapporteurs for the various sessions. Mr. Anders Johnson, Secretary General of the IPU, thanked participants for their contributions and encouraged them to take the main ideas and recommendations of the Hearing back to their national parliaments, for further discussion and follow-up action.