

# INTERNATIONAL GUIDELINES AGAINST IMPUNITY: FACILITATING ACCOUNTABILITY

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## I

### INTRODUCTION

We strive to overcome impunity for international crimes and serious violations of human rights. Our reasons may include a vision of justice and perhaps a hope for deterrence.<sup>1</sup>

Notwithstanding our aspiration to establish a regime of accountability, impunity remains a recurrent pattern. Where an effort at accountability is undertaken at all, it consistently is approached through a second-best alternative to full and complete accountability—some form of partial accountability and, hence, partial impunity. This essay briefly examines the reasons for this consistent pattern of compromise, and then considers what contribution the development of International Guidelines Against Impunity for International Crimes (“Guidelines”) might make in moving toward a regime of consistent and meaningful accountability.

## II

### ACCOUNTABILITY, CONSTRAINTS, AND COMPROMISES

#### A. Full Accountability

Ideally (insofar as the proper handling of heinous crimes can be considered “ideal”), full accountability for genocide, war crimes, crimes against humanity, and other serious human rights violations would be the norm. Holding perpetrators fully accountable would entail appropriate trial and punishment of each responsible individual for the actual crimes committed,<sup>2</sup> together with appropriate reparations made by perpetrators to victims. In many contexts, one

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1. The other two purposes for punishment generally cited in the context of domestic penal law—incapacitation and rehabilitation—presumably have a much lesser role in the goals of accountability for crimes of such enormity as genocide or crimes against humanity.

2. I mean here to distinguish the “actual crimes committed” (*e.g.*, genocide or crimes against humanity) from lesser offenses (*e.g.*, murder, torture, rape) that are sometimes charged in place of the actual crimes. Such prosecution for lesser offenses is done for various reasons including the failure of the prosecuting state to have adopted domestic legislation under which to prosecute the greater offenses. *See supra* part II.C.

would wish also to utilize some form of truth commission to ensure the credible and authoritative revelation, documentation, and memorialization of the events in question as a comprehensive whole.

## B. Chronic Obstacles to Full Accountability

That ideal of full accountability for international crimes and serious human rights abuses is never, in practice, attained. National and international efforts at achieving accountability for such offenses typically resort to means designed to render something less than full accountability. This occurs for three identifiable reasons (at least I will group the reasons into three categories).

First, political constraints may limit the extent to which accountability is pursued. Such constraints arise from the need to continue to live with (and perhaps to share power with or even to work toward reconciliation with) the perpetrator population or constituency. Argentina and South Africa exemplify two faces of this phenomenon. In Argentina, threats of military insurrection halted the Alfonsín government's prosecutorial efforts to hold accountable perpetrators of human rights abuses committed under the former military regime.<sup>3</sup> In South Africa's transition from apartheid, a negotiated settlement to a political conflict that had already involved bloodshed, and had the potential to involve much more, included a rather robust amnesty provision.<sup>4</sup> Thus, precarious balances of power sometimes involving military threats often place political constraints upon the degree of accountability that is sought.

Second, the resources required to achieve full accountability often are prohibitive. The offenses in question typically involve large numbers of perpetrators and victims. Prosecutions and other accountability mechanisms as well as victim compensation schemes all therefore demand extensive financial, physical, and human resources. Often, those demands arise in post-conflict contexts in which the nations affected suffer from a dearth of resources. Rwanda provides perhaps the most extreme example: There, tens of thousands are suspected of participation in genocide.<sup>5</sup> The Rwandan judiciary, along with much of the national infrastructure, was destroyed in the course of the 1994 genocide and war.<sup>6</sup> The resources required to achieve full accountability in each case in Rwanda would quickly overwhelm national capacities.

Third, all too often, accountability fails for lack of will at national and/or international levels. In such cases, there may be a denial that the offenses were committed. This is typical where the regime responsible for the offenses is still in power.<sup>7</sup> Alternatively, offenses may be acknowledged but resource limita-

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3. See Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina*, 100 YALE L.J. 2619, 2622-30 (1991).

4. See Promotion of National Unity and Reconciliation Act 34 of 1995, §§ 18-22 (as amended 1995 & thereafter).

5. See Madeline H. Morris, *The Trials of Concurrent Jurisdiction: The Case of Rwanda*, 7 DUKE J. COMP. & INT'L L. 349, 357 (1997).

6. See *id.* at 353 and sources cited therein.

7. The point is almost too obvious to state: repressive regimes rarely acknowledge their own

tions or political constraints such as those discussed above may be used as a pretext for inaction that is actually born of a lack of will. Failures of will at the international level clearly have impeded the efficacy of the International Criminal Tribunals for the former Yugoslavia and Rwanda ("ICTY/R") since their inception. Lack of commitment to the success of the ICTY/R on the part of elements of the international community has been reflected in a paucity of funding,<sup>8</sup> failure to arrest indictees,<sup>9</sup> and other forms of obstructionism both active and passive.

### C. A Taxonomy of Compromise

Because of political constraints, resource limitations, or lack of will (or some combination of the three), national and international bodies charged with the handling of international crimes and serious human rights violations typically adopt a compromise or second-best approach. That approach generally is comprised of some or all of the following elements. First, a decision may be made to pursue accountability only for some subset of the individuals responsible for the crimes. The ICTY/R, for example, is expected to prosecute at most a few hundred of the thousands of perpetrators in the former Yugoslavia and Rwanda. The remaining bulk of the perpetrators will have to be prosecuted in national courts or not at all. And in South Africa, amnesty is made available under specified conditions to all perpetrators of the relevant crimes<sup>10</sup> except for some few perpetrators whom the amnesty-granting authority determines committed crimes disproportionate to their political purpose.<sup>11</sup>

Second, some form of plea bargaining may be utilized. Rwanda, for example, has passed specialized legislation offering all but the most culpable category of perpetrators in the Rwandan genocide<sup>12</sup> a substantial sentence reduction in return for a full confession, a guilty plea, and an apology to the victims.<sup>13</sup>

Third, a sentence-reduction may be provided for all perpetrators without the requirement of any plea bargain. This may be done to relieve the state of the long-term burden of supporting a massive prison population and/or in the interests of reconciliation. Rwanda once again provides an example. Except

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guilt.

8. See Tom Warrick, *Money Troubles*, 7 TRIBUNAL 8 (1997).

9. See Walter Gary Sharp, Sr., *International Obligations to Search for and Arrest War Criminals: Government Failure in the former Yugoslavia?*, 7 DUKE J. COMP. & INT'L L. 411 (1997).

10. To qualify for amnesty under the South African Promotion of National Unity and Reconciliation Act, the crimes must have been politically motivated and have been committed during the period March 1, 1960 through May 10, 1994. See PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT 34 of 1995, Ch. 4 (*as amended*).

11. See *id.*

12. The most culpable category is defined as including the leaders and organizers of the genocide and perpetrators of particularly heinous murders or sexual torture. See Organic Law No. 08/96 of 30 August 1996 on the Organization of Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990, Art. 2, published in OFFICIAL JOURNAL OF THE REPUBLIC OF RWANDA (Sept. 1, 1996) (*hereinafter* "Organic Law").

13. See *id.* arts. 15-16.

for the most culpable category of perpetrators, the maximum penalty for murders committed in connection with the Rwandan genocide has been reduced from the death penalty (normally provided for murder under the Rwandan Penal Code) to life imprisonment.<sup>14</sup> This allows the Rwandan government to pursue mass-level accountability<sup>15</sup> without being obliged to carry out thousands of executions which would exacerbate rather than ameliorate national tensions.

A fourth second-best approach often adopted is to take legal action against perpetrators for lesser offenses than the genocide, war crimes, crimes against humanity, or other serious human rights violations actually committed. One version of this is prosecution for “ordinary crimes” (such as murder or rape) where national legislation provides only for such offenses and not for the greater, international crimes.<sup>16</sup> Another frequently used mechanism for taking legal action for a lesser offense is deprivation of citizenship or immigrant status and, possibly, deportation on the ground that the individual violated immigration regulations by failing to disclose his criminal acts when applying for immigrant status or citizenship.<sup>17</sup>

Second-best approaches are taken not only in place of full criminal prosecution but also in place of civil reparations from perpetrators to victims. One such compromise is the award of an unenforceable (or probably unenforceable) civil judgment. Examples include many of the judgments made under the U.S. Alien Tort Claims Act,<sup>18</sup> in which a court grants a victim of human rights violations an award against a perpetrator whose assets are outside of the United States and inaccessible for satisfaction of the award.<sup>19</sup> Another compromise approach to reparations is where a successor government or the international community provides reparations or assistance to victims rather than the pepe-

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14. *See id.* art. 14.

15. More than 90,000 genocide suspects are currently imprisoned in Rwanda. Conversation with Simeon Rwagasore, Procureur General Before the Supreme Court of Rwanda, in Cape Town, South Africa (Jan. 22, 1997).

16. Rwanda has taken a novel approach in this regard. By way of response to the lack of implementing legislation in Rwandan law for the relevant international conventions, Rwanda’s specialized legislation for the handling of the genocide-related cases provides that

[t]he purpose of this organic law is the organization of criminal proceedings against persons who are accused of having, since 1 October 1990, committed acts set out and sanctioned under the Penal Code and which constitute: a) either the crime of genocide or crimes against humanity...; or b) offenses set out in the Penal Code which the Public Prosecution Department alleges or the defendant admits were committed in connection with the events surrounding the genocide and crimes against humanity.

ORGANIC LAW, *supra* note 12, art. 1. By taking this approach, Rwanda identifies the crimes in question as other than “ordinary” murders, rapes, and so on by virtue of their comprising or being connected with the genocide. At the same time, the principle of non-retroactivity of penal law is honored, as defendants are prosecuted only for pre-existing offenses—such as murder or rape—in accordance with the Rwandan Penal Code.

17. *See, e.g.*, *United States v. Demjanjuk*, 518 F. Supp. 1362 (N.D. Ohio 1981), *aff’d. per curiam*, 680 F.2d 32 (6th Cir.), *cert. denied*, 459 U.S. 1036 (1982).

18. 28 U.S.C. § 1350 (1994).

19. *See* BETH STEPHENS & MICHAEL RATNER, *INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS* 168, 218 (1996).

trators being made to do so.<sup>20</sup> While often indispensable for purposes of acknowledgement and rehabilitation of victims, this approach makes no inroads against the impunity of perpetrators.

Finally, there are approaches to accountability that are not inherently compromises but are second-best when adopted in lieu of, rather than in conjunction with, other mechanisms for accountability. These include lustration and truth commissions.<sup>21</sup> Lustration disqualifies certain categories of officials (or collaborators) of the former regime from holding certain offices within the new regime.<sup>22</sup> While lustration has been controversial because of its lack of individualization of liability and its potentials for abuse,<sup>23</sup> a form of lustration with adequate due process and without excesses may be appropriate for purposes both of accountability and of political transition and reform. But lustration alone obviously does not fully achieve the purposes of accountability.

Truth commissions in many contexts can perform an important function in providing a comprehensive overview and historical record of the offenses in question and the context in which they occurred. This will be particularly important where the offenses were committed covertly and might otherwise remain shrouded in secrecy or ambiguity. A truth commission can provide a comprehensive and integrated account such as cannot be gleaned from a patchwork of trial records. A truth commission also will often have credibility and authority that a private historian's account would lack.<sup>24</sup> For these reasons, truth commissions may be of considerable value when employed in conjunction with other accountability mechanisms. Often, however, truth commissions have been used in lieu of other approaches.<sup>25</sup> Even where fully successful in their own terms, truth commissions alone—which provide neither for criminal liability nor for reparations—cannot provide anything approaching full accountability.

An array of compromise approaches to accountability thus has been employed over the years, by international as well as national entities. Each compromise renders an outcome of partial accountability and, correlatively, partial impunity. The draft Statute for an International Criminal Court ("ICC"), as we would expect, also does not offer a panacea of accountability, having strictly

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20. See Ellen L. Lutz, *After the Elections: Compensating Victims of Human Rights Abuses*, in *NEW DIRECTIONS IN HUMAN RIGHTS* 195, 204-07 (Ellen L. Lutz, Hurst Hannum & Kathryn J. Burke eds., 1989).

21. International sanctions might also be viewed as a mechanism that is not inherently second-best but becomes so if used in lieu of other mechanisms for accountability. However, because sanctions are used to create pressure for change (and are removed when change is achieved) rather than to attain accountability for wrongs committed, I will not discuss sanctions in this essay.

22. See Herman Schwartz, *Lustration in Eastern Europe*, in 1 *PARKER SCH. J. E. EUR. L.* 141, 141 (1994). Variations on the theme of lustration include such other administrative measures as demotion in rank, job transfer, and the like.

23. See *id.* at 162-66.

24. The production of "official truth" has its own pitfalls, of course, which must be taken into account when a truth commission is being considered.

25. See Priscilla B. Hayner, *Fifteen Truth Commissions—1974-1994: A Comparative Study*, in 16 *HUM. RTS. Q.* 597, 604 (1994).

limited jurisdictional provisions,<sup>26</sup> and making only a weak mention of anything approximating victim reparations.<sup>27</sup> Accountability, thus, has not been and will not in the foreseeable future become an all or nothing question but, rather, must be viewed as a matter of degree.

In sum, there is a spectrum of possible outcomes between complete impunity and full accountability. As discussed earlier, outcomes that fall short of full accountability often are attributable to political constraints and resource limitations as well as to a lack of will. With these points in mind, we can consider the potential value of developing Guidelines Against Impunity.

### III

#### THE SUBSTANCE OF INTERNATIONAL GUIDELINES AGAINST IMPUNITY FOR INTERNATIONAL CRIMES

Given the predictable obstacles to accountability and the spectrum of possible outcomes between complete impunity and full accountability, we must ask, in considering the development of Guidelines Against Impunity, what type and extent of accountability such Guidelines would mandate. The Guidelines might provide that the type and extent of accountability that states are obliged to establish would vary depending upon specified factors. The Guidelines might also very usefully include a set of "facilitative provisions" that would delineate responsibilities of member states to provide facilitation to the states bearing the primary responsibilities for accountability and redress, in order to assist them in overcoming the predictable obstacles to accountability. Finally, the Guidelines might also specify that international proceedings (perhaps before an ICC) would serve as a backup or failsafe mechanism to ensure that accountability and redress would be attained even in cases in which the relevant national authorities were unable or unwilling to do so.

Several factors would be relevant in determining in each context the type of accountability and redress mechanisms required of states and the extent of their necessary scope. The most obvious of these factors would be the nature of the offenses committed. Presumably, genocide, crimes against humanity, and grave breaches of the Geneva Conventions would give rise to the strictest accountability and redress requirements in Guidelines that address a range of international crimes and human rights violations.

Other factors determining the type and extent of accountability required would relate to the three chronic obstacles to accountability: political constraints, resource limitations, and lack of will. Political constraints and resource limitations may diminish the degree of accountability and redress that a state can realistically be required to achieve in a given context (for example, the number of defendants to be prosecuted may have to be smaller than the total number of perpetrators). However, a diminution in standards of accountability

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26. See *Draft Statute for an International Criminal Court*, in *Report of the International Law Commission on the Work of Its Forty-Sixth Session*, arts. 20-24, U.N. Doc. A/49/355 (1994).

27. See *id.* art. 47 (3)(c), at 23.

should be the very last resort, not the first response, to such obstacles. The first line of response should be the provision of international facilitation in overcoming those obstacles in order to achieve the greatest possible measure of accountability and redress. Such facilitation may also be useful in addressing a lack of will to achieve accountability, as discussed below.

A. "Facilitative Provisions" Addressing the Chronic Obstacles to Accountability

1. *Facilitation in Overcoming Political Constraints.* Political constraints, involving delicate balances of power, often with the specter of war or other violence, frequently prove to be a very real obstacle to the pursuit of accountability. In order to surmount political constraints, a set of facilitative provisions within the Guidelines might state that member states should provide mediation or even military intervention to foster accountability under some circumstances. Of course, one can readily envision limits to what would be possible in this regard. The mixed results of peacekeeping and related missions trace those limits graphically. Nevertheless, diplomatic and military interventions can be efficacious and could be brought much more to bear in the cause of accountability. Guidelines could be useful in this context by providing that, under specified circumstances, member states bear a responsibility to participate in the provision of such assistance in overcoming political constraints on accountability.

A special problem, falling within the category of political constraints, is the risk of bias or the appearance of bias in the national accountability and redress process. Where the regime administering accountability does so after prevailing in a conflict with those now being brought to justice, the reality or appearance of "victors' justice" may taint the proceedings, undermining their claim to legitimacy. One form of international facilitation that may help to ameliorate that potential problem would be the provision of international monitoring to help ensure the impartiality of the accountability and redress process. If the monitoring agency has the confidence of the parties (particularly of the party fearing bias), then the monitoring function may be valuable in minimizing the potential problem of bias or the appearance of bias in the accountability process.

2. *Facilitation in Overcoming Resource Limitations.* Even if potential political constraints on accountability can be overcome, resource limitations remain as a second category of potential obstacles to be addressed. Guidelines could delineate responsibilities of member states to facilitate the efforts of those bearing the primary responsibility for accountability by providing resources (financial, human, and/or physical) to a specified extent when delineated conditions arise warranting such assistance.

The particular forms of facilitation required will be somewhat situation specific. The most appropriate approach will depend upon two main factors: the

state of the national judicial system<sup>28</sup> and the volume of cases in question. If the national judicial system is essentially intact and the volume of cases is not overwhelming, then the national system may be able to function with little assistance. If the national system is intact but the number of cases is very large, then reinforcement and supplementation of that system in the form of financial, physical, and/or human resources may be both necessary and sufficient. If the national system is somewhat damaged but could be rehabilitated without great delay, then there may be a need both for international assistance in quickly rehabilitating the judicial system and for an international staff to begin investigatory work, lest important evidence be lost, while the judicial system is being brought back to capacity. Once the judicial system is back in functioning order, then the volume of cases will determine whether that system can be entirely self-sufficient in establishing accountability and redress or will require reinforcement and supplementation, as discussed above. Finally, there is the difficult and all too frequent scenario in which the national judicial system (especially in a post-conflict situation) is essentially destroyed or collapsed. Here, the question is how (and whether) the national judicial system can be adequately reconstructed fast enough to meet the near-term need for accountability and redress. Part of that question turns, of course, on a determination of what constitutes “adequate” reconstruction and how fast is “fast enough” in the provision of accountability and redress.

If a destroyed judicial system could be adequately reconstructed (or constructed *de novo*) quickly enough, then that system could be treated much as the damaged but reparable system discussed just above. But such a prospect is highly unlikely. The more likely scenario is that it would take a significant period of time to establish even a minimally functional judicial system. In such a situation, the international community would have two principal options. The first would be to provide massive assistance to reconstruct the judicial system (as well as providing an international staff to begin investigations and preserve evidence), while being prepared to accept long delays before accountability processes begin. In such circumstances, it would also have to be expected that, even once accountability processes began, the proceedings would be conducted by a less than fully functional national judicial system, with some attendant inadequacies of due process and effectiveness. The second principal option would be to provide an international forum prepared to bear the bulk of the responsibility for providing accountability and redress, in lieu of a national system able to function adequately within an acceptable timeframe.

A third option, provision of accountability processes in the national courts of a country other than that in which the crimes occurred, will be of value in certain cases. The suspected perpetrator of crimes giving rise to universal or other extraterritorial jurisdiction may be prosecuted in a country other than that in which the crimes were committed. But instances in which such prosecu-

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28. I use the term “judicial system” in the broadest sense to include not only judges and court staff but also prosecutors, defense counsel, investigators, and the like.

tions are actually undertaken will likely constitute a small proportion of the total caseload in question.<sup>29</sup>

One colleague has suggested that the courts of a "third-party" state might be willing to take on a substantial proportion of the total potential caseload if the international community were to provide funding for such an undertaking. While the suggestion has some initial appeal, one must ask what advantages that approach would have over the use of an international court. In some instances, such an approach might reduce costs somewhat. But savings, if any, would likely be marginal. One might suggest that cultural similarities between neighboring states would be beneficial in such proceedings. In fact, though, such cultural similarities might be highly correlated with the likelihood of bias or the appearance of bias in the proceedings conducted. Indeed, the closer the third-party state to the one in which the crimes occurred, the less likely that the courts of the third-party state would be viewed as impartial. Thus, to a greater or lesser degree depending on the country chosen, the neutrality benefits of international proceedings would be lacking in proceedings held in a third-party state. In addition, the sovereignty and nation-building benefits of rendering accountability in the country where the crimes were committed would be equally lost whether trials were held in a third-party state or in an international tribunal. In sum, it is less than clear that international funding of a large volume of trials in a third-party state is preferable to holding international proceedings.

One might nevertheless argue that, notwithstanding certain drawbacks, a scheme relying on extensive trials conducted by a third-party state should be preferred over conducting extensive trials before an international forum such as an ICC because an ICC is not intended to process a large volume of cases. But such an argument begs the question of what an ICC *should* be designed to do. It is true that, as currently conceived, an ICC would focus on a small set of cases considered to be of particular significance. The question, however, is whether the role of an ICC should be flexible and its capacities sufficiently expandable so that it is capable of handling a large number of cases in instances in which the national courts with primary responsibility cannot accomplish the task.

Finally, there might appear to be a fourth option available to the international community in situations where the national justice system is essentially destroyed or collapsed: provision of a virtually full staff of foreign judicial personnel to staff the national judicial system until the process of reconstructing the national judiciary can be accomplished. Closer inspection, however, reveals that option to be flawed. Once we move from providing some foreign supplemental human resources to installing a full judicial staff of foreigners, we must ask in what sense the "national system" remains meaningfully national. The main national feature, presumably, would be that national law would be applied. In some contexts, that might be enough reason to favor such a strategy.

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29. See generally Yves Sandoz, *Penal Aspects of International Humanitarian Law*, in 1 INTERNATIONAL CRIMINAL LAW 209, 230 (M. Cherif Bassiouni ed., 1986).

In most cases, however, the applicability of national law would be more a drawback than an advantage. The foreign personnel would require training in the national law and, even after some training, would remain inexpert at best. In most cases, it would be preferable to utilize a frankly international judicial forum, applying international law in which its personnel are expert, than to employ an essentially international entity—a “national” judicial system staffed by foreigners—to haltingly attempt some inexpert rendition of national law.

A special kind of resource limitation, which might be termed a lack of “political resources,” may often hamper national efforts at establishing accountability and redress. A lack of political resources would be reflected in difficulties in gaining extradition, in obtaining evidence outside the country, or in gaining access to perpetrators’ assets that are outside the country. The Guidelines’ facilitative provisions could help to overcome political resource limitations by providing for various forms of judicial cooperation, including special extradition or transfer arrangements, mechanisms for evidence provision, and methods for freezing and accessing perpetrators’ offshore assets.

In providing facilitation to national accountability and redress processes, there is the potential problem of providing assistance in proceedings that are lacking in due process. It would therefore be worthwhile to include in the Guidelines’ facilitative sections a proviso requiring that the national proceedings being facilitated comply with specified fundamental due process standards.

The need to provide facilitation where resource limitations pose an obstacle to accountability may perhaps best be met through creation of a “judicial rapid reaction force” or “international legal assistance consortium” prepared to assess promptly the needs presented in a particular context and to reinforce, supplement, and assist in the rehabilitation of post-conflict national justice systems. Such an entity would be prepared to respond quickly with the specialized expertise required to help ensure accountability and judicial rehabilitation in a post-conflict environment.

*3. Facilitation in Overcoming a Lack of Will to Establish Accountability and Redress.* By crafting Guidelines that clarify national and international responsibilities to establish accountability and redress and that also delineate responsibilities of member states to provide facilitation to states bearing primary responsibility for establishing that accountability and redress, the likelihood is heightened that some substantial measure of accountability and redress will in fact be achieved. In addition, such Guidelines would also be helpful in overcoming the third chronic obstacle to accountability and redress, a lack of will. A specific delineation of the type and extent of accountability mandated under specified conditions would clarify states’ obligations. With obligations clarified, pressure for compliance could be brought to bear. At the same time, assuring facilitation in overcoming political constraints and resource limitations would render such obstacles less readily available as pretexts for inaction actually born of a lack of will.

## IV

## CONCLUSION

A set of International Guidelines Against Impunity could, in its preamble, articulate the aspiration of eliminating impunity. In their substantive provisions, the Guidelines could identify what is required nationally and internationally in the pursuit of accountability. The facilitative provisions could ensure assistance in overcoming the predictable obstacles to accountability. By doing all of that, the Guidelines could eliminate ambiguities, obstacles, and excuses so that appropriate pressure could be brought to bear on those who would otherwise lack the will to pursue accountability. What is envisioned is a realistic evaluation of potential obstacles to accountability and redress, the articulation of standards to be met by member states in providing facilitation to other states in overcoming those obstacles at the national level, and augmentation of national efforts with international proceedings where national efforts will unavoidably be incomplete in establishing accountability and redress.<sup>30</sup> The effect of such Guidelines would be to demand and to facilitate the greatest degree of accountability and redress that is realistically possible. The key in drafting International Guidelines Against Impunity would be to avoid courting failure by demanding the impossible but to demand, facilitate, and exact all that is possible in each instance in which perpetrators must be called to account.

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30. The design of such international proceedings would have to be carefully tailored to interface smoothly with whatever proceedings were to be undertaken at the national level. *See Morris, supra* note 5, at 362-73 (discussing the interaction of national and international criminal tribunals).