



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Président
The President

Judge Silvia Fernández de Gurmendi
President of the International Criminal Court

**Complementarities and convergences between international criminal justice and
human rights law**

CHECK AGAINST DELIVERY

Strasbourg, France

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President Raimondi,
Honourable judges,
Mr Secretary-General,
Excellencies,
Ladies and gentlemen,

Thank you very much, President Raimondi, for your kind words of introduction. I am very honoured to address your audience today.

This solemn hearing is certainly one of the most important judicial gatherings of the year. It celebrates the efforts of the European judicial community to safeguard the fundamental rights of all people in Europe.

These efforts echo beyond the Council of Europe area. The jurisprudence of this court inspires and influences efforts in other continents as well and thus helps to promote human rights worldwide.

The fact is that today's world is interdependent and interconnected, and that applies to courts as well.

Since I became President of the International Criminal Court two years ago, I have come to realize more than ever the importance of building connections between judicial institutions. Last year, I was very pleased to visit the European Court of Human Rights. I had a very productive discussion with President Raimondi on different steps we could take to bring our two courts closer together.

And I feel privileged that I have been invited to today's solemn hearing. This ceremony unites key actors of what is the oldest and largest regional human rights mechanism. I come myself from a different continent, a continent that has also invested great efforts in overcoming a legacy of violence including by setting up a regional human rights commission and court.

The International Criminal Court and other criminal tribunals are different from human rights courts. Criminal courts do not monitor respect for human rights in general, but focus exclusively on individual criminal responsibility for certain gross violations of human rights that may qualify as international crimes when they attain

predefined thresholds. Importantly, international criminal courts seek to ensure the responsibility of individual perpetrators of those crimes regardless of whether they are state or non-state actors.

Notwithstanding the differences between our courts, we do share the same values. More importantly, we share a common purpose. We all aim at promoting the well-being of all by fostering the rule of law.

We also share common roots. As the world marks today the International Holocaust Remembrance Day, we are reminded that our institutions are a result of the international community's determination to prevent the repetition of the horrors of the past.

Despite their differences, international criminal justice and human rights law interact in many ways.

In accordance with its founding treaty, the Rome Statute, the ICC must apply and interpret its law in a manner consistent with internationally recognized human rights. Human rights law and jurisprudence have influenced many of our substantive and procedural provisions. They also guide us in areas where our own provisions are silent or very general, such as the detention of persons or reparations to victims.

Let me address some areas of complementarity and convergence in more detail.

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Human rights and humanitarian law are at the core of the prohibition of genocide, crimes against humanity and war crimes. Not so distant regional experiences of human rights abuses are reflected in the acts prohibited under those crimes. The inclusion of apartheid, enforced disappearances and forced pregnancy as crimes against humanity or war crimes are important examples, intended to take into account specific forms of egregious human rights violations suffered in particular in Africa, Latin America and Europe.

In today's world, international crimes are not only committed by individuals acting on behalf of States; non-State actors also perpetrate mass crimes and other atrocities. Since the Second World War, the nature of armed conflicts has changed drastically. We have witnessed an ever-growing participation of non-State groups in armed conflicts, while classical State-against-State confrontations have become the exception rather than the rule.

The international community has also taken stock that armed conflicts are not the only situations where mass atrocities are perpetrated and that civilian populations are victimised in time of peace by both State and non-State groups.

International humanitarian law and international criminal law have therefore developed in order to better reflect modern mass violence. As a result, the legal distinction between international and non-international armed conflicts is now blurred.

Crimes against humanity have also considerably expanded since Nuremberg to encapsulate various forms of criminality committed in a widespread or systematic scale by both State officials and private individuals, in both times of peace and war.

These developments provide legal basis to sanction most atrocities committed today. Criminal responsibility for such atrocities attaches to all individuals equally, whether they are State or non-State actors.

Most of the cases currently before the ICC involve non state actors. So far, all convictions involve non-State actors. Final convictions have been entered against two leaders of militia in the Democratic Republic of the Congo (Mr. Lubanga and Mr. Katanga) and a member of a group associated with Al-Qaeda, Mr. Al Mahdi, convicted for the destruction of cultural property in Timbuktu, Mali. Another conviction against Jean Pierre Bemba, for crimes committed in Central African Republic by non-State forces under his command is now under appeal.

We hope these proceedings send a powerful message to all those involved in situations of violence: **the rule of law knows no exception**. Thanks to the remarkable development of international criminal law in the last decades, non-State

actors are now on notice that they too can be held accountable for participation in mass atrocities.

As said, human rights law has also influenced the procedural scheme of the ICC. The Rome Statute encapsulates fair trial rights enshrined in human rights instruments, including the right to have adequate time and facilities for the preparation of the defence, the right to legal assistance of the accused's choosing and the right to have free of any costs interpretation and translations in a language that the accused fully understands and speaks. This is an aspect that has proved to be extremely challenging in practice at our Court.

The Rome Statute, in an historic step forward, has made progress from an exercise of purely retributive justice to a new dimension that includes elements of restorative justice. Accordingly, victims may participate in all phases of the proceedings to express their views and concerns, and to seek reparation in the event of a conviction.

The definition of victims and harm, as well as the procedural and substantive rights to be accorded to them, have been influenced by human rights law and the jurisprudence of regional courts of human rights.

The distance between our proceedings at The Hague from communities directly affected by the crimes is a major challenge for a global Court. In order to ensure understanding of and meaningful access to justice by victims, the ICC makes great efforts to raise their awareness about the system and bring justice closer to such communities.

Recently, we took a number of initiatives to reach out to them in Northern Uganda by organizing viewing sessions in various localities particularly affected by the crimes allegedly committed by the Lord Resistance Army. This has made it possible for people to follow the trial against Mr Dominic Ongwen, an alleged former commander of this rebel group.

The Court can also choose to hold proceedings *in situ*. Unfortunately security reasons have prevented us from doing it thus far. We hope to do so in a near future as this would be an effective way of bringing our Court closer to those directly concerned by the crimes.

As said, human rights law and jurisprudence have influenced the approach of the ICC to reparations to victims. Under the Rome Statute, reparation orders are not directed against States, but at convicted persons. In certain cases, reparations can be made through a special trust fund for victims, which receives voluntary donations from states and private entities and individuals.

Following convictions, the ICC has now started to test this innovative legal framework. Currently, reparations are being considered in relation to the enlistment and conscription of child soldiers, attacks against the civilian population, sexual violence and the destruction of cultural property.

The distance of proceedings in The Hague from the actual place where crimes took place also raises human rights challenges regarding the detention of our suspects and accused persons coming from distant countries. The ICC must have due regard to cultural differences and needs to ensure, *inter alia*, the maintaining of sufficient family links. Again, human rights law and jurisprudence guides the responses provided by the Court.

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Chers confrères,
Excellences,
Mesdames et messieurs,

Il ressort clairement des exemples qui ont été donnés qu'il existe de nombreux domaines de convergence entre, d'une part, le droit relatif aux droits de l'homme et, d'autre part, la théorie et la pratique du droit international pénal. Nous partageons un but commun, celui de promouvoir la primauté du droit. C'est pourquoi il importe que nous soyons autant que possible à l'écoute les uns des autres. Il est important que nous puissions compter sur notre soutien mutuel pour envoyer tous ensemble, sur la base de nos valeurs communes, un message clair prônant la justice et la fin de l'impunité.

Ce moment solennel est pour nous une occasion unique d'engager un dialogue afin de renforcer notre compréhension mutuelle et notre attachement à la justice.

Il est tout aussi important d'instaurer un dialogue avec les juridictions nationales et, à ce titre, je me félicite de la présence parmi nous en ce jour des représentants des autorités judiciaires de différents États.

La Cour pénale internationale et la Cour européenne des droits de l'homme sont toutes deux des juridictions de dernier recours. Toutes deux agissent en complément du travail effectué en premier lieu par les tribunaux nationaux. Ensemble, nous participons tous à un système de justice mondial, qui vise à protéger les valeurs les plus précieuses de nos sociétés.

Les tribunaux nationaux ont un rôle essentiel, et même crucial, à jouer dans l'établissement de l'état de droit. L'issue de la lutte visant à assurer le respect des droits de l'homme et la fin de l'impunité des crimes internationaux dépend avant tout de la volonté des États et de leur capacité à le faire.

Cela nécessite d'adopter à cet effet des lois à l'échelon national, notamment aux fins de la mise en œuvre du Statut de Rome et d'autres importants traités relatifs aux droits de l'homme et au droit international humanitaire qui érigent en infractions pénales certains crimes parmi les plus atroces. Et cela nécessite aussi de disposer de la compétence voulue sur le plan national et extraterritorial pour enquêter sur ces crimes et en poursuivre les auteurs.

Les réponses données par les tribunaux nationaux sont prises en compte par la Cour pénale internationale. À son tour, la Cour peut aussi avoir une influence sur les réponses données par les juridictions nationales et régionales face aux crimes internationaux. Cette influence s'exerce de diverses manières, notamment par l'incorporation dans la législation des États des crimes, des différentes formes de responsabilité et des principes généraux prévus par le Statut de Rome. Dans de nombreux pays, les définitions qui ont été adoptées sont soit identiques soit très proches de celles figurant dans le Statut de Rome.

L'adoption de dispositions similaires sanctionnant pénalement ces crimes au niveau national constitue un énorme pas en avant pour l'harmonisation du droit international pénal, harmonisation qui contribue à son tour au renforcement du système de justice mondial.

En se renforçant mutuellement au sein d'un système de justice mondial, les institutions internationales, nationales et régionales peuvent ensemble devenir plus fortes. Nous nous sommes tous récemment félicités de l'approche régionale qui a permis d'apporter une solution pour le procès retentissant de Hissène Habré devant Chambres africaines extraordinaires au Sénégal.

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Chers confrères,
Excellences,
Mesdames et messieurs,

Notre passion pour la justice est ce qui nous unit. Si nos mandats diffèrent, nos aspirations, elles, sont les mêmes. Nos institutions, si elles ont emprunté des chemins différents, aspirent aux mêmes objectifs.

L'unité de nos efforts pour atteindre ces objectifs rendrait le système de justice mondial plus efficace.

On behalf of the International Criminal Court, I wish the European Court of Human Rights a productive and successful judicial year 2017.

Thank you for your attention.

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