



**Judge Silvia Fernández de Gurmendi
President of the International Criminal Court**

International Criminal Court Today: Challenges and Opportunities

**Keynote speech at Seminar
“International Criminal Court – the Past, the Present and the Future”**

CHECK AGAINST DELIVERY

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Excellencies,

Ladies and Gentlemen,

I would like to start by extending my sincere gratitude to the Foreign Ministry of Finland for inviting me to speak at this Seminar, and indeed for inviting me to visit Finland.

It is really a great pleasure to be here. Finland has been one of the most consistent proponents of the International Criminal Court from the very beginning.

The pleasure is all the greater for being able to speak at this seminar together with my old friends and colleagues Erkki Kourula and Marja Lehto, with whom I've had the pleasure to work together in the process of creation of the International Criminal Court.

After the Rome Conference, Judge Kourula had the historic role of being among the very first group of judges of the ICC, and participated in numerous ground breaking decisions during his remarkable 12 years on the Court's Appeals Chamber.

It is also a pleasure to be together with Ms Rehn who served with great devotion and energy as the Chair and a member of the Board of Directors of the Trust Fund for Victims, which is a crucial element of reparative justice in the ICC system.

I very much look forward to hearing their interventions.

18 years since Rome, the International Criminal Court has established itself as a leading international institution for addressing core international crimes. The Court has become an integral part of the international system for promoting the rule of law, human rights, peace and security.

It has been a long road to achieve this point, and we could not have made the journey without the active role of countries such as Finland.

I had the privilege to witness the creation, birth and the progress of the Court from the very beginning, first as a representative of Argentina to the negotiations on the Rome Statute, then as a Chair of the Working Group on Rules of Procedure and Evidence, later as a member of the Office of the Prosecutor in the early days of the ICC, and finally as Judge and now President of the Court.

I have seen the Court grow from an idea, a piece of paper, into a robust judicial institution.

Today, the Court faces an unprecedented level of activity in the context of 10 investigations and multiple preliminary examinations in all regions of the world.

Final judgements have been issued in three cases, including two convictions, for crimes against humanity and war crimes in the Democratic Republic of the Congo. These two cases are now in different stages of the reparations proceedings.

The Katanga case is at the stage before the order for reparations has been issued. The Trial Chamber, with the assistance of the Registry, is consulting with the victims in order to properly inform the Chamber's decision on reparations, so that it is responsive to the harm that the victims have suffered. At this stage it is not yet known whether these reparations will be collective or individual. Both are possible under the system.

The Lubanga case has progressed further and is in the implementation stage. The original Trial Chamber ordered collective reparations that were confirmed by the Appeals Chamber. At the implementation stage, the Court works with its partner, the Trust Fund for Victims. The specifics of the collective reparation programmes are still being discussed with a new Trial Chamber, which is reviewing the implementation proposal of the Trust Fund.

The challenge for the Court, whether ordering individual or collective reparations, is to ensure that reparations accurately reflect the nature and extent of the harm caused to victims. How do you repair harm caused on such a massive scale as typically happens with the crimes that the ICC deals with? This is where the role and the expertise of the Trust Fund for Victims plays such an important part.

Even if the ICC is located in The Hague, Netherlands, we must always be responsive to the realities of those most affected by the crimes that we investigate and adjudicate. This is even more so when dealing with reparations, which is a central tenet of the Rome Statute.

The third conviction at the ICC was issued in March this year, in the case of Jean-Pierre Bemba, in the situation of the Central African Republic. This is the first verdict at the ICC that applies provisions on command responsibility, and the first conviction for sexual and gender-based violence. The sentence of Mr Bemba is expected to be pronounced this month.

In another milestone, the Court's first trial concerning offences against the administration of justice has just finished and we are now awaiting the judgment.

These offences include acts aimed at intimidating or otherwise influencing witnesses or tampering with evidence. Obstruction of justice is a real challenge for the Court; we have other similar cases pending, and we have recently taken steps to propose amendments to the Rules of Procedure and Evidence in order to mitigate the impact of such trials on the judicial resources of the Court.

This is not all. Two additional trials are currently ongoing in the situation of Democratic Republic of Congo against the alleged militia leader, Mr. Bosco Ntaganda and in Ivory Coast against former President Laurent Gbagbo and his alleged aid Mr. Charles Blé Goudé.

Another two cases are heading to trial; both are very important, in different ways.

The case of Dominic Ongwen is the first one in the situation in Uganda to reach the courtroom, more than ten years after arrest warrants were issued against alleged members of the Lord's Resistance Army. The trial will start on 6 December.

The Al Mahdi case is the first one concerning attacks on cultural property, relating specifically to the destruction of Timbuktu, in Mali. This is also the first case before the Court in which the accused has announced he intends to admit his guilt. The trial in this case will start on 22 August.

The Prosecutor continues to monitor other situations. In January this year, the judges authorised the opening of the tenth investigation, in Georgia.

This is the third investigation that the Prosecutor has launched on her own initiative, using the *proprio motu* powers under the Statute – the other two being Kenya and Ivory Coast.

Previously, five investigations had been triggered by State Party referrals, made by the Democratic Republic of the Congo, Uganda, Central African Republic (twice), and Mali. Two investigations followed referrals by the United Nations Security Council – in the situations of Darfur (Sudan) and Libya.

In addition to these investigations, the Prosecutor is conducting preliminary examinations in Palestine, Ukraine, Iraq, Afghanistan, Colombia, Guinea, Nigeria, and most recently Burundi. The purpose of the preliminary examinations is to determine whether the criteria for the opening of an investigation are met including, in particular, whether the alleged crimes are being adequately addressed by national courts, which

have primacy under the Rome Statute in accordance with the system of complementarity.

As you can see, after several years of institution building, the Court is now operating at full capacity and the workload may increase in the coming years.

This now fully operational Court confronts multiple challenges on the internal and external front that can be grouped under two main concepts: challenges of efficiency, and challenges of legitimacy.

Enhancing the efficiency and effectiveness of the Court is the main priority for my term as President as it is vital to maintain and increase the confidence of the international community in the Court.

The Court can and should improve its internal governance as well as the manner it conducts its proceedings in order to enhance the quality and the impact of the justice that it delivers. All organs of the Court have embarked in reforms to ameliorate internal governance and improve the transparency, efficiency and accountability of the institution as a whole. This includes development of performance indicators for the Court, to facilitate an objective assessment of how the Court attains its essential goals.

The interpretation and application of the legal framework of the ICC has not been easy in the initial years of the Court. This system is a unique “hybrid” that combines elements of different legal systems and traditions and includes elements of restorative justice through a system of victims’ participations and reparations.

I have engaged my fellow judges in a collective effort to take stock of the experience of the first 12 years in order to identify best judicial practices and seek greater harmonisation across Chambers and Divisions with a view to accelerating proceedings.

We can and must improve the speed and quality of international criminal justice. This may require some adjustments to the legal framework and we have indeed proposed some amendments to the Rules of Procedure and Evidence. However, many improvements may be achieved by internal agreements among judges. We have sought to do this in the initial phase and some of these agreements are now reflected in a Chambers Manual which is publicly available on the Court’s website.

While we seek to improve the areas within our control, we also need to recognise that efficiency and effectiveness of proceedings depend on external cooperation.

The Court needs that States Parties cooperate fully with the Court in accordance with their legal obligations under the Statute. In addition, it needs the voluntary cooperation of States, parties and non-parties, and organisations.

Thirteen arrest warrants are still outstanding – some now for more than a decade. We need swift and full cooperation for access to evidence. We need better and faster action from States in the tracing, seizing and freezing of assets.

We need more States to enter into voluntary agreements with the Court on witness relocation, enforcement of sentences, hosting suspects or accused on provisional release, and accepting acquitted persons.

On this note, I would like to praise Finland for being among the first States Parties to conclude agreements with the Court on the enforcement of sentences, as well as on the relocation of witnesses. It is of grave concern to me that only 8 States Parties out of 124 have done so with respect to sentence enforcement, and only 18 with respect to witness relocation; we urgently need more States to share the responsibility.

As indicated before, the Court also faces the challenge of legitimacy.

Bound by its treaty limitations, the Court cannot address all international crimes whenever they may be committed. Unless the Security Council of the United Nations refers the matter to the Court, which may or may not happen, the Court can open investigations only when crimes are committed in the territory of a State Party or by nationals of a State Party.

This generates perceptions of selective justice, double standards and at this very moment, the perception that the Court “targets” one region over others.

While some of this criticism may be unfair or in self-interest, it is clear that the lack of universal jurisdiction does have an adverse impact on its global mandate. Enhancing the universality of the Rome Statute is thus essential for the legitimacy and effectiveness of the Court.

Just last week, we took an important step forward, as the Rome Statute entered into force for El Salvador, making it the 124th State Party.

While accession to the Rome Statute was of course El Salvador’s sovereign decision, other actors contributed to the process. The Court, officials of the Assembly of States Parties, including two former presidents, individual States Parties and civil society organisations invested a lot of time and effort to make sure that the decision-makers in El Salvador were fully informed of all consequences of accession.

There is a lesson to be learnt from these experiences. If we wish to see the remaining States of the world join the ICC, all parts of the Rome Statute system have to remain active in offering their support and encouragement for non-States parties that are thinking of ratification. Our system is now stronger than ever with 124 States Parties, but there is a long way to go to achieve universality.

Excellencies, ladies and gentlemen,

To seriously address mass atrocity crimes, there must be a unified, comprehensive response from the international community.

Accountability is essential for addressing past crimes but also an essential element of prevention. We have to demonstrate that there are consequences for those who commit genocide, crimes against humanity and war crimes. It is our duty to do our utmost to provide justice to victims of such acts.

All of this cannot happen unless national, regional and international actors alike are determined in their commitment to the rule of law, human rights and justice.

As the Court becomes more active and effective, it also faces increasing resistance from those opposed to its mandate, or those whose interests are affected by the Court's activities. These attacks and pressures take different forms and are raised in different fora.

The Court cannot deal with these pressures alone. It needs the support of civil society, regional and international organisations, and most importantly States.

Non-governmental organisations have been instrumental in promoting the system of international criminal justice. Just this week, the Court is holding an annual meeting with the Coalition for the International Criminal Court, a coalition of more than 2500 NGOs that are active on international justice issues.

But, as I said, it is States – and in particular the States Parties to the Rome Statute that carry the main responsibility for supporting the ICC. They are the ones that can best shield the Court from political attacks and ensure that it fulfils its mandate.

Finland has done a great job in supporting the ICC, and I encourage it to continue on that path. And indeed I hope to see States Parties from all regions taking concrete steps to advance global justice by taking appropriate actions on many fronts.

The ICC is a court of last resort, and the primary responsibility for addressing Rome Statute crimes rests with national jurisdictions. However, only some 60 out of the 124 States Parties have adopted national implementing legislation necessary to ensure they have the capacity to investigate and prosecute domestically, or cooperate with the Court as may be necessary.

Justice at national courts should always be the first choice. In post-conflict situations this is obviously an enormous challenge, and States should see to it that accountability for international crimes is properly integrated into rule of law development assistance programmes.

More broadly, States Parties may be more vocal in international fora about the importance they attach to accountability. They can also use their participation in regional and international bodies to mainstream international criminal justice into crisis prevention and crisis management, rule of law development and human rights agendas.

In order to facilitate concrete cooperation with the activities of the Court, States Parties can appoint focal points to deal with ICC issues and mainstream awareness about Rome Statute obligations across governmental institutions.

Within their means, States can make donations to the Trust Fund for Victims, or they can support civil society organisations that promote international justice.

States Parties to the Rome Statute can take active part in the decisions of the Assembly of States Parties to make sure that the Court receives adequate resources, that the Assembly supports the independence of the Court and takes measures to ensure that States comply with their duties under the Statute.

States can use diplomatic dialogue with other States to promote ratification and full implementation of the Rome Statute.

So, there is much that can be done by States to enhance the Rome Statute system. All those who believe in international justice must stay vigilant in using the available opportunities to promote the Rome Statute system.

Excellencies, ladies and gentlemen,

Once more I thank Finland for its support of the International Criminal Court. This country has gone beyond its strict duties under the treaty in offering voluntary cooperation to the Court and making significant donations to the Trust Fund for Victims. Finland also helps the ICC by helping others, including through the European Union, which provides various and highly appreciated forms of support.

I thank you for your attention. I would be glad to take any questions and engage in discussion.

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