

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

*International Criminal Court: the contribution to conflict resolution through
accountability*

**Remarks to the Forum for Security Co-operation of the
Organization for Security and Co-operation in Europe**

- Check against delivery -

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Excellencies,

Ladies and Gentlemen,

It is an honour to be here today and I thank Ambassador Bugajski of Poland for including me in this important discussion of the Forum for Security Co-operation.

The OSCE is a remarkably important organisation, and it is really a pleasure to have this opportunity for dialogue.

The security challenges we face in today's world are staggering in number and alarming in complexity.

Our new century has already seen destabilizing conflicts around the globe which include not only deliberate acts of violence against the physical security and well-being of civilians, but also deliberate attacks against their cultures and identities.

By their very nature and underlying objectives, as well as the technological means at the disposal of perpetrators, these violent acts, wherever committed, entail potential repercussions regionally and globally.

As I'm sure those acting at the OSCE appreciate, this complex reality and multiform type of violence demand an equally multifaceted response from the international community in order to bring about a cessation of violence in the short term, but also sustainable conflict resolution in the long range.

While both present steep challenges as we have seen so clearly in recent times, it is the search for sustainable solutions to conflict which so often proves illusive. Attaining a lasting peace clearly requires addressing the underlying causes of the conflict which can be varied and not easily resolved. It also requires the integration of security, humanitarian, development and justice dimensions in the solutions that are envisaged.

Indeed it is important that such solutions address the need for justice, reconciliation and reparation for victims.

The call for individual accountability for grave crimes committed contrary to international law is a moral imperative that has grown increasingly strong since the horrors of World War II led to the establishment of the Nuremberg and Tokyo tribunals. The demand that perpetrators of crimes be punished arises from a basic drive for justice, but it is also increasingly recognised as inextricably linked to conflict resolution in practice.

In the past 20 years we have seen significant efforts towards accountability through international, national and mixed or hybrid mechanisms. The most recent example of the latter is the recent verdict against the Chadian leader Hissene Habré issued at the

outcome of criminal proceedings before the Extraordinary African Chambers in Senegal on 30 May.

At the international level, we have experienced the establishment of the *ad hoc* tribunals of the Security Council for the former Yugoslavia and Rwanda and a myriad of special courts and tribunals such as those for Sierra Leone and Cambodia. Accountability measures have aimed at the most responsible individuals both among non-state and state actors.

These international justice efforts cumulated with the establishment of the International Criminal Court, with the adoption of the Rome Statute in 1998 and its coming into force on 1 July 2002. This Court is soon to be 14 years old, it has 124 States Parties and has recently relocated to permanent premises in The Hague.

The ICC can exercise jurisdiction over crimes against humanity, war crimes and genocide. Its jurisdiction is complementary and not intended to replace national systems – a point I will return to later. Situations can be investigated by the ICC Prosecutor if they are referred by a State, referred by the Security Council, or the Prosecutor decides on her own initiative to examine them and the judges authorise her to investigate.

Unique components of the International Criminal Court process provide for the participation and reparation of victims. Furthermore, the Court's Trust Fund for Victims has already provided assistance to more than hundred and eighty thousand victims.

Today, after several years of institution building, the Court is fully operational, legally and practically equipped to contribute to accountability for international crimes.

The ICC now faces an unprecedented level of activity in the context of 10 investigations and multiple preliminary examinations in all regions of the world.

Judgements have been issued in several cases, including three convictions, for crimes against humanity and war crimes in the situations of the Democratic Republic of the Congo and the Central African Republic.

The latest conviction at the ICC was issued in March this year, in the case of former Vice-President of the Democratic Republic of the Congo, 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 will be pronounced next week.

Two additional trials are currently ongoing: in the situation of Democratic Republic of Congo against the alleged militia leader, Mr. Bosco Ntaganda, and in the situation of Ivory Coast against former President Laurent Gbagbo and his alleged aid Mr. Charles Blé Goudé.

Another two cases are heading to trial in the coming months.

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.

Most of the Court's investigations were triggered by the request of States Parties where the alleged crimes had been committed, namely the Democratic Republic of the Congo, Uganda, Central African Republic (twice), and Mali. Two investigations followed referrals by the United Nations Security Council acting under Chapter VII of the Charter – in the situations of Darfur (Sudan) and Libya. After a referral, the justice process takes its independent course at the ICC.

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. The Court encourages domestic proceedings, and where possible, it supports the process.

The ICC's attention on emerging crises can also complement early warning mechanisms and help prevent the escalation of violence.

Reflecting back on a time not long ago when there was no international accountability mechanism for individuals responsible for the most heinous crimes, these advancements and the very existence of the ICC represent a remarkable achievement.

But much work remains to be done for the Court to fulfil its potential.

The most significant challenge is that this is not yet a universal court. As the ICC is treaty based, its jurisdiction is limited to criminal activity committed on the territory of a State which has accepted the jurisdiction of the Court or where the person accused of the crime is a national of a State Party.

To date, adherence has been significant with 124 State Parties and Ukraine having accepted jurisdiction by way of a declaration. However the ramifications of the lack of universality remain significant. Without jurisdiction or a referral by the Security Council, the ICC cannot address all situations that may deserve its attention, and this obviously limits the contributions that it can provide to conflict resolution.

Universality is thus essential for the effectiveness of the Court.

Cooperation is another critical area for the ICC's effectiveness. As the Court has no direct enforcement powers, it is dependent on external actors, most importantly States, for the gathering of evidence and – critically – the arrest and surrender of suspects. While evidently the Court looks to its States Parties for this assistance, it is also essential to have dialogue, interaction and support from non-States parties.

Excellencies, Ladies and Gentlemen,

The International Criminal Court is increasingly becoming a central component of the developing system for accountability for the gravest of crimes - war crimes, crimes against humanity and genocide.

I emphasize the term “system”, and the ICC's role as a part of a broader initiative, as it brings me to my final point.

As I mentioned, the ICC is a Court which has been established based on the principle of complementarity. It is a last resort institution intended to intervene only in those instances where there is no State willing and able to genuinely investigate or prosecute.

It follows that the success of the International Criminal Court is actually dependent on the capacity of States to carry out these investigations and prosecutions on a national level.

And on this point I would like to recognize the important and highly relevant work of the OSCE. There is the War Crimes Justice Project where it has worked with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) to ensure transfer of knowledge and material to build national capacity in the former Yugoslavia. This model bears consideration for replication in other situation countries.

But also general initiatives supported by the OSCE on rule of law and building strong democratic institutions are very relevant – they contribute to the development of a culture which can support the delivery of justice. Capacity building efforts supporting national authorities in the promotion of the rule of law are critically important to fully implement a global system for accountability – the aspiration of the Rome Statute.

In this context, the training of the military and the police on international humanitarian law is essential, to strengthen prevention.

In conclusion, I would like to reiterate my thanks to the organizers for incorporating the ICC into the OSCE Security Dialogue. The role of accountability mechanisms in achieving conflict resolution is one which may be overlooked at a time when the costs of conflict – in terms of the loss of life and the staggering humanitarian crisis – generate a focus on immediate solutions. Accountability can easily be seen as too remote and painstakingly slow for such proximate threats.

However, perpetrators of crimes must know that there will be consequences for their acts. In order to deter future crimes, we need to establish a consistent pattern of accountability.

Justice and security must go hand in hand.

Thank you.