



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## **Solemn hearing for the opening of the Judicial Year**

**27 January 2017**

Speech by 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*

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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Colleagues,

Excellencies,

Ladies and Gentlemen,

It can be seen clearly from the examples I have given that there are many areas of convergence between human rights law on the one hand and the theory and practice of international criminal law on the other. We share a common goal, that of promoting the rule of law. That is why it is important for us to listen to each other as much as possible. It is vital that we should be able to count on our mutual support in order to send together, on the basis of our common values, a clear message in favour of justice and an end to impunity.

This solemn occasion represents a unique opportunity for us to engage in a dialogue, so that we can strengthen our mutual understanding and our commitment to see justice done.

It is equally as important to enter into a dialogue with the national courts, and in that connection I am glad to see here today so many representatives of judicial authorities from the various States.

The International Criminal Court and the European Court of Human Rights are both courts of last resort. They both act to complement the work accomplished at an earlier stage by the national courts. Together, we are all participants in a system of global justice, and one which seeks to protect the most precious values of our societies.

National courts have a role that is essential – and even crucial – in upholding the rule of law. The outcome of our efforts to ensure respect for human rights and an end to impunity for international crimes depends above all on the willingness of the States and their capacity to achieve this.

This requires enacting legislation to that end at national level, particularly for the purpose of implementing the Rome Statute and other major human rights and international humanitarian law treaties which have now classified as criminal offences some of the most heinous acts. And this also means having the requisite jurisdiction at a national and an extraterritorial level to investigate those crimes and prosecute the perpetrators.

The responses of the domestic courts are taken into account by the International Criminal Court. In its turn, our Court may also have an influence on the way in which national and regional courts deal with international crimes. This influence takes different forms, in particular by the incorporation into a State's legislation of the relevant crimes, the different types of responsibility and the general principles of the Rome Statute. In many countries, the definitions which have been adopted are either identical or very similar to those of the Rome Statute.

The adoption of analogous provisions laying down criminal sanctions for those crimes at national level is a major step forward for the harmonisation of international criminal law – a harmonisation which contributes in turn to the strengthening of the system of global justice.

The international, national and regional institutions can together become stronger by their mutual reinforcement through a system of global justice. We recently had occasion to commend the regional approach which provided a solution for the momentous trial of Hissène Habré before the Extraordinary African Chambers within the courts of Senegal.

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Colleagues,

Excellencies,

Ladies and Gentlemen,

Our passion for justice is what unites us. While we each have different mandates, our aspirations are the same. Our institutions, although they have followed different paths, are working towards the same goals.

By uniting in our efforts to achieve these objectives we can make the system of global justice more effective.

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.