

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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President of the International Criminal Court**

**Lectio magistralis at the Conference:  
“New Models of Peacekeeping: Security and Protection of Human Rights. The  
Role of the UN and Regional Organizations”**

*CHECK AGAINST DELIVERY*

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Excellencies,

Ladies and gentlemen,

I would first like to express my gratitude to the organisers for the invitation to address you today.

The topic of this conference is very timely. Peacekeeping is as important as ever in today's world. And as the theme of this event rightly reflects, the pursuit of peace is inextricably linked to the global community's joint goals of achieving justice, security and ensuring the protection of human rights.

I am truly grateful to have the opportunity to join this important discussion in my role as the President of the International Criminal Court.

I am especially pleased to do so here in Rome, where the founding treaty of the Court was adopted 19 years ago.

Italy has always been at the forefront of supporting the ICC, far beyond its historic role as the host state for the final negotiations on the Statute. Italy's steadfast commitment to the Court is very highly appreciated.

Many Italian nationals have played a highly influential role in and around the Court since its establishment, and I am very happy that this event has given me the chance to reunite with one of them – my dear friend Professor Mauro Politi, who was one of the very first judges of the ICC, as well as one of the active participants in the negotiations on the Statute. Professor Politi contributed in a significant way to the creation and early development of the Court.

Today, the ICC is a well-recognised permanent international institution that plays a central part in the evolving global system of international criminal justice.

The Court has opened investigations in 10 situations and the Prosecutor is conducting another 10 preliminary examinations at the moment. Four final judgements have been issued, three trials are ongoing and two cases are on appeal. In four cases the judges are currently considering reparations for victims, which is one of the progressive aspects of the ICC's legal system.

Furthermore, the Trust Fund for Victims associated with the ICC has already provided assistance to more than 300.000 victims and family members, and is planning to expand its activities.

Clearly, the institution-building period of the Court is behind us.

That is not to say that challenges have gone away. Rather they have changed with the growth of the institution. As the Court comes more active and more effective, it also faces increasing pushback. It is probably inevitable that the concrete fulfilment of the Court's mandate will face some resistance and raise some important questions and controversies, including, as we have seen, with respect to the relation between peace and justice, security and the protection of human rights. This relation was an important question during the creation of the Court and continues to be central to its current operations.

The question is broad and involves many aspects. Let me focus today on three very particularly important ones from the ICC perspective, namely, the relation between the ICC and the Security Council of the United Nations, the contribution of the Court to the protection of peacekeepers, and the cooperation of peacekeeping missions to the work of the Court

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Excellencies,

Ladies and gentlemen,

The relation between the Court and the Security Council was very controversial during the negotiations of the Rome Statute and continues to be an important part of the current debates on the ICC. Understandably so as it addresses the link between peace and justice.

The two concepts are at the core of the shared values of the international community. Together with security and human rights they are at the heart of the preamble of the United Nations Charter as well as the Preamble of the Rome Statute.

The Preamble of the Statute states that the crimes under the Court's jurisdiction are such that they threaten the peace, security and well-being of the world. The prosecution of such crimes is seen as contributing to the prevention of such atrocities from happening in the future.

The link between peace and justice is also reflected in the particular status that the UN Security Council is accorded in the Statute of the ICC, despite the fact that the Court is an independent body that is not part of the United Nations.

The Statute recognises two types of actions that the Security Council may take in relation to the Court, using its powers under Chapter VII of the Charter.

Under article 13(b), the Security Council may refer a situation to the ICC Prosecutor for consideration of possible investigation and prosecution. This has happened twice so far. The Council referred the situation in Darfur, Sudan, to the Prosecutor in 2005, and the situation in Libya in 2011. I will come back to this in a minute.

The Statute also provides that the Court must comply with a request of the Security Council to defer an investigation or prosecution for a period of one year – again, if the Council makes such a request under Chapter VII of the Charter. This makes it clear that the provision goes directly to the relationship of peace and justice. The

drafters of the Statute wanted to make sure that the Council, as the primary international body in charge of peace and security, would have the possibility to intervene if it considered that the Court's proceedings presented a serious threat to international peace and security.

Article 16, relating to the deferral of proceedings, was invoked by the Security Council very early in the life of the Court, less than two weeks after the entry into force of the Statute, in July 2002. However it was not used to defer any actual investigation or case, but rather pre-emptively. As a condition for renewing any peacekeeping mandates, the Council adopted a resolution on 12 July 2002 requesting that the Court should not proceed with any investigation or case involving officials or personnel from non-States parties in relation to acts allegedly committed in the context of a peacekeeping operation. The resolution was renewed in 2003. Since that time, the Council has not invoked article 16 again.

However, as I said, the Council did refer two situations to the Court – Darfur and Libya. These referrals have been portrayed as a sign of the international community's growing confidence in the Court, particularly the Libya resolution that was adopted unanimously. Most importantly, the referrals allowed the Court to address situations in the territory of non-parties that would have been otherwise outside its jurisdiction.

On the other hand, the referrals by the Security Council without any proper follow up by the Council have not ensured cooperation by the two states concerned despite repeated reports on lack of cooperation by the Court.

It must be said that the Court's relationship with the Council has actually gone beyond the question of referrals and deferrals and many other points of connection exist beyond them, including with peacekeeping missions to which I will refer later.

It is important to recall, in particular, that often, individuals sought by the Court are subject to travel bans, freezing of assets and other sanctions imposed by the Council.

Action by the Court in their regard, such as the transfer of the person to the Court, may require addressing the Council to obtain the necessary authorisation to proceed.

More broadly, I am happy to note that the Council has increasingly made reference to the Court also in thematic debates and resolutions on children and armed conflict; sexual violence in conflict; women, peace and security, and so forth.

The increasing reference to justice in the discussion of conflicts at the Council, including with reference to the ICC's role in this regard, demonstrate the growing recognition that – as said by Ban Ki-moon – “peace and justice go hand in hand”. Both are essential, and one should not be pursued to the detriment of the other.

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Let me now address the contribution that the Court can make to the protection of peacekeepers under the Rome Statute.

Intentional attacks on personnel, installations, material, units and vehicles involved in a peacekeeping mission are explicitly recognised as a war crime under the Rome Statute, both in international as well as conflicts of non-international character.

In the early 90s, the issue of attacks on UN peacekeeping and humanitarian personnel became an object of increased international concern and resulted, *inter alia*, in the 1994 Convention on the Safety of United Nations and Associated Personnel. The definitions contained therein inspired the provisions later included in the Rome Statute, despite the fact that by the time of the Rome Conference the Convention had only attained a limited number of ratifications and was not yet in force.

However, there was agreement that it was extremely important to accord specific legal protection to peacekeepers under the Rome Statute in light of their contribution to peace and security.

The Court has already had the opportunity to apply this provision in one early case concerning specifically an alleged attack of rebel groups on peacekeeping personnel and facilities of the African Union Mission in Sudan, in Haskanita, Darfur.

In its decision on the confirmation of charges, the Pre-Trial Chamber addressed in detail the legal conditions for the alleged crimes to fall under the Court's jurisdiction and addressed in particular the issue of whether the alleged crimes reach the threshold of sufficient gravity posed by the Statute, taking into account the relatively low number of victims of the attack - allegedly 12 peacekeeping personnel were killed, several were injured and property of the compound was looted in the attack.

However the Chamber also took into account the information that as a result of the alleged attack, the African Union Mission in Sudan was initially suspended, and then reduced its activities in the area, and this reportedly left a large number of civilians without the Mission's protection, on which they had allegedly relied prior to the attack.

On this basis, the Chamber concluded that the alleged attack had grave consequences not only for the direct victims of the attack and their families, but also indirectly on the local population due to its impact on the peacekeeping operation.

This demonstrates that the inclusion of the attacks on peacekeepers in the ICC's Statute is in line with the broader recognition of the mutually reinforcing relationship between peace and justice.

Unfortunately the case could so far not proceed further to trial because of the lack of cooperation for the arrest of the accused, who is now at large, in Sudan.

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Finally, let me turn to the subject of the Court's co-operation with peacekeeping missions.

The Court has no enforcement powers of its own and is heavily dependent on external cooperation for its operations, including collecting evidence, informing victims of their rights, interviewing and protecting witnesses, arresting suspects and transferring them to the Court's custody.

Obtaining cooperation for these tasks is essential for our proceedings. This cooperation entails not only legal assistance but also practical and logistical cooperation for the Court. Reaching areas of on-going violence may in itself present a number of logistical challenges that could be insurmountable without the cooperation of those with access to the field.

The necessary cooperation for the Court's operations is often provided by States, but in some cases of conflict or post-conflict areas, the United Nations missions deployed on the ground are the only ones that can effectively help the Court to conduct essential tasks.

The first 15 years of the Court have shown that in practice the assistance provided by peacekeeping missions is essential to the Court's operations in the field, and we are hugely grateful for the cooperation we receive.

As you are aware, the ICC is not part of the United Nations but a self-standing international organisation created by a treaty, the Rome Statute. However, already the Statute foresaw the conclusion of a relationship agreement between the two organisations, which was signed on 4 October 2004. This agreement ensures that the Court receives the assistance it needs while maintaining its independence – a facet of the Court's cooperation with any organisation or State that cannot be compromised.

This agreement is a framework agreement that serves as a basis for other specific agreements or ad hoc arrangements, including specific agreements with peacekeeping missions, where necessary.



By the time the ICC was established, the experience of the International Criminal Tribunal for the Former Yugoslavia with the UN-authorized peace enforcement operation in Bosnia and Herzegovina, SFOR, had already demonstrated that the usefulness of peace-keeping missions, in particular where the mission is exercising military or law enforcement powers in the territory subject to the Prosecutor's investigation.

The cooperation of peacekeeping missions soon proved very important for the ICC as well. To streamline and regulate this cooperation in more detail, specific agreements have been concluded between the Court and several UN peacekeeping missions.

The first agreement signed by the Court was the Memorandum of Understanding concluded in 2005 with MONUC, later renamed MONUSCO, the UN presence in the Democratic Republic of the Congo. Subsequent agreements have been concluded with the UN peacekeeping missions in Côte d'Ivoire; Mali; and in the Central African Republic.

The Court also has a memorandum of understanding with the UN Office in Nairobi, although the terms of this MOU differ from the others as UNON is not a peacekeeping mission.

These MOUs provide a basis for a range of administrative and logistical assistance such as transportation, medical services and loan of UN-owned equipment. They also provide for the provision of military and other support to the ICC Prosecutor for the purpose of facilitating investigations in areas where UN peacekeeping units are deployed. This may include securing crime scenes, preserving physical evidence, or search and seizure operations. Please note that the agreements concluded typically specify that for these and similar forms of assistance the explicit consent of the government of the Host State is required before assistance can be provided to the Court.

Finally, the MOUs also deal with cooperation and legal assistance in the form of provision of information, documents, interviews and testimonies, including by peacekeeping personnel.

Over the years, the Court has seen direct, concrete benefits of cooperation with peacekeeping missions. Let me provide some examples.

First of all, the UN has provided invaluable support in the way of logistics in the field, including transport of ICC staff on hundreds of UN flights in the DRC, Uganda and elsewhere. On several occasions the UN has also arranged special flights specifically for the Court's needs, for instance to enable ICC staff to reach potential witnesses. Let me clarify here that this is not done free of charge; in accordance with the Relationship Agreement, the Court reimburses the UN for all assistance provided.

MONUSCO has also assisted directly with court proceedings, facilitating the transport of suspects to the Court and providing support for the first ever field visit of an ICC Trial Chamber, which took place in 2012. MONUSCO also facilitated a feasibility study on the possibility of holding *in situ* proceedings in the trial of Bosco Ntaganda. Although the proceedings ultimately did not take place, the UN's assistance was critical in allowing the Court to reach a fully informed decision on the matter.

In the Central African Republic, the UN's stabilisation mission, MINUSCA, has provided a wide range of support not only to the Court, but also the national jurisdiction in addressing grave crimes under international law, by documenting abuses and supporting the establishment of a Special Court, which is currently in the making. Also the ICC has shared its expertise to support the creation of the Special Court, in line with the principle of complementarity at the heart of the Rome Statute.

The UN mission in the Central African Republic also provided vital assistance to the Court at the time when the security situation in the country deteriorated drastically.

This included assistance with the evacuation of staff, accommodating ICC personnel in the UN compound for six months, and providing updates on the security situation.

UN missions have also been extremely helpful in putting medical experts at the disposal of the Court when necessary, for instance to check whether suspects or witnesses are fit for transport to the Netherlands.

These examples show the critical importance of a close relationship between the Court and the various UN peacekeeping operations in conflict or post-conflict areas. Some of the examples may sound fairly simple, but the truth is that in many situations the Court would face great difficulty in conducting operations if it could not make use of the reliable services made available by the United Nations.

As said, the scope of cooperation that the Court may receive from a particular mission depends on the formulation of the mandate approved by the Council. It cannot, therefore, be taken for granted as the approval of each mandate will depend on the political will of members of the Council to enable such cooperation with the Court. Indeed, after the establishment of the Court and in light of the need for cooperation that soon emerged, mandates of peacekeeping missions were revised to make cooperation possible. It will be extremely important that the requirements of cooperation with justice efforts continue to be taken into account in shaping future missions.

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Excellencies,

Ladies and gentlemen,

I have briefly addressed various aspects of the International Criminal Court's relationship with peacekeeping, and the link between peace and justice. I hope to have demonstrated that these are important connections, and ones on which we should have a positive and constructive approach.

As said, it is crucial that the mandates of current and future peacekeeping missions are carefully crafted to properly reflect the role of justice efforts in the wider project of peace, security and stability. The active role of States Parties on the Security Council is key to ensure that the ICC and Rome Statute issues are taken into account in all aspects of the Council's work. And I am very happy to congratulate Italy on the strong role that it is currently playing in this respect, as one of the non-permanent members currently on the Security Council. I have had the pleasure to work very closely with Ambassador Cardi, who is not only the Permanent Representative of Italy to the United Nations, but also the Vice-President of the Assembly of States Parties to the Rome Statute.

Following a friendly and cooperative relation with Mr. Ban Ki Moon, I have also had the chance to start very positive discussions with the new Secretary-General of the United Nations, Mr. Antonio Guterres. I am confident that we will have a constructive relationship with him and his team to maintain and further develop the cooperation between the Court and the UN.

At our meeting in March, Mr. Guterres specifically highlighted that two of the UN's main goals, those of peace and justice, are directly linked to the work of the ICC. He also recognised that "both the Court and the United Nations strive to maintain international peace and security and to ensure that the rule of law prevails".

The International Criminal Court has built an excellent, cooperative relationship with the United Nations and many peacekeeping missions in its first 15 years. The Court is deeply grateful for this assistance.

We also enjoy very good cooperation with many regional organisations that contribute in different ways to the work of the Court. In this context we are also increasingly developing cooperation and professional exchange with regional courts of human rights.

There is no doubt that we can develop these important links further. To all of you who are involved in different ways in the work of peacekeeping operations, I would make an appeal that you raise awareness among the peacekeeping personnel about the role of the International Criminal Court. I believe this goes together well with the more general goal of ensuring awareness of and compliance with international humanitarian law as well as international human rights law.

I thank you very much for your attention and look forward to any questions you may have.

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