



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

Remarks at the Europe Lecture 2016

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The Hague, 13 June 2016

Excellencies,

Ladies and Gentlemen,

It is a great honour to be here today. I thank the organisers for extending an invitation for me to participate as respondent in this Europe Lecture on the protection of cultural property. I enjoyed tremendously listening to Ms Bokova's insightful remarks, and I appreciate the references that she has made to the role of the International Criminal Court in the context of this important theme.

The topic of this lecture on the protection of cultural property in conflict is unfortunately very timely. Over the last few years we have been increasingly confronted by attacks that not only threaten the physical security and well-being of civilians but that also deliberately target their cultural landmarks and seek the destruction of the past.

This deplorable multiform type of attack against mankind requires an also multifaceted approach that mobilizes security, humanitarian, cultural and justice dimensions. We must connect the dots and Ms Bokova has rightly said so. Justice must be part of any comprehensive response as perpetrators need to understand that their acts will be sanctioned and that they will be held personally accountable. The International Criminal Court can contribute to providing this justice dimension.

The ICC was established as the world's first permanent international criminal court, borne out of a global movement to provide justice to victims and to ensure accountability for crimes that deeply shock the conscience of humanity.

Similarly to the *ad hoc* tribunals created by the United Nations Security Council for the Former Yugoslavia and Rwanda in the early 90s, the ICC has been created to prosecute and try individuals responsible for crimes of genocide, war crimes and crimes against humanity.

However, contrary to the *ad hoc* tribunals, the ICC is not part of the United Nations but an independent treaty body created by the Rome Statute in 1998. The Court has concluded a relationship agreement with the United Nations and benefits tremendously from cooperation and interaction with the United Nations system.

The ICC has been operational now for 13 years. 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, sentencing in one landmark case is scheduled for next week, other trials are ongoing and two more are set to start later this year. Over 180.000 victims have benefited from the assistance mandate of the Trust Fund for Victims.

The Court shares the underlying values of the United Nations and seeks to contribute to peace and development through justice. The Preamble of the ICC's Statute recalls the devastating effects of the scourge of war that may shatter at any time the cultures of peoples that are pieced together in a "shared heritage".

The ICC is legally equipped to protect this shared heritage including by explicitly sanctioning the destruction of cultural property.

Article 8 of the Rome Statute provides that the intentional destruction of cultural property in the context of an armed conflict is a war crime. It prohibits intentionally directing attacks against buildings, including religious buildings and historic monuments provided they are not a military objective. This prohibition is absolute and applies to both international and internal conflicts.

This prohibition reflects some of the oldest and most firmly established principles governing the conduct of hostilities. It echoes, in substance, the Hague Regulations annexed to the 1907 Hague Convention, the 1954 Hague Convention for the protection of cultural property in the event of armed conflict, and the Additional Protocols to the Geneva Conventions.

As I will develop further, the Court is now dealing for the first time in its history with an attack on cultural property. However, this is not entirely new in international criminal justice. There are also some precedents that can be found in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia, which was established by the United Nations before the creation of the ICC.

The Yugoslavia Tribunal established that the destruction of institutions dedicated to religion, the arts and sciences in conflict amounted to war crimes. This was upheld in the *Strugar* case, which concerned the destruction of the World Heritage listed Old Town of Dubrovnik, Croatia.

In other cases, the Tribunal also recognized that in certain circumstances attacks against institutions dedicated to religion and education may amount to persecution as a crime against humanity.

As I said, the destruction of cultural property may constitute a war crime under the Rome Statute of the ICC. Victims of these attacks are ultimately the people. However, our Rules of Procedure and Evidence add that victims before the Court may include organisations of institutions that have sustained harm to any of their property which is dedicated to religion, education, art or science, or to their historic monuments.

This is important, as, at the ICC, victims may participate in the proceedings to express views and concerns, and to seek reparation for the harm suffered.

These provisions are now being put to a test for the first time at the Court in the trial that will start on 22 August in the Al Mahdi case. This case is the first time that charges are being brought for the war crime of attacking protected objects.

The allegations in this case concern the destruction of several historical monuments and religious buildings in Timbuktu, Mali, some of which were on the UNESCO World Heritage List.

This case is also so far unique at the Court in that the accused has expressed his intention to plead guilty and admit his responsibility for the crimes he is charged with.

This case is indeed important in demonstrating that attacks on cultural heritage in conflict *can* be effectively investigated and prosecuted through judicial mechanisms.

The cooperation and support of states and organisations, including UNESCO, has been crucial to bring this and other cases before the ICC. Cooperation is the cornerstone of the Court's effective functioning.

Unfortunately, while the Court is now able to address the destruction of cultural property in Mali, it is not always able to address similar events that may and that now indeed occur in other parts of the world.

The ICC has a global mandate but does not have universal participation. Its founding treaty, the Rome Statute, which entered into force in 2002, has now 124 States Parties. This is a significant number that signals a commitment by a majority of countries to ensure accountability for international crimes.

At this Europe Lecture, I would like to recognise in particular the strong role that European countries have played in the creation and development of the International Criminal Court. I also wish to recognise the European Union's strong support under its common policy position.

However, much more needs to be done to enlarge participation in the Rome Statute in other regions and enable the Court investigate and prosecute the most serious crimes wherever they occur, including the destruction of cultural property.

We need States, civil society and organisations to all work together to underline the importance of justice and the rule of law in protecting the common heritage of humankind.

Over the last 20 years, we have witnessed enormous progress of international criminal justice. Ground-breaking trials in national and international courts have demonstrated that justice for the most heinous crimes is attainable.

But for truly effective deterrence, we must establish a pattern of accountability, to make it clear to all potential perpetrators that there will be consequences for their actions. For this to happen, we need the firm and continuous cooperation of the global community.

On that note, I finalise by thanking UNESCO and the United Nations for their invaluable support of the International Criminal Court. This relationship is today as important as ever, and I look forward to our continued cooperation.

Thank you.