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International justice and diplomacy: partnering for peace and international security

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Excellencies,

Ladies and gentlemen,

I am delighted to be with you here this evening. I would like to start by thanking the Académie diplomatique internationale, and its Secretary-General, Mr. Jean-Claude Cousseran, as well as the International Herald Tribune, for inviting me to address you today.

As the Forum for New Diplomacy's goal is to discuss emerging dynamics in global affairs, focusing on innovative approaches to effecting change in international relations, I strongly believe this is an important opportunity to discuss a crucial adjustment in international relations: the partnering of international justice and diplomacy to effectively contribute to a sustainable and long-lasting peace and international security.

I will focus today on a question which regularly comes to our attention at the International Criminal Court: should perpetrators of crimes against humanity, war crimes and genocide always be prosecuted? And, if so, does this premise intrinsically conflict with the interests of peace?

Indeed, long has this question been asked: peace or justice? That is:

- shall we strive for peace at all costs? Shall we sacrifice justice at the altar of peace, by postponing or not holding perpetrators of crimes responsible, as the case might warrant?
- or, shall we soldier on in the pursuit for justice, to end impunity, without considering the short-term impact on peace, stability and security of an affected people?

Ladies and Gentlemen,

My premise to you is that this perennial debate about peace *versus* justice or peace *over* justice is an overstated dilemma, a patently false choice. For, peace and justice are two sides of the same coin. That is, the road to peace should be seen as running *via* justice, and that their objectives could be pursued simultaneously. Plainly put: both roads complement and reinforce each other.

However, the judicial track, by its nature, cannot take into consideration the interests of peace, which is the mandate of other institutions, such as the UN Security Council.

That is not to say that justice cannot have a positive impact on peace and security: this is what the UN Secretary-General Ban Ki-moon calls the “shadow of the Court”, its preventative role, and its capacity to diffuse potentially tense situations that could lead to violence by setting a clear line of accountability.

Ladies and gentlemen,

Based on the experience of centuries of conflict on all continents of the world, accountability and the rule of law have been recognized as fundamental preconditions to provide the framework to protect individuals and nations from massive atrocities, to promote peace and international security, and to manage conflicts. Thus, not only was prosecuting crimes seen as satisfying conceptions of fundamental justice, but also as a means to prevent their perpetration.

Both major institutions in the equation, the International Criminal Court and the United Nations Security Council, have been tasked with a core responsibility:

prevention of mass atrocities. The Rome Statute Preamble, which is the Court's founding treaty, explicitly recognizes that "such grave crimes *threaten the peace, security and well-being of the world*". The Preamble also clearly states that prevention is a shared responsibility of the international community and that States Parties are "*determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.*"

It is of course not an accident that the mandates of these two major institutions in international relations also greatly differ. The UN Security Council is a political body within the UN system, whereas the Office of the Prosecutor is an independent organ within an independent, judicial institution, which has to adhere at all times to clear legal criteria and jurisdictional boundaries provided by the Rome Statute, upholding the law without political considerations.

As part of its peace and security mandate, the Security Council has the option of referring situations to the Office of the Prosecutor for investigations, especially in those States not Party to the Rome Statute, where there are *prima facie* indications that widespread serious crimes under the jurisdiction of the Court are being committed. In part, of course, such referrals do reflect political choices. However, once a situation has been referred to the Court, a judicial process ensues and only legal criteria and legal standards apply.

It is for the Prosecutor to independently decide whether legal criteria for opening investigations are met, and whether there is enough evidence to charge anyone with the commission of crimes. Also solely based on legal criteria, the judges assess the Prosecutor's decisions and decide on the guilt or innocence persons brought before them.

At this level, for us, there is no dilemma between peace and justice; the international community has put in place some clear divisions of responsibility regarding peace and justice. The UN Security Council is the main international body in charge of peace and security. The ICC on the other hand is solely responsible for doing justice.

Ladies and gentlemen,

The so called tension between peace against justice has been a subject of much controversy over time. The prevailing discourse has long been premised on the view that to choose one is to dismiss the other. In this equation, proponents of justice have often been defined as *idealists*, whereas proponents of peace have been held to be *realists*.

Experiences in some countries, such as Chile, or South Africa, where amnesties and truth commissions had been preferred over criminal trials, have also helped shape this unhelpful trend of thought.

It must be said that, even in these cases, we have seen that opting for peace in the form of amnesties has not proven to be a sustainably binary choice. The Chilean courts, for instance, have endlessly had to deal with challenges on Augusto Pinochet's immunity from prosecution. From 2000 until Pinochet's death in 2006, the Chilean judicial system rocked back and forth, from stripping his immunity, indicting him on charges of politically-motivated killings, torture and disappearances, only to suspend proceedings again. And the tense discussions that took place in Chile during those years only demonstrated that the issue had not been settled and was still quite divisive within the population.

Ad contrario, with the successes of the *ad hoc* tribunals for former Yugoslavia and Rwanda, the premise that a trade-off between peace and justice was a matter of course has evaporated. It is no coincidence, in this respect, that these tribunals were ushered by the Security Council, acting under Chapter VII, for the promotion of international peace and security.

Ultimately, international criminal tribunals, and international criminal justice in general, have essentially emerged as instruments of peace *and* justice. The value of such institutions has become indispensable, not only in terms of establishing responsibility, but also discrediting hate and institutions and leaders who wield it, establishing a permanent historical record, addressing victim needs and providing redress, and promoting deterrence in the long term.

This has also been the experience with the International Criminal Court. The Office can and has made a substantial contribution to international peace and security by proactively collecting information and monitoring situations under preliminary examination and investigating and prosecuting those most responsible for the most serious crimes.

The role of the Court has never precluded or put an end to any peace process, as some may allege. Whilst we should not readily presume that warlords are rational actors, and that every situation will be the same, the Court's impact on peace until now has been noted, and has proved to be a spur to action.

In the case of the Lord's Resistance Army, for instance, ICC arrest warrants themselves have been widely acknowledged to have played an important role in bringing the rebels to the negotiating table in the Juba Peace Process in the first instance. This was despite initial fears by some – emphasized and exploited by the

LRA leadership – that if the arrest warrants were not withdrawn, they could threaten the peace talks. At that time, my predecessor appropriately referred to this as blackmail.

The situation in Uganda is also sometimes pointed to as an example where the Court was perceived to be an obstacle to peace. This is narrow and short-sighted. If the international community is to work towards long-lasting peace, critics must question the reasons why peace had proven elusive in Uganda, long before these warrants were issued.

There can be obvious perverse side-effects for deferring judicial proceedings in the name of peace and security. Succumbing to pressure to restrain justice may send out a message to perpetrators that arrest warrants can be stayed, if only they commit more crimes or threaten regional peace and security. Court proceedings or the possibility of Security Council deferrals should not be used by alleged war criminals as a tool to divide the international community.

We cannot but also stress the difference between negative and positive peace. With the possibility of an immediate, short-term cessation of violence, true desires for a long-lasting peace can be obscured. It can be fatal to forget that not prosecuting criminals undoubtedly emboldens would-be perpetrators. With prosecutions, long-term steps are taken to entrench human rights at the boundaries of State power. As the first Chief Prosecutor of the ICTY, Richard Goldstone, rightly observed:

“... if one is talking about short term ceasefires, short term cessation of hostilities, it could be that the investigation of war crimes is a nuisance. But if one is concerned with real peace, enduring and effective peace, if one is talking about proper reconciliation, then, in my respectful opinion, there is and can be no contradiction between peace and justice.”

Ladies and gentlemen,

Despite this symbiotic relationship, there are of course challenges, from time to time, that falsely depict the Court as an obstacle. As the late Antonio Cassese, the first President of the ICTY, liked to say, the ICTY *“remains very much like a giant without arms and legs – it needs artificial limbs to walk and work. And these artificial limbs are state authorities. If the cooperation of states is not forthcoming, the ICTY cannot fulfill its functions”*.

The same rings true with the work of the ICC Office of the Prosecutor. Tangible, full and timely cooperation is vital for the Court to realize its full capacity as a vehicle of justice, and, by extension, peace. The Court relies on States on most aspects of its work.

When the judicial process has culminated into issuance of arrest warrants by the Court's Judges, it is up to the international community to act. To preserve its impartiality, the Office cannot participate in peace initiatives, but it does make clear that any proposed solutions in peace talks have to be compatible with the Rome Statute. The Office will also inform the political actors of its actions in advance, so that they can factor the Court into their activities.

Given the shared preventative mandate, all concerned actors must do more. Prevention is key to all our efforts. Lack of cooperation with the ICC and non-enforcement of its arrest warrants are particularly harmful for the Court, but they also harm the UN Security Council when it referred these situations, and the international community as a whole. Therefore, the Security Council, the international community and the Court should work together to establish strategies for attaining their mutual goals.

There are many things that can be done to further achieve these goals, and my Office has been actively engaged in discussions with key partners since its inception to strengthen and coordinate our complementary roles.

For instance, I believe that increasing the political and diplomatic support for the Court is essential, as well as further mainstreaming issues related to the Court's activities in bilateral and multilateral fora. Tools, such as avoiding non-essential contacts with individuals under outstanding ICC arrest warrants in order to isolate them, need to be further explored and deepened.

Conflict managers and peace mediators must refine their strategies, taking into account the work of the Court, respecting the legal limits. With the entry into force of the Rome Statute, international policy makers now have the Court available in their toolkit as they work to achieve peace and security.

There is a cooperation deficiency to fully realise this potential. The international community and the Security Council have an important role to play to ensure justice is fully and consistently incorporated into the equation.

Ladies and gentlemen,

To conclude, the choice, therefore, is not ultimately between justice and peace. The pursuit of justice, whether it be through national or international prosecutions, and the pursuit of peace, whether it be through truth and peace negotiations, can and must work together. They should not be seen as oppositional, not alternatives, but complementary.

Thank you.