

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Judge Sang-Hyun Song
President of the International Criminal Court

Keynote address

**Second Asia-Pacific Consultation on the
Universality of the Rome Statute of the International Criminal Court**
Parliamentarians for Global Action & Parliament of Malaysia

*Kuala Lumpur
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Excellencies, Esteemed Parliamentarians,
Ladies and Gentlemen,

I would like to thank the Honourable Mr. Kula-Segaran for his kind introduction and for inviting me to address the distinguished audience before me.

Rarely does one have the opportunity to reach out to so legislators from so many nations at the same time, and the occasion is all the more valuable when the topic is as timely as it is today. I wish to express my sincere appreciation to the Parliament of Malaysia and Parliamentarians for Global Action for convening this important meeting which has great potential to further the participation of the Asia-Pacific region in the Rome Statute system.

As the first Asian President of the International Criminal Court, I feel a particular duty to further the universality of the Rome Statute in the Asia-Pacific, which is clearly the most underrepresented region in the ICC's Assembly of States Parties. Of the 53 countries of the Asian Group of States, merely 15 are party to the Rome Statute.

This is why I have made it a priority in my term as President to reach out to Asian countries. I have travelled to Indonesia, Nepal, Bangladesh, Laos and the Philippines to explain the ICC and its work and I have met with delegations from many other Asian countries.

Bangladesh joined the ICC last year and on Monday I was delighted to learn that the Philippines could be following soon. President Aquino personally informed me that he has signed the instrument of ratification, which will now be considered by the Senate.

This morning we have also heard encouraging words about the exciting prospect of Malaysia acceding to the Rome Statute. If both the Philippines and Malaysia were to join the ICC, it would be an unprecedented development that could inspire other countries in the region to jump on board in their slipstream.

Of course the decision to join the ICC is entirely and solely a decision of every sovereign state. What I hope to achieve is to inspire each nation to consider joining the Rome Statute and to that effect I try to facilitate informed consultations on the subject. As the ICC's public face it is my role to offer information about the mandate and work of the ICC and to raise awareness about the importance of the Court's founding treaty, the Rome Statute.

The ICC's roots are in the aftermath of the Second World War. The grave crimes committed in its course led to the creation of military tribunals in Nuremberg and Tokyo. They embodied a new recognition that the darkest crimes should be answered with fair, impartial trials.

Shortly afterwards, the Convention on the Prevention and Punishment of the Crime of Genocide and the four Geneva Conventions were adopted. The shockwaves of the atrocities committed by the Nazis and their allies also gave rise to the Universal Declaration of Human Rights which became the basis of the modern concept of human rights.

Common to all these post-World War II developments was the notion that the protection of peace and basic human dignity is a matter of common concern and that even in a world consisting of sovereign States, certain international rules are necessary to safeguard these values of fundamental importance to humankind as a whole.

Then, however, the new bipolar division of the world paralysed much of the progress towards a more peaceful international set-up. The cold war also manifested itself in the form of armed conflicts, and the first major proxy war broke out in my home country, Korea. The year was 1950 and I was nine years old at the time.

For three months, during the battle for Seoul city, my family was hiding in an underground bunker. Every day, I was responsible for emerging from the bunker to bring food. To do this, I had to walk about 16 kilometres every day. I will never forget passing hundreds of bodies, lying on the streets. I still remember the terrible smell in those hot summer months. At times I encountered street battles, but each time I was fortunate enough to get away. I was too young to be mobilised for war, but old enough to realise its horrors.

It wasn't until the end of the cold war and the creation of the *ad hoc* tribunals for Rwanda and the former Yugoslavia by the Security Council that the project of international criminal justice gained a new momentum. A growing number of diplomats, parliamentarians, civil society activists and scholars became increasingly determined to finally materialize the idea put forth by the UN General Assembly in 1948 - to create a permanent international criminal court to try individuals for atrocity crimes.

In 1998, the foundation for the first permanent court was laid down. Gathered in Rome, 120 states approved the ICC's founding document, the Rome Statute. Within four years, the ICC entered into force with 60 ratifications.

The ICC became the centrepiece of a new system of international justice, with a carefully defined, relatively narrow yet absolutely crucial mandate.

The offences contained in the Rome Statute are no ordinary crimes. They are mass atrocities that cause terrible suffering to entire communities and populations. The Rome Statute refers to them as “the most serious crimes of concern to the international community as a whole” - genocide, crimes against humanity, war crimes, and the crime of aggression.

The ICC’s jurisdiction only extends to the territory and the nationals of States Parties. The only exceptions are non-States Parties that have made a declaration accepting the Court’s jurisdiction, or referrals by the United Nations Security Council, which can adopt a resolution under Chapter VII of the UN Charter to make any situation subject of the ICC’s jurisdiction.

Another important limitation is that the ICC does not have retroactive jurisdiction. It may only consider crimes committed after the Rome Statute has come into force in each respective State Party. For instance, if Malaysia were to ratify the Rome Statute today, the treaty would come into force for Malaysia on the 1st of June 2011 and the ICC would only have jurisdiction as of that date in this country.

Above all, the ICC is a court of last resort. Under the principle of complementarity, the ICC does not replace national courts and it can step in only where a State is unwilling or unable to carry out genuine investigations or prosecutions. Therefore the ICC is not a substitute for national justice systems; it merely complements them.

In other words, States and their national jurisdictions retain the primary responsibility to prosecute atrocity crimes. This is why it is so important for the proper functioning of the Rome Statute that States Parties ensure that they have proper national laws in place to enable the investigation, prosecution and adjudication of genocide, crimes against humanity and war crimes. Until now, only about half of the States Parties have adopted legislation to that effect and I appeal to all other States to do so as soon as possible.

The cooperation of States with the ICC is another key area where the existence of implementing legislation is of utmost significance. The ICC has no enforcement mechanisms of its own; the Court is completely reliant on States Parties to implement its decisions and to carry out judicial orders such as arrest warrants. Without the cooperation of States, the ICC will simply be a paper tiger with no claws.

The Rome Statute requires all States Parties to have national procedures in place for all forms of obligatory cooperation, and most States find that the adoption of specific legislation is the best way to adhere to that requirement. Again, however, the fact is that many States Parties are yet to do this, and I strongly encourage all States Parties to ensure that they have national procedures in place to enable effective and full cooperation with the ICC. Otherwise the Court will not be able to carry out its mandate properly.

One of the great achievements of the Rome Statute is the emphasis it puts on victims. First of all, victims can participate in the proceedings in their own right through legal representatives, even when not called as witnesses. The Statute is mindful of the particular interests of the victims of violence against women and children. In the countries where we have active cases, the ICC's outreach programme communicates actively with the local population, informing the victims of their rights and helping communities generally understand the ICC's mandate and proceedings.

The ICC has the power to order reparations to victims – including restitution, compensation and rehabilitation, and a separate Trust Fund has been set up to collect donations for this purpose. The Trust Fund for Victims also has a mandate to assist victims outside the context of the court proceedings, and it has already supported tens of thousands of beneficiaries.

Finally, the guarantee of a fair trial and protection of the rights of the accused have paramount importance before the ICC. The Statute incorporates the fundamental provisions on the rights of the accused and due process common to national and international legal systems.

Today, the ICC is a fully functioning court, delivering justice and deterring future violations. The ICC now has six active situations under investigation and three cases are on trial. 2011 is our busiest year yet. Five accused are currently in custody and three other persons have voluntarily appeared before the Pre-Trial Chamber. Furthermore, only yesterday the Pre-Trial Chamber issued a public decision summoning six suspects in the Kenya situation to appear before the Court next month, on the 7th of April.

Three States Parties - the Democratic Republic of the Congo, Uganda and the Central African Republic – have referred situations to the ICC themselves. The situations in Darfur, Sudan, and Libya were referred to the ICC by the UN Security Council. And one investigation – concerning post-election violence in Kenya – was opened by the Prosecutor on his own initiative and approved by the Pre-Trial Chamber. Therefore, all three mechanisms for bringing a situation before the ICC have now been used.

The Prosecutor is also gathering and analyzing information on alleged crimes in other situations on several continents, including Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea, Honduras, the Korean peninsula, Libya, Nigeria and Palestine.

You are probably aware that the ICC is not yet able to exercise jurisdiction over the crime of aggression, as it was not fully agreed at the Rome Conference of 1998. Last year a historic step towards fixing that was taken at the first Review Conference of the Rome Statute with the adoption of a definition of the crime of aggression. Before the amendments to the Statute will take effect, a new decision confirming them is required by the States Parties after 1 January 2017.

The Review Conference was convened by the United Nations Secretary-General Ban Ki-moon. "The old era of impunity is over", he said in his memorable opening speech, and he continued, "In its place, slowly but surely, we are witnessing the birth of a new Age of Accountability." But he also reminded that if the ICC is to have the reach it should possess, it must have universal support.

The climate for achieving universal ratification of the Rome Statute has improved greatly. A few years ago, many countries were reluctant to join the ICC due to the hostile attitude of the Bush administration. But, those days are far behind us and the US has adopted a new policy of positive engagement with the ICC. Senior officials of the Obama administration have confirmed to me time and again that the US in now way opposes any country's ratification of the Rome Statute.

Just last month the UN Security Council unanimously referred the situation of Libya to the ICC. This was an unprecedented expression of the world community's growing trust in the ICC. Even all the non-States Parties on the Council – such as China, Russia, the US and India – voted in favour of the referral.

All these developments show that the ICC is playing an increasingly active and central role in the global struggle against impunity. But to achieve a truly global reach, we need as many states to join the Court as possible.

People often ask me, what would ICC membership mean for their country? First of all, joining the ICC sends out a strong message of a state's commitment to peace, justice, human rights and the rule of law. These values and the goal of ending impunity for the most atrocious crimes known to humanity have already gathered the majority of the world's sovereign nations around the ICC.

Joining the ICC provides protection to each State Party's citizens against the gravest violations of the most fundamental human rights. If anyone intended to commit such crimes on your territory, you would have the backing of all the 114 States Parties in resisting such violence with the force of law.

The Rome Statute system makes the promise of peace and security possible through the joint effort of States Parties to rectify wrongs and deter violence, and thereby build a peaceful and just future.

Every new State Party can also contribute to the ICC's structure and operations by being able to nominate candidates for Judges, the Prosecutor, and other elected officials, and having an equal vote in these elections.

Furthermore, membership in the ICC opens an avenue for the lawyers and other professionals of a country to participate in the work of a court that is on the cutting edge of the development of international law, as citizens of States Parties are preferred in the recruitment of staff to the ICC.

Excellencies, Esteemed Parliamentarians,
Ladies and Gentlemen,

I wish to extend my strongest encouragement to you as you embark on your discussions during the next two days on the universality of the Rome Statute. Each one of you plays a role in the efforts to bring the humankind closer to a more peaceful and just future, a future free of atrocities that have plagued our history for far too long.

Parliamentarians for Global Action is one of the most important organisations working consistently for the advancement of the Rome Statute system, particularly in promoting the universality and national implementation of the Statute.

This Second Asia-Pacific Consultation on the Rome Statute is yet another manifestation of that longstanding commitment by the PGA and I wholeheartedly commend the PGA, the Parliament of Malaysia as well as the supporters and all the participants of this event. Knowledge is a precondition to progress and by your efforts to raise awareness about the Rome Statute you bring the ICC closer to the fulfilment of its mandate.

Thank you for your attention.