

**Cour
Pénale
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**International
Criminal
Court**

Judge Sang-Hyun Song
President of the International Criminal Court

The Role of the International Criminal Court

Speech to Committee on Foreign Relations,
Senate of the Republic of the Philippines

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Honourable Members of the Senate,
Ladies and Gentlemen,

I am grateful to Senator Legarda for her kind introduction and for inviting me to address you today.

I am honoured to be here before you today as President of the International Criminal Court, or ICC. Your nation experienced the struggle for human rights on its own soil, and then successfully emerged as a regional leader in the human rights movement. As a founding member of ASEAN, the Philippines plays an active role in the protection of peace and stability in Southeast Asia. It is a model in this region for a strong and vibrant democracy, which the Filipino people have fought hard for. The EDSA revolution of 1986 also showed us that human rights, accountability, and a strong sense of justice are cherished values deeply felt in the Filipino heart and soul.

I personally believe that it was largely because of these experiences that the Philippines became actively involved in the creation of the ICC and the international justice movement. As you are aware, the Philippines was actively engaged in the United Nations Diplomatic Conference on the Establishment of an International Criminal Court in 1998 and subsequently signed the statute in 2000.

You also sent an esteemed delegation to the Kampala Conference in 2010 where the Philippines affirmed its active support for the ICC, stating that the Rome Statute “is anchored on the policy enshrined in the Philippine Constitution valuing the dignity of every human person and guaranteeing full respect for human rights.”

The Philippines also showed its commitment to international justice and the fight against impunity when it enacted the “Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity” on 11 December 2009. This law mirrors the ICC’s Rome Statute, by defining and penalizing crimes under international humanitarian law, genocide and crimes against humanity, and even providing for reparations to victims.

The next step, honourable members of the Senate, is to ratify the Rome Statute. I woke this morning to encouraging media reports that His Excellency, President Aquino, had already signed the bill that would lead to ratification of the RS by the Philippines. If this turned out to be the case, I would naturally be delighted because one of my functions of the ICC President is to raise awareness globally about the Rome Statute in order to inspire every nation of the world to make an informed decision about joining the ICC.

As the first Asian President of the ICC, I feel a particular duty to further the ratification of the Rome Statute in Asia, which is clearly the most underrepresented region. Merely a fraction of the States Parties are from Asia, and only two of them - Cambodia and Timor-Leste - .from Southeast Asia.

Therefore I have made it a priority in my term as President to reach out to Asian countries. So far, I have travelled to Indonesia, Nepal, Bangladesh, and Laos 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 I hope that other Asian countries, including the Philippines, will follow soon.

I understand the Philippines has been considering ratification of the Rome Statute for some time. Should the Philippines decide to ratify, your great country would be joining a global movement of 114 States Parties to ensure that the worst crimes known to humanity are not tolerated. By ratifying the Rome Statute, the Philippines could 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.

Of course, a decision to join the ICC is entirely and solely a decision of every sovereign state. I can only offer encouragement, as well as information about the Court.

The ICC's history finds its roots 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.

But then progress towards international accountability and justice was paralyzed. 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, lawyers, 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 – including the Philippines – approved the ICC's founding document, the Rome Statute. Within four years, the ICC entered into force with 60 ratifications.

The crimes contained in the Rome Statute are those of greatest concern to the international community as a whole - genocide, crimes against humanity, war crimes, and the crime of aggression.

The ICC's jurisdiction is not universal. With the exception of Security Council referrals, it is limited to circumstances where a national of a States Party is accused of committing the crimes or the alleged crimes have been committed on the territory of a States Party.

Furthermore, the ICC does not have retroactive jurisdiction. It may only consider crimes committed after the Rome Statute has come into force in each respective States Party. For instance, if the Philippines were to ratify the Rome Statute today, the ICC would only have jurisdiction as of the 1st of June 2011 in the Philippines.

Above all, the ICC is a court of last resort. Under the principle of complementarity, the ICC does not replace national courts. The Court 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. States and their national jurisdictions retain the primary responsibility to prosecute crimes, and the ICC's jurisdiction is only activated if the domestic justice systems fail in their task.

Since the Philippines has already enacted a law which provides for the prosecution of crimes covered in the Rome Statute, the ICC would only play a role if the Philippines, for some reason, was unable or unwilling to go forward with domestic prosecutions for such crimes. This is the principle of complementarity.

One of the great achievements of the Rome Statute is the emphasis it puts on victims. These provisions allow victims to be substantially integrated into the ICC's proceedings 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.

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, Korean peninsula, Libya, Palestine and Nigeria.

Last year, the first Review Conference of the Rome Statute was held in Kampala, Uganda. The Conference was convened by 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."

The main agenda item was the possible amendment of the Rome Statute with respect to the crime of aggression which States were unable to agree upon at the Rome Conference in 1998. An agreement was reached on the last day of the Review Conference with the adoption of a definition of the crime of aggression. The ICC's ability to exercise jurisdiction over the crime of aggression will be subject to a decision taken by States Parties after 1 January 2017.

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 Parties to join the Court as possible.

As your country considers making the step to ratify the Rome Statute, you may be wondering what ICC membership would mean for the Philippines?

First of all, the Philippines would join in the global fight against impunity, and stand together with 114 nations from around the world in a collective movement for international justice and the rule of law.

Joining the ICC would provide protection to your nation and to your citizens against the gravest violations of the basic human rights known to humankind. If anyone intended to commit such crimes on your territory, you would not be alone in resisting such violence with the force of law.

Joining the ICC also sends out a clear signal of a country's commitment to peace. The Rome Statute system makes the promise of peace and security possible through the joint effort of States Parties to rectify wrongs, deter ongoing violence, prevent future crimes and thereby build a peaceful and just future.

Another positive consideration is that citizens of States Parties are preferred in the recruitment of staff to the ICC. Therefore, 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.

Ladies and gentlemen,

I would be particularly thrilled to welcome the Philippines as a new State Party to the ICC. That would be a historical step for your country as well as to the entire Rome Statute system. I would like to express my appreciation for many in this room who have actively engaged in your domestic debate about ratification, and I thank you for allowing me to address you today.