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**International
Criminal
Court**

**Judge Sang-Hyun Song
President of the International Criminal Court**

*Remarks at United Nations Security Council Open Debate
“PEACE AND JUSTICE, WITH A SPECIAL FOCUS ON THE ROLE OF THE
INTERNATIONAL CRIMINAL COURT”*

New York
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Mr President, Mr Secretary General, Excellencies, Members of the Security Council, ladies and gentlemen,

It is an honour to have this opportunity to address you in the International Criminal Court's 10th anniversary year. This is the first time that a President of the ICC has been invited to do so, and I would like to thank the Guatemalan Presidency of the Council for taking this initiative.

The ICC, together with the Rome Statute that underpins it, is the realisation of a compelling vision – that those responsible for the most serious crimes of concern to the international community must face justice. The Statute makes clear that the primary responsibility for prosecuting such crimes lies with States. The ICC is a court of last resort, called on to act only where States are unable or unwilling to do so.

The ICC was preceded by several temporary Courts and Tribunals, which have made a huge contribution to the development of international criminal law. But the vision behind the Rome Statute was to have a permanent Court which would be readily available whenever needed. It would deal with clearly defined crimes, and could develop over time a unified body of jurisprudence which would enhance legal certainty for those affected by its work.

The Rome Statute establishes a carefully considered institutional balance within the ICC. There is an independent Prosecutor, independent defence and an independent Judiciary. The Prosecutor decides which cases to pursue. But it is the judges who have the final say on whether to issue an arrest warrant or summons to appear, or whether there is sufficient evidence for charges to proceed to a trial.

Ten years from its foundation, the ICC is fully functioning at all levels. Judgment was given in our first trial earlier this year. A second case is close behind, and several others are at earlier stages in the judicial process. Our current cases arise from seven distinct country situations, three of which were referred by the States themselves and two by the Security Council.

The first ten years have seen a welcome growth in international support for the ICC. From the 60 States Parties required to bring the Rome Statute into force a decade ago, we have grown to a community of 121 States. More are joining every year, most recently Guatemala. Each step we take towards universality reduces the potential for impunity, and strengthens the prospect of justice for the victims of terrible crimes.

Today's discussion is about peace and justice. The relationship between the two has been the subject of debate since ancient times in all the world's cultures, and still continues. We have, however, taken a step forward in recognising that we need to pursue both. One must not override the other.

While the ICC's contribution is through justice, not peacemaking, its mandate is highly relevant to peace as well. The Rome Statute is based on the recognition that the grave crimes with which it deals threaten the peace, security and well-being of the world.

The Statute's objective is to ensure their effective prosecution at national or ICC level, putting an end to impunity, and thus contributing to the prevention of further crimes, as well as laying the foundation for a sustainable peace.

But I must be clear that as a judicial institution the ICC can only work on the basis of the law. It can only pursue cases where it has jurisdiction, and where the Prosecutor can obtain the necessary evidence to justify criminal proceedings.

In dealing with the cases before them, the parties and the judges make great efforts to understand conditions on the ground, but can only take these into account in so far as they are relevant to the factual or legal issues under consideration in the proceedings. The role of a criminal court is to establish guilt or innocence in accordance with the law. It is not for a court to take a view on political or other factors extraneous to the proceedings.

In saying this I fully recognise the challenges that may face the international community over how best to achieve peace and security in situations in which the ICC plays a judicial role. In addressing these challenges, however, it is important to remember that the ICC does not deal with ordinary crimes. The Rome Statute crimes are considered to be the gravest in the eyes of the international community; the victims are often numbered not in hundreds but in thousands; and the perpetrators therefore carry an especially heavy burden of personal responsibility for their actions.

This is one of the reasons why the drafters of the Statute included a provision enabling the Security Council, acting under Chapter VII of the UN Charter, to refer situations inside or outside the normal limits of the ICC's jurisdiction to the Prosecutor. As we all know, it has done this twice, in relation to Darfur and Libya.

Those referrals have been an important sign of the growing confidence of the international community in the ICC. In both instances, however, it is clear that follow-up to the referrals at the international level has sometimes been problematic, and the ICC has needed on occasion to inform the Security Council of specific instances of non-cooperation.

I will not comment further on the specifics of those referrals, as the Prosecutor reports to you regularly on them. I would simply like to underline that, once such a referral is made, the Prosecutor and the Judiciary are bound to act in accordance with the requirements of the Rome Statute, and to follow the referral wherever it leads them in accordance with those requirements. If the Prosecutor decides to launch an investigation and bring charges against individuals, the ICC has to pursue these proceeding as it would any other active case.

The Security Council, on the other hand, does have a potential emergency brake at its disposal, if it considers suspension of ICC action necessary in order to maintain or restore international peace and security. Under Article 16 of the Rome Statute, the ICC must comply with a request to defer investigation or prosecution made by the Council in a Chapter VII resolution.

For the ICC to effectively deal with situations referred by the Council under Chapter VII, it needs to be able to count on the full and continuing cooperation of all UN members, whether they are parties to the Rome Statute or not. This includes not only cooperation in investigations and the gathering of evidence, but also in areas such as the execution of arrest warrants and tracing the assets of suspects. In making any future referrals, it would be very helpful if the Security Council could underline this obligation of full cooperation, without which it is very difficult for the ICC to discharge the mandate the Council has given it.

An area of concern for many ICC States Parties has been the financial implications of these referrals. This complex issue is principally for UN members to consider. Clearly it will be difficult to sustain a system under which a referral is made by the Security Council on behalf of the UN, but the costs of any investigation and trial proceedings are met exclusively by the parties to the Rome Statute.

In this context I welcome the encouragement in General Assembly Resolution 66/262 of voluntary contributions by UN members to help meet the costs of ICC investigation and prosecution. The ICC stands ready within the framework of its Relationship Agreement with the UN to help with the implementation of any longer-term solution which would be workable on both sides.

Excellencies, ladies and gentlemen,

The Security Council and the ICC are two highly distinct bodies, with very different roles. But we are connected by the shared objectives of peace, justice and respect for international law, enshrined in both the UN Charter and the Rome Statute.

The worst nightmares of humanity lie at the intersection of our respective mandates. When massive crimes against innocent victims threaten international peace and security, both the Council and the ICC have an important role to play. And in the ICC, the Council may recognise a unique avenue for ensuring justice as a crucial element in wider international efforts.

In adopting the Rome Statute, States created important possibilities for the Security Council to use its Chapter VII powers in the ICC framework. The Council has the unique prerogative to create a specific judicial mandate for the ICC, to extend the Court's jurisdiction where it otherwise would not reach, and to require non-States Parties to cooperate with the Court.

Furthermore, a referral by the Security Council allows the ICC Prosecutor to open an investigation without waiting for judicial authorisation.

When the Council exercises these prerogatives, it is important for it to take due account of how the ICC will have to carry out any mandate it is given, and the cooperation that it will require to do so effectively.

Mr. President, Mr. Secretary-General, Excellencies, Ladies and Gentlemen,

The ICC warmly welcomes the trust which the Security Council has placed in it through its referrals.

We hope that the Council will actively support the ICC's ability to act on these referrals by ensuring compliance with the Council's resolutions and by underlining the need for full cooperation by UN members.

The ICC is grateful for the support we have received from the Security Council, such as the statement on the ICC staff detained in Libya last June.

The ICC welcomes the concept note circulated by the Guatemalan Presidency in preparation for today's debate, and looks forward to hearing the reactions of members of the Security Council to the ideas in it. The ICC is keen to maintain a close dialogue with the Security Council in the areas where our mandates intersect, not least with a view to ensuring the effective implementation of the relevant resolutions of the Council.

The International Criminal Court is a young institution by international standards, with plenty of work in progress and much still to learn. As we move forward, I can assure the Security Council that we will hold fast to the principles of prosecutorial and judicial independence and the rule of law.