

Sub Only "Check against delivery"

**Speech by Dr. B. Altangerel, Director of the Law and Treaty Department,
Ministry of Foreign Affairs of Mongolia, at the 5th Assembly of the State
Parties to Rome Statute of the International Criminal Court**

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Mr. Chairman,
Distinguished Delegates,
Ladies and Gentlemen,

The Parliament of Mongolia ratified the Rome Statute of the International Criminal Court (ICC) as one of its important legislative acts in 2002, participating in the simultaneous deposit at the special UN treaty ceremony to mark the 60 ratifications necessary for entry into force. Thus, Mongolia is becoming one of the founding members of the Court. Mongolia's early ratification of the Statute of the Court is connected with its belief that rule of law and justice should be the basis of world order, and that all States, big and small alike, should take active part in making this goal a reality. That is why it has supported the earliest establishment of the ICC as a permanent court that could substantially reduce or prevent impunity and enhance deterrence against perpetration of such heinous international crimes as genocide, war crimes and crimes against humanity.

Mongolia is one of the few Asian States to have ratified the Rome Statute, thus this opportunity to demonstrate a leadership role in the development of the Court within Asia has resulted in strong domestic political will for ICC implementation.

The people of Asia have witnessed many grave crimes in the course of history, including genocide, crimes against humanity and war crimes. These atrocities have taken millions of lives, while thousands of others are still suffering the trauma of these crimes. There is no effective international mechanism to prevent such crimes from occurring or to grant redress to the victims. In fact, even today, impunity remains a major obstacle for the redress of these crimes; not a single person responsible for the crimes has been prosecuted or punished in accordance with international law.

Such rampant impunity has meant that many Asian countries continue to be plagued with grave crimes, particularly those countries faced with military and civil conflict. The key reasons for the impunity are weak domestic legal systems, as well as a lack of political will to hold the perpetrators.

The ICC can help to reduce this impunity in two significant ways.

- Firstly, those responsible for grave human rights abuses, particularly heads of state and other senior officials, will no longer be able to use their own weak domestic systems as a shield to protect them from criminal liability.

- Secondly, the nature of the ICC involves the strengthening of domestic institutions.

In this way, the ICC can also give rise to more consensual forms of governance. Citizens and states may cooperate in new and more invigorating ways when both are aware of the limits to the use of power. What is defined by international law and implemented by an international court can have a powerful effect on the internal management of a nation. In particular, the possibility that internal jurisprudence may be developed in keeping with international law is now more likely than before.

Under the Rome Statute however, systematic and widespread torture and disappearance amount to crimes against humanity. Therefore, in enacting domestic legislation to correspond with the Statute provisions, widespread torture and disappearances need to be defined as crimes, with provisions for their punishment and compensation. However, domestic legislation will necessarily evolve to include individual acts of torture and disappearance as well, thereby strengthening the domestic criminal justice system.

In this regard, the following issues are on the top agenda of the Mongolian Government to consider; I am going to name just a few of them, especially those causing some challenges;

- Mongolia, in general must amend its existing domestic legislation to conform to the Rome Statute.
- Mongolian criminal procedure must be amended to take into account ICC cooperation requirements, and that law enforcement personnel will have to be trained in any new procedure.
- Training seminars for law enforcement personnel should be planned once cooperation mechanisms are developed.
- The Mongolian Constitution establishes a monist system and references automatic incorporation of customary international law, but that specific legislation is nonetheless advisable.
- The definition of genocide in the Rome Statute is already incorporated in Mongolian national criminal legislation, but that there is inadequate incorporation of crimes against humanity or war crimes
- This inadequate incorporation will have to be resolved through new legislation or amendments to existing legislation.
- The process of ICC implementation may present an opportunity to abolish the death penalty in Mongolia, although the Rome Statute clearly does not require

such an abolition in national law even for the ICC crimes of genocide, crimes against humanity and war crimes.

- While extradition of Mongolian nationals is forbidden by the Constitution, surrender of Mongolian nationals to the ICC is not. The ICC would not be considered a foreign jurisdiction because it does not replace national jurisdiction (due to complementarity), and because Mongolia took part in the drafting of the Rome Statute and is a member of the Assembly of States Parties.

- Specific cooperation provisions should be incorporated into Mongolian criminal law providing for arrest and surrender and other forms of cooperation.

- The Mongolian Criminal Code is new, thus MPs may be reluctant to make new changes, but that despite this there is a recognized need for changes to be made.

- Amending the Mongolian Constitution will be politically very difficult; amending the Criminal Code is more feasible.

From what I named, on the one hand, significant progress towards the relevant corresponding legislation has been made in Mongolia amongst those Asian countries having ratified the Rome Statute, but, on the other hand, still much needs to be done to make ICC fully operational. My country, as Party to the Statute, is prepared to work with others in making the Court fully operational and universal, in making it an effective judicial instrument for ending impunity for acts of aggression and other international crimes.

Mongolia believes that the functioning of the Court as an independent, effective and credible judicial body would strengthen and develop further the principles and norms of international humanitarian law and the rule of law in general. You can rest assured that Mongolia will continue its policy of promoting the rule of law and justice for all and making the Court a fair, effective and independent international judicial organ.

In conclusion, allow me to congratulate you, Mr. Chairman and through you all the States Parties to the Statute with the successful beginning of the work of the 5th Assembly.