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

**International Criminal Court and the European Union:
Challenges for the Promotion of International Justice and the Fight against Impunity**

Address to European Parliament Group of Parliamentarians for Global Action
European Parliament, Brussels, 15 October 2009

Good afternoon.

It is a pleasure and an honour to be here at the European Parliament to address you today. Senator Ewa-Henshaw, I am grateful that you could be here. I would like to thank the European Parliament Group of Parliamentarians for Global Action for inviting me to speak. In particular, I would like to thank Ms. Ek, Mr. Leinen, Professor Prodi, and Mr. Howitt. I know your schedules are full of discussions about the Lisbon Treaty and the future of Europe, so it is a credit to your dedication to international justice that you have found this time. PGA has proved to be a tremendously valuable resource for the International Criminal Court in its work all around the world. The Court has benefited from a close and cordial working relationship with Dr. Donat-Cattin and Ms. Ruiz-Verduzco. I am very pleased to see them here today.

It is fitting to come to the European Parliament to discuss the challenges for the promotion of international justice and the fight against impunity. The Parliament was instrumental in mobilising the forces that brought the ICC into existence. The Parliament and the ICC share a commitment with regard to the worst crimes: justice for the victims of atrocity, accountability for perpetrators, and post-conflict peace that is more durable because this accountability comes to be expected. This Parliament has played a leading role in urging the EU-wide embrace of these goals that the Court enjoys today. As we look together to the many challenges that lie ahead, I am eager to work with you to explore new avenues of cooperation.

Since the Rome Statute came into effect in July 2002, the Court has made steady progress. Investigations have been opened in four situations: the Democratic Republic of Congo; Northern Uganda; the Central African Republic; and Darfur, Sudan. Thirteen warrants of arrest have been issued. Four accused are in custody, and a further suspect has appeared voluntarily in response to a summons. Our first trial – that of Thomas Lubanga Dyilo – began in January and the Prosecution case is complete. A second trial is scheduled to start next month, and a third is moving toward trial next year.

Judges are hearing evidence and the Court is working to ensure that affected communities are informed about judicial proceedings. As an innovation in international criminal law, victims who are not themselves witnesses for the prosecution or defence can still have their voices heard in the proceedings.

Building on the achievements of the tribunals that came before us, the Court already may be deterring crimes. Although difficult to prove, according to some observers, including the UN, fear of prosecution may have led some would-be perpetrators to refrain from the commission of atrocities in the first place.

If true, this already would be a great achievement. But creation of a court of last resort cannot be the final word in the development of international criminal justice. We need a world-wide system of international criminal justice, and to achieve that we need your support.

Even acting at the best of its ability, the ICC represents only one aspect of the international criminal justice system. Too many atrocity crimes fall outside the jurisdiction of the ICC. And in any case, the Court will only ever have the resources to focus on the most serious cases within its jurisdiction. It will take all parts of the system, working together within their respective mandates, to have the maximum impact. Specifically, I see three main areas for common action:

- First, the reach of the Rome Statute system can broaden through the addition of new States Parties. This will not only extend the geographical reach of the Statute, but further enhance perceptions of its legitimacy.
- Second, the Rome Statute system can strengthen through enhanced cooperation, for example by arresting suspects and blocking their bank accounts. The ICC does not have the tools to enforce its own decisions. It is up to the States who created it and its other supporters to ensure that they are enforced. Cooperation should come to be regarded as routine, not an exercise of extraordinary political will.
- Third, the Rome Statute system can deepen by enhancing the capacity of national jurisdictions to deal with these issues at national level. The ICC is a court of last resort. It will only ever be able to handle a relatively small number of cases at a time. We must continue to ensure a realistic view of what the Court can do, but, more importantly, we must ensure that national courts are willing and able to act. They have the primary responsibility to investigate and prosecute crimes, not the ICC. The bulk of the work of developing national capacities will therefore fall to states, NGOs and intergovernmental organizations.

The European Union has made contributions in all of these areas and we profoundly thank you for this. In June 2003, the EU adopted a Common Position on the ICC, binding its Member States to “support the effective functioning of the Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute.” A subsequent Action Plan established a framework for implementing this policy.

In April 2006 the EU became the first regional organization to sign an agreement with the Court on cooperation and assistance. This allows the sharing of documents, principally with the Office of the Prosecutor, and sets the stage for the sharing of classified information. Beyond the assessed contributions of its Member States, the EU has provided critical financial backing for PGA and other effective civil society proponents of international

criminal justice. The Commission also generously funds internships at the Court and our Visiting Professionals Programme.

In its external relations, the EU has provided the Court with important political support. This has included encouraging new ratifications and accessions to the Rome Statute. The Court has benefited from inclusion of ICC language in the Revised Cotonou Agreement and several country-specific Partnership and Cooperation Agreements.

For all of this cooperation, the vocal support of the European Parliament has set the tone. This institution and individual MEPs have played an important part in ensuring that the Court has the support of the European Union as a whole. As we set about the enormous tasks that remain to broaden and deepen the reach of the Rome Statute system, your leadership is needed once again.

On the first of this month, it was my great pleasure to welcome the Czech Republic as the 110th State Party to the Rome Statute. Now all 27 EU Member States are States Parties. But even among these states, work remains to be done. Some of them have yet to adopt implementing legislation. Such legislation contains two important elements. One provides a concrete legal basis for cooperation with the Court. The other element entails domestication of crimes under the Rome Statute so that these can be prosecuted in national jurisdictions. The Court also relies on states for witness relocation and the enforcement of sentences. Especially now that multiple judicial proceedings are under way, this is an area of acute need. Four EU Member States have entered into witness relocation agreements, and two have entered into enforcement agreements with the Court. I am hopeful that other Member States will give serious consideration to the many requests the Court has issued in these areas.

Of course, in seeking to fulfil these needs, the Court does not only make requests of EU Member States, but of all States Parties. In its external relations, the EU can assist by encouraging States to adopt implementing legislation and enter into relocation and enforcement agreements.

The EU can also make a major contribution to animating the principle of complementarity at the heart of the Rome Statute. If existing rule of law programming for developing countries could include a module on international criminal justice, including the ICC, it would go a long way to advancing national capacities for credible investigation and prosecution of war crimes, crimes against humanity and genocide. Likewise, EU police training programmes could include elements to enable more developing countries to enter into witness relocation agreements. And existing or new EU support for the building or modernization of prison facilities could be accompanied by encouragement to enter into enforcement agreements with the Court.

The Parliament can also continue to lead in encouraging non-States Parties to ratify or accede to the Rome Statute. Beyond welcome formal resolutions of the Parliament in support of the Court, this can include various actions by individual MEPs. You have numerous interactions with colleagues around the world, so are very well placed to encourage those from non-States Parties to take up ratification or accession within their own systems. Perhaps you could even suggest that they join PGA. In the wider Europe we hope for your help in bringing Turkey, Ukraine, Moldova, Armenia and Azerbaijan on board. We already have 30 African States Parties – our largest regional group – but would like to have more, as well as more Asian and Middle Eastern countries.

Each country will make a sovereign decision about whether to join the Rome Statute. It is important that this decision is taken not on the basis of myths and misperceptions, but of facts. The Court strives to fight ignorance about the Statute which, unchecked, can corrode support for it. Especially in need of broader explanation is that we are a court of last resort, and only have jurisdiction when States are unwilling or unable to conduct credible investigations and prosecutions. Where this principle of complementarity is poorly understood, irrational fears can arise that the Court tramples on national sovereignty. We need your support to disseminate information about this and other key facts.

Beyond efforts to encourage non-States Parties to join the Rome Statute, dissemination of facts about the Court helps to assure that we receive adequate cooperation from States. We are a judicial institution operating in a political world. The ICC is politically neutral and judicially independent, but we are aware that the world around us – a world that we depend upon for support and cooperation – is not always that way. We rely on partners to help defuse potential real anger based on ignorance. This also disarms those acting out of ulterior motives who would exploit such ignorance in order to subvert support for the Court.

I realize that I have brought a lengthy wish-list with me to the Parliament today. I only dare ask so much because of our strong partnership and your commitment to the cause of international criminal justice. I am deeply appreciative of the extensive support that the European Union, and especially this Parliament, already have provided to the Court. The ICC offers a last hope for justice in response to humanity's deepest depravity. Together we can expand the reach of that hope, develop national capacities, and work toward the day when there is a realistic chance of justice for every atrocity. Then the ICC will underpin a system that fulfils justice's promise to deter crime. And few will then doubt that justice sustains peace.

Thank you.