

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Remarks at ICC workshop organized by Parliamentarians for Global Action

*Kathmandu, Nepal
2 December 2009*

Honourable Ministers,
Esteemed Members of Parliament,
Ladies and Gentlemen,

Good afternoon. It is a great pleasure to be in Kathmandu, and to be with you here today. I would like to thank the Members of the Parliament of Nepal in attendance. Your interest in the work of the International Criminal Court is very much appreciated. I would like to specifically thank the national group of Parliamentarians for Global Action, Peter Barcroft of PGA, and everyone else involved in facilitating this important roundtable meeting. I hope this roundtable can be as interactive as possible. I will keep my remarks brief in order to allow more time for questions and answers.

The ICC has been an interested, distant observer of the discussions in Nepal about potentially joining the Rome Statute of the International Criminal Court. Let me be clear: although I can offer encouragement, I recognize that ratifying or acceding to the Rome Statute is a sovereign decision for Nepal to make. It is my hope, however, that greater understanding of the ICC and its mandate will be constructive in informing the debate. That is the reason I have come.

I will briefly outline the Court's history, work and core principles.

In response to the terrible atrocities committed during the Second World War, trials were held in Nuremberg and Tokyo to hold accountable those accused of being most responsible. International criminal law took the place of violent retribution. There was a new recognition that the darkest crimes should be answered with fair, impartial trials.

But almost immediately the Cold War froze for decades the expectation of accountability for war crimes, crimes against humanity and genocide. The world was largely polarized into two opposing camps, and there were numerous proxy wars. Justice in these contexts could hurt the interests of one side or the other. And so there was justice for none. Mass atrocities in such places as Uganda and Cambodia went unpunished. The victims were ignored. Leaders did not expect to be held individually accountable. Peacemakers knew not to try. All too often, the atrocities continued.

The Cold War eventually did end. Human capacity for barbarity did not. Now, however, the international community could agree on justice for some victims and some perpetrators. There were new trials, for atrocities committed in such places as Rwanda, Bosnia, and Sierra Leone. This new factor complicated peace processes. It led some to suggest that peace and justice were at odds.

Yet politicians and diplomats began to avoid those accused of grave crimes. Presidents and rebel leaders began to consider the reality of legal accountability. For some victims, perhaps, seeing justice done meant they would not seek violent retribution. Uncomfortable truths revealed in court testimony perhaps led some ex-combatants to question the causes for which they had fought, and made them less likely to fight for them again.

Building on these encouraging developments, countries began to work on creating a permanent tribunal, which had already been suggested in 1948. In the new atmosphere, after the Cold War, the Rome Statute, our founding document, was signed in 1998. Already in 2002 enough countries had ratified it to allow the ICC to become operational.

I will briefly review some of the Court's main features.

The Court's jurisdiction is limited to the most serious crimes of concern to the international community as a whole. The ICC currently has jurisdiction over the crimes of genocide, crimes against humanity and war crimes.

The jurisdiction of the Court may be triggered by a State, the UN Security Council or the Prosecutor of the Court, under certain conditions.

The Court's jurisdiction is not universal. Except for situations referred by the Security Council, it is clearly limited to the most recognised bases of jurisdiction. The Court only has jurisdiction over nationals of States Parties or crimes committed on the territory of a State Party.

Furthermore, the Court's jurisdiction applies only to crimes committed after the entry into force of the Rome Statute on 1 July 2002. When a state joins the Rome Statute, the Statute applies from the date of joining onward. In other words, if Nepal joins, the Rome Statute would be a safety net for the future.

Above all, the fundamental principle underpinning the ICC is that it is a court of last resort. Under the principle of complementarity, the Court does not replace national courts. It does not have the ability to override properly functioning national courts. It must further, as a matter of law, defer to genuine investigations and prosecutions of national courts. Finally, the Court can act only where a State is unwilling or unable to carry out an investigation or a prosecution. Otherwise the ICC is obliged to refer the situation to national courts.

The ICC's mission is purely judicial. The ICC is an independent institution. It is not part of the United Nations system or any political organ. The independence of the Court, its 18 judges and the Prosecutor is protected under the Statute. The Statute also guarantees a fair trial and the protection of the rights of the accused.

Lastly, the Rome Statute allows victims to be substantially integrated into the Court's proceedings. Victims may participate in proceedings even when not called as witnesses. The Court also has the power to order reparations to victims – including restitution, compensation and rehabilitation. The need to take into account the particular interests of victims of violence against women and children is also specifically built into the Rome Statute.

Over six years, the Court has become a fully functioning judicial body. The Prosecutor has opened four investigations, in the Democratic Republic of Congo, Uganda, Central African Republic, and Darfur, Sudan. Three of these were referred to the Court by the governments themselves. The Security Council referred the situation in Darfur to the ICC in March 2005.

This month the Prosecutor requested approval from the Judges to open a fifth investigation, in Kenya. This is the first time he has sought to open an investigation on his own initiative. There have been 13 arrest warrants issued. One suspect in the Darfur situation voluntarily appeared before the Court without need for an arrest warrant. Four detainees are currently in custody. Our first trial began in January, and a second has just begun. A third trial is scheduled to begin in April.

I am very pleased with the Court's progress. There are currently 110 States Parties to the Rome Statute. But the goal of accountability for the perpetrators of genocide, crimes against humanity and war crimes is a goal that can be embraced by all humanity. I would like to see the Rome Statute achieve global reach.

Nepal can play a major role in advancing the fight against impunity by becoming the first state in South Asia to join the Rome Statute. In doing so, it would also help to address the problem of Asia's under-representation in the Court. At this time only 14 of the 110 States Parties are in Asia.

What would membership in the ICC mean for Nepal? For the international community, it might well signal this country's unified determination to put a dark chapter of its history behind it. There are other considerations too. States Parties have the right to make nominations when there are vacancies for Judges and the Prosecutor, and to have an equal vote in these elections. In May, a major Review Conference will be held in Uganda to look at the development of the entire Rome Statute system and proposed amendments to the statute. Nepal can be a full participant in this conference, but only if it joins the Rome Statute by March 2010.

I would be thrilled to welcome Nepal as a new State Party in the coming months. But let me reiterate that this is a decision for you to make alone. Many in this room have been active participants in discussions on possible accession to the Rome Statute. I am eager to hear your views and answer your questions. Thank you very much.