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Judge Sang-Hyun Song
President of the International Criminal Court

The International Criminal Court: A Global Commitment to End Impunity

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Thank you very much for the invitation to speak here today; it is a great pleasure to be here in the beautiful city of Istanbul at Bilgi University. I would like to thank the University for hosting me today as well as the Coalition for the International Criminal Court and the International Federation of Human Rights who have organised today's event. I came to Turkey for the FIDH conference which will take place tomorrow and I am delighted that I am able to complement that by a visit to this outstanding university.

I always try to accept invitations to talk to students – while I work today as a judge and President of the International Criminal Court, I am, at heart, a law professor and I have spent the majority of my career in education. I love talking to students, and being inspired by their energy and enthusiasm.

I find it particularly exciting to be in Turkey today – this country, and this city, has always held a unique role as the bridge between east and west, and today you are taking on new influence and power as an economically dynamic and politically stable democracy in a region that is too often riven with turmoil. It is an exciting time to be young and Turkish – many of you will shape the future of your country and of the world. Some of you will become diplomats, others lawyers or judges, and many of you will be leaders in your fields.

I am here today in order to talk about the institution that I am proud to serve as a judge and president, but before that I want to focus straight on the most important word in my title today: impunity. What does this mean?

According to the United Nations, Impunity simply means the impossibility of bringing the perpetrators of violations to account. However this does not fully capture the profoundly damaging impact that cultures of impunity have on societies. Where impunity reigns, the rule of law can never truly take hold and long term peace and justice can never be secured for people today or for future generations.

Excellencies, ladies and gentlemen,

The International Criminal Court is the product of a shared global commitment - a promise that has been made and broken too many times throughout history: every time we see the most horrific crimes committed, the world says “never again”, and promises that the next time will be different, and we will not have to apologise again to victims for action that is too little, too late.

This promise was made in the aftermath of the Second World War when the world came together to ensure that there could never again be such a horrific war. The United Nations and International Court of Justice were established to enable cooperation between states and the peaceful settlement of disputes. In addition the Nuremberg and Tokyo Tribunals were established to try the architects of the horrific crimes committed during the Second World War. Unfortunately the idea at the time to establish a permanent international criminal court was a sad victim of the Cold War rivalry, and for a half century the idea lay dormant.

In the aftermath of the Cold War, as a response to the hideous crimes committed in the former Yugoslavia and Rwanda, the United Nations Security Council established two *ad hoc* tribunals to try the perpetrators of these crimes, and ensure that impunity would not be allowed to endure in these countries. Now, nearly twenty years later these tribunals are nearing the end of their work, and have made a significant contribution to peace, reconciliation, and rebuilding of these damaged societies.

In 1998, however, the international community came together to fulfil a promise that had been fifty years in the making. Delegates from 160 countries gathered in Rome to negotiate an international treaty that formed the statute for the world's first permanent international criminal court. On the 17th of July 1998, the Rome Statute was adopted, finally giving life to the commitment to end impunity.

Four years later, far more quickly than even the ICC's most ardent supporters anticipated, the sixtieth ratification was deposited, and the ICC was established as a new, permanent international organisation, independent from the United Nations or any other body. The new court was given a mandate to investigate and prosecute genocide, war crimes, and crimes against humanity.

This mandate is the legal representation of the international community's promise, its commitment, to the victims of these crimes that impunity will not be tolerated. However, reality is never as simple as aspiration, and the ICC has had a turbulent first decade. It has at times faced significant challenges to its work, and some of the judges who first arrived in The Hague thought that the Court might not survive. Today, I am pleased to be able to say that those fears proved unfounded. The ICC has shown that it is able to do its work with professionalism and integrity, and it enjoys the strong support of the international community.

Today, the ICC has eight situations before it, two of which were referred to us by the UN Security Council – Darfur and Libya, two that the Prosecutor initiated in Kenya and Côte d’Ivoire, and four referred to us by states themselves – Uganda, the Democratic Republic of the Congo, Central African Republic, and Mali.

Last week, the Comoros Islands referred the situation relating to the events of May 2010 on the ship Mavi Marmara. The Office of the Prosecutor will now conduct a preliminary examination before deciding whether to open a full investigation or not.

The ICC has completed its first two trials with one conviction and one acquittal issued for cases concerning the use of child soldiers under the age of 15. Both of these verdicts are currently under appeal, as is the decision regarding reparations for the victims of crimes in the Democratic Republic of the Congo.

Other trials are progressing well, and numerous cases are at the pre-trial stage – it is an extremely busy time for the Court.

After more than a decade of experience, it is now clear that the ICC exists at the heart of a global movement that demands an end to impunity for these egregious crimes. This movement extends far beyond the seat of the Court in The Netherlands.

The United Nations is the other major actor in this movement to end impunity. There is a common misconception of the ICC that it is part of the UN. While the two are close in many respects, the ICC is an entirely independent institution. Delegates in Rome in 1998 recognised that peace and justice were interlinked, and they constructed a relationship between the two institutions that was aimed to be mutually reinforcing such that both peace and justice could be achieved.

I have mentioned the UN Security Council several times already, and it is this body which is the primary body through which the UN-ICC relationship is played out. The Security Council has the ability to refer situations to the Prosecutor of the ICC, and has done so twice in the cases of Darfur, Sudan, and Libya. In the most recent referral, of Libya in 2011, the Council voted unanimously with fifteen positive votes including the United States, Russia, and China.

Furthermore, the Rome Statute creates a system of international justice whereby responsibilities are split between the ICC and States. The Court has the mandate to investigate, prosecute and try suspects of crimes, but for arrest warrants to be implemented, evidence to be provided, witnesses to be protected, and sentences to be enforced, States, and at times the UN Security Council, must assist the ICC.

However, the responsibilities of states go far beyond this, since the ICC has been designed from the ground up with the relationship between States and the Court in mind. Unlike the UN ad hoc tribunals, the ICC has been constructed as a court of last resort. The primary responsibility for investigation and prosecution of Rome Statute crimes lies with states, whether genocide, war crimes or crimes against humanity. I cannot stress enough that this is both the right and the responsibility of each state. Ultimately the commitment to end impunity is given life by states, and can only have meaning when states commit to investigate and prosecute these crimes when committed by their nationals or on their territory.

This means that states parties to the Rome Statute have an obligation to ensure that their national justice systems are capable of conducting proceedings into alleged crimes of this kind. This notion has been receiving a great deal of attention in the Assembly of States Parties to the ICC and there is increasing awareness of the link between the ICC and development. The UN is taking an increasingly proactive role in this area, ensuring greater linkage between the rule of law and international justice.

This shows how the real power of the ICC is not in the Court alone, but in an entire system of international justice incorporating international organisations, states, and civil society organisations. With every year that goes by, the normative consensus around the world grows strong that impunity in the case of the most heinous crimes cannot be tolerated and that justice must be done when mass atrocities have been committed.

Excellencies, ladies and gentlemen,

I have described to you what this commitment to end impunity means and how it works, but clearly there are limitations and we do not yet live in a world in which justice is always done when and where it should be. This is a reflection of the fact that, while the membership of the ICC has grown dramatically over the past decade and a half, still a third of the world's sovereign states comprising a majority of the world's population are not parties to the Rome Statute, including Turkey.

As President of the ICC, I have invested a lot of effort into encouraging more States to consider joining the Rome Statute system. The goal of universal membership is important for several reasons. Each new State Party strengthens and broadens the ICC's jurisdiction, increasing its credibility not only for holding perpetrators of mass atrocities accountable, but also for the prevention of future atrocity crimes.

Furthermore, the ICC is also responsible for a substantial normative evolution, with the ideals of peace and justice woven through the fabric of the institution. The more states ratify the Rome Statute, the stronger these principles grow and the more entrenched these norms become, progressively narrowing the basis for war criminals to justify their actions.

Whether to accede to the Rome Statute or not is a sovereign decision for every state to make, but today I want to state my firm belief that Turkey should take all the necessary steps to accede to the Rome Statute without delay, taking its rightful place alongside the 122 existing members of the Assembly of States Parties.

Turkey is no stranger to the ICC – your country participated actively in the Rome Conference in 1998, and the preparatory commission for the ICC. More recently, Turkey was well represented as an observer at the Kampala Review Conference in 2010, and delegates from Turkey are active members of the Friends of the ICC group in New York. Furthermore, Prime Minister Erdogan stated in 2004 that Turkey would accede to the Rome Statute, and since has accepted recommendations in the United Nations Human Rights Council to consider accession. Let me highlight, therefore, some of the reasons why I believe that Turkey would benefit from taking this important next step and joining the International Criminal Court.

The region in which we stand now – the broader Middle East and Islamic world – is one of the most under-represented parts of the world in the family of States Parties to the Rome Statute. To join would show that international justice truly is international with support from every region in the world.

By acceding to the Rome Statute and joining the ICC Turkey would be sending a strong signal that it shares the commitment of nations and people across the world to end impunity for the worst international crimes. In addition, Turkey's accession would be a powerful statement of solidarity with the victims of the gravest crimes and its commitment to international law and the protection of fundamental human rights and dignity.

Membership of the Rome Statute system provides protection for every State Party's population and territory against the potential threat of future crimes. Anyone – regardless of their nationality – who would commit a crime under the Rome Statute on the territory of a State Party, would risk possible prosecution before the ICC and arrest by any of 122 States Parties around the world.

As a State Party to the Rome Statute, Turkey would enjoy the equal right, along with all other States Parties, to nominate candidates for positions of judge or prosecutor at the ICC and would have the right to vote in those elections. Joining the Rome Statute would also give your nationals preferential treatment in recruitment for ICC positions over nationals of States not Party to the Statute.

Importantly, it would allow Turkey to shape the future of international criminal justice by participating in all negotiations and decisions of the Assembly of States Parties. For example, Turkey would have the opportunity to make proposals on any amendment to the Rome Statute or the rules of procedure.

Allow me also to highlight two important facts. Firstly, I have already mentioned the principle of complementarity which means that the ICC cannot override national judicial systems when they are working properly. Where states are willing and able to investigate and prosecute alleged crimes the ICC cannot intervene.

Secondly, the Rome Statute is not retroactive. Accession to the Rome Statute does not give the ICC any powers whatsoever to investigate events of the past. For each country that decides to join, the ICC has jurisdiction only with respect to crimes committed after the entry into force of the Rome Statute for that State, unless that State has previously made a declaration accepting the Court's jurisdiction. This means that the ICC is a court that will always look forwards, not backwards in order to dredge up whatever may have happened in a country's history.

Excellencies, ladies and gentlemen,

Before finishing my remarks today let me depart for a moment from my role as the President of the ICC, and speak merely as a citizen of Korea.

When war broke out in my country in 1950, a number of states from different parts of the world answered the call of the United Nations to provide assistance to Korea. Turkey was among the 16 countries that provided troops, sending nearly 15,000 young Turkish men all the way around the world over the course of the conflict.

The Turkish troops are known to have been some of the bravest soldiers in the war, and fought many of the hardest battles. As a result, over 700 of them never returned home alive, sacrificing their lives to achieve peace – and it was that peace that laid the foundation for the prosperity that South Korea today enjoys.

I want to take this opportunity to thank your nation from the bottom of my heart. I assure you that to this date, every Korean remains grateful to Turkey for what it did to help our nation. Let me say to everyone in your country today - Teşekkür ederim!

Solidarity among nations remains as important today as it was 60 years ago. But I hope that in the future we do not have to sacrifice lives to help other nations. If we act wisely, we can prevent large-scale suffering before it takes place. That is the goal that we must seek to achieve.

Excellencies, ladies and gentlemen

I have discussed the global commitment to end impunity with you today, and told you why I believe that your government should take the necessary steps to accede to the Rome Statute.

At the end of the day, however, the global commitment to end impunity does not come from governments and elites sitting in their capitals, it comes from ordinary people – men, women, and children around the world who believe in the simple and powerful truth that when crimes are committed, justice must be done. This belief has guided the creation and the development of this new form of justice over the past decade and a half, and today we are able to say with conviction that we have a real opportunity to see that commitment realised. I am calling on Turkey to stand with us, to stand with the victims of crimes, to stand with the people of the world and make this commitment to join the International Criminal Court.

Thank you very much.