



**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



**Judge Piotr Hofmański  
President of the International Criminal Court**

**Keynote speech at the Opening Session of the Annual Conference of the  
Law Association for Asia and the Pacific (LAWASIA)**

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Virtual platform

Dear Mr Chunghwan Choi, President of the Law Association for Asia and the Pacific,  
Distinguished fellow lawyers,  
Ladies and gentlemen,

It is a great honour for me to deliver this keynote speech in my capacity as President of the International Criminal Court, and I thank President Choi for inviting me to do so.

Indeed, I feel privileged to have this opportunity to address the membership of LAWASIA, one of the foremost regional associations of lawyers promoting adherence to the rule of law.

The occasion is all the more timely, as the activities of the ICC in Asia have increased in recent years, while at the same time the Asia-Pacific region remains severely underrepresented both among the ICC's States Parties as well as the Court's staff.

I will return to that later in my remarks, but please allow me first to make some general observations on the ICC's origins, and where the Court stands today.

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First of all, we may ask ourselves: why was the ICC created?

The answer lies in our shared sense of humanity. Who among us would not feel anguish at the sight or the thought of helpless fellow humans being subjected to mass murder, torture and rape, or destruction of their property and cultural monuments and the deportation of entire communities because they are deemed to be of the wrong ethnicity, or religion?

These are just some examples of the horrific crimes which humanity has witnessed countless times in history, often associated with armed conflict. And more often than not, such acts went unpunished, and victims received no redress for their suffering.

The international community came together with the determination to put an end to that impunity, to provide justice to victims, and to help prevent such atrocities from happening again.

The Nuremberg and Tokyo tribunals, the Genocide Convention and the Geneva Conventions, and the *ad hoc* tribunals for former Yugoslavia and Rwanda were some of the critical stepping stones on the road to creating the ICC.

The final negotiations took place under the auspices of the United Nations. And on the 17<sup>th</sup> of July 1998, the Court's founding treaty, the Rome Statute, was adopted, with 120 States voting in favour.

The crimes contained in the ICC Statute – genocide, crimes against humanity, war crimes and the crime of aggression – were already widely recognised as crimes under international law. But what the Statute did was to create a judicial mechanism for the enforcement of that criminalisation, when national courts are for whatever reason unable or unwilling to do so.

By performing that role, the ICC has become an integral part of the international structure for upholding the rule of law. As such, it also plays an important part in the achievement of Agenda 2030, in particularly Sustainable Development Goal 16. With its deterrent effect, the Court contributes to the prevention of mass violence.

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Ladies and gentlemen,

The ICC's development from a Court on paper into a bustling international institution has been remarkable.

From its inception, the ICC has been seized of 30 cases involving a total of 46 defendants. Ground-breaking judgments have been issued on crimes such as the use of child soldiers, attacks on civilian population, sexual slavery, and the destruction of cultural and religious monuments.

Today, there are 16 different situations under investigation at the ICC, on several continents.

There are three ways in which a situation of alleged crimes can come to the ICC. One is by referral of the State concerned, or another State Party or multiple States Parties to the Statute.

A second route is that the United Nations Security Council refers a situation to the ICC Prosecutor – who will, however, make his own independent assessment of the alleged crimes.

And a third route is for the ICC Prosecutor to open an investigation on his own initiative, *proprio motu*, with authorisation by the Court's judges.

This was the case, for instance, with the situations in Afghanistan, in Bangladesh/Myanmar, and in the Philippines, which is one of the most recently opened investigations at the ICC.

Indeed, the Court's work has expanded from the first investigations referred by several African governments to a much wider geographical scope, with the latest investigation opened in the situation in Venezuela, just two weeks ago.

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Ladies and gentlemen,

In the development of international criminal justice, the ICC's Rome Statute placed unprecedented emphasis on victims. Victims are truly at the heart of the Court's activities.

They can participate in the proceedings with the assistance of counsel who are funded by the ICC's legal aid system.

And victims have the right to apply for reparations which the judges can order against a convicted person. These reparations, which are implemented by the ICC's Trust Fund for Victims in cooperation local with implementation partners, can be individual or collective, and take the form of compensation, rehabilitation, restitution, and symbolic measures.

The Trust Fund's reparative activities have already benefited hundreds of thousands of victims and their family members.

This has been possible thanks to donations from public and private donors, since in most cases the convicted persons at the ICC are indigent.

I appeal to all of you to consider donating to support the important work of the ICC's Trust Fund for Victims.

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Ladies and gentlemen,

I referred earlier to the fact that the Asia-Pacific group of States is severely underrepresented in the ICC system. Only one third of the countries in the Asia-Pacific have joined the Rome Statute, less than half of what that number is for other regions.

In the order of joining the Rome Statute, the 19 States Parties from the Asia-Pacific are: Fiji, Tajikistan, Marshall Islands, Nauru, Cyprus, Cambodia, Jordan, Mongolia, Timor-Leste, Samoa, Republic of Korea, Afghanistan, Japan, Cook Islands, Bangladesh, Maldives, Vanuatu, State of Palestine, and Kiribati.

As you can see, this leaves huge gaps in your region where the ICC has no jurisdiction.

I find this very regrettable.

As I see it, people everywhere should enjoy the same legal protection against genocide, crimes against humanity, war crimes and the crime of aggression. Empirical research shows that joining the Rome Statute does add to the deterrence of such atrocities.

But joining the ICC is not only about protecting your own population. With its commitment and cooperation, each new State Party also strengthens the international criminal justice system as a whole and gives more hope to victims everywhere in the world.

Indeed, joining the ICC is a powerful expression of solidarity with the victims of the gravest crimes. It is also one of the most tangible steps that a state can take in support of international law, and a rules-based international system. Multilateralism is at the heart of the Rome Statute.

By joining the Rome Statute, a State gains a seat in the Assembly of States Parties, where it can participate with the rest of the world in decisions that shape the future of international criminal law.

And each State Party can both propose and vote on amendments to the Rome Statute. The Statute is a living document, as we have already seen with the evolving catalogue of crimes included in it. For instance, several small island States have recently spoken forcefully in favour of adding ecocide in the ICC's jurisdiction. I do not take any position on that proposal, but I mention it as an example of the kind of issues that may be debated in the Assembly of States Parties.

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Sometimes lack of information stands in the way of ratification. One of the common misconceptions is that joining the Rome Statute opens the door for the ICC to look into events of the past. That is not so: the Statute contains extremely clear provisions specifying that ratification of the Rome Statute has no retroactive effect. The ICC is above all a forward-looking institution, a structure of the rule of law built for the well-being of current and future generations.

Another common misconception is that the ICC holds States responsible. Obviously that is not so, because the ICC is not a human rights court. The ICC can only prosecute natural persons for their individual criminal responsibility. And that is done under a rigorous

system with multiple checks and balances. Fairness of the proceedings and judicial independence are among the highest values for the ICC as a judicial institution – and for me as its President.

Finally, there may be a fear that the ICC will undermine the status of the country's own judiciary, or interfere with its internal matters. But that is not the case. The Rome Statute is based on the principle of complementarity, which means that domestic jurisdictions retain the primary right and responsibility to investigate and prosecute the crimes under the ICC's jurisdiction. The ICC can intervene only if the national authorities fail to do that. As long as the domestic prosecutors and courts address any such cases in a genuine manner, the ICC cannot intervene – that is the law under the Rome Statute.

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Ladies and gentlemen,

There is also another aspect related to ratification of the Rome Statute, which may be of particular interest to this audience.

Namely, nationals of States Parties have a significant advantage when it comes to career opportunities in international criminal law. This applies to junior lawyers as well as the most experienced professionals.

A State Party can put forward their top lawyers as candidates for leadership positions at the ICC. You cannot become an ICC judge unless you are a national of one of the States Parties.

And in recruitment for the many exciting jobs at the ICC, nationals of States Parties are always preferred over similarly qualified candidates from non-States parties.

So this is one more reason for bar associations to urge their governments to join the Rome Statute, so that lawyers are not deprived of a major career path in international law.

And from my own experience I can attest that the ICC really is a very rewarding workplace.

Above all, it is rewarding because the importance of the Court's mandate for victims and for the international community serves as a constant motivation.

But it is rewarding also from a more professional point of view. International criminal law is still a relatively young branch of international law, and we are often breaking new legal ground in our cases.

What is fascinating about the ICC is also the fact that lawyers from starkly different legal systems have to find a way to work together, to understand each other, despite the differences in their legal education and professional background.

The Court's criminal process is *sui generis*, combining elements from different legal systems of the world. The rules of procedure and evidence of the ad hoc tribunals for the former Yugoslavia and Rwanda provided some inspiration for the drafters, particularly in showing that it is possible to mix elements of civil law and common law systems into a perfectly workable mixed procedure.

In some aspects the ICC's procedure is of course entirely different from the ad hoc tribunals, in terms of victim participation, which did not exist at the ICTY and the ICTR. And indeed it is one of the ICC's features we are very proud of.

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Mr President of LAWASIA,  
Distinguished fellow lawyers,  
Ladies and gentlemen,

It has been a pleasure and a privilege for me to address this opening session of your annual meeting. The ICC attaches great importance to its interaction with the legal communities in all regions of the world. We hold cooperation with prominent organisations of lawyers such as LAWASIA in particularly high regard.

I invite all the bar associations represented as well as individual lawyers in attendance to look out for opportunities to contribute to international criminal justice, which is an exciting and evolving area of international law.

I truly hope to see Asia and the Pacific to participate more robustly in the ICC system. It is the whole world's court. You can be part of it.

Thank you for your attention.

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