

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

**Role of Asian Lawyers in the Emerging System of International  
Criminal Justice**

*24<sup>th</sup> Annual Conference of the Law Association for Asia and the Pacific (LAWASIA)  
Grand InterContinental Hotel, Seoul  
10 October 2011*

Excellencies, Ladies and Gentlemen,

Good morning. I would first like to thank LAWASIA and President Lester Huang for giving me the opportunity to deliver the keynote speech at this Annual Conference, which is truly a great honour. I would also like to commend the organizer, the Korean Bar Association, one of the founding members of LAWASIA, for convening this important event.

My fellow lawyers, we share many commonalities; to begin with, we spent a large portion of our lives struggling with thick and heavy law books, day and night. Our time and efforts spent, however, were not merely for proficiency in law, but rather for our understanding of the role that the law plays in a society.

This goes hand in hand with your membership in LAWASIA, an organization faithfully dedicated to promoting the rule of law, justice, and protection of human rights throughout the Asia-Pacific region since its establishment in 1966.

Excellencies, ladies and gentlemen,

The topic of this year's LAWASIA Conference is "*Asian Lawyers: Where are we and Where are we headed?*"

When I became President of the International Criminal Court in 2009, I posed myself a similar question: what is the role of Asia, and Asian lawyers, in the new system of international criminal justice that has emerged during the last two decades?

Unfortunately, the answer to that question was not reassuring – frankly, it seemed to me that Asia was seriously lagging behind in international criminal law.

I made it a priority for my three-year term as President to address this alarming situation. Since then, I have used every opportunity to reach out to the legal communities, governments, parliamentarians, and other important decision-makers in our region.

Some encouraging developments have taken place in the meantime, including the decisions of Bangladesh, the Maldives and the Philippines to ratify the Rome Statute of the International Criminal Court. But even then, **less than a third of the countries in the Asia-Pacific are States Parties to the Rome Statute**, whereas the corresponding figure is **more than 70 % for the rest of the world!**

Can Asia afford to fall behind like this? This is not only a question of Asian lawyers being deprived of important opportunities at the cutting edge of international law. It is also a question of people in Asia being deprived of legal protection against the most serious crimes known to humanity – genocide, crimes against humanity, war crimes and the crime of aggression.

Let us remind ourselves how the concept of international criminal law was born, and why it is necessary.

You could say that it all began here, in Asia, more than two thousand years ago. The writings of Sun Tzu in China, and the Laws of Manu - or *Manusmriti* – in India laid down some of the earliest foundations of humanitarian rules for armed conflict, such as the humane treatment of the sick, wounded, prisoners and civilians, and respect for religious institutions in occupied territories.<sup>1</sup>

The customary laws of war developed over many centuries, and started to take the form of international humanitarian law after the advent of the International Committee of the Red Cross in 1863, and with the Hague and Geneva conventions that followed.

However, the tragic events of the 20<sup>th</sup> century showed that, in the absence of effective enforcement mechanisms, such conventions alone were not sufficient to protect innocent civilians from falling victim to terrible crimes in times of war, or during internal upheavals.

---

<sup>1</sup> Cherif Bassiouni, *International Criminal Law: Sources, Subjects and Contents*, pp. 19-20.

On this day 67 years ago, 10 October 1944, eight hundred innocent children were gassed to death at the Auschwitz concentration camp just because they were Roma children. In Cambodia, hundreds of thousands if not millions were killed because they were seen as enemies of the regime. In Rwanda in 1994, over 500,000 people were killed within about 100 days just because they were perceived as the wrong ethnicity. I could go on citing atrocities committed in every region of the world. Men brutally murdered, women raped, children deprived of future.

How can our history be riddled with this kind of brutality in such magnitude? How can we put an end to it?

In the twentieth century, there has been growing recognition that those who commit mass atrocities must be held accountable for their actions, regardless of their rank or official position. This was one of the fundamental principles behind the International Military Tribunals set up after the Second World War in Nuremberg and Tokyo to try the architects of the shocking atrocities committed by Nazi Germany and its allies. The seed of international criminal law had been planted.

Sadly, the ensuing cold war rivalry drove international criminal justice into the background. The violent use of armed force continued to plague the humankind in many corners of the world. The Asia-Pacific region was no exception. It witnessed its share of injustice, atrocities, and human suffering in the course of history. I personally experienced the horrors of war as a small boy during the battle for Seoul City, and the people closest to me paid a heavy price for the conflicts that took place in my home country.

It was not until the end of the cold war that the project of international criminal justice gained a new momentum through the creation of the *ad hoc* tribunals for former Yugoslavia in 1993 and Rwanda in 1994, and renewed efforts by lawyers, diplomats and civil society to create a permanent international criminal court.

The truly historic moment came in Rome, in the summer of 1998. Delegates from all regions of the world converged in Rome to cast their votes on a court fifty years in the making. 120 states voted in favour of the proposed treaty, which became the Rome Statute of the International Criminal Court.

The ICC was given jurisdiction for four groups of heinous crimes. First, the crime of **genocide**, which is a massive violation characterised by the specific intent to destroy a national, ethnical, racial or religious group by killing its members or other means.

Second, the ICC can prosecute **crimes against humanity**, which are serious violations committed as part of a large-scale attack against any civilian population. The 15 forms of crimes against humanity listed in the Statute include offences such as murder, rape, imprisonment, enforced disappearances, enslavement – particularly of women and children, sexual slavery, torture, apartheid and deportation.

Third, the Statute contains 50 forms of **war crimes**, with a distinction between international and non-international armed conflicts. War crimes listed in both categories include, for instance, the use of child soldiers; the killing or torture of persons such as civilians or prisoners of war; intentionally directing attacks against hospitals, historic monuments, or buildings dedicated to religion, education, art, science or charitable purposes.

Finally, the fourth crime falling within the ICC's jurisdiction is the crime of **aggression**. At the time of the adoption of the Rome Statute, States could not agree on the definition of this crime, but this shortcoming was overcome last summer at the first Review Conference of the Rome Statute. Even though the ICC cannot actively exercise jurisdiction over the crime of aggression for at least another six years, another historic step has been taken toward criminalizing aggressive war-making.

The four clusters of offences included in the ICC's jurisdiction did not find their way to the Rome Statute by accident. In the words of the preamble to the Statute, these are crimes that "threaten the peace, security and well-being of the world".

In less than four years, 66 States had ratified the Rome Statute, which entered into force on 1 July 2002. The first permanent international criminal court was born. I had the honour to be among the first 18 judges, in fact the only Asian judge among those that were sworn into office on the 11th of March 2003 in The Hague, Netherlands.

When the first judges of the ICC, gathered in the temporary premises of the Court in The Hague, we naturally felt privileged to be among the first pioneers to build this new institution that carried a promise of a better future for humanity. But we were also very uncertain whether the ICC would survive the hostility and suspicion it faced from different directions.

Fortunately, those fears were unfounded. Today, the ICC has 118 States Parties and it is a fully functioning judicial institution, taking central stage in the global struggle against impunity and the protection of fundamental human rights and dignity. The UN Security Council's unanimous referral of the Libya situation to the ICC, with the positive votes of China, the US, Russia and India, was a strong sign of the growing international confidence in the ICC, and the changing attitudes of big powers.

The ICC currently has seven country situations under investigation or prosecution, involving gruesome allegations of mass crimes such as murder, rape, sexual slavery and the use of child soldiers. The first judgement is expected by the end of the year, two trials are ongoing and several others in preparation. Five accused are currently in custody and nine other persons have voluntarily appeared before the Pre-Trial Chamber. 2011 is the ICC's busiest year yet, and our workload continues to grow.

Excellencies, Ladies and Gentlemen,

I wish to stress that the ICC's purpose is not to replace national justice systems, but only to complement them as a court of last resort. The very first article of the Rome Statute emphasizes that the work of the Court "shall be complementary to national criminal jurisdictions". This means that your national jurisdictions have the primary duty to investigate and prosecute Rome statute crimes. The ICC is a kind of a safety net that can only be activated if States are unable or unwilling to carry out genuine investigations or

prosecution. But even then, the ICC will only have the resources to focus on the high-ranking suspects and the most serious crimes.

Consequently, it is essential to strengthen the national capacity to investigate or prosecute the Rome Statute crimes. This is where you as legal experts will be called on to make crucial contributions. Criminal lawyers, prosecutors, judges, and other legal professionals can play an important role in increasing attention on atrocity crimes within the framework of national jurisdictions.

Being at the focal point of all the legal professionals in Asia Pacific, LAWASIA has encouraged lawyers to give full consideration to the human rights implications of the cases they deal with in their national courts as well as to consider implications of international conventions. This Annual conference provides timely opportunity to open a discussion on incorporating Rome Statute crimes into domestic law. This would greatly contribute to promoting uniformity in criminal law in the Asia-Pacific in accordance with the objectives of LAWASIA.

Let us not forget that all Asian countries, without exception, are States Parties to the four Geneva Conventions of 1949, and have thereby accepted to criminalise the grave breaches defined in those treaties, and to prosecute the perpetrators of such grave breaches – which form, in fact, a major part of the war crimes contained in the Rome Statute.

So as you can see, the question is not so much whether we agree that the offences under the Rome Statute should be criminalised, the question is rather, what are the efforts we should take to prevent impunity for such crimes.

Together with the principle of complementarity, another intriguing aspect of the Rome Statute is the ICC's reliance on States Parties to carry out its mandate. The ICC does not have its own law enforcement forces or prisons at its disposal. From the opening of an investigation to arrests and the enforcement of a sentence, the Court needs the cooperation and judicial assistance of the competent authorities of the States parties at every step of the way. A key aspect of such cooperation is domestic legislation allowing the States Parties to provide effective assistance to the ICC when requested.

Excellencies, Ladies and Gentlemen,

As president Shin has rightly pointed out, the Asia-Pacific region has achieved remarkable economic growth in the last few decades and has emerged as a significant player in the global market. I firmly believe that the Asia-Pacific region can likewise be a significant player in the global struggle against impunity.

Let us remember that the concept of international criminal justice is not at all foreign to the Asia-Pacific region. Asian countries participated in the creation of the ICC and the *ad hoc* tribunals for former Yugoslavia and Rwanda, and judges from Australia, Bangladesh, China, Cyprus, Fiji, Japan, Jordan, Malaysia, Pakistan, Samoa, Singapore, South Korea, Sri Lanka and Turkey have served on the judicial benches of at least one of these courts.

In East Timor, Special Panels were set up with the help of the UN to bring to justice those responsible for the egregious violence that occurred in 1999. Extraordinary Chambers in the Courts of Cambodia were established to deal with mass killings and other crimes committed under the Khmer Rouge regime. In Bangladesh last year, a tribunal was set up to prosecute those accused of committing war crimes during the country's war of independence in 1971.

In light of these and many other experiences, I believe the Asia-Pacific region can and should make an essential contribution to the further development of international criminal justice.

Right now, the Asia-Pacific is the fastest growing regional group of States Parties to the Rome Statute. In addition to Bangladesh, the Philippines and the Maldives that I already mentioned, for instance Malaysia has indicated it will join the ICC soon, and Vanuatu has taken steps in that direction. Let us encourage more states to sail with the wind that is blowing across the Asia- Pacific in favour of ratification of the Rome Statute.



Excellencies, ladies and gentlemen,

You as the finest legal minds in Asia Pacific can be, and should be, a leading force in this process. Upon ratification, your states will be able to contribute to the ICC's structure and operations by nominating candidates for Judges, the Prosecutor, and other elected officials and by having an equal vote in these elections. One of the latest members of the ICC family, the Philippines, already nominated Senator Miriam Defensor-Santiago as a candidate for the election of six ICC judges in December this year.

Apart from the top positions, the ICC offers provides many other job opportunities for lawyers, for instance in the office of the prosecutor or one of the defense teams, or as a law clerk working for the judges. I strongly encourage qualified Asian lawyers to apply for such vacancies, especially applicants from States Parties, since they are given preference under the ICC's recruitment regulations.

It is of great concern to me that the ICC only has 6,3% of professional staff from the Asia-Pacific group of States, which is far less than our target figure of 18,3%. This means that there simply have not been sufficient numbers of highly qualified applicants from the Asian States Parties. Let us make sure that this situation is rectified!

Excellencies, Ladies and Gentlemen,

After nine years of being an ICC Judge, I have no hesitation in saying that the Court has earned its place among the permanent international institutions charged with questions of peace, justice and security. The Rome Statute system has become the world's instrument of choice for dealing with mass atrocities and bringing justice to the victims. The operation of the Rome Statute is based on principle of complementarity and state cooperation, a clear indication of respect for state sovereignty. States have nothing to fear. In this regard, the question is not why should you join the Rome Statute? But rather why shouldn't you?

Let us remember that;

- Our efforts to end impunity contribute to the prevention of further crimes.
- The prevention of mass atrocities is crucial for strengthening the peace and security of international community.
- And international peace and security is a precondition for the well-being of each one of us.

In this process, everyone has a role to play, and your role as legal experts is a particularly important one. It is my sincere hope that when you return to your respective countries following this conference, you will help re-energise the debate on acceding to the Rome Statute. Or, if your country is already a State Party, you will help raise awareness and encourage your legal community to participate actively in matters of international criminal law.

The time to act is now. People often look up to the word ‘tomorrow’, but the meaning of tomorrow is simply the day after today. There is always more we can do today to secure a better tomorrow. ICC is doing exactly that, and Asia needs to decide whether it will be on the inside, or the outside of that development.

Excellencies, distinguished delegates, dear colleagues, ladies and gentlemen,

I wish to send my sincere wishes for the success of this annual LAWASIA conference, together with a heartfelt message of hope to men, women, children, throughout the Asia-Pacific region and beyond.

Thank you very much for your attention.