

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

*Keynote remarks at ICTJ retreat on complementarity*

*Greentree Estate, New York  
28 October 2010*

Excellencies,

Ladies and Gentlemen,

First, I would like to congratulate the ICTJ and the other organisers for convening this event, which gathers an impressive range of participants to discuss a very timely topic. I wish to extend my sincere gratitude to David Tolbert for inviting me to address this distinguished audience.

Allow me to begin my remarks by going back in time.

In 1950, war broke out in my home country, Korea. I was nine years old. For three months, during the battle for Seoul city, my family was hiding in an underground bunker. Every day, I was responsible for emerging from the bunker to bring food. To do this, I had to walk about 16 kilometres every day. I will never forget passing hundreds of bodies, lying on the streets. I still remember the terrible smell in those hot summer months.

At times I encountered street battles, but each time I was fortunate enough to get away. I was too young to be mobilized for war, but old enough to realize its horrors.

Sixty years later, in my capacity as the President of the International Criminal Court, I met with victims in Uganda and the Democratic Republic of the Congo as part of the Court's outreach activities. Some were former child soldiers, grappling to rebuild their lives. Other victims were missing arms or legs which had been intentionally cut off.

How can such cruelty be committed by man against man in the 21<sup>st</sup> century? Does humanity never learn?

My encounter with the victims saddened me greatly, but it also reinforced my commitment to international justice and the goals of ending impunity and achieving universal deterrence of the most serious crimes of international concern.

The Review Conference held in Kampala clearly confirmed the strong conviction of States and other stakeholders that the Rome Statute and the ICC are invaluable tools for reaching these goals.

But the Kampala discussions also pointed out that other tools are badly needed, too. Most importantly, the domestic justice system of each State should be so well equipped to deal with ICC crimes that they serve as the main deterrent worldwide. The ICC would then merely be a safety net.

That is the well-known principle of complementarity which underlies the Rome Statute. However, the Statute provides no roadmap for making complementarity work in practice. The Statute recalls the duty of each State to exercise its national criminal jurisdiction to prosecute international crimes, but it does not elaborate on that subject any further.

We know that in a national setting, effective positive complementarity requires both a good legal framework and the necessary capacity in terms of skills and resources for investigations, prosecutions and trials.

Again, the Rome Statute does not provide any guidance as to how the legal framework and the judicial capacity should be built at the national levels. The Statute focuses on the ICC, not the wider system.

If States, as the main actors on the international plane, are truly intent on ending impunity and preventing atrocities which destroy millions of lives, they have to see that wider picture. The system of international justice is not ready yet and the work has to continue. States have to look beyond the ICC and “think outside the box”, or “think outside the Court” in this case.

One benefit of this approach is that the strengthening of national jurisdictions to deal with international crimes is a goal shared by States Parties and non-State Parties to the Rome Statute alike. Creating the appropriate legal framework in a national context may be called ICC implementing legislation in one country and a war crimes act in another country but the purpose will be largely the same.

The Kampala discussions indicated that it is essential to put in place a system for effective exchange of information regarding national implementation of the Statute and the strengthening of national jurisdictions. Many States are willing to share their experiences with others. NGOs such as Parliamentarians for Global Action, the ICRC and of course the Coalition for the ICC and its national member organisations have worked hard for many years to promote complementarity and national implementation of the Rome Statute. Model laws have been drafted to facilitate the task. Several intergovernmental organisations provide valuable support rule of law development around the world.

At the same time, there is huge need for technical assistance in many States on Rome Statute issues, and this has been confirmed countless times in my discussions with various actors, most recently at a Commonwealth meeting on the ICC in London.

It is obvious that some kind of a coordination system or a “clearing house” is needed to match the supply and demand of technical assistance for the national implementation of the Rome Statute and the strengthening of national capacity.

The Review Conference requested the Secretariat of the Assembly of States Parties to facilitate the exchange of information and assistance in this respect, but the Secretariat cannot perform wonders with the meagre resources that it has at the moment. It is very important that States continue to pay close attention to this issue.

Mainstreaming Rome Statute issues into rule of law, judicial reform and human rights development programmes would go a long way in furthering positive complementarity. For that to happen, it is crucial to bring the rule of law and development sectors closer to each other. This event has taken an excellent first step by gathering many of the key actors around the same table.

The United Nations in particular plays a central role, under the leadership of the Deputy Secretary-General as the head of the Rule of Law Coordination and Resource Group created in 2007. Madame Deputy Secretary-General, we place a lot of hope in your able hands!

The ICC itself is of course glad to support the strengthening of national capacity by acting as a catalyst and a facilitator where possible, but our possibilities are limited. The fact is that the ICC is neither a development agency nor a training academy and does not aim to be one. We are a court and as you know, our judicial docket is quite full.

Ladies and gentlemen,

Having seen the incredible energy that victims have after all the suffering that they have gone through, surely we must find the strength and resources to redouble our efforts to ensure justice for them and to prevent the needless suffering of others. The stakes are high – the future of humanity is in question.

The Rome Statute and the ICC present a truly historic step in humanity's efforts to end needless suffering, but they are only part of the solution. It is important to maintain the momentum created in Kampala and to follow up on the conclusions and pledges made there.

Let us be creative in forging new links between justice and development as well as between the international and national justice systems. Let us be decisive in turning our ideas into action. Let this event be a milestone on the path towards the creation of a comprehensive international system to end impunity and to prevent the worst atrocities known to mankind.

Thank you for your attention.