



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Président
The President



Judge Sang-Hyun Song
President of the International Criminal Court

Remarks to the High Level Panel
on the Achievements and Challenges of the International Criminal Court

Seminar on the Ratification and Implementation of the Kampala Amendments to the Rome
Statute of the ICC

“Turning the Kampala Amendments into Reality”

Brdo, Slovenia, 15 May 2014

Excellencies, Ladies and Gentlemen,

It is a great pleasure to be here today before such a distinguished audience. On behalf of the International Criminal Court, I would like to extend a special greeting to each one of you this afternoon.

Please allow me, first and foremost, to thank the Slovenian Ministry of Foreign Affairs, the Permanent Mission of Liechtenstein to the United Nations, and the Global Institute for the Prevention of Aggression for spearheading this timely seminar.

I am glad to see representatives from so many countries of the region gathered here to discuss issues of common concern to the international community as a whole.

Let me also express my gratitude to the government of Slovenia for hosting us during these two days.

The Kampala amendments are, of course, part of the evolving Rome Statute system, and I find it fitting that we start the Seminar by taking stock of the ICC's achievements so far, and of the challenges that we face in our joint quest for global justice.

To properly consider the achievements of the ICC, I think we have to look at things in a historical perspective.

Just 25 years ago, who would have thought that crimes against humanity, war crimes and genocide would be prosecuted by an independent, permanent international institution? And that investigating such crimes would become the expected norm, instead of being a rare exception?

Here, for me, lies the monumental achievement of the Rome Statute – it set up an entirely new paradigm of international criminal justice, which has made accountability for atrocity crimes an integral aspect of the rule of law that simply cannot be ignored any more.

Now the world knows that perpetrators of the gravest crimes need to be and can be held accountable – in the first place by national courts, and failing that, by the ICC.

There are already signs of a growing deterrent effect of the ICC's permanent presence. Ministers from some African States have personally told me that the threat of prosecution by the ICC was a crucial factor that helped prevent large-scale violence surrounding elections in those countries.

Another big achievement of the ICC's first 12 years is the fact that we have turned the ICC from a Court on paper into a fully functioning judicial institution. Trials for the gravest crimes before a permanent international court are now a reality.

There are active cases at all stages of proceedings, from pre-trial to appeals. Eight situations are under investigation. Over twenty cases have been brought before the Court, involving more than thirty suspects in total.

All triggering mechanisms of the ICC's jurisdiction have been activated: five African States have referred situations to the ICC; the UN Security Council referred two situations to the

Prosecutor, and two investigations were initiated by the Prosecutor, with judicial authorisation. We have even seen non-States parties accepting the ICC's jurisdiction – in the case of Côte d'Ivoire, and most recently, Ukraine.

The judicial proceedings undertaken at the ICC have not always been easy. The Judges and the parties have been applying a new legal system in practice for the first time. As a result, we now have a large body of jurisprudence on many fundamental legal issues, and I am proud to say that the Judges have successfully safeguarded the fairness of the proceedings at the ICC, as a cornerstone of the Court's integrity. Whoever has closely followed the trials at the ICC will have seen that the judges are truly independent and impartial, and they are the ones who have the last say in the courtroom.

Victims have a very important role in the ICC's daily work. The ICC's Registry has so far provided legal representation for more than 7,500 victims who were granted the right to take part in the proceedings. The first judicial decision on victim reparations has been issued, and it is currently on appeal.

Furthermore, the Trust Fund for Victims has already supported over 110,000 individuals through physical and psychological rehabilitation, material support and other forms of humanitarian assistance.

Even though there are wounds that may never heal, this model of restorative justice helps communities overcome a violent past and build a more stable future.

All in all, looking at the past 12 years as a whole, I have no hesitation in saying that the advent of the ICC and the broader Rome Statute system has changed the way the world thinks – and increasingly also, acts – in relation to grave international crimes.

That said, the ICC must under no circumstances become complacent – and indeed the Court remains on a constant learning curve.

As soon as the first trial was finished, I asked the First Vice-President of the ICC to set up a Working Group on Lessons Learnt, to collect proposals from all the judges on how we could improve and expedite our procedures. The Lessons Learnt exercise has already produced several procedural amendments, and many more are under consideration.

Other organs of the ICC are also working on improvements. The Office of the Prosecutor has recently adopted a new strategic plan, making adjustments on three levels: policy, resources, and organisational performance – particularly to ensure the high quality of investigations and prosecutions.

The Registry of the ICC is going through a revision process which intends to optimize the management of this essential support organ of the Court.

As you can see, the ICC is strongly committed to continuous development. In my view, the constant quest for enhanced efficiency and performance is part of the good governance of a public institution such as the ICC. While international justice is absolutely vital for global security and the rule of law, it is not cheap, and we must seek to use wisely and responsibly the resources States invest in the ICC.

Let me now turn to other challenges, specifically those that are external to the ICC itself.

The first of these is cooperation. The ICC would be powerless without the cooperation of States in areas such as access to crime scenes, obtaining documentary evidence, locating witnesses, and arresting suspects.

Most of the time, States extend good cooperation to the ICC, but not always, and the lack of cooperation can seriously diminish the ICC's ability to deliver justice.

It is important not to lose sight of the fact that cooperation with the ICC is a treaty obligation, and it must be treated as such.

Another key issue I would like to highlight is the role of States Parties in safeguarding the judicial independence of the ICC.

The ICC is subject to high expectations, intense debates and, at times, political attacks due to the sensitive nature of the subject matter that the Court deals with.

As a judicial body, the ICC is not well equipped to address politically motivated attempts to undermine its institutional legitimacy. We need the States Parties to speak up strongly in defence of the Court.

At the same time, States must fully respect the ICC's independence, and they must refrain from exerting political pressure on the judicial proceedings, for example by expressing expectations that the Court should rule in a certain way. Even to urge the ICC to show "flexibility" is potentially problematic, particularly in circumstances where the Court is bound by provisions of the Rome Statute, adopted by the States Parties themselves.

But if and when any improper political pressures are made, other States should publicly assert the fundamental principle of the ICC's independence. I see a particular role for the group of Eastern European States in this regard. And I hope that you will be more vocal in the Assembly of States Parties and other international forums in defending the Court's independence.

However, if the States Parties identify real shortcomings or room for improvement in the ICC's processes, they can of course legitimately exercise their collective legislative powers through the Assembly of States Parties – but they should take extreme care to do so in a manner that does not undermine the foundations of the Rome Statute system.

At all times, the Statute, Rules, Regulations and other legal instruments of the ICC should form a coherent whole. The balance of the legal framework should not be disturbed lightly.

A seemingly small change to one aspect of the legal system will often require adjustments to other parts as well – this is one of the conclusions that have emerged from the Court's Lessons Learned exercise so far.

This is why a holistic and systemic approach to any legislative amendments is very important. This is something I urge the States Parties to always keep in mind.

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Excellencies, Ladies and Gentlemen,

The force of international criminal justice has come a long way. Yet we are aware that there is much room for development, and the ICC is fully committed to improving and refining its functioning.

But the future success of the ICC is also closely linked to the actions of States, and of the Assembly of States Parties.

We need the steadfast commitment of the States Parties to support the work of the ICC, to provide full cooperation and the necessary resources for its operations, while respecting the Court's independence.

Here is what I often say to diplomats: the ICC is unlike any other international organisation that you know. Unlike in some organisations, activities cannot be turned on or off according to the availability of funds, or changing political priorities. Once a judicial process starts before the ICC, it will take its own course.

The ICC is a legal institution that must be accountable to its States Parties but in its prosecutorial and judicial capacity must remain independent of their influence or control. At the same time, we have to acknowledge that the Court operates in a political world in which States are the main actors.

Properly managing this relationship of the ICC and States, the relationship between the judicial and the political, is, in my view, essential for securing the success of the ICC in the years to come.

Thank you for your attention.