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**The rule of law in Korea
A journey towards justice and peace**

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by

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I would like to extend my sincere gratitude to President Gianni Buquicchio, and staff members of the Venice Commission for inviting me to speak at this plenary session. Today, I'll talk about the past, present, and future of the rule of law in Korea. As you may well know, Korea's monarchy was overthrown by the Japanese colonial rule, followed by the Korean War. Then Korea has achieved rapid industrialisation and democratisation. I believe that looking at how the rule of law has changed amid these dynamic chapters of the Korean history presents us valuable lessons.

1. Formal rule of law (or “Rule by Law”) in Korea

Korea recovered its independence from Japanese colonial rule in 1945. In 1948, the Constitution of the Republic of Korea was established and included modern concepts of the rule of law. However, Korean presidents and politicians repeatedly amended the Constitution only to strengthen their authority or extend presidential terms. Thus they did not respect the people as mature citizens of a democratic society. From time to time, the basic rights stated in the Constitution had no actual effect and were easily disregarded by the legislative, executives.

The situation was the same with constitutional adjudication. Between the first Constitution of 1948 and the last major amendment of 1987, the Constitutional Committee or the Supreme Court had the authority to review the constitutionality of statutes. However, these institutions rarely declared any statutes unconstitutional. Such failure of the independent judicial bodies to review the constitutionality serves as an evidence of the perfunctory rule of law.

2. Substantive rule of law in Korea

However, the darker the night, the nearer the dawn. As a result of people's continuous protests against dictatorship and a series of large-scale demonstrations calling for democracy across the nation in 1987, the Constitution was amended to create a direct presidential election system allowing only a single presidential term. The amendments also resulted in the establishment of the Constitutional Court.

The Court founded in 1988, serves the important function of implementing substantive rule of law. Over the past 30 years, the Court heard around 33,000 cases and rendered about 1,500 of them unconstitutional. These decisions served as wake up calls to the administration and legislature, reminding them of their limits and duty to fulfill constitutional values. The Court employed its jurisdiction to implement substantive rule of law by setting out the boundaries of statutes that infringe upon fundamental rights, and revitalised the principles of rule of law, proportionality and equality.

To name a few notable decisions, the Court has struck down government practices including: Presidential Emergency Decrees that justified the arrest without warrant and punishment of persons who criticized former constitutional amendments; a blanket ban on outdoor assembly at night; deprivation of voting rights of prisoners; statutes embodying deeply-rooted discrimination against women; poor prison conditions that compelled inmates to sleep on their side next to each other; ban on labor unions' contributions to politicians; and pre-censorship on commercial movies.

We find from the history that those in power are tempted to stray from the law and act arbitrarily or in their own political interests. The key function of the rule of law is to prevent this from happening.

Last year, the Constitutional Court of Korea was summoned to defend this core of the rule of law in the form of an impeachment procedure. Former President Park. She allowed her shadowy confidante to secretly influence state affairs; intervened in the fundraising of certain foundations for her own benefit; and leaked confidential government documents to her. Citizens, outraged by the scandal, took to the streets at night with candles in hands and joined in moonlight assemblies peacefully for 17 weeks, demanding President Park to step down. When she refused to resign, the National Assembly voted in favor of her impeachment. On 10 March 2017, the Constitutional Court reached a unanimous decision that she should be removed from her office, recognizing her misconducts during her presidency as a grave violation of the Constitution and the law. The Court acknowledged that her actions impaired the principles of democracy and rule of law. Also, the benefits of safeguarding the Constitution is so grave that it greatly outweighed the national loss resulting from her removal.

Even today, the Court's endeavors are ongoing. The standing issues such as whether conscientious objection to mandatory military services shall be protected under the Constitution, and whether abortions shall be decriminalized, have been repeatedly presented to the Court. Also, a debate on updating our 30 year old Constitution is under way for meeting the recent standard. The Korean citizens' strong will to defend the Constitution, together with the Court's courage and effort, have been the building blocks of the real and effective Constitution.

3. Justice based on humanity

This was a quick overview of the journey towards the "rule of law" in Korea. In retrospect, we can find that the rule of law means binding those in power to act within legal boundaries. Hence, how can we assure that authority stays within such legal boundaries? I would like to share two lessons from our experience in the Korean constitutional justice.

First, having laws is not enough, the rule of law can be realized only in a country that people actually observe laws based on the constitution. The Korean Constitution between 1948 and 1987 had sufficient provisions to protect human rights. However, when the national leaders and politicians disregarded those provisions with no consequence, the provisions were rendered ineffective and the rule of law was lost. A country that has laws but fails to observe them is no different from a person who has many recipes but does not cook. He would always be hungry no matter how many recipes he has.

Second, justice based on humanity should be embodied in the law. It is important to design a legal system that can realize justice. However, we must not forget that the justice we pursue through the law should be based on humanity and affection for fellow people.

For social minorities, formal equality may not be sufficient to compensate for the uneven playing field they are situated in. Right from the start, they suffer from the lack of resources and they are disadvantaged by their environment. Active measures are required to give them a head start to accomplish substantive equality based on humanity.

Laws enacted with malicious intention against a certain group of people may lead to effective destruction of humanity. Japanese colonial rule over Asia and Nazi Holocaust left a permanent scar of destroyed humanity. In order to prohibit such abuse, we shall use law, with its encompassing reach, only to channel "justice that is based on humanity." Only then can justice sail with the wind of universality and spread throughout the world. This is the principle of the substantive rule of law. Thus the only question left is how can we practice humanity? Unfortunately, the mindset to practice humanity is not a virtue we are naturally

born with. Rather, it will take root in us only when we practice it every day. Humanity is something we can realize right here and right now.

4. Hope for the rule of law in the whole Korean peninsula

Beyond imagination, we are now witnessing the multilateral talks concerning denuclearization of North Korea. Is rule of law able to play a role in peace-building? Some people say that justice and peace cannot go hand in hand. But I can say with confidence that sustainable peace can only be achieved through justice. I do believe we will see this happen for real in the Korean peninsula.

Thank you for your attention.