

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT RATIFICATION AND IMPLEMENTATION IN ASIA: SOME PROSPECTS AND CONCERNS¹

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Distinguished guests and participants, ladies and gentlemen,

On behalf of the Coalition for the International Criminal Court, let me extend my thanks to the organizers of this event, FORUM-ASIA and INSEC for initiating this workshop on the ICC. I remember few years ago when we did a similar workshop also in this venue. At that time we were hoping Nepal would already join the ICC. Now we are here again with a stronger hope that finally Nepal will join the international community in the movement to stop impunity and in aspiring for international justice and peace.

I was tasked to update you on the status of ICC in Asia. As you know, Asia as well as the Middle East are the least represented regions in the Court now with Europe, Africa, the Americas and Oceania having substantial number of states that have joined the Court. One hundred states, more than half of the world's nations are states parties to the Rome treaty of the ICC with Mexico as the latest country that ratified.

Status of ICC in Asia

Sub-Region	# of States	Signature	Ratification (r) Accession (a)	Implementation	BIA	APIC
SEA	11	2	2	2 stalled	7	
SA	8	1	1	1 on-going	8	
NEA	5		2	2 on-going	1	2
CA	6	2	1		5	
Total	30	5	6	3 on-going 2 stalled	21	2

There are four aspects of ICC process included in this update: 1) signature, 2) ratification or accession, 3) signature on the Bilateral Immunity Agreement (BIA) and 4) ratification of the Agreement on Privileges and Immunities of the Court (APIC).

Of the 30 countries we are working on in Asia, only six have ratified and acceded (Cambodia, Timor Leste, Republic of Korea, Mongolia, Afghanistan and Tajikistan). Five have signed but have not yet ratified (Philippines, Thailand, Bangladesh, Kyrgyzstan and Uzbekistan). Of the countries that ratified, 5 are in the process of drafting their implementing legislation at different stages. The most advance is Republic of Korea where

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the final text is due for approval by the National Assembly. Cambodia, Mongolia, Afghanistan and Timor Leste are still in the process of drafting their implementing law. Though still in the process of preparing for ratification, Japan and Lao PDR have drafted their laws as a pre-requisite for ratification as provided for by their respective laws.

Ironically, with only 6 ratifications, a total of 21 states have signed the Bilateral Immunity Agreements with the USA.

ICC Process in Southeast Asia

State	Signature	Ratification (r) Accession (a)	Implementation	BIA	APIC
1. Brunei Darussalam				*	
2. Myanmar (Burma)					
3. Cambodia		11 Apr 2002	Drafting stalled	<i>Signed - 23 June 2003 Ratified - 18 May 2005</i>	
4. Indonesia			HR law passed in 2001 incorporating 3 ICC crimes		
5. Lao PDR				24 Dec 2003	
6. Malaysia					
7. Philippines	28 Dec 2000		IHL bill pending in Congress	14 May 2003 <i>(executive agreement)</i>	
8. Singapore				17 Oct 2003 <i>(executive agreement)</i>	
9. Thailand	8 Oct 2000			3 July 2003	
10. Timor Leste		6 Sept 2002 (a)	Drafting stalled	<i>Signed - 23 Aug 2002 Approved by the Council of Ministers - Oct 2003</i>	
11. Vietnam					
Total	2 signatures	2 Ratifications	3 Processes on-going	7 BIAS	

Particularly in Southeast East Asia, out of the 11 countries belonging to ASEAN, including Timor Leste, 7 have so far signed. Vietnam, Myanmar, Malaysia and Indonesia continue to withstand pressures from the USA to sign such agreement. In South Asia, ALL have signed.

ICC Process in South Asia

State	Signature	Ratification (r) Accession (a)	Implementation	BIA	APIC
1. Afghanistan		10-Feb-2003		20 Sept 2002 <i>(executive agreement)</i>	
2. Bangladesh	16-Sep-1999			17 Aug 2003	
3. Bhutan				Signed - 2 May 2003 Ratified - 12 Aug 2004	
4. India				26 Dec 2002	
5. Maldives				9 Apr 2003	
6. Nepal				31 Dec 2002	
7. Pakistan				21 July 2003	
8. Sri Lanka				22 Nov 2002	
Total	1 Signature	1 Ratification		8 BIAS	

On the Agreement on Privileges and Immunities of the Court (APIC), only two so far have signed (Mongolia, Republic of Korea). None has ratified.

Some Issues and Concerns

There is much concern that given the US pressure to sign the BIAs and not to ratify the Rome treaty, many of the countries in Asia will be left out and miss the opportunity that the Court 's establishment has opened.

Though considered a Court of last resort, the ICC provides a mechanism for redress for victims of most heinous crimes if and when the states involved are unwilling and unable to serve justice to victims. If there is no such mechanism, the cycle of impunity continues with victims left with no recourse for redress.



*The 18
Judges of
the ICC*

Worse, Asian countries that are not states parties to the ICC maybe used as safe havens by international criminals and terrorists because they know that the Court has no jurisdiction in our territories and the states have no authority to arrest them.

This is not to mention the fact that we as Asians, with all the expertise and experience lose the opportunity to take part directly in the shaping and developing of this new institution which we may need, if not in the present , maybe in the future. For example, Asia is the least represented in the Court's personnel and officers. Of the 18 judges, only one come from Asia, Judge Song from the Republic of Korea.

With Asia's millions of overseas workers deployed particularly in war-torn countries like Iraq and recently in Lebanon other conflict areas, ICC could provide protection and justice when they become victims to war crimes and other crimes under the jurisdiction of the Court if our countries are parties to the Rome treaty. Philippines, for example has about 10 million overseas workers, with majority working in the Middle East, including Iraq. Almost everyday, there are several casualties reported and there is no way by which justice could be rendered to the thousands of victims of atrocities unless states like the Philippines and Iraq decide to become parties to the ICC.

Some Prospects

Last week, we just had the Asian Parliamentarians' Consultation on the Universality of the ICC. MPs from Japan, Indonesia and Malaysia, including from Nepal reported on the good prospects for ratification in their respective countries.



Asian Parliamentarians' Consultation on the Universality of the International Criminal Court, 15-16 August 2006, Manila, Philippines

Earlier, Lao PDR had announced its intention to accede. Their timetable for ratification is within 1-2 years. During this conference, the Philippine Senate passed a resolution endorsing the ratification of the ICC treaty by the government. The Speaker of the House of Representatives likewise supported the call for ratification and committed himself to work for it within the soonest time possible.

With Japan's major standing and strategic role not only in the region but in the world as well, its eventual decision to join the Court will create further impact to the ratification efforts in Asia and elsewhere.



*Mr. Parashu Ram Meghi Gurung,
MP, one of the two participants
from Nepal*

*Asian Parliamentarians'
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The active participation of civil society groups and ICC support initiatives in almost all countries in the region, notably in China and India and recently in Malaysia and Vietnam, including Indonesia and Sri Lanka will hopefully result towards greater acceptance of ICC in the region. These efforts involve mostly lawyers, judges and prosecutors, parliamentarians, women's organizations, members of the academe, social workers, doctors and most importantly, the victims and their families. The activities range from conducting study sessions on the ICC to actual lobbying governments to ratify the Rome treaty.

Conclusion

Much has yet to be done to get majority of the states in the region to become parties to the Rome treaty. With active participation by civil society and support and cooperation by members of the international community, the prospects for universal jurisdiction of the Court and its goal of rendering justice to victims of most serious crimes and of fostering peace among peoples is not far from being realized. We may be slow in the region as far as ratification is concerned but this does not mean we do not support the ICC. Our historical past and current political dynamics at the national, regional and international levels make it not that easy to disregard USA in governments' decision-making whether to ratify or not the Rome treaty, to sign or not to sign the BIA and other matters related to the ICC.

It is upon lawyers, academics and professionals like you, as well as parliamentarians and other stakeholders to explain and convince leaders and other decision-makers the relevance and significance of the ICC, the benefits our people can get from joining it and the contribution we can give to make it truly an independent and effective Court – truly a mechanism for justice and peace in the world. Nepal’s tragic experience in recent history is the best reason why it should join the ICC. And the sooner it joins, the more guarantee it has that what happened in the past will not be repeated and if it does, the people are assured that there is a mechanism on hand if and when their government fails them.

Thank you very much and good day to all.
