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

SPEECH OUTLINE

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Speech Outline

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

Evelyn Balais-Serrano*

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 important event. It is a welcome opportunity for us in the Coalition to join you and share with you some of the developments in the International Criminal Court (ICC).

The Coalition for the ICC (CICC), as most of you know, is a network of more than 2,000 civil society groups worldwide advocating for an independent and effective international criminal court. Of this number, around 300 members are in Asia. Formed in 1995 during the negotiation for the establishment of the Court, the CICC has participated in all the processes leading to the adoption of the Rome treaty in 1998, to its coming into force in 2002 and until today that it is beginning to investigate its first cases.

I was tasked to update you on the status of ICC ratification and implementation 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 four states, more than half of the world's nations are states parties to the Rome treaty of the ICC and we hope more states will be joining this year and the coming years.

There are five aspects of ICC process included in this update: 1) signature, 2) ratification or accession, 3) signature on the Bilateral Immunity Agreement (BIA), 4) ratification of the Agreement on Privileges and Immunities of the Court (APIC) and 5) status of implementing legislation.

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

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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 the final text is due for approval by the National Assembly this year. 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.

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.

On the Agreement on Privileges and Immunities of the Court (APIC), only two so far have signed, Mongolia and Republic of Korea. The APIC allows the Court personnel to perform their work within the jurisdiction of states parties involved, similar to the UN personnel when they are conducting their work in the field.

Some Concerns

There is much concern that after four years that the treaty has come into force, many of the countries in Asia are still not part of the Court. Already, there have been many opportunities that Asia is missing out in the process of the development of the Court. For example, of the 18 judges in the Court, only one comes from the region, when in fact, we can have three if we have more states parties from Asia. We also miss the opportunity of participating in the deliberations on issues most crucial to our region like the definition of the crime of aggression, terrorism and other relevant issues. Much of the rich experiences and lessons in dealing with these issues are very much present in the region and we miss the opportunity of giving these inputs in the development of the Court.

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.

Worse, Asian countries that are not states parties to the ICC may be 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.

With Asia's millions of overseas workers deployed particularly in war-torn countries like Iraq and recently in Lebanon and 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 December, we just had the Parliamentarians for Global Action general assembly and forum on human security and the universality of the ICC. MPs from all the continents of the world attended. In this forum, Japan reaffirmed its decision to join the Court very soon. So we expect that in the coming session of the Parliament, the ratification bill will be approved and Japan will become the 105th state party to the ICC.

Earlier, Lao PDR had announced its intention to accede. Their timetable for ratification is within 1-2 years. Likewise, Nepal expressed its intention to ratify. Indonesia has also calendared its ratification for 2008. The Philippine Senate also passed a resolution endorsing the ratification of the ICC treaty by the government. As provided for by the Philippine constitution, the Senate concurs the signed bill of ratification by the head of the government.

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.

With the active participation of civil society groups, the support from ICC and from various governments like Canada, members of the European Union and other states

parties, we hope that more countries in the region like China and India, Malaysia and Vietnam, Sri Lanka and Pakistan will open up and consider their membership in the ICC.

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. The wait and see attitude which a number of countries tends to do is leaving us behind as a region as the majority of the countries in the world moves forward in its search for justice through the ICC. We are being challenged to be more pro-active and decisive in this regard. It is upon you - lawyers, academics and professionals 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.

Thank you very much and good day to all.