
**EXPERIENCES IN JAPAN FOR THE COMING
ACCESSION TO THE ROME STATUTE**

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TO THE ROME STATUTE**

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1. Introduction

When the Rome Statute was adopted in July, 1998 by the Rome Diplomatic Conference, Japan was one of the overwhelming majority that voted for the Statute. Since then, almost nine years have past but Japan has not signed or ratified the Statute. You may call it a lost decade for Japan. When the government of Japan was asked why it did not join to the ICC, it has responded that, tough Japan is always supportive of the ICC, it is very difficult and taking time to prepare implementing legislations in advance. Such a response from the Japanese government is not unusual when it talks about joining new treaties. However, I observe that things were more complicated and profound.

I attended the Rome Conference in 1998 as one of a few members from Japan's Civil Society. There, I represented the Japanese Federation of Bar Associations (JFBA) or a Japanese national bar. I witnessed what was going at he Conference, in particular, how the delegation of Japan behaved. In my view, Japan was far from being enthusiastic on the ICC.

Since then, I have worked for early ratification of Japan in a legal, an academic or other civil societies. In addition to the JFBA, I closely work with the Japan Network for the ICC (JNICC), a counterpart in Japan of the CICC. I have also been serving as a Council Member and Asian Focal Point person of the International Criminal Bar.

2. Obstacles in Japan to Ratify the Rome Statute

It is my observation that there were three obstacles having prevented the early ratification in Japan.

First of all, since the End of World War II, there have always been streams or people, even those with powers, who reject or try to minimize wartime responsibilities of Japan's atrocities. You may call them a right wing people. For those people, experiences from the International Military Tribunal of Far East or "the Tokyo Tribunal" and many foreign tribunal in the Allied states were regarded as devastating and shameful. They simply claim that such tribunals were of "Victors' Justice" and were too politicized. They were so skeptical and hostile against internationalized system itself.

After the end of the Cold War, issues of wartime responsibilities of Japan's atrocities, such as "Military Comfort Women," were raised again in 1990s by victimized citizens and in international community. In response to those issues, special Raporteurs of the UN organs repeatedly urged Japan to investigate and prosecute half a century old war crimes and crimes against humanity. The right wing people and conservative politicians strongly repulsed against such ideas of criminal prosecutions of the wrongdoings of the former military.

Secondly, even those who were liberal, pacific and sensitive on Japan's wartime responsibilities were skeptical and cautions about Japan's joining to the ICC. One of

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reasons was again a negative sentiment over the Tokyo Tribunal. They observed that the prosecution at the Tokyo Tribunal was so politically biased that many serious war criminal candidates including the Former Emperor successfully escaped from the prosecution and came back to the power. They were also heavily concerned about lack of due process or a fair trial to the defense.

What concerned the pacific people more was the possible rearmament of Japan. What does the ICC matters with rearmament? I will address this point further in my presentation. Of course, all we here know that the ICC has nothing to do with the rearmament. The preamble of the Statute correctly reads “[e]mphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict in the internal affairs of any State.”

Now, let me present the last but most serious obstacle in Japan. I quote a remark of the President Kirsch, that is “the worst enemy to the ICC is ignorance.” Japan has not been involved in armed conflicts after WWII, at least directly and until recently. Differently from the European Continent or the Great Lake region of Africa, Japan, maybe similar to some Asian states, has long been able to keep a distance from armed conflicts and atrocities of neighboring regions. Also the Hague is far and far away from the far east and the language barriers are another discouragement.

3. Activities of Civil Society to Overcome the Obstacles

In order to overcome those obstacles, people of Japan have made long and restless efforts. I am only part of it and I can present today only parts of the experiences.

First of all is raising awareness among people. There are a large number of NGOs in Japan which are working for human rights, refugees and victims of the former Japanese militarism. Those NGOs have a variety of international networks and has become to include the ICC in their agenda. Uncountable number of study meetings, large or small, have been organized in a nation wide. Also such NGOs, scholars and lawyers have publicized many articles in newspapers, journals and websites. The JNICC played a hub role of such activities.

What to be mentioned about next is lawyers, since lawyers should know more about international criminal law and the ICC. In the first stage, the JFBA, a national Bar, was not so enthusiastic on the Rome Statute. Lawyers always hate the introduction of new crimes and criminalization and they also regarded, and still regard, the Statute as strange because the proceedings at the ICC are totally different and difficult to understand, even with the compromise of common and civil systems. They must have chances to study closely the Statute.

The change came after 9.11 and a following attack of the US led Allied to Afghanistan. In witnessing a military attack under the name of punishment and prevention, lawyers in Japan got convinced that the world need a independent and permanent criminal justice system, in place of military activities. It was in 2002 that the JFBA resolved to strongly urge the government for the accession of the ICC. Thereafter, the JFBA became a founding member of the International Criminal Bar.

Lastly and most importantly again, I would like to discuss politics and politicians. As you may know, the highest power belongs to the Diet or a parliament in Japan. In the Diet, the most powerful leading party is the Liberal Democratic Party (LDP). It was last spring that the league of LDB Diet members was established and it promptly submitted a strong opinion letter to the Cabinet urging the accession to the Rome Statute. It was only

after a few month that the Prime Minister Abe expressed its plan to join the Rome Statute as of 2007. How could it happen? I will give a report in my presentation.

Also I must mention about international cooperation. The visits of the EU delegation and the ICC officials contributed much to have politicians get awareness and to encourage civil societies.

4.Looking Forward after the Accession

There still remaining issues on budget and implementing legislation to reach the final accession, which I am optimistic to be solved soon. I, however, believe that the mere accession will not be the end but it will be just a beginning.

For Japan, we, people of Japan, must also work for the accession of the Agreement on the Privileges and Immunities of the International Criminal Court. We must find a way for Japan to contribute effectively the Victims Trust Fund. We must ensure proper experts from Japan to join and work at the ICC. Above all, we must ensure the principle of impunity and other valuable tools for human rights and victims' rights to be absorbed in our society.

Also for the ICC as a whole, we must encourage Japan to make meaningful and effective contributions for ongoing and emerging activities of the ICC. In particular, it will be an important occasion that Japan along with other Asian states would make a voice in the Assembly of States Parties in 2009 to discuss a reformation of the Rome Statute.

5.Role of Lawyers and Bars

Lastly, please allow me introduce briefly a subject of role of lawyers and bars.

Looking backward to the Post War Military Tribunals, rights of the defense and role of lawyers are crucial for the credibility and legitimacy, particularly in international criminal proceedings. With such understandings, the Rome Statute provided in detail "rights of persons during an investigation" (art. 55) and "rights of the accused" (art. 67), and also obliges the court to be "be consistent with internationally recognized human rights."(art. 21-3). Even with such guarantee of the rights, however, inherent inequality of arms still remains between the individual defense and the prosecution that is backed up by an institution of the Office of the Prosecutor. In that regard, the ICC has made further developments by obliging the Registrar to consult with bars for ethics, legal assistance and training in the Rules of Procedure and Evidence. It has also introduced an independent Public Counsel Office (OTP) for the Defense in the Regulation of the Court. The concept underlying such developments is that the defense should be the third pillar of the ICC to the Chambers and the OTP. In order to realize the equality of arms, not only counsels appearing before the court but also legal society in the world wide should have interests in the proceedings at the ICC.

The International Criminal Bar (<http://www.bpi-icb.org/>) was set up to ensure the independence of counsels appearing before the ICC, not only for the defense but also for the legal representation for victims. I am glad to announce here about the ICB Council Meeting to be held in Tokyo, for the first time in Asia, in coming May 18. The International Criminal Law Seminar will be also held on the following day May 19, welcoming the Honorable Judge Song, the Registrar Cathala and other officials from the ICC. The Seminar will be cosponsored by the JFBA and the Law Association for the Asia and the Pacific (LAWASIA). We expect many participation from Asian bars and lawyers. Further information is to be found in a broacher.

