Asia and the ICC: The Development of International Criminal Law in a World Changing Order

Harsh Mahaseth, Assistant Lecturer, Jindal Global Law School, O.P. Jindal Global University
and Ayushi Bansal, Final-year Law Student, NALSAR University of Law

As of April 2019, 123 countries have become parties to the Rome Statute of the International Criminal Court. 19 of those 123 countries are from the Asia-Pacific States. Although Asia houses over 50 per cent of the world's population, it is underrepresented in the International Criminal Court (ICC). This underrepresentation is due to various rationales that can be either legal or political in nature. In response to this underrepresentation, there have been efforts made by governments as well as non-governmental actors to increase awareness regarding International Criminal Law, however, beyond building awareness, there is a possibility of drawing on the Asian experiences and build a potential emerging regional consensus towards ending impunity and providing international justice. While the Asian nations do lack enthusiasm towards ratifying the Rome Statute, there could be tangible benefits to becoming a part of the ICC.

The benefits of ratifying the Rome Statute outweigh any disadvantages, real or perceived, and thus, domestic steps need to be undertaken to lead to eventual ratification. This paper will trace the histories of International Criminal Law and explore the reasons for the disinclination of the Asian nations to join the ICC. Chapter 1 will introduce international criminal law and will give a brief summary of the current situation. Chapter 2 will trace the histories of International Criminal Justice and analyze Asian participation in its discourse. Chapter 3 will look at specific Asian nations and their participation with the International Criminal Court or their reasons for not ratifying the Rome Statute. Chapter 4 will look into a few nations that have diluted the boundaries between domestic law and international criminal law. Chapter 5 will close the debate by providing suggestions and recommendations.

The Role of Post-Conflict Justice. The Case of the Extraordinary Chambers in the Courts of Cambodia

Francesca Braga, PhD Candidate in International Law, Middlesex University London

Between April 1975 and January 1979, the Khmer Rouge regime (KRR) caused the deaths of millions of Cambodians, approximately one-fourth of the population. They died through a combination of executions, starvation, torture, arbitrary killings and forced labour.

In 2006, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were established to bring to trial senior Khmer Rouge leaders and those "most responsible" for serious crimes committed under the regime. The ECCC was designed as a hybrid tribunal to ensure judicial independence and to contribute to the strengthening of the Cambodian justice system. The ECCC has some specific features and its scope is limited in time and space. It is composed of both Cambodian and international staff to combine the Cambodian law and local knowledge of the justice system.

Despite these peculiarities, since the beginning of its establishment, the ECCC has faced considerable challenges caused by political pressure and interference due to its hybrid nature. Moreover, the ECCC's reputation has been subject to criticism for many other reasons: insufficient legal protections, delay, corruption scandals, and also limited jurisdiction. Precisely, the limited scope of personal jurisdiction at the ECCC fails to address the widespread crimes perpetrated by the KRR of all levels.

Notwithstanding the many aforementioned critiques, the ECCC had facilitated the process of memorialization of what happened during the KRR to learn from history and avoid a repetition of crimes. It has played a precious role in ending a culture of impunity and in the creation of a common history for Cambodians and also improving the relevance of the Cambodian judiciary.