

Report of the Workshop on the International Criminal Court

(held at the National Conference on Human Rights, Social Movements, Globalisation & the Law, 26 December 2000 - 2 January 2001, at Panchgani, Maharashtra, India.)

A one-day workshop on International Criminal Court was held on 30th December 2000 at Panchgani, Maharashtra, India, as part of the National Conference on Human Rights, Globalisation, Social Movements and the Law. The workshop on ICC was co-ordinated by the Asian Network for International Criminal Court (based in Dhaka, Bangladesh) & India Centre for Human Rights & Law (based in Mumbai, India). The participants for this workshop included researchers, human rights advocates, activists and law students.

The resource persons for the workshop were:

Vahida Nainar	Women's Caucus for Gender Justice, New York
Iftequer Mahmud	Asian Network for International Criminal Court, Dhaka
Mathew Carlson	International Human Rights Law Institute, Chicago
Saumya Uma	India Centre for Human Rights & Law, Mumbai

Introduction: *Saumya Uma*

Saumya Uma opened the session by terming the ICC as a very timely and worthy issue, which the human rights defenders of India ought to campaign upon. She suggested that the civil society organisations should not be deterred by the position taken by the Indian government, which voted against the treaty at the Rome Conference. Saumya also said that the reason for organising the present workshop was to initiate an active awareness campaign on the ICC in India. This is necessitated by the fact that in India, neither the civil society nor the human rights activists nor the legal fraternity is aware of this significant development in the international legal arena, and that very little is written about on the subject in India.

Screening of a Public Service Announcement video on ICC, prepared by Coalition for International Criminal Court (CICC), New York, followed Saumya's introductory speech.

Need for an International Criminal Court: *Saumya Uma*

Saumya gave a brief history of the prosecutions (or the absence of them) for war-time atrocities after the I and II World Wars, the working of the ad hoc international criminal tribunals and the how the achievements and

failures of these ad hoc tribunals brought the aspiration of the world community for a just effective and permanent international criminal court closer to reality. Saumya further emphasised that the ICC was an institution that gave teeth to international law which is otherwise considered as "soft" law. She said that the philosophy behind creation of the ICC was to end impunity, and to create accountability, as there cannot be any true and lasting peace without justice.

Saumya stated that the urgent need for an ICC arises out of the fact that though mass rapes, genocides and another heinous crimes have been committed throughout the world, the international community has failed to prosecute political leaders who have often been a party to the offences. She said that the creation of an ICC is a positive step, which seeks to neutralise these limitations; Its advantages are as follows:

- a) it will make international humanitarian law enforceable against individual offenders;
- b) it will facilitate affected people to initiate prosecution even if the state is unwilling to or unable to;
- c) no immunity will be available to any political leader;
- d) it will set out a definite code of conduct, the violations of which will be prosecuted.
- e) It will be a permanent court and not depend on the will of the Security Council or any individual countries.

Saumya's presentation provided the foundation for Iftequer's presentation on the historical background of ICC.

Concept of ICC and its Historical Background: *Iftequer Mahmud*

Iftequer gave a presentation on the historical background of the Rome Statute dating back to the Paris Peace Treaty of 1919, and the basic concepts involved in the Rome Statute for establishing the ICC. . Starting with a descriptive note on the long history of struggle for a permanent international criminal court by the world community, he explained certain legal concepts that made the statute a unique one international instrument, including the principles of complementarity, universal jurisdiction of the future court and proprio moto jurisdiction of the prosecutor. He also elaborated the structure of the court, the trigger mechanism and its relationship with the UN and the Security Council. He said that the ICC will get jurisdiction, only if the concerned state is not willing to or is unable to prosecute the offender. The crimes triable include war crimes, crimes against humanity and genocide. He clarified that the ICC does not provide death penalty for any crime

committed. The maximum punishment can be given by the ICC is 30 years of imprisonment plus penalty. The post-lunch session began with a presentation on the global dynamics related to the ICC.

Global Dynamics: *Matthew Carlson*

Matthew Carlson gave a presentation on the present position of the economically and politically powerful states, like the USA, China and EU Countries. He talked about the successful international campaign for ICC which resulted in most European countries and many countries from the African continent signing the Rome Treaty. He said that the signatures and ratifications reflect on the resolve of countries to ensure that no further conflicts take place, and also the resolve to adhere by the established codes of conduct if conflicts take place.

He further dealt with the opposition to ICC with a special reference to the arguments advanced by the US government, and the international representation that was envisaged once the ICC became a functional court. He said that the main concern of USA was that exposure to the ICC would severely limit the military / peace-keeping operations abroad as its soldiers run the risk of prosecution. He countered the American arguments against the ICC and elaborated the attempts of the American government to prevent the application of the Rome Statute to its citizens. He also delved briefly on global representation involved in the functioning of the ICC. This presentation was followed by a presentation on the South Asian perspective.

*(***Please note that the U.S. government has subsequently signed the Rome Statute on 31st December 2000, the last day that it was kept open for signature.***)*

Need for ICC in South Asia: *Iftequer Mahmud*

Iftequer Mahmud spoke of the need for an ICC in the South Asian context. Iftequer stated that peace is sine qua non for the South Asian countries for their individual and mutual development. He reminded the participants that the South Asian countries have a very bad history of massacres, wars and armed conflicts. For example, during the freedom struggle in Bangladesh, 3 million people died. Pakistan and Sri Lanka face ethnic conflicts; India faces internal conflicts in Punjab, Kashmir and North eastern states. He said that South Asia, as the most impoverished part of the world, can, by no means can afford any political instability. He emphasised the South Asian need for

ICC based on the fact that South Asia is the only region that has no regional mechanism to deal with human rights violations.

Itequer's presentation was followed by the screening of a film prepared by Women's Caucus for Gender Justice, titled "If Hope Were Enough".

Gender Concerns in ICC: *Vahida Nainar*

The film screening was followed by the speech of Vahida Nainar, who talked of the gender concerns within the ICC Statute. She recalled how her organisation participated in the Preparatory Commissions meetings with documents providing legal basis for gender provisions in the statute, Rules of Evidence and Procedure and definitions of the crimes. She said that they have successfully lobbied delegates from various countries for inclusion of gender-friendly provisions into these documents.

Vahida termed the Rome Statute as "a superb international instrument with a high level of gender integration." The Statute formally codifies as crimes in international law many of the violations long committed against women and long ignored and unrecognised by the international community as a whole. Vahida stated that a major provision which is significant for women all around the world is the term "crimes against humanity" which includes not only heinous crimes committed in conflict situations, but also those committed during "peace" times. She also emphatically stated that the Statute creating the ICC has now formed part of the body of international law, and had enhanced the standard of the same with particular regard to gender concerns. She said that it would now work as a standard for the national legal systems to comply with.

Discussion:

A prolonged open discussion followed Vahida's speech, which was addressed by all the panel discussants. The major queries raised pertained to the issues of sovereignty, the relationship between ICC and the jurisdiction of national courts, the difference between ICC and ICJ, the process of enforcement of orders of ICC, the relationship between ICC and the United Nations, as well as practical aspects including accessibility to the court. A good number of advocates and young law students showed colossal interest on ICC.

Conclusion

In conclusion, it was felt that though the ICC is not a perfect system, it had to be borne in mind that the court is in its infantile stage and its drawbacks can be rectified over a period of time. It was felt that the ICC had a real potential in forcing reform of national law to bring it more on par with universally accepted standards. Participants expressed the need to acquire an in-depth understanding of the concept of ICC and the need for information dissemination and awareness-raising as important tools to that end.

For the detailed minutes of the workshop, please write to iccindia@joymail.com