

Amnesty International calls on China to start the process to sign up to the new International Criminal Court

The need for universal ratification of the International Criminal Court

On 17 July 1998, the international community adopted the Rome Statute of the International Criminal Court (Rome Statute). The Rome Statute establishes a new International Criminal Court (Court) to bring to justice persons accused of the worst crimes known to humanity: genocide, crimes against humanity and war crimes. Less than four years later, in April 2002, as a result of the unprecedented support for the new Court, the 60th state ratified the Rome Statute and the Court was established with jurisdiction to investigate and prosecute crimes committed after 1 July 2002.

As of 1 October 2006, 102 states have ratified the Rome Statute and the Court is already conducting investigations in three situations – the Democratic Republic of Congo, Darfur, Sudan and northern Uganda where crimes have been committed on a large scale. The first trial is likely to start early next year - Thomas Lubanga has been arrested and surrendered on charges of conscripting, enlisting or using children under the age of fifteen in hostilities in the Democratic Republic of Congo.

Amnesty International has supported the establishment of the Court as an essential mechanism in a new system of international justice designed to end impunity, which in recent history, has seen millions of people subjected to these crimes but only a handful of those responsible brought to justice. The Court will investigate and prosecute cases only when national courts are unable or unwilling to do so. Of equal importance, the Court will also act a catalyst for states to investigate and prosecute cases before their national courts – which they have traditionally failed to do. If the new system is successful, justice will be a deterrent to future crimes as persons will never again be able to plan and commit crimes safe in the knowledge that they will not be held accountable. Instead of being forgotten, victims will see justice for the crimes they have suffered and will be granted full reparation to help them rebuild their lives.

Universal ratification is a key goal to ensure that the Court has universal jurisdiction and universal support of all states to end impunity for these crimes. Amnesty International is, therefore, calling on all states which have yet to do so, to ratify as soon as possible. The ratification of the Rome Statute by China, which has the largest population in the world, would be a major step forward for international justice.

China's position on the International Criminal Court

Although China has not yet ratified the Rome Statute, it is emerging as an important supporter of the Court. China has supported the concept of international justice, most notably by enacting national laws in 1997 criminalizing certain crimes under international law and providing for universal jurisdiction so that any person accused of such crimes could be prosecuted before Chinese courts regardless of where in the world the crimes were committed.

China was very active in the process of drafting the Rome Statute. It was therefore disappointing when China was one of only seven states that chose to vote against the adoption of the Rome Statute. The government's reasons for doing so focussed on three main issues. Firstly, the government had problems with the definitions of crimes against humanity and war crimes, despite the fact that the definitions in the Rome Statute reflect customary international law. Secondly, the government expressed concern that the crime of aggression was listed as a crime under the jurisdiction of the Court even though the Statute expressly requires that the crime be defined

before the Court can exercise jurisdiction over the crime. Thirdly, the government was concerned that the Court could be subject to political bias or interference, despite the inclusion of comprehensive safeguards and fair trial guarantees in the Rome Statute to ensure that such a situation could never arise.

Since voting against the Rome Statute, however, China has been more positive. A year later, in 1999, China participated actively in the Preparatory Commission of the International Criminal Court to draft the supplementary documents to the Rome Statute. Significantly, in the development of the Elements of Crimes, China insisted that the letter and spirit of the Statute with regard to crimes under the jurisdiction of the Court should be fully respected, indicating that after careful study it no longer had the concerns it had raised previously about certain definitions. The government also participated in the working group that is developing a definition of the crime of aggression and a procedure for submitting cases to the Prosecutor of the Court. Of even more importance, China has voiced its political support for the Court on a number of occasions, including in 1999, when it stated during the United Nations General Assembly's Sixth Committee "China is ready to join in the effort to set up the Court and to promote its universality and authority."

Following the entry into force of the Rome Statute in July 2002 and the establishment of the Court, China re-stated its support for the Court stating "[i]f the operation of the court could bring to justice all those individuals who have perpetrated most serious international crimes, this would not only help build confidence in international justice, but will also ultimately contribute to the maintenance of international peace and security. This is the outcome we fervently hope for."

In 2003, in its address to the United Nations General Assembly's Sixth Committee, China stated "What we hope to see is that before long, an independent and just international judicial body that truly commands respect will emerge to play an important and positive role on the international stage. China is ready to work tirelessly with other countries towards this end." Since then the government has welcomed the transparency of the Prosecutor in developing his policies and the work done by the judges, the Prosecutor and the staff of the Court in making the Court functional.

In the context of these expressions of support for the Court, the Chinese government has on some occasions reiterated its concerns that the Court must carry out its mandate in an objective and fair manner, free from political bias and double standards. Accordingly, the government has openly stated that it is following the development of the Court to ensure that its concerns of political bias are not realized before deciding whether to ratify. For example, in 2005, China stated during a debate on Reform of the United Nations "we still hope that the Court will win the confidence of non-Contracting Parties and wide acceptance of the international community through its work." It is important to note that in the first four years that the Court has been in operation, concerns of political bias or interference have not in any way materialized. The Prosecutor has followed the mandate set out in the Rome Statute by focusing on situations under the jurisdiction of the Court which are widely recognized as extremely serious, involving widespread crimes under international law.

There has also been a great deal of interest in the Court expressed by the legal community within China. A number of seminars have been organized to discuss the Rome Statute, in which judges, lawyers, legal academics and other professions have supported China's accession.

Amnesty International calls for China to start the ratification process

Based on the strong political support expressed for the Court and the important achievements of the Court in its first years, Amnesty International is calling on the Chinese government to start the process of ratifying the Rome Statute and joining the new system of international justice. As a first step, the organization encourages the government to conduct a review of its national law to ensure that national courts can prosecute crimes in the Rome Statute and that China can cooperate fully with the Court. In particular, Amnesty International would urge the government to incorporate the comprehensive fair trial guarantees in the Rome Statute into national law and to follow the Court's example by precluding the death penalty as a punishment for the crimes.

For more information about the International Criminal Court, see Amnesty International's fact sheets on the Court, available in Chinese at: www.