



PGA CONSULTATIONS AND MEETINGS ON ICC RATIFICATION IN SOUTH ASIAN STATES

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1. SUMMARY OF MEETINGS

From 2nd to 7th March 2002, an international delegation of the PGA International Law & Human Rights Programme held meetings and consultations with Members of Parliament and High Government Officials, including Ministers, from India, Bangladesh and Nepal in New Delhi, India.

The PGA international delegation was comprised of:

1. **Sen. Raynell Andreychuk (Canada)**, Convenor of the PFA Int. Law & Human Rights Programme, VP of the Foreign Relations Committee and President of the Human Rights Committee of the Canadian Senate,
2. **Mr. Malcolm Savidge, MP (UK)**, member of the PGA Int. Law Network,
3. **Dr. David Donat Cattin (Italy)**, Senior Programme Officer and European Coordinator, International Law and Human Rights Programme, PGA.

A first set of consultations took place in parallel to the PGA Sub-regional Seminar hosted by the Parliament of India on UN Peace Operations on 2nd and 3rd March 2002, sponsored by the British Government.

A second set of meetings and consultations was held between Monday 4th and Thursday 7th March 2002.

The outcome of these meetings is hereby summarized on the basis of a country-by-country report.

(a) INDIA

In India, PGA members had in-depth discussions on creating critical support for the ICC and India's accession to the ICC Statute among politicians in leading position within the majority and the opposition. In particular, the Indian National Congress (I.N.C.) leadership on foreign policy and justice took the explicit view that it would be in the interest of India to be part of the ICC. Such view was shared also by important lawyers such as the President of the National Bar Association and the Indian member of the UN International Law Commission. Support for the ICC was in principle expressed among certain influential Members of the majority party

(B.J.P.), as well as a positive interest and engagement on the matter from the side of the Minister of Law and a key member of the Home Affairs Committee. The ICC dossier within the Indian administration includes positive recommendation by the relevant offices of the Ministry for External Affairs, and is now reviewed at the Ministries of Home Affairs and Defence that have been asked to assess the impact of the ICC on Indian domestic policies.

In conclusion, the opinion of key majority and opposition politicians, such as the two most important Members of the External Affairs Committee, Hon. Mrs. Krishna Bose (Committee President, I.N.C., PGA member) and Hon. Dr. L. M. Singhvi (B.J.P., advisor to the VP of India) is that the accession to the ICC Statute would entail “a calculated risk for India as far international scrutiny is concerned, but a much higher benefit in terms of leadership of India in the Asian continent and in the world to fight the most serious crimes”.

Another element that was underscored by several leaders is that the ICC could be a viable instrument for India to de-politicise the prosecution and surrender from other countries of alleged terrorists who are accused of terrorist atrocities amounting to crimes against humanity.

(b) BANGLADESH

The presence in Delhi of PGA International Councillor Dr. Moyeen Khan, MP (Minister of Information) allowed the outreach at the highest level in the ICC decision-making in Bangladesh.

In a Conference call with Sen. Andreychuk of Canada, Hon. Barrister Moudud Ahmed Minister of Law, Justice and Parliamentary Affairs of Bangladesh asked for a formal letter of PGA on the ICC, promising that such letter will be submitted for approval to the Prime Minister of Bangladesh to trigger and expedite ratification process. Minister Ahmed and Minister Moyeen Khan will together approach the Prime Minister upon return of Dr. Khan to Delhi. The letter has been already sent: a copy is attached.

In assessing the position of Bangladesh, it must be stated that although the previous Government signed the Statute – the only SAARC State that did so – ratification did not follow. Indeed, too high expectations from a non-retroactive Court were raised with that Government. It will be therefore very important to see the reaction of the new Prime Minister to the PGA letter, which is based on a carefully balanced approach to the potentialities of Bangladeshi participation in the ICC system.

(c) NEPAL

Meetings with five MPs representing all major parties in Nepalese politics revealed that there is no prospect in the short term for Nepal’s accession to the Rome Statute. Notwithstanding a favourable climate on human rights issues which pre-existed the Royal family massacre of early June 2001, the current situation of internal strife and violence in Nepal does not facilitate support for the ICC at the highest level of the State authority (*i.e.*, the King). In particular, the issue of the King’s immunity and inviolability may be easily seen as not purely a legal obstacle to a successful ICC process within Nepal.

These views were basically shared by a former Minister of External Affairs (Mr. Bastola, MP) and a former Minister in several areas (Mr. Pashupati Rana, MP), as well as by the Secretary General of the largest party in Parliament (Mr. Tripathi, MP). The situation shall be soon reassessed by PGA in light of two developments: (1) the upcoming restructuring of the Cabinet, to which Mr. Bastola may soon be reassigned, and (2) the expected creation of a multi-party National Group of PGA in Nepal to be chaired by Mr. Rana.

(a) India

Authorities met or consulted:*MAJORITY*

Hon. Mr. Arun Jaitley, MP, Union Minister for Law, Justice & Company Affairs, Govt. of India

Hon. Dr. L. M. Singhvi, MP (Rajya Sabha, B.J.P.), former High Commissioner of India in UK; Member of the Committee on Home Affairs and of the Committee on External Affairs, Advisor to the VP of India and father of the Solicitor General

Hon. Lt General Prakash Mani Tripathi, MP (Lok Sabha, B.J.P.), Member, Parliamentary Committee on Home Affairs; Chairman Committee of Enquiry on the Stock Market

Mr. Mahendra Prasad, MP (Rajya Sabha, Ind.), Member, Parliamentary Committee on External Affairs, Parliament of India

Dr. Arun Kumar Sarma Ph.D., MP (R.S.)

OPPOSITION

Ms. Krishna Bose, MP (Lok Sabha, A.I.T.M.C.), Chairperson of the Parliamentary Committee on External Affairs; member of PGA

Mr. Eduardo Faleiro, M.P. (R.S., I.N.C.) Former Union Minister for External Affairs, member of PGA

Mr. Fali S. Nariman, MP (Rajya Sabha, Nom./Independent) & Senior Counsel; Committee on External Affairs; President of the Bar Association of India; Member of the International Bar Association (IBA)

Justice Ranganath Misra, MP (R. S., I.N.C.), Former Chief Justice of the Supreme Court of India; President, Parliamentarians for Global Action (PGA) India National Group; Committee on External Affairs; Member of the Commission of Mediation on Indus Muslims relations

Mr. Shivraj Patil, MP, I.N.C, Former Speaker Lok Sabha & Deputy Leader of the Opposition in the Lok Sabha

HE Mr. P.M. Sayeed, Deputy Speaker, Lok Sabha

Mr. Suresh Keswani, MP (R. S., I.N.C.), Vice-Chair, PGA International Council

Mr. Prafulla Maheshwari, MP (I.N.C.), Secretary of PGA India National Group; Director and ex Chairman, United News of India

The I.N.C. Delhi Pradesh Human Rights Committee, represented by:

-Mr. Virender Sood, Advocate;

-Ms. Sapna Sinha, Advocate;

-Mr. Satish Khurana, Editor & Publisher of the Legislation Times (India's First Journal on Parliamentary Affairs and Legislation)

INDEPENDENT GOVERNMENT OFFICIAL

Dr. Pemmaraju S. Rao, Head of the Legal Affairs Office, Ministry of External Affairs, India; member, International Law Commission, UN; Associate Member, Institut de Droit International

MPs alerted and updated on the ICC process¹:

Mr. Ram Jethmalani, MP (I.N.C, Rajya Sabha, Ind.), Former Union Minister for Law & Judiciary and member PGA India Group; Committee on Home Affairs

Mr. Hansraj Bharadwaj, MP (Rajya Sabha, I.N.C.) and former Union Minister for Law, Judiciary & Company Affairs; Committee on Home Affairs

Mr. Sushil Kumar Shinde, MP (Lok Sabha, I.N.C.); Committee on External Affairs

Mrs. Ambika Soni, MP (Rajya Sabha, I.N.C)

(b) Bangladesh

Authorities met or consulted:

Hon. A. Moyeen Khan, MP, Minister for Information; Member of the Int. Council of PGA

Hon. Barrister Moudud Ahmed, MP, Minister of Law, Justice and Parliamentary Affairs

MPs alerted and updated on the ICC process:

Hon. Faruque Khan, MP

Hon. Khondoker Mahbubuddin, MP

The Honourable State Minister for Law, Justice and Parliamentary Affairs

(c) Nepal

Hon. Pashupati Shumshere J.B. Rana, MP, former Minister, member of PGA

Hon. Hridayesh Tripathi, MP

Hon. Chakra Prasad Bastola, MP former Minister of External Affairs

Hon. Birodh Khateuda, MP

Hon. Renu Kumari Yadav, MP

(d) Authorities alerted and updated on the ICC process in other SAARC Countries

Pakistan

Hon. Iqbal Haider, Former Senator and Minister of Law

Maldives

H.E. Dr. Mohamed Munavaar, MP, Attorney General

Sri Lanka

¹ PGA has sent letters also to the Indian Minister for External Affairs and to the State Minister for External Affairs.

Mr. Anura Bandaranaike, MP; former Speaker of Sri Lanka; member of PGA
Mr. Dinesh Gunawardena, MP

4 March 2002

Hon. Barrister Moudud Ahmed

Minister of Law, Justice and Parliamentary Affairs
Bangladesh Secretariat
Dhaka, 1000
[Fax: 880-2-861 8557]

**Re. Brief Memorandum on the International Criminal Court (ICC)
and on the opportunity for Bangladesh to be among the founding members of the ICC**

Honourable Minister:

Please allow me to express my most sincere gratitude for the interest that you have shown in meeting with a delegation of Parliamentarians for Global Action (PGA) and the kind invitation that you extended to us to visit you in Dhaka. As you know from our today's telephone conversation facilitated by PGA International Councillor Dr. Moyeen Khan, it has been impossible for us to find available seats in flights from Delhi to Dhaka during the short time-period of our stay in South Asia.

As agreed, I am writing this letter to briefly outline the reasons why the prompt ratification by Bangladesh of the Rome Statute of the International Criminal Court (ICC) would be beneficial both to Bangladesh and to the International Community as a whole.

The ICC Statute will enter into force and the Court will become operational once 60 States will have ratified (or acceded to) it.

As of today, 52 States have already become parties to the ICC Statute (*see list attached*), and several others are expected to do so in the next three to four months.

The entry into force of the ICC is therefore imminent, and by June 2002 a countdown will start with respect to several policy making decision that will be taken by the States Parties.

On 16 September 1999, Bangladesh signed the Statute, thus signalling a National commitment towards the creation of the first permanent mechanism of international criminal justice in the history of humankind. The signature, however, has not led to ratification yet.

States that ratify by June 2002 will have the right to participate in the first meeting of the ICC Assembly of the States Parties, scheduled in early September 2002, and decide on the following key issues:

- a) Nomination and election of the Judges, the Prosecutor and the Registrar,
- b) Election of the Bureau and the President and Vice presidents of the Assembly of State Parties,
- c) Determination of the criteria for recruiting personnel and other administrative and financial issues relating to the Court,
- d) Adoption of the Rules of Procedure and Evidence and any decision necessary for the good administration of international justice.

The leadership of Bangladesh among Asian States may facilitate the election of a Bangladeshi judge to the ICC High Bench. The need to ensure proper representation of all regional groups and principal legal systems in the composition of the Court's organs will provide a preferential opportunity for Bangladesh candidates, as Bangladesh will be the first State Party from the South Asian sub-region.

The ICC will have complimentary jurisdiction to the one of Member States, which will maintain primary jurisdiction over crimes against humanity, genocide and war crimes. The State Parties and the Court will create an integrated system, the goal of which will be to prevent and put an end to the impunity for such crimes committed *after* the entry into force of the ICC Statute itself, in accordance with the principle of non-retroactivity.

The ICC will outlaw in a definitive manner the most serious crimes that shock the conscience of humanity from our planet, and will send a powerful message to the new generations: they will be protected on a permanent basis from the atrocities that other generations had suffered in the past decades and centuries.

As you know, PGA is working towards peace and justice in the world arena: PGA is currently present in 103 democratically elected parliaments and consists of nearly 1,350 individual MPs. Our organisation remains at your disposal for any further information concerning the ICC process, its most recent developments and issues arising from the National ratification. The contact person for PGA on the ICC is Dr. David Donat-Cattin, Senior Programme Officer for International Law (PGA): Tel. +39-06-397-20034, Email: donat@pgaction.org.

Thank you very much for your time and consideration. We look forward to your reply.

Gratefully yours,

[signed]

Sen. Raynell Andreychuk (Canada)

Convenor of the International Law Programme, Parliamentarians for Global Action (PGA)

c.c. Dr. Moyo Khan, MP, Minister for Information, and Member of the PGA International Council