

Mongolia's experience in ratifying the Rome Statute of ICC

(Dr. J. Enkhsaikhan, Institute for Strategic Studies of Mongolia)

Kathmandu, Nepal

28 September, 2007

First of all I would like to welcome Parliamentarians for Global Action for organizing this important round-table discussion together with the members of Nepalese parliament that would contribute to the goal of creation of a rules-based international order for a more equitable, safe and democratic world, as PGA's vision envisages.

I would also like to thank the organizers for inviting me to participate in its work and contribute to it by sharing Mongolia's experience in supporting the ICC and becoming a State party to the Rome Statute.

The work undertaken in Nepal to become party to ICC, including the July 2006 unanimous directive of the House of Representatives to accede to the Rome Statute, the work of PGA done in this respect, the statements made this morning allow me to dispense with the need to talk about the importance of ICC for national security of states, for international peace and security, for rule of law and justice for all.

Mongolia's bitter experience of early XX century

My country is a comparatively small country, land-locked and geographically sandwiched between to great powers. That is why objectively and for historical reasons it has always been one of the ardent supporters of creating an international criminal justice system. In the past century alone, especially in its first part, it was victim of aggression or threats of aggression. Thus in 1919, 1921 and 1939 it became object of aggression or military incursions. As history vividly demonstrates, aggression shall always be the "threat of all threats", especially for small and weak ones. ICC offers to put a price-tag on impunity for acts of aggression, a price-tag of individual responsibility that results in commission of heinous crimes. However, criminalizing aggression is not yet fully achieved, extra efforts need to be undertaken before 2009 to define aggression for the purpose of the Rome Statute, so that it could be included in the list of crimes within the jurisdiction of the Court. This could be undertaken most effectively by the States Parties of the Statute. Mongolia's membership of ICC offers such opportunity to it.

As representative of a small country I would like to touch upon another, yet not less important reason that prompted Mongolia to be supportive of ICC and become its member.

In early XX century in order to prevent the perceived invasion from one of its neighbors, Mongolia turned for help and protection to the other neighbor, only to find itself in the seven decades of “bear hug” of the latter.

Mongolia’s experience of the first half of the XX century demonstrated that the most serious crimes against peoples do not necessarily have to come in the form of direct foreign aggression. It comes in the form of manipulating, by external or internal forces, the political forces and part of the elite to commit crimes against its own people. The past century has demonstrated that increasingly most of the sufferings of the peoples come from such form of atrocities, rather than naked aggression. Thus in our case, under Soviet pressure, Mongolia underwent Soviet-style social experimentation and manipulation. The ideological class struggle was imposed upon Mongolia, which divided the society into the working class and exploiters, into ‘reliables’ and ‘unreliables’. As a result of such a policy in the late 1930s almost 10 percent of the entire population was exterminated or persecuted.

International criminal law was at that time in the realm of ideals. No voices were raised in Mongolia proper nor internationally concerning these deliberate acts of persecution, which I would call acts of ‘class genocide’. In the early 1990, both the new, post-soviet governments of Mongolia and Russia formally admitted that the above crimes had been committed in the late 1930s. However, since they had been committed over half a century ago and since the oppressive systems in these two countries had been overthrown, it was decided not to pursue the executioners of purges and repressions. The chance to thoroughly investigate the crimes committed and serve justice was, unfortunately, missed. Political expediency triumphed over the rule of law. Absence of strong international criminal rule was felt. Today the Mongolian government is compensating, though belatedly and almost symbolically, the families of the tens of thousands of victims of those purges and repressions. This tragic situation should not be allowed to be repeated in the future under any pretext or form.

Importance of ICC

Rome Statute is a very important achievement of the latter part of XX century. As product of long negotiations and delicate compromises, it not a perfect document and does not fully satisfy the interests of all States, including small States.

Mongolia believes that the establishment of ICC is the first major practical step in institutionalizing an international criminal justice system. It believes that since it is based on the principle of complementarity, it respects the sovereignty of States, including of small States. The court would step in only when a nation’s judicial system is unable or unwilling to render justice and would hold individuals responsible for their actions or inactions in connection with the crimes. When fully operational, the Court would increase accountability, nationally and internationally.

When dealing with ICC, we faced two misperceptions: 1) that it is a supranational court with powers superseding national laws and courts; and 2) that it would be a panacea for international crimes. Those are dangerous misperceptions. ICC is not a supranational organ and it will not automatically prevent international crimes. It could, if effective, render justice and deter crimes in many cases. Much will, of course, depend on the Court's credibility and actions. Much will also depend on national efforts and legislation, on member States themselves, on the universality of its membership.

Mongolia joins ICC

Mongolian people's tragedy of the XX century was very fresh in minds of our people, politicians and members of parliament. So when the question arose whether Mongolia needed to become party to the Rome Statute, there was almost unanimous vote of support among members of parliament. A working group was established within the parliament to make sure that sovereignty is safeguarded, and that the principles of due process of law, justice and other principles and norms would be understood, interpreted and abided by in Mongolia like it is understood in the Rome Statute.

For Mongolia the problem of acceding to the Rome Statute was not political or legal, but rather technical. By mid 1990s Mongolia was undertaking legal reform and the lawmakers in principle agreed with the principles and norms reflected in the Rome Statute. However, since our official language is Mongolian, the Government faced a very difficult task to ensure correct and faithful translation of the Rome Statute into Mongolian legislation. The final Mongolian text of the Rome Statute had to be agreed after three separate unofficial readings. This provided ample opportunity for experts as well as law-makers to study and analyze thoroughly the Statute and meaning of its provisions. The expeditious work of the parliamentary working group and general support of the MPs allowed Mongolia to become one of the founding members of ICC.

Working for implementing legislation

According to Mongolian law and practice, an international convention or treaty automatically becomes part of the country's legislation when ratified by the parliament. In line with the Rome Statute some changes have been reflected in the criminal and criminal procedural laws as a result of proposals made by the parliamentary working group. However, Mongolian lawyers, including members of the Mongolian Coalition for ICC believe that piece meal approach would complicate smooth implementation of the Statute and that therefore an implementing legislation needs to be adopted.

The Mongolian Coalition for ICC has been working in four areas of implementing legislation which it is planning to present to the parliamentary working group charged with improving further the criminal, criminal procedural

and other related laws. As in many other countries, the question of extradition of Mongolian nationals and of the privileges and immunities of State officials needs to be addressed and resolved in line with the Rome Statute. The constitutional provisions on immunity do not explicitly make exceptions for the crimes of genocide, crimes against humanity and war crimes. Therefore a legislation needs to be adopted in this regard. Also the Mongolian criminal legislation needs to be up-dated to reflect accurately the definitions of the crimes reflected in the Statute. As a State party, Mongolia needs to be able to provide all forms of cooperation to ICC and its organs, as stipulated in Part IX of the Statute. The legislation should also more fully reflect offences against the administration of justice.

These are not simple issues. However they can be overcome bearing in mind the importance of ICC, what it stands for and tries to achieve. The Mongolian Coalition for ICC is planning to present its findings and suggestions concerning the content and form of the implementing legislation to the parliamentary working group next month. The coalition does not see major difficulty in finding common ground with the members of parliament on this issue, which we believe is important for the people and the rule of law in Mongolia and internationally. When adopted, we could share our experience in drafting the implementing legislation. As for now, we are looking forward to learning from the experience of others.