



Universalizing the Rome Statute of the International Criminal Court in Asia: Lessons from Africa

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Excellencies, Distinguished Participants;

It is an honour, and a privilege for me to be here with you today, to commemorate the 20th Anniversary of the Rome Statute of International Criminal Court, at this Side Event, coinciding with the 57th Annual Session of the Asian-African Legal Consultative Organization (AALCO), and to say a few words on a topic that has no barriers. A topic that transcends specific countries and regions: international criminal justice.

Criminal justice is pursued for two main reasons. First is to give due regard to the position of victims. Justice demands that perpetrators of serious crimes should be held accountable. Impunity is an affront to the pain and suffering of victims. A scar they have to live with, often for the rest of their lives.

The second reason is preventive in nature. The prospect of being held criminally accountable would deter future commission of crimes. These two reasons are as relevant for Africa as they are for Europe, the Americas and Asia. What we discuss here, are universal values.

The mere fact that the values underlying criminal justice are universal does not in itself demand that perpetrators of gross crimes must be held accountable at supranational level. In fact, the contrary is true. Criminal justice is best done at home, or as close as possible to home. If perpetrators of grave crimes can be held accountable in the country where the crimes were committed, that is of course to be preferred. Local or national criminal justice systems are likely to have greater legitimacy than foreign national courts, or international criminal justice systems. This is true for Africa and, I assume, for Asia too.

The problem is that it is not always possible to pursue criminal justice at national levels. For various reasons, national criminal authorities may be either unable or unwilling to hold perpetrators of serious crimes accountable. This inability or unwillingness is not necessarily unique to any particular region. Challenges could include limited capacity and political inexpediency.

Whenever states are either unwilling or unable to prosecute serious crimes of international concern, delivering justice to perpetrators must be pursued elsewhere. It is up to foreign national courts, regional bodies, and the international community to take responsibility. This indeed is the main rationale underlying international criminal justice and the Rome Statute of the International Criminal Court.

In Africa, there has been much discussion on international criminal justice and the ICC. I will share some of these with you. Perhaps they could be useful for an Asian dialogue on international criminal justice.

On the one hand, there has been considerable support for the concept of international criminal justice in Africa. This may be explained by various factors, among them the relatively long culture of discussing human rights protection at sub-regional and regional levels; a vibrant NGO community that advocates for protection of human rights; and a painful history of genocide, war crimes, and crimes against humanity in quite a number of African countries.

Viewed from a distance, it would seem to me that the human rights and justice culture, and the involvement of civil society, is quite different here in Asia. If my observation is correct, and if the idea of criminal justice is to be taken seriously, it would

seem necessary to build a human rights and justice culture through education and the sharing of information. Public support- legitimacy; is crucial, for a successful criminal justice regime.

On the other hand, the pursuit of international criminal justice has proven to be quite controversial in Africa. This is due to two separate but closely intertwined reasons, both of which are political in nature.

The first is the fact that subjects of international criminal justice are typically the so-called big fish, with influential positions. We did not hear complaints about the ICC targeting Africa when the first cases were referred to the Court. It was only after some big fish were indicted that we heard complaints about the ICC targeting Africa. Pursuing international criminal justice affects the powerful and this triggers political tensions.

Africa was indeed a very willing participant in the adoption of the Rome Statute and the establishment of the Court. For example, the first state to ratify the Statute was an African country, Senegal.

The second reason is what is often referred to as the North-South dimension of debates on international criminal justice. Europe pushes hard for criminal justice and, among some the

feeling is that Europe is imposing its own adversarial criminal justice norms on Africa.

But it is also true that African states have had long historical ties with Western European countries, and in modern times, development cooperation, and promoting human rights and international justice, have become part and parcel of that relationship.

Here there would seem to be a difference with Asia. Many countries in Asia, and indeed in Africa, are seeking to develop their economies through business dealings with China. China, unlike development partners from Western Europe does not insist on respect for human rights and international justice.

Furthermore, and correct me if I am wrong, it seems to me that Asian countries tend to have stronger ties with the U.S., a not so keen supporter of the ICC, while African countries have stronger historical ties with Western European countries known to be proponents of the ICC.

Indeed, Asian countries with ties to Western Europe - Japan and South Korea for example, are already strong supporters of the ICC. So, I would suggest that Japan and South Korea have a leading role to play in promoting criminal justice and universalizing the Rome Statute in Asia. Crimes against

humanity are being committed in some countries in Asia. There is a compelling need to promote international justice in Asian countries, including ratification of the ICC Statute.

Our host state for this forum, Japan, is having impact in Africa, and enjoys much respect among its development partners on the African continent. Japan enjoys respect not because they are giving aid, but more because they are not imposing. Modesty is a key feature. I believe this culture of modesty, in spite of Japan's extreme accomplishment will serve Asia well if Japan should take a leadership role together with South Korea to promote universalization of the ICC. A culture that is not imposing, a culture that subscribes to modesty and humility, can achieve a lot in leadership. Japan can achieve a lot as a leader of human rights and international justice on the Asian continent.

We saw the impact that my compatriot, the late Kofi Annan, former UN Secretary-General had on the world stage. He was not imposing. He was soft spoken. He had humility, and treated all with respect. He believed that the youth are not too young to lead, nor are the elderly too old to learn. I would add that you are never too modest to lead, quite the contrary.

The challenges ahead are huge. As in Africa, serious crimes of international concern have been committed in Asian countries- in Myanmar, in Bangladesh, in the Philippines, and in

Afghanistan. For the sake of the victims, I cannot overemphasize the need to build support for international criminal justice initiatives in Asian countries. The dialogue must continue, and perhaps in the process Asia can learn some lessons, be they positive or negative, from the African experience.

Thank You.