



## **NATIONAL INTEREST ANALYSIS: QUESTIONS, CONCERNS AND DILEMMAS TO RATIFY THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT BY BANGLADESH**

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The Bangladesh government and members of civil societies took active interest in the process that led to the signing of a historic international treaty, the Statute of the International Criminal Court in Rome in July 1998. The Court will have jurisdiction over individuals who commit most serious crimes of universal concern; namely, genocide, crimes against humanity, war crimes, and aggression. In 1971, Bangladesh endured all the four international crimes.

After the Holocaust, the world said in unison ‘never again’, but failed repeatedly to prevent subsequent acts of genocide, including the genocide in Bangladesh. Bangladesh obviously associated itself with the global endeavor to prevent genocide and other crimes and for the development of an international justice mechanism to end impunity. Bangladesh rightly voted in favor of adoption of the Statute of the International Criminal Court, while her immediate neighbors, India, Pakistan and Nepal abstained and Sri Lanka voted against.

Following its 60<sup>th</sup> ratification, the Statute came into force on 1 July 2002. As of today, 139 States have signed the Statute while 93 States have ratified it, thus making it historic as one of the fastest ratified international treaties. Many believed that it would take decades for the international community to ratify and establish the ICC, but in reality it was in force well before the fourth anniversary of its adoption. Countries all over the globe and from all regions have ratified the Statute, 23 African, 18 Latin American and Caribbean, 12 Asian and Pacific, 14 Eastern European, and 26 Western European and other States are State Parties today.

Since then, all senior officials of the Court have been elected including its 18 Judges, the Prosecutor and the Registrar. It has before it two situations referred to by Uganda and Democratic Republic of Congo (DRC).

The first situation, or the case, as it may well turn out to be, came before the ICC when the Ugandan President Yoweri Museveni referred, in January 2004, the situation in northern Uganda and in particular, the alleged crimes of Lord’s Resistance Army (LRA). The Prosecutor found sufficient basis to start planning for the first investigation of the ICC for the alleged crimes committed in the region that included conscription of children into the army, willful killing, rape, sexual slavery, forced pregnancy, and forced displacement of civilians that constitute crimes against humanity under the Rome Statute.

On 11 April 2004, the Prosecutor received the second referral from the President of the Democratic Republic of Congo referring him the situation of crimes in DRC. Earlier in July 2003, Mr. Luis Moreno-Ocampo, ICC’s Prosecutor, made public his intention to closely follow situation in Ituri in DRC, where according to his information, five thousand people were killed since the ICC Statute came into force, and resulting violence caused between 2.5 and 3.3 million deaths since 1998.

He said crimes committed there could amount to genocide, crimes against humanity or war crimes, where, he reported, massacre of civilians based on ethnicity, summary executions, disappearance, torture, ritual cannibalism, rape and sexual assaults, severe mutilation of female genitalia etc. He later confirmed his readiness to seek authorization from a Pre-Trial Chamber of ICC to start investigation under his *proprio motu* powers. The Statute authorized the Prosecutor to initiate proceedings on his own accord after necessary permission from three Judges of the Pre-Trial Chamber if the State concerned is unwilling or unable to investigate or prosecute.

### **PRELUDE TO ICC:**

In 1998 the government of Bangladesh acceded to the 1948 Convention on the Prevention and Punishment of the Crime of genocide. An Inter-ministerial Committee considered the necessity for Bangladesh to accede to the Genocide convention. The Committee found that it was only appropriate that Bangladesh accedes to this Convention “*considering Bangladesh’s history of liberation war and the genocide against Bangladeshis during the war of independence.*” The Committee did not accept suggestions that there was no need for accession to the Genocide Convention since the country don’t anticipate or apprehend genocide in the country.



Instead, the Inter-Ministerial Committee put forward three strong arguments favoring accession; “*Firstly because, no one can guarantee that genocide could not take place in a given country. Secondly, the Convention aims at preventing any incident of genocide anywhere in the world. Finally, accession to the Convention would be a commitment to the international community, and make the country live in the comity of nations according to international standards.*” The Committee, after considering the advice of the Law Commission recommended Bangladesh's accession to the Convention “*on a priority basis.*”

### **BANGLADESH SIGNED THE STATUTE:**

Bangladesh was one of the 120 countries that voted in favor of adoption of the Statute of the ICC in Rome in 1998, where 160 other nations joined the diplomatic conference convened by the United Nations. The Bangladesh delegation comprised of its Ambassador in Rome and a team from Dhaka actively participated in the negotiation, in particular in debates relating to gender and gender related crimes. A handful of Bangladeshi non-governmental organizations also made their presence felt in Rome. It took little over a year for Bangladesh to sign the Statute. At the time of signature, the Statute came under detail scrutiny. In this process, the fact that Bangladesh already enacted legislation in 1973 for the trial of the Pakistani war criminals on similar principles of international law as of the Statute facilitated the discourse.

Also, the Constitution was analyzed to examine compatibility along with the International Crimes (Tribunals) Act, 1973 to determine its impacts. It also tried to find out whether Bangladesh has to give up its right to try and punish the international crimes, or whether Bangladesh has to abolish death penalty, provided under its law but not provided in the ICC statute, or whether this would have any impact on other existing Treaty obligations, or whether national legislation would be required to implement statute obligations and other related issues.

The government took very positive views in favor of Bangladesh's signature. The government concluded that signature of the Statute of the International Court may have Constitutional implications, though; existing constitutional and legal provisions already provided solid foundation for the development of international law that would facilitate acceptance of the Statute of the ICC with a minimum of amending legislation.

Regarding the jurisdiction of Bangladesh over the international crimes, it concluded that Bangladesh, following signature of the ICC statute, would not give up its jurisdiction to prosecute, try or punish for international crimes, as the International Criminal Court essentially would have jurisdiction complimentary to the national criminal jurisdictions.

About the consequences for the death penalty provisions in force in Bangladesh, it was viewed that the ICC Statute would not require abolition of death penalty by the signatory state. The Statute instead recognized that the Statute would not affect the penalties provided by the national laws. However, it was acknowledged that it would be necessary to enact an implementing legislation to give effect to the Statute.

After a careful analysis, Bangladesh became the third Asian country and the first in South Asia to sign this landmark treaty in September 1999. Bangladesh signature was widely acclaimed, especially, as an important Asian country that has shown leadership in international law and justice.

### **RATIFICATION:**

The next logical step for Bangladesh was to ratify the Statute of ICC, and in this respect, the government began detail and further appraisal of the Statute. Under the Vienna Convention on the Law of the Treaties, signature of international treaties require the States to refrain from adopting policies contrary to the treaty. This was one of the concerns raised by the experts as Bangladesh and others signed with United States the so-called immunity or bilateral non-surrender agreement, offering virtual immunities to US nationals.

Meanwhile, the Asian Network for the International Criminal Court (ANICC) conducted series of conference, workshop and missions in collaboration with Forum Asia and Coalition for the International Criminal Court (CICC) to increase awareness about the ICC and to impress the government on the significance of ratification by Bangladesh.

Since its signature in 1999, the Statute had been under consideration of the government. It is, however, legitimate for the government to analyze and understand the Statute and its ramifications that should be carried out keeping national interests of Bangladesh in mind.



In this regard, true purport of the Court should be the basis of all consideration; to end impunity and to prosecute and punish the perpetrators of the most serious crimes of international concern, only when States with jurisdictions are unable or unwilling to conduct serious investigations and prosecutions.

At this stage, it's important to highlight the obligations of the States that results from the ratification of the Statute. These obligations, however, are not specific to Bangladesh, but applicable to all State Parties without exception.

1. **Obligations under Articles 5 and 12:** Bangladesh must accept the jurisdiction of the International Criminal Court regarding the crimes enumerated in Article 5 of the Statute, namely, genocide, and crimes against humanity, war crimes and the crime of aggression. Under Article 12, as a result, the Court would be able to exercise jurisdiction if any crimes occur in Bangladesh or on board of a vessel or aircraft registered in Bangladesh; or if the person accused is a Bangladesh national. Bangladesh already has its national legislation for crimes similar to the Article 5 and also as a party to the Genocide Convention, Bangladesh should not have any concern to allow an international tribunal jurisdiction over crimes or over the alleged criminals, while the Statute recognizes primacy of Bangladesh's right to prosecute.
2. **Obligations under Part 9:** The Statute under its Part-9 enjoins the State Parties to cooperate with the International Criminal Court in its investigations and proceedings. The Court may seek assistance of the State to surrender the accused or convicted persons and other forms of cooperation that may include questioning of suspect, taking evidence, and freezing assets. The States are thus required to put in place necessary legal basis to offer such assistance. Bangladesh should have no conceivable reason not to cooperate with the Court and to offer required assistance, as Bangladesh supports establishment of international rule of law and justice.
3. **Obligations under Articles 72 and 73:** Under these articles, Bangladesh would have to follow specified procedures regarding disclosure of information having national security interests. In the event that supply of the information may prejudice national security, Bangladesh has to follow Article 72 to resolve the matter in a cooperative manner. If it still considers that disclosure would prejudice Bangladesh national interest, it must advise the Court, with reasons. If, however, the information is acquired from a third party, Bangladesh has to follow procedure laid down in Article 73.
4. **Obligations under Article 3:** The seat of the Court shall be at The Hague in the Netherlands, but according to Article 3, the Court may sit elsewhere, whenever it considers it desirable. This obligation, however, is subject to the agreement of the State Party where the Court can sit or hold sittings. In the event of such an eventuality, Bangladesh could agree to allow the International Criminal Court to sit in Bangladesh. Moreover, Bangladesh should have no problem for the Court's independent Prosecutor to carry out investigations in the territory of Bangladesh.
5. **Obligations under Article 70:** Under Article 70, the Statute has created a host of offences and Bangladesh would be obliged to create new offences in Bangladesh relating to the administration of justice to apply to offending that occurs in the course of the proceedings of the International Criminal Court. These would include offenses like perjury, obstruction of justice etc. Already under Bangladesh laws, such offenses are punishable, but its jurisdiction may have to be extended over Bangladesh nationals for offending elsewhere. As a matter of fact, Bangladesh Penal Code (Act No. XLV of 1860) already has extra-territoriality principle built-in. Under Section 3, "Any person liable, by any Bangladesh law, to be tried for an offence committed beyond Bangladesh shall be dealt with according to the provision of this Code for any act committed beyond Bangladesh in the same manner as if such act had been committed within Bangladesh."
6. **Obligations under Article 109:** Bangladesh would be obliged to enact necessary procedures in its laws to enforce fines or forfeitures ordered by the Court and to recover the value of the proceeds, property or assets so ordered.
7. **Obligations under Article 103:** Under this provision Bangladesh could express its willingness to accept sentenced persons and at the time of its declaration, may attach conditions to its acceptance. Bangladesh could agree to hold convicted prisoners especially in the event if the sentenced person was a Bangladesh national or the victims were.
8. **Obligations under Part 11:** Under this part, the Statute established An Assembly of State Parties where each party shall have one representative to oversee the various organs of the Court, its budget, and reports and activities of the Bureau of the Assembly. Bangladesh, on ratification, as a State Party would have to ensure continuous participation in the Assembly.
9. **Obligations under Part 12:** Part 12 deals with the financing of the Court and that as a Party to the Statute, Bangladesh has to contribute to finance the Court. Under the provisions, funding of the Court would come from three sources; assessed contributions from the States Parties, funds provided by the United Nations, and voluntary contributions from governments, international organizations, individuals, and corporations and other entities.
10. **Obligations under Article 79:** Under this provision, a Trust Fund shall be established for the benefit of the victims of the crimes within the jurisdiction of the Court, and of the families of such victims.



- 11. Obligations under Article 100 and Part 9:** Though the Court under Article 100 would bear the costs associated with the transport of person being surrendered to the seat of the Court, however, Bangladesh would have to pay the costs related to the request from the International court of assistance under Part 9.

### **QUESTIONS FOR BANGLADESH:**

According to the information received by the Coalition of the International Criminal Court, all ninety-three States that have so far ratified the Statute of the ICC, have undertaken serious studies. Some obviously have proceeded much faster than others depending on the capacities and political willingness, and in doing so, have raised and found answers to many questions, concerns and dilemmas.

Thus, it was very natural that Bangladeshi officials, while at home and abroad, as well as ICC activists and others, in formal and informal meetings, raised a number of issues on the Statute and its implications for Bangladesh. In all probability, some of these came up during analysis and consideration phase of the ratification process within the government.

So, an attempt will be made here to address all such questions that had been raised, over the years, by the officials and others, regarding ratification of the Statute by Bangladesh. By no means, however, these are exhaustive answers to some very complicated questions.

**Necessity for Ratification.** The government experts are clear about requirement of ratification of the Statute by Bangladesh to be a State Party. However, some argue that the Constitution of Bangladesh and the International Crimes (Tribunals) Act of 1973 that brought international crimes as conceived by the ICC under domestic jurisdiction for prosecution and trial, provide adequate legal basis to prosecute international crimes, and as such, ratification of the Rome Statute is not necessary for Bangladesh.

Even without a detailed analysis of the 1973 law, it can be said that the law has limited jurisdiction, and certainly could be a basis to build upon on, but cannot overcome the requirements of the Statute. The Rome Statute contains in Article 125 (2) necessary precondition, the Statute is subject to ratification and the instrument of ratification shall be deposited with the Secretary General of the United Nations for it to be applicable.

**Immunity:** Question on President's immunity and others were raised as an important issue for consideration. Under Article 27, it states that the Rome Statute "shall apply equally to all persons without distinction based on official capacity" and that the "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person." This provision has often been found to contravene many national constitutions that provide various degrees of immunities to the kings, Queens, heads of the states, and others.

Though immunities are not homogenous, and they vary between states, and as between the different types of privilege they afford. In some cases, the scope of conduct are covered by immunity is limited, while in others; it is absolute on its face, apparently guaranteeing the inviolability of the person. The countries that have ratified so far have applied as many as seven different approaches to address this question. Most of the States have adopted interpretative approach, teleological approach, or purposive approach. No country has thus far amended the constitution to revoke Kings or Presidents immunity.

The Constitution of Bangladesh in Article 51 offers immunity to the President for acts "in the exercise or purported exercise of the functions of this office..", that appears to contradict Article 27 of the Statute. But further examination reveals that Bangladesh adopted functional approach to immunity essentially to prevent frivolous or politically motivated interference and to govern the country according to the Constitution. Article 52 that provides provision for impeachment of the President for violation of the Constitution has confirmed this approach.

More so, under Article 48, the President has very limited constitutional power. He acts in accordance with the advice of the Prime Minister. Therefore, the possibility of a Bangladesh President ever to come under the Court's jurisdiction is simply not possible. Also, the people of Bangladesh will never expect their president to involve in any crimes, let alone the crimes of such magnitudes, and that there are no conceivable way for a President to commit ICC crimes without violating rights and duties embedded in the Constitution.

**Saving Clause in the Constitution:** Arguments have been made based on Article 47(3) of the Constitution of Bangladesh on its possible conflict with the Rome Statute. This provision constitutionally protects the legislation, namely, the International



Crimes (Tribunals) Act, 1973 that provides prosecution of members of armed or auxiliary forces for genocide, crimes against humanity or war crimes and other crimes under international law. Though the 1973 law may not have in its ambit civilians that the ICC has, there are no contradictions. This constitutional provision merely protects certain anomalies of law, but does not restrict or prohibit the government to ratify a treaty for the same or the other crimes with broader jurisdiction. Any new legislation expanding jurisdictional scope for such crimes cannot be in conflict with this provision. This legislation has no limiting effect.

**Extradition:** Extradition is not a constitutional issue in Bangladesh like in those countries that prohibit extradition of nationals to other jurisdictions. Mindful of this common constitutional problem, the delegates in Rome supplied specific characteristics to extradition under Article 102 of the Statute. It defined extradition for the purpose of the Statute as ‘the delivering up of a person by one State to another as provided by treaty, convention or national legislation’, while ‘delivering up of a person by a state to the Court’ as transfer.

**Penalties:** In number of countries there are constitutional provisions prohibiting life imprisonment while under Article 77, the ICC may impose life term for extreme gravity of crimes. It will not impose death penalty. However, the Statute’s penal provision, like life imprisonment or death sentence as practiced in Bangladesh, would not entail doing away with death penalty upon ratification. In fact, Article 80 of the Statute provides that penalty provisions of the Statute will not affect inclusion or prohibition of particular penalties in national laws. Therefore, there are no consequences in imposing death penalty, if Bangladesh ratifies. Nevertheless, as it sets the minimum standard of international norms, non-inclusion of death penalty reflect current trends of abolition of such form punishments.

**Definition of Crime of Aggression:** The Crime of Aggression found a place in the Statute but the governments in Rome could not agree to a common definition and exercise of its jurisdiction the Court. A Working Group on Crime of Aggression at the Preparatory Commission (PrepCom) meetings then continued the discussions but remained inconclusive. Now, the Assembly of State Parties will take over the work on defining the crime of aggression, and once agreed by the States, the Court will exercise its jurisdiction over crime of aggression.

Non-inclusion of the Crime of Aggression as one of the crime for the Court to exercise jurisdiction cannot be a justification not to ratify the Statute. Such approach undermines other three serious crimes of international concern that the Court will deal with. Moreover, those States who are concerned about crime of aggression, its definition and exercise of jurisdiction should rather ratify the treaty to join as full participant of the Assembly of State Parties. By ratifying the Statute, the States could then effectively contribute as a full voting member in the discussion on the crime of aggression. Staying out of the Court will offer States no opportunity to influence the course of event.

**Opt-out Provision:** Opting out by a State Party under Article 124 of the Statute from Court’s jurisdiction over war crimes, was a compromise provision during negotiation in Rome. It was only availed by France out of 93 ratifying States. This provision should not be used to justify not ratifying the Statute on the ground of an imperfect treaty. There are controversies in France about its declaration under Article 124, and many believe, this will have no visible impact on the workings of the Court.

**Higher Threshold:** There are some concerns about higher threshold of crimes and its possible impacts on national legal order. It is true that the government delegates at the Rome negotiation were very careful to ensure that the Court only deals with the cases of major concerns to the international community. In this regard, the negotiators agreed that the crimes to be defined clearly included the elements of the crimes, and provided numerous safeguards against abuse of the process.

The thresholds of the crimes, therefore, are every high. Higher bars were put to protect frivolous or motivated cases ever to reach to the Court. However, as an international treaty, the Statute set the minimum standard of justice. Nevertheless, one can argue that not holding a trial to ICC standard may tantamount to inability on the part of the State, triggering ICC’s jurisdiction.

This must be seen in the context of the principle of complementarity, where ICC will not interfere if a State Party carried out a genuine investigation or prosecution. Therefore, higher threshold of the crimes cannot be a ground for the State not to ratify the Statute, rather, ratification will likely to generate aspiration to improve, if needed, the national legal system to minimum international standard provided by the Statute.

**Mental Elements:** Some have expressed concerns about the mental element (*mens rea*), necessary for criminal responsibility in the ICC crimes, and whether it is different from the age-old concept applied in Bangladesh, and its possible consequences of ratification. If so, whether it would require re-writing of entire penal and procedural laws of Bangladesh.



Such arguments are patently unfounded. Under Article 30 of the Statute, “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge”. It defines intent and knowledge. The Statute never intended to compel nations to change all the criminal provisions; rather, the principle of complementarity under Article 1, and in Preamble reinforces national systems. However, States have always been under obligations to bring domestic norms to internationally recognized standards.

This is illustrated by the fact that major Commonwealth countries including Canada, New Zealand, UK, South Africa, Ireland etc, with similar common law principles, did not find any contradictions with the mental element aspect of the ICC crimes and their legal systems. Ours, based on same principles, do not have to change because of mental element requirement of the ICC crimes.

**Bad Faith:** The argument that the Prosecutor may act hastily under Article 17 to initiate the process on the ground of the State’s inability or unwillingness to prosecute should be an overwhelming reason not to ratify is also entirely a misplaced view. The Prosecutor’s power to initiate an investigation is conditional upon approval of three members Pre-Trial Chamber of the Court. The Prosecutor will have to provide mountains of evidence to initiate such an investigation, as seen above; the thresholds are rather high for ICC crimes.

Moreover, the Statute defined clearly both inability and unwillingness, if the State acts to shield the person from criminal responsibility, or there had been total or substantial collapse of national judicial system for the Court to exercise jurisdiction. It is true that eventually the Court will determine on bad faith, inability or unwillingness of the State Parties. In this sense, an independent and competent Court representing all regions of the world will decide judiciously.

**Implementation Legislation and Reform of Criminal Law:** Some have argued to put in place necessary implementation legislation, and complete reform of criminal law before ratification. In some countries, these are constitutional and legal requirements.

In Bangladesh, prior implementation legislation is not necessary for ratification. Under Article 145A of Bangladesh Constitution, “treaties with foreign countries shall be submitted to the President who shall cause them to be laid before Parliament.” Internalizing the Rome Statute is a necessary requisite of the Statute, but not a pre-condition. Implementation legislation could be developed later. For example, in 1998 Bangladesh acceded to Genocide Convention, but has yet to enact implementation legislation. Equally, reforming the criminal law before ratification to rectify perceived differences and to bring into line our national legislations are also unwarranted.

**On jurisdiction:** Some have lingering doubts and questions about the Court’s jurisdiction on *ratione personae* with regard to cut-off dates for the Court to exercise its jurisdiction. The Statute is very clear in Article 24 where it states “No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.” In other words, crimes committed prior to 1 July 2002 will not come under the jurisdiction of the Court.

**Financing and Financial Supports:** Under Article 115 of the Statute, the State Parties will finance the Court in addition to voluntary contributions and funds provided by the United Nations. The contributions will be assessed under UN scale. For the first Assembly of State Parties, Germany alone has committed to provide 23% of the total expenses. It should be noted, out of the ratifying countries, especially those in Asia and Africa and not particularly rich will pay very little amount. The figure indicates as low as \$40 a year has been assessed contribution of a State Party.

**Regional Considerations:** Bangladesh is the only South Asian country to have signed the treaty. It is, therefore, natural to inquire about the perceptions of its neighbors, and to weight any consequences. However, Bangladesh has always been ahead in fulfilling its international responsibilities compared to other countries in the region. On the one hand, regional situation appears bleak, though there are signs of hope. Nepal’s government, before recent dissolution of parliament, all but decided to ratify the Statute to arm itself with additional weapon of law against the rebels. As peace process in Sri Lanka gets momentum, the government’s earlier opposition has already changed, and in all probability, will dissipate further, while supports for the ICC has been rising in India and Pakistan.

Moreover, Bangladesh ratification is not likely to put the nation at any particular disadvantage vis-à-vis its neighbor. Rather, Bangladesh would gain substantial benefit from good wishes of the world community to stand-alone among neighbors in favor of international law.



**Wait for the others:** Bangladesh could easily succumb to the argument to wait and see the evolution of the Court and decide later, especially, to see which of the big countries join or stay away. Bangladesh should not be swayed by such thoughts, as it will not provide any particular advantage for the country, as a positive decision would.

**Security Council:** The Court will be independent of UN and the Security Council, but the Council would be able to refer a situation to the Court, and under Article 16, has the power to defer the process for 12 months and to renew it. Again, this was one of the many compromises made in Rome to get an agreed treaty. All permanent members must agree to any such resolution. This is not a perfect treaty but enormously better than the culture of impunity that now prevails.

**Existing and Bilateral Treaties:** After ratification, the States have to be careful about new bilateral treaties signed with another country. The Statute will not override the existing bilateral treaties, and the State Parties could rely on the existing treaties under Article 98. However, State Parties must regard new treaties in light of the Statute, and its various obligations. All new treaties must be consistent to obligations under the Statute.

**US Role:** US opposition to the Court is indicative of the Court's potential power, and its independence. The US opposed the Court to the extent of un-signing its signature, demonstrates that as far as the US is concerned, the Court will to be effective, and will exercise power independently, and will work and stay beyond its influence. The US would not have opposed the Court had it been certain about influencing its course. In addition, the US is unsure of its future activities that might attract the Court's jurisdiction.

To shield American nationals from the ICC's reach, US has aggressively campaigned and succeeded in securing bilateral non-surrender agreements with as many as 72 States, 33 of which are State Parties to the ICC. Typically, under such an agreement, US secures promise not to surrender a wanted American before the ICC or other international tribunal without agreement of the United States. The US applied unfair, illegal and immoral tactics including withholding of military aids, to obtain such agreements. Bangladesh is also one of the 15 Asian countries that have signed such an agreement.

These bilateral non-surrender agreements have no legal effects on the ICC, and States are free to ratify the Statute. It merely expects not to handover American nationals found on the territory of State Party. It however does not prevent the State to exercise judicial sovereignty to prosecute such a person for commission of international crimes and to fulfill the principles complementarily. As such, despite a signatory to a non-surrender agreement, Bangladesh still could ratify the Statute.

## **WHAT DOES BANGLADESH GAIN?**

Bangladesh has everything to gain from by expressing its commitment in building the institution to deal with justice after genocide and other international crimes, and establishment of the rule of international law. The Court will end the eternal immunity that had so far been enjoyed by the perpetrators of international crimes with positive impacts on the international peace and security. The permanent Court will be able to respond quickly in the event of necessity, unlike the *ad hoc*, that so far proved to be inadequate. Ratification will reaffirm commitment of Bangladesh to existing obligations under international law and those under the United Nations Charter.

Because of the principle of complementary, Bangladesh will have full jurisdiction to deal with such crimes under national laws, and in this regard, Bangladesh do not have to part with its rights of judicial sovereignty. The ratification will reinforce Bangladesh democracy and would deter adventurers from otherwise disturbing the stability of the country.

The Statute though did not include use of nuclear weapons as war crimes as many countries demanded, but for Bangladesh, this has special significance, since, in recent years, the region has gone nuclear. The Statute has enough provisions to make, in effect, illegal use of nuclear weapons. It has prohibited use of weapons that are of a nature to cause superfluous injury or unnecessary suffering, or that are inherently indiscriminate (Article 8). This would have sobering effects of the nuclear countries in the region.

Once ratified, Bangladesh would be placed at advantageous situation to contribute effectively at early days of the Court's formation and influence it's development.

## **RATIFICATION PROCESS IN BANGLADESH:**



Unlike many countries, ratification of an international treaty, whether bilateral or multilateral, has simpler procedure in Bangladesh. Under Bangladesh Constitution, Article 145 A states that “All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.”

Thus, in Bangladesh, Parliament’s prior acceptance or endorsement is not essential to ratify a treaty. However, after ratification, members of the Parliament should have the opportunity to deliberate. But as people’s representative, prior consultation with the Members of Parliament will increase understanding of and support for the Statute.

### **DIFFERENT OPTIONS:**

The Statute of the ICC foresees a general cooperation agreement with the Court based on Part 9 of the Statute as the minimum necessary requirements following the ratification. The broad outline of the agreement has already been provided in Part 9 and as discussed, Bangladesh would have no difficulty in entering into such an agreement with the Court.

Other options include, adoption of the Statute of the ICC in its entirety as a stand-alone piece of national legislation to be followed when the Court requires assistance, invoke jurisdiction or Bangladesh does its part at ICC. However, in such an eventuality, relationship with the Supreme Court of Bangladesh and other jurisdictional issues has to be made transparent.

Yet another option could be to remold the law that already exists, the International Crimes (Tribunals) Act. Although enacted to try international crimes under domestic jurisdiction, the Act could well be amended suitably to serve both the purposes; domestic trials for international crimes and support the International Criminal Court by including all the obligations as stipulated by the Statute.

Finally, Bangladesh could opt for a law on ICC after reviewing its effects on all laws with comprehensive amendments, as appropriate, to various civil, criminal and procedural laws. This approach will be the best option for Bangladesh, since, in the process, the laws and the procedures will be assessed by the international standards.

### **CONCLUDING THOUGHTS:**

International system was chaotic for long, but at the same time, quietly the international law developed to the extent that today a person could be individually held criminally responsibly for committing international crimes. International law, until recently, was solely governmental affairs, but now; natural persons are too subject to international law.

In conclusion, it could be said that the ratification of the Statute are fully consistent to national interests of Bangladesh, and the country has all to gain from the good wishes of the international community. It is good for the country in every aspect, as Bangladesh will be placed on higher pedestal for its commitment to the rule of international law.

Following the ratification, Bangladesh still has to continue to work for accession by other Asian countries. Bangladesh by then would be suitably placed on moral high ground to play leading role in Asia.

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