

**Review Conference of the Rome Statute
Kampala, Uganda**

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Japan Federation of Bar Associations**

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**Observation for
the Review Conference of the Rome Statute
of the International Criminal Court (ICC)**

**Japan Federation of Bar Associations
(JFBA)**

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Observation

The Japan Federation of Bar Associations expresses the following observation to the ICC and the governments of each participating state in the Review Conference, concerning stocktaking of the Review Conference for the Rome Statute of the International Criminal Court.

1. Observation concerning Universality of the ICC

The ICC is a court exercising jurisdiction against "those who commit the most serious crimes of concern to the international community as a whole."¹ In order to achieve this, it is important to achieve participation from all regions of the world; however there are regions, especially Asia, where there is insufficient participation in the ICC and ratification of the Rome Statute. We believe that the ICC and Assembly of States Parties can encourage the various nations of such regions to participate in the Rome Statute by appealing to the bars and lawyers' associations of each country and implementing measures to promote understanding about the Rome statute and the ICC.

2. Opinion concerning Issues of Lessons Learned

A fair trial and expeditious trials are internationally recognized human rights and form the core of legitimate criminal processes. In order to resolve some of the issues about how to ensure fair trials and expeditious trials, the Presidency of the ICC has sought to establish a venue for constructive dialogue, without prejudice to the independence of the judiciary, between various ICC organs and those representing criminal lawyers and the legal representatives of victims.

Reasons for the Observation

1. Observation concerning Universality of the ICC

In order to strengthen the ICC, the majority of countries should become parties to the Rome Statute², but in reality there are regions of the world, especially Asia, where an insufficient number of states parties are there. In order to promote accession to the Rome Statute by states from those regions lacking adequate participation, it is necessary to promote understanding of the activities of the ICC and the Rome Statute amongst the bars and lawyers' associations in each of those states.

The Japan Federation of Bar Associations (JFBA) has from early on pressed the Japanese government to accede the Rome Statute and has undertaken activities that promote deeper understanding of the ICC amongst member lawyers. As part of this process the JFBA convened the International Criminal Law Seminar in Tokyo on May 18 and 19, 2007. Attendees of the Seminar included not only Japanese lawyers but also attorneys and scholars from more than 30 countries. Starting with Judge Song Sang-Hyun from the ICC, attendees included representatives from the ICC Registry, the Office of Public Counsel for the Defense (OPCD) and the Office of Public Counsel for Victims (OPCV). Attendees from within Japan included people from government, including a former Minister of Justice, a substantial number of parliamentarians and representatives of various overseas embassies. The seminar discussions covered legal and practical affairs of the ICC, the principle of equality of arms between parties, and victims rights,

¹ The Rome Statute of the International Criminal Court Chapter 1.

² Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/8/Res.3, paras. 1 and 2.

from the perspective of comparing to domestic criminal law practice in varied Asian countries. The Seminar, the records of which were published by the JFBA under the title “Opening the Door of the International Criminal Court”, has played a significant role in fostering understanding amongst attorneys and scholars from the Asian region of the activities and objectives of the ICC and was instrumental in moving Japan toward accession to the Rome Statute immediately following the seminar, in October 2007.

In tandem with accession and ratification of the Rome Statute, another important issue concerning the ICC is achieving regional parity in staff and listed counsels working at the ICC³.

Contributions from the bars and lawyers’ associations of various countries from underrepresented regions should be encouraged in order to overcome these challenges. Under its procedures and rules of evidence, the ICC Registrar is to secure cooperation with independent bars and lawyers’ associations on legal aid, legal training and code of conducts. It is also important that the ICC and the Assembly of States Parties cooperate with bars and lawyers’ f associations to encourage other governments to ratify and accede the Rome Statute and to have them represent in the work of the ICC . Accordingly, the ICC and the Assembly of States Parties must implement measures to encourage understanding of the Rome Statute and ICC activities amongst the bars and lawyers’ associations of each nation.

2. Observation concerning Issues of Lessons Learned

Viewing the ICC's consistent performance of its operations to date in establishing an international system of criminal justice on the one hand, it also faces a considerable number of challenges. Examples of these can be found in the Lubanga case, the first ever before the ICC, which experienced delays and insufficient support and legal aid budget for counsels to realize the principle of equality of arms between the prosecution and the defense. The realization of victims’ rights also faces with challenges, which shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. .

In one respect, these challenges shall be resolved simply through judgments or decisions of chambers in individual cases where parties and participants have exhausted their arguments; however, in another respect, the understanding of challenges should be shared among all lawyers involved with the ICC where the challenges are common to them . General, constructive dialogue by representatives of parties and participants concerning challenges they have in common would lead to mutual understanding between those parties and participants about their respective concerns and considerations. This would also help to provide direction in solving the challenges at hand. The Presidency in charge of the proper administration of the ICC should provide opportunities for such dialogue, paying heed not to be prejudice to judicial independence of respective functions⁴.

³ ICC-ASP/8/Res.3, 11th para. of the Preamble and para. 20. Statement by Sang-Hyun Song, President of the ICC at the 8th ASP, 18.11.2009.

⁴ Article 38 Clause 3(a) of the Rome Statute concerning International Criminal Court. The Office of the Prosecutor is excluded from "proper administration of the Court" in that clause. The independence of lawyers and legal representatives of accused persons is protected. Resolution of problems confronting the ICC however concerns all persons involved with the ICC.