

Fact sheet: China and the International Criminal Court

“China is ready to join in the effort to set up the Court and to promote its universality and authority.”

China’s statement to the Sixth Committee of the United Nations General Assembly Sixth Committee, October 1999.

On 17 July 1998, the international community adopted the Rome Statute of the International Criminal Court (Rome Statute). The Rome Statute established the new International Criminal Court (ICC) to bring to justice persons accused of the worst crimes known to humanity: genocide, crimes against humanity and war crimes. Amnesty International is calling on all governments of the world to commit to the new system of international justice by ratifying the Rome Statute to ensure that when genocide, crimes against humanity and war crimes are committed that those responsible are brought to justice. As of 17 July, 105 states from all regions of the world have ratified, including Afghanistan, Cambodia, Japan, Mongolia, Republic of Korea, Timor Leste from the Asia region. Many others countries are preparing to do so.

Amnesty International believes that with strong international support, the ICC can act as a strong deterrent to the horrific crimes as persons will never again be able to plan and commit them safe in the knowledge that they will not be held accountable. Furthermore, instead of being forgotten, victims will see justice for the crimes they have suffered and will be able to seek reparation to help them rebuild their lives.

Since the ICC was established on 1 July 2002, it has already made important progress towards upholding the rule of law. The ICC is currently conducting investigations in four situations – Central African Republic, the Democratic Republic of Congo, Darfur, Sudan and northern Uganda where crimes have been committed on a large scale. The first trial of Thomas Lubanga Dyilo, who is charged with enlisting, conscripting and using child soldiers, is expected to begin in 2007.

Amnesty International welcomes China’s support for the establishment of the ICC and calls on the government to now start the process of ratifying the Rome Statute.

China’s position on the ICC

Although China has not yet ratified the Rome Statute, it is emerging as an important supporter of the ICC. China was very active in the process of drafting the Rome Statute. It was therefore disappointing when China was one of only seven states that chose to vote against the adoption of the Rome Statute. The government’s reasons for doing so focussed on three main issues. Firstly, the government raised concern about some aspects of the definitions of crimes against humanity and war crimes. Secondly, the government expressed concern that the crime of aggression was listed as a crime under the jurisdiction of the ICC even though the Statute expressly requires that the crime be defined before the ICC can exercise jurisdiction over the crime. Thirdly, the government was concerned that the ICC could be subject to political bias or interference.

Since voting against the Rome Statute, however, China's position has significantly changed to support the ICC. A year later, in 1999, China participated actively in the Preparatory Commission

of the International Criminal Court to draft the supplementary documents to the Rome Statute. In the development of the Elements of Crimes, China insisted that the letter and spirit of the Statute with regard to crimes under the jurisdiction of the ICC should be fully respected, indicating that after further consideration China determined that the definitions of crimes in the Rome Statute are consistent with international law. Despite its original opposition to references to the crime of aggression in the Rome Statute, China participated actively in the working group tasked with developing a definition of the crime of aggression and a procedure for submitting cases to the Prosecutor of the ICC. Furthermore, China voiced its political support for the ICC on a number of occasions, including in 1999, when it stated during the United Nations General Assembly's Sixth Committee "China is ready to join in the effort to set up the Court and to promote its universality and authority."

Following the entry into force of the Rome Statute in July 2002 and the establishment of the ICC, China re-stated its support for the Court: "[i]f the operation of the court could bring to justice all those individuals who have perpetrated most serious international crimes, this would not only help build confidence in international justice, but will also ultimately contribute to the maintenance of international peace and security. This is the outcome we fervently hope for."

In 2003, in its address to the United Nations General Assembly's Sixth Committee, China stated "What we hope to see is that before long, an independent and just international judicial body that truly commands respect will emerge to play an important and positive role on the international stage. China is ready to work tirelessly with other countries towards this end." Since then the government has welcomed the transparency of the Prosecutor in developing his policies and the work done by the judges, the Prosecutor and the staff of the ICC in making the Court functional.

In the context of these expressions of support for the ICC, the Chinese government has on some occasions reiterated that the ICC must carry out its mandate in an objective and fair manner, free from political bias. Accordingly, the government has openly stated that it is following the development of the ICC to ensure that such concerns of political bias are not realized before China decides whether to ratify. For example, in 2005, China stated during a debate on Reform of the United Nations "we still hope that the Court will win the confidence of non-Contracting Parties and wide acceptance of the international community through its work."

Amnesty International believes that there are effective safeguards in the Rome Statute to protect against politically motivated prosecutions. Indeed, the ICC has already, in its first years demonstrated that it is a just, fair and effective court. Concerns of political bias or interference have not materialized in any way. The Prosecutor has followed the mandate set out in the Rome Statute by focusing on situations under the jurisdiction of the ICC which are widely recognized as extremely serious, involving widespread crimes under international law.

Amnesty International calls for China to start the ratification process

Based on the strong political support expressed for the ICC and the important achievements of the Court in its first years, Amnesty International is calling on the Chinese government to start the process of ratifying the Rome Statute and joining the new system of international justice. As a first step, the organization encourages the government to conduct a review of its national law to ensure that national courts can prosecute crimes in the Rome Statute and that China can cooperate fully with the ICC. Such a review should be conducted transparently in consultation with civil society, including the national legal community which has shown a strong interest in the ICC in recent years. In particular, Amnesty International would urge the government to incorporate the comprehensive fair trial guarantees in the Rome Statute into national law and to follow the ICC's example by prohibiting the death penalty as a punishment for the crimes.

For more information about the ICC and analysis of the Rome Statute, see Amnesty International's fact sheets on the ICC, available in Chinese at: www.amnesty.org/pages/icc-factsheets-eng