

## STUDENT CONTRIBUTION

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# Rome Statute and India: An Analysis of India's Attitude towards the International Criminal Court

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*The International Criminal Court is the first permanent world judicial institution with nearly universal jurisdiction to try individuals accused of war crimes, crimes against humanity, genocide and possible aggression. Curiously, India voted against the Court's founding instrument, the Rome Statute. The Indian Government has chosen to adopt a 'non-position' on the most important step taken towards establishing genuine accountability for unthinkable atrocities, which reflects a deep seated confusion of thought rather than a principled stance. Even worse, the stated position of the Government has been to find common ground between Indian and American 'apprehensions' of "possible conflict between robust, national judicial processes and international tribunals as also the impact of such tribunals on national sovereignty." Against this background, this paper presents a critical review of the Indian position on the ICC, considering familiar accusations and criticisms directed against it. It also explores policy options available to the government in tackling core international crimes and finally underlines the need for reforms in the national criminal justice system. It is the thesis of this paper that India has seriously misjudged the legal, political and social repercussions of opposing the Rome Statute, and risks a further erosion of credibility if it altogether repudiates the Statute, and with it, its sizable practical advantages for protecting the dual interests of its nationals as individuals serving their country abroad, and of its national security. These points are not based on sentimental devotion to a vague and ill-defined*

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*internationalism, but on a pragmatic analysis of the interplay between the ICC and customary international law.*

### **Keywords**

ICC, Jurisdiction, State Sovereignty, Security Council, International Crimes.

I believe an International Criminal Court is very much to be desired. – Harold Pinter<sup>1</sup>

## **I. Introduction**

In human history, thousand of wars have been fought and millions of lives and limbs have been lost. This inevitably has been punctuated by many egregious instances of “crimes against humanity” for which few or no individuals have been held accountable. At the end of the twentieth century the international community finally summoned its will to establish a permanent international criminal court. In 1998, determined to put an end to impunity for the perpetrators of atrocities and to prevent grave international crimes, a diplomatic conference in Rome adopted the Statute of the International Criminal Court (“ICC”).<sup>2</sup> The Rome Statute was approved by an overwhelming majority vote.<sup>3</sup> The ICC Statute has received the sixty ratifications necessary for its entry into force.<sup>4</sup> The new Statute promises to impact universal jurisdiction in particular and the enforcement of international criminal law in general. While it is too soon to assess the ICC’s impact on the latter,<sup>5</sup> we could recognize at the outset that the ICC and universal jurisdiction pursue similar goals. Both systems grant jurisdiction, albeit to a different extent, over offenses such as: war crimes, crimes against humanity, and genocide. Further, they attempt to punish crimes that domestic courts would otherwise be unable to prosecute under ordinary heads of jurisdiction. This overlap raises

<sup>1</sup> See Brainy Quote, available at <http://www.brainyquote.com/quotes/quotes/h/haroldpint366865.html> (last visited on July 4, 2010).

<sup>2</sup> U.N. Doc. A/CONF.183/9 (1998), reprinted in 37 I.L.M. 999 (1998) (hereinafter Rome Statute).

<sup>3</sup> 120 participants in the Rome Conference voted in favor of the Rome Statute and 7 voted against it. 21 states abstained. See U.N. Press Release, U.N. Diplomatic Conference Concludes in Rome with Decision to Establish Permanent International Criminal Court, July 17, 1998 (L/ROM/22), available at <http://www.un.org/icc/pressrel/lrom22.htm> (last visited on July 4, 2010).

<sup>4</sup> Rome Statute art. 126.1.

<sup>5</sup> Antonio Cassese, *The Statute of the International Criminal Court: Some Preliminary Reflections*, 10 EUR. J. INT’L L. 144-145 (1999).