Asian Perspectives on the International Law Commission's Work on Crimes Against Humanity

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Abstract

No Asian States expressed regret over the failure of the Sixth Committee to reach a consensus on the elaboration of a convention on crimes against humanity. This article examines the comments of Asian States during the Sixth Committee debate on the final Draft Articles submitted by the International Law Commission, demonstrating that most States believed further discussions were needed. It situates these comments against the wider Asian approach to international criminal law, and argues that the concerns of the Asian States during the Sixth Committee are part of a broader context. In doing so, it suggests a common ground for future discussion and the progression of a convention.

Keywords: Asian States, crimes against humanity, international criminal law, Draft Articles on Prevention and Punishment of Crimes Against Humanity.

1 Introduction

In its seventy-first session in 2019, the International Law Commission (ILC) completed the second reading of its Draft Articles on Prevention and Punishment of Crimes Against Humanity and submitted it to the General Assembly with a recommendation that States elaborate a convention under the auspices of the United Nations or by an international conference of plenipotentiaries on the basis of the Draft Articles. However, the Sixth Committee was unable to agree on an elaboration of a convention as recommended by the ILC. The statement of the Singapore delegation, which introduced the draft resolution on crimes against humanity at the end of the Sixth Committee debate, urged delegations to continue to "genuinely seek to understand the view of others and work together to find mutually acceptable solutions".[1] This indicates that there was some division on how to proceed with the Draft Articles.

In seeking a way to accommodate differing views among States on a way forward, it seems crucial to examine opinions of Asian States. Indeed, there was no Asian State among those 43 States expressing regret over the failure of the Sixth Committee to reach a consensus on an elaboration of a convention. In fact, as will

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1 A/C.6/74/SR.35 (2019), Para. 31.

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be shown in the main part of this article, most States from this region that made comments in the Sixth Committee debate suggested that further discussions among States were needed before moving on to the next stage.

Against this background, this article traces the concerns expressed by Asian States in the Sixth Committee and situates them in a broader context to seek common ground for future discussion.

In proceeding with this analysis, a preliminary question is which States are defined as falling within the 'Asian' region. In contrast to other regions based on geographical contiguity (Africa and North and South America) and/or coordinated actions through the creation of regional organizations (Europe, Africa and the Americas), Asia has no such settled geographical scope, nor has a regional institution been established with the same level of integration as those in the aforementioned regions. Given this unsettled situation and for the sake of the discussion, this article starts from the United Nation's Asia-Pacific Group (55 States), from which the Middle East (14 States), the Pacific (11 States) and two special cases (Kiribati and Cyprus) are excluded. The Middle East is excluded because it is usually viewed as its own distinct region and possesses its own regional institution (the League of Arab States). The Pacific is excluded because, while it is closely linked to Asia by geography, economics and politics, it is still conceived as a distinct region and also has taken a slightly different approach to international criminal law (ICL) compared with Asian States.[2] The remaining 28 States are referred to here (in this article) as States in the Asian region, and are, in addition, divided into four groups: East Asia, Southeast Asia, South Asia and Central Asia (see, annex Table 1).[3]

2 Asian States' Approach to ICL

Before proceeding to the main analysis, it is useful to observe how Asian States have approached ICL. Generally speaking, Asian States have taken cautious approaches to ICL, which is mostly traceable to their attitudes towards the International Criminal Court (ICC). Indeed, States from this region had actively participated in the negotiation that led to the adoption of the ICC Statute.[4] However, at the end of the diplomatic conference in Rome, China voted against the Draft Statute, while several others (India, Singapore and Sri Lanka) abstained from the

2 M. Findlay, 'Sign Up or Sign Off – Asia's Reluctant Engagement with the International Criminal Court', *Cambodian Law and Policy Journal*, Vol. 1, 2014, pp. 75-95, at p. 87.

3 This article does not claim authority on the categorization of Asian States nor aims to solve the issue; however, it is noted that this group of States generally corresponds to the list of 'Asian' States adopted by many Asian States themselves on their government websites.

4 Notably, compromise proposals made by Singapore (on the power of the UN Security Council to defer an ICC investigation or prosecution for a renewable period, which had been integrated into Art. 16) and the Republic of Korea (on the issues of jurisdiction, which had led to Art. 12) had significantly contributed to shaping the final form of the Statute. *See* S. Linton, 'International Humanitarian Law and International Criminal Law', *in* S. Chesterman et al. (Eds.), *The Oxford Handbook of International Law in Asia and the Pacific*, Oxford, Oxford University Press, 2019, p. 162.

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vote for various different reasons.[5] As of July 2020, only 8 of the 28 States in the group (Afghanistan, Bangladesh, Cambodia, Japan, Republic of Korea, Maldives, Mongolia and Tajikistan)[6] are Parties to the ICC Statute. This record of Asian participation in the ICC regime has been additionally soured by the fact that the Philippines, which ratified the Statute in 2011, notified its intention to withdraw on 17 March 2018 (this came into effect on 17 March 2019), after the Office of the Prosecutor decided to open Preliminary Examinations into the situation in the Philippines.[7] Moreover, while Malaysia had deposited its instrument of accession on 4 March 2019, it withdrew from the Statute a month later, before the Statute had entered into force for it.[8]

At the same time, this record does not necessarily mean that Asian States are indifferent to ICL or that they are unwilling to engage with it. First, many States in this region have ratified the Convention on the Prevention and Punishment of the Crime of Genocide and the 1949 Geneva Conventions (see Table 1). Second, regarding crimes against humanity, while not all the States Parties to the ICC Statute have enacted domestic legislation that provides for the prosecution of crimes against humanity,[9] several non-Party States to the Statute have enacted such legislation. For instance, Indonesia criminalized crimes against humanity in its domestic law in 2000, which also establishes a Human Rights Court that specifically deals with gross human rights violations based on territorial and active personality principles. The Philippines enacted Republic Act No. 9851 in 2009, in which crimes against humanity were criminalized and are subject to universal jurisdiction. It retained this Act despite withdrawing from the ICC Statute, and in fact, mentioned this legislation to show its commitment to combating impunity for crimes against humanity in its comment in the Sixth Committee.[10] In addition, China has participated as an observer in the Assembly of States Parties of the ICC Statute since 2002, and actively engaged with the discussions of the Special Working Group on the Crime of Aggression. Though a Non-Party State ineligible to vote in conference decisions, China sent a delegation to observe the Review Conference of the ICC and present its views.[11]

5 Explanations of vote are available at: www.un.org/press/en/1998/19980720.l2889.html.

6 Note that the scope of Asian States in this article is not the same as that of the Asia-Pacific States identified in the ICC Regime, as this article excludes the Middle East and Pacific regions from the scope of Asian States.

7 Statement of the Prosecutor of the ICC (8 February 2018), available at: www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat.

8 Reportedly, the decision of the Malaysian government to accede to the Statute had created political confusion and the government had faced criticism from its opposition parties and the Crown Prince of Johor. *See* www.coalitionfortheicc.org/news/20190412/malaysia-backtracks-accession-rome-statute.

9 Among States Parties to the ICC Statute in this region, South Korea, Cambodia and Bangladesh are the only States to have adopted crimes against humanity into their domestic law (*see* Table 1).

10 The Philippines, A/C.6/74/SR.27 (2019), Para. 49.

11 D. Zhu, 'China, the International Criminal Court, and Global Governance', *Australian Journal of International Affairs*, Vol. 73, No. 6, 2019, pp. 585-608, at p. 587.

All these developments seem to indicate that Asian States have been increasingly engaging with ICL while maintaining a certain distance from the ICC regime. Grounded in this observation, the next section will turn to how Asian States react to the ILC's work on crimes against humanity in the Sixth Committee.

3 Asian States' Reaction to the ILC's work on Crimes Against Humanity

3.1 Comments of Asian States in the Sixth Committee

Overall, most Asian States have constantly shown support for and understanding of the work of the ILC on the topic of crimes against humanity since it was first presented to the Sixth Committee in 2015. Indonesia hailed the project as "an essential part of the international community's effort to combat impunity and a key missing piece in the current framework of international law".[12] Similarly, Japan pointed out that this work would establish "horizontal relationships among States and regulate inter-State cooperation", which would complement the "vertical relationships" regulated by the Rome Statute between the ICC and its States Parties, and suggested that the ILC's work would contribute to "filling the legal gap between [the] obligation[s] of prevention and punishment".[13] Singapore welcomed the Draft Articles "which could help to strengthen accountability by providing useful practical guidance to States on the topic of crimes against humanity".[14]

However, views were divided on how to proceed with the Draft Articles. Thailand and Malaysia expressly supported the elaboration of a convention on the basis of the Draft Articles, as recommended by the ILC.[15] Other States, however, took a more cautious approach. China was the most direct, contending that "the time was not ripe for the conclusion of a convention", maintaining that such a convention must be based on the actual will of and consensus among States.[16] Similarly, Vietnam was not convinced that consensus existed regarding an international convention in so far as the ILC's analysis was based on the practices of the ICC, which "did not enjoy broad consensus within the international community".[17] More nuanced comments were given by other delegations, suggesting that further discussion among States was needed and States' opinions should be fully heard.[18]

12 Indonesia, A/C.6/70/SR.23 (2015), Para. 29. *See also* the Philippines, A/C.6/74/SR.27 (2019), Para. 49 ("an important contribution to the international community's effective efforts to deter and curtail atrocity crimes").

13 Japan, A/C.6/70/SR.22 (2015), Para. 129, A/C.6/71/SR.23 (2016), Para. 30. *See also* South Korea, A/C.6/74/SR.26 (2019), Para. 55; Uzbekistan, A/C.6/74/SR.26 (2019), Para. 31; Thailand, A/C.6/72/SR.19 (2017), Para. 62.

14 Singapore, A/C.6/74/SR.24 (2019), Para. 28.

15 Thailand, A/C.6/74/SR.24 (2019), Para. 106; Malaysia, A/C.6/74/SR.26 (2019), Para. 100.

16 China, A/C.6/74/SR.23 (2019), Para. 51.

17 Viet Nam, A/C.6/74/SR.26 (2016), Para. 49.

18 South Korea, A/C.6/74/SR.26 (2019), Para. 58; the Philippines, A/C.6/74/SR.27 (2019), Para. 49.

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Notably, most of the concerns raised by Asian States were related to the scope of criminalization and the establishment of national jurisdiction.

As to the scope of criminalization, on the one hand, it is observed that there is a consensus among delegations, including both Parties and Non-Parties to the ICC Statute, in proceeding with the definition of crimes against humanity as contained in the Rome Statute and mirrored in Draft Article 2. Even China, which has been critical of the ILC's reliance on the practice of the ICC, seemed to accept the definition in the Rome Statute in so far as it is "interpreted in conjunction with the Elements of Crimes adopted by the Assembly of States Parties",[19] thereby reflecting the States' will. On the other hand, several delegations pointed out the technical difficulties that may be posed in incorporating crimes against humanity in their domestic legal systems and suggested that the Draft Articles should have taken into account the diversity of national systems.[20] For instance, Japan suggested that, regarding the criminal responsibility of a person who participates in an offence in the form of "accessorial" responsibility provided in Draft Article 6, Paragraph 2, States had differing provisions regarding the modes of criminal responsibility and should be allowed some discretion in that regard.[21]

Concerns were also raised regarding the liability of legal persons for crimes against humanity provided for in Draft Article 6, Paragraph 8. Vietnam maintained that the criminal liability of legal persons had yet to gain wide acceptance in international law and so sanctions for the acts of legal persons should be addressed in the States' domestic laws.[22] In this regard, while the commentary on the Draft Articles admits that the "criminal liability of legal persons has not featured significantly to date in international courts and tribunals", the Draft Articles draw on the language contained in conventions "that ha[ve] been widely accepted by States in the context of other crimes and that contains considerable flexibility for States in the implementation of their obligation",[23] such as the Convention against Corruption, the Convention against Transnational Organized Crimes, the Optional Protocol to the Convention on the Rights of the Child regarding the sale of children, child prostitution and child pornography and the International Convention for the Suppression of the Financing of Terrorism. However, China maintained that there were major differences between the acts addressed in the aforementioned treaties and crimes against humanity, in terms of their nature and elements, and suggested that those issues concerning the likelihood of actual participation of legal persons in the proscribed acts and the need for criminalization under domestic law should be left to the autonomous decision of States.[24]

19 China, A/C.6/70/SR.22 (2015), Para. 65.
20 The Philippines, A/C.6/74/SR.27 (2019), Para. 49.
21 Japan, A/C.6/74/SR.26 (2019), Para. 42.
22 Viet Nam, A/C.6/SR.21 (2017), Para. 35. *See also* Japan, A/C.6/74/SR.26 (2019), Para. 44.
23 Draft Articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, *in* Int'l Law Comm'n, *Report on the Work of Its Seventy-First Session*, UN Doc. A/74/10 (2019), p. 83, Para. 47.
24 China, A/C.6/72/SR.18 (2017), Para. 120.

In addition, several delegations expressed concerns about Draft Article 6, Paragraph 5, which stipulates the inability to assert the existence of an official position as a substantive defence to criminal responsibility, suggesting that it might be confused with the denial of procedural immunity from foreign criminal jurisdiction. In its commentary on Draft Article 6, the ILC made a distinction between these two categories and suggested that Article 6, Paragraph 5, has "no effect on any procedural immunity that a foreign State official may enjoy before a national criminal jurisdiction, which continues to be governed by conventional and customary international law".[25] However, Singapore proposed incorporating this distinction into the text of the Draft Article itself, for clarity.[26] Japan and South Korea also suggested that care should be taken to avoid confusion in practice.[27] China went further to observe that serious international offences did not constitute an exception to immunity from foreign criminal jurisdiction and maintained that "[i]mmunity was procedural in nature and fell under an entirely different category of rules compared with the substantive rules which determined the lawfulness of a given act".[28]

Regarding the establishment of national jurisdiction, Singapore submitted its understanding about Draft Article 7, Paragraph 2, which requires States Parties to establish jurisdiction whenever an alleged offender is present on the State's territory, regardless of whether any of the other jurisdictional links in Paragraph 1 are satisfied by the State, when that State does not extradite or surrender the person in accordance with the article. According to Singapore, Draft Article 7, Paragraph 2, is intended to provide "an additional treaty-based jurisdiction in respect of an alleged offender on the basis of presence alone when none of the other connecting factors are present", so it "only permits States to establish jurisdiction over crimes committed by a national of a State party and does not extend to establishing jurisdiction over nationals of States non-parties".[29] It can be argued that this interpretation is narrower than that of the case law of other jurisdictions, such as the *Pinochet* case in the UK House of Lords[30] or the Case Concerning the Questions Relating to the Obligation to Prosecute or Extradite *(Belgium v. Senegal)*[31] before the International Court of Justice (ICJ). In these cases, the courts that applied relevant provisions did not appear to find a material question whether the State of nationality or the State in whose territory the alleged offence was committed was a State Party to the relevant treaty.[32]

Assuming that there would be conflicts of jurisdiction generated by the obligations under Draft Article 7, paragraphs 1 and 2, Singapore also maintained in

25 Int'l Law Comm'n, *supra* note 23, p. 77, Para. 31.
26 Singapore, A/CN.4/726 (2019).
27 Japan, A/C.6/74/SR.26 (2019), Para. 43; South Korea, A/C.6/72/SR.21 (2017), Para. 40.
28 China, A/C.6/71/SR.24 (2016), Para. 93.
29 Singapore, A/C.6/74/SR.24 (2019), Para. 28.
30 *R v. Bow Street Stipendiary Magistrate and Others, Ex parte Pinochet (No. 3)*, [1999] 2 All E.R. 97.
31 *Case Concerning the Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 20 July 2012, ICJ Reports (2012), p. 422, Para. 102.
32 D. Hovell, 'The Authority of Universal Jurisdiction', *European Journal of International Law*, Vol. 29, No. 2, 2018, pp. 427-456, at p. 432.

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its comment on the 2017 draft that the Draft Articles should accord primacy to the State that can exercise jurisdiction on the basis of at least one of the limbs in Article 7, Paragraph 1, rather than a custodial State that can only exercise jurisdiction on the basis of Article 7, Paragraph 2. According to Singapore, the former would be the State with a greater interest in prosecuting the offence in question.[33] This concern was partly addressed by the ILC in its Draft Article 13, Paragraph 12, which requires that the State where the alleged offender is present "give due consideration to the request of the State in the territory under whose jurisdiction the alleged offence has occurred".

3.2 Analysis

Overall, Asian States' reactions to the ILC's Draft Articles reflect their traditional position based on respect for national sovereignty and non-interference in other States' internal affairs. Therefore, while provisions that facilitate law enforcement cooperation, such as Draft Article 13 (Extradition) or Draft Article 14 (Mutual Legal Assistance), gained wide acceptance,[34] reservations and concerns were expressed about provisions that would significantly diverge from existing national legal systems or impose obligations beyond existing treaty systems.[35]

It can be argued that this reluctance in Asian States' reaction is partly related to the fact that the approach taken by the Draft Articles is an integration of crimes under international law and transnational criminal law.[36] On the one hand, the Draft Articles are premised on crimes against humanity being crimes under international law, in the sense that criminalization takes place at the international level without any involvement of domestic law. Essentially, individual perpetrators are held responsible directly under international law.[37] However, in terms of the establishment of jurisdiction and mutual legal assistance, the Draft Articles are modelled on the United Nations Convention Against Torture, which adopts the formula commonly included in treaties in the field of combating terrorism or other organized crime (so-called suppression treaties).

These suppression treaties belong to transnational criminal law, which is distinguished from ICL *stricto sensu*. While these treaties provide definitions of offences, States Parties are required to criminalize offences as defined in the treaties. In other words, these treaty systems leave criminalization at the domestic level. Based on this, these treaties seek to harmonize States' criminal systems,

33 Singapore, A/CN.4/726 (2019).

34 Thailand, A/C.6/74/SR.24 (2019), Para. 106; South Korea, A/C.6/74/SR.26 (2019), Para. 55.

35 South Korea, A/C.6/70/SR.23 (2015), Para. 55 (suggesting that States would likely be hesitant to become Parties to the prospective convention on crimes against humanity if its provisions differed significantly from those of existing domestic legislation or imposed exceedingly burdensome obligations). *See also* Philippines A/C.6/74/SR.27 (2019), Para. 49 (arguing that the Draft Articles should prevent overbroad assertions of jurisdiction by national and international courts).

36 On the distinction between crimes under international law and transnational crimes, *see* R. Cryer, 'The Doctrinal Foundations of International Criminalization', *in* M.C. Bassiouni (Ed.), *International Criminal Law (Third Edition), Vol. I: Sources, Subjects, and Contents*, Leiden, Brill/Nijhoff, 2008, pp. 108-109.

37 Int'l Law Comm'n, *supra* note 23, p. 24.

over which States still retain sovereignty, with other States' systems. As Boister observes, "transnational criminal law is a horizontal or non-hierarchical order of formal equal centres of authority based on reciprocity, equality, and sovereign consent".[38]

While crimes under international law directly address individuals and thus are vertical and universal in nature, integrating this into the transnational criminal law system raises tensions with existing criminal law systems that are grounded in a horizontal relationship between States. It has in fact exacerbated concerns about the principle of *pacta tertiis nec nocent nec prosunt* (treaties do not create rights or obligations for a third party), the scope of jurisdiction and the immunity of state officials, as was shown in the Sixth Committee's debate. In addition, concerns raised about the liability of legal persons seems to be related to the fact that while the liability of legal persons has been known in the suppression treaties and thus considered domestic in nature, it remains unclear whether it would also constitute the responsibility for crimes under international law.

Admittedly, the ILC has already partly addressed these concerns by allowing certain discretion for States (the liability of legal persons) and providing clarification in its commentary (the immunity of state officials). At the same time, more explanation from the theoretical point of view would be helpful not only to mitigate the concerns of Asian States but also to clarify how this innovative project is situated within the system of ICL.[39]

Moreover, some of the concerns about the scope of jurisdiction and the *pacta tertiis* principle would be mitigated, if not resolved, by referring to practices of the establishment of universal jurisdiction over crimes against humanity in other regions. Since crimes against humanity are established as a crime under international law, there is consensus among States that it is in the interest of the international community to deny safe havens to perpetrators of those crimes and also that exercise of universal jurisdiction is a useful tool for achieving this goal.[40] In fact, many States Parties to the ICC Statute have established universal jurisdiction over crimes within the jurisdiction of the ICC, even though they are not required by the Statute,[41] and have exercised jurisdiction without subjecting it to the consent of the national State of perpetrators or the State where the offence occurred. In addition, the fact that criminalization takes place at the international level contributes to secure the foreseeability of law for individual perpetrators – which is crucial in terms of the principle of legality[42] – even though

38 N. Boister, *An Introduction to Transnational Criminal Law*, Oxford, Oxford University Press, 2012, pp. 18-19.

39 For a thorough analysis of the integration of crimes under international law into the system of transnational criminal law, *see* L.N. Sadat (Ed.), *Forging a Convention for Crimes Against Humanity*, 2nd ed., Cambridge, Cambridge University Press, 2013.

40 *See, e.g.,* Report of the Secretary General on the scope and application of the principle of universal jurisdiction, U.N. Doc. A/65/181 (2010).

41 S. Nouwen, *Complementarity in the Line of Fire*, Cambridge, Cambridge University Press, 2013, pp. 36-40.

42 P. Gaeta, 'The Need Reasonably to Expand National Criminal Jurisdiction over International Crimes', *in* A. Cassese (Ed.), *Realising Utopia*, Oxford, Oxford University Press, 2012, p. 602.

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these perpetrators are not directly connected to the State exercising jurisdiction and hence are not supposed to know the law of that State. Thus, it can be argued that concerns about the *pacta tertiis* rule and the priority of jurisdiction can be partially dispelled by referring to these universal jurisdiction precedents.

Admittedly, Asian States still retain a certain ambiguity towards universal jurisdiction, perhaps partly because there are few States Parties to the ICC Statute. This is succinctly reflected in Indonesia's comments in the Sixth Committee's debate on crimes against humanity:

> It was the responsibility of the international community to end impunity and deny safe haven to individuals who committed crimes against humanity. Nonetheless, there were still divergences of position regarding the scope and application of the principle of universal jurisdiction, which was reflected in the wide range of crimes designated as crimes against humanity, and their scope, according to a variety of sources.[43]

In contrast, the practice of universal jurisdiction is becoming increasingly common outside the Asian region. For instance, the Member States of the African Union, which were initially critical of the exercise of universal jurisdiction by European countries, have also adopted their own model of national law on universal jurisdiction over international crimes,[44] recognizing that this is a means to achieve a policy of combating impunity. Thus, it would be helpful for Asian States to learn from the precedents of universal jurisdiction. Indeed, as a means to substantializing crimes under international law at the domestic level, the practice of universal jurisdiction could serve as a bridge not only between States from different regions but also between ICL stricto sensu and transnational criminal law. In the context of the ILC project, universality is not expressly recognized or precluded since the grounds for jurisdiction are broad and intended to permit Asian and other States to invoke the exercise of any criminal jurisdiction established by the States in accordance with their own national law.

4 Concluding Remarks

Since the adoption of the Rome Statute, Asia has been the most under-represented region in the ICC regime. Meanwhile, one preliminary examination (the Philippines) and two situations under investigation (Afghanistan and Bangladesh/Myanmar) are pending before the ICC with respect to the States in the Asian region, all of which involve charges of crimes against humanity. However, the Philippines and Myanmar are not Parties to the ICC Statute and thus assume no obligation to cooperate with the ICC absent a Security Council referral.

In light of these circumstances and given that it is unlikely that Asian States will accede to the ICC Statute in large numbers in the near future, it is all the

43 Indonesia, A/C.6/74/SR.27 (2019), Para. 32.

44 African Union Model National Law on Universal Jurisdiction over International Crimes, adopted in 21st Ordinary Session, 9-13 July 2012.

more important that the Draft Articles are elaborated into a treaty and attract as many Asian States as possible to avoid a legal vacuum in this region. Indeed, from another perspective, countries from this region that wish to support codification of crimes against humanity in a multilateral convention might consider that the process of treaty negotiations allows individual State views to be taken into account. Thus, rather than being impediments to arriving at a consensus on a way forward, their wariness that the Draft Articles do not meet their sovereign concerns can perhaps more appropriately be addressed in that negotiation context.

In this regard, it should be noted that the ILC itself has taken an inclusive approach, benefiting from the rich commentary of States throughout the process of developing the articles, until the final stage. While the Draft Articles seek to contribute to the implementation of the principle of complementarity under the Rome Statute, they also aim to provide obligations "that may be undertaken by States *whether or not they are parties to the Rome Statute*".[45] It is hoped that dialogue will continue not only between the ILC and the Sixth Committee, but also between Parties and Non-Parties to the ICC Statute, to find a common ground for future discussions.

Table 1 ***Asian States' Engagement with International Criminal Law***

	Countries	ICC Statute	Domestic Legislation Adopting Crimes Against Humanity[a]	Genocide Convention	Geneva Conventions	Convention on Enforced Disappearance
East Asia	China			○	○	
	Japan	○			○	○
	DPRK			○	○	
	Republic of Korea	○	○	○	○	
	Mongolia	○		○	○	○
Southeast Asia	Brunei Darussalam				○	
	Cambodia	○	○	○	○	○
	Indonesia		○		○	○
	Lao People's Democratic Republic			○	○	
	Malaysia			○	○	
	Myanmar			○	○	
	Philippines		○	○	○	
	Singapore			○	○	
	Thailand				○	○

45 Int'l Law Comm'n, *supra* note 23, p. 23, Para. 4 (emphasis added).

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Table 1 (continued)

	Countries	ICC Statute	Domestic Legislation Adopting Crimes Against Humanity[a]	Genocide Convention	Geneva Conventions	Convention on Enforced Disappearance
	Vietnam		△	○	○	
South	Afghanistan	○		○	○	
Asia	Bangladesh	○	○	○	○	
	Bhutan				○	
	India			○	○	○
	Maldives	○		○	○	○
	Nepal		△	○	○	
	Pakistan			○	○	
	Sri Lanka		△	○	○	○
Central	Kazakhstan		△	○	○	○
Asia	Kyrgyzstan		○		○	
	Tajikistan	○		○	○	
	Turkmenistan			○	○	
	Uzbekistan			○	○	

△: focusing on genocide (Vietnam) or enforced disappearance (Nepal, Sri Lanka, and Kazakhstan)

[a] Domestic legislation data is based on www.derechos.org/intlaw/.