


Joining the ICC: Asia-Pacific States



A MESSAGE OF WELCOME TO THE ASIA-PACIFIC STATES

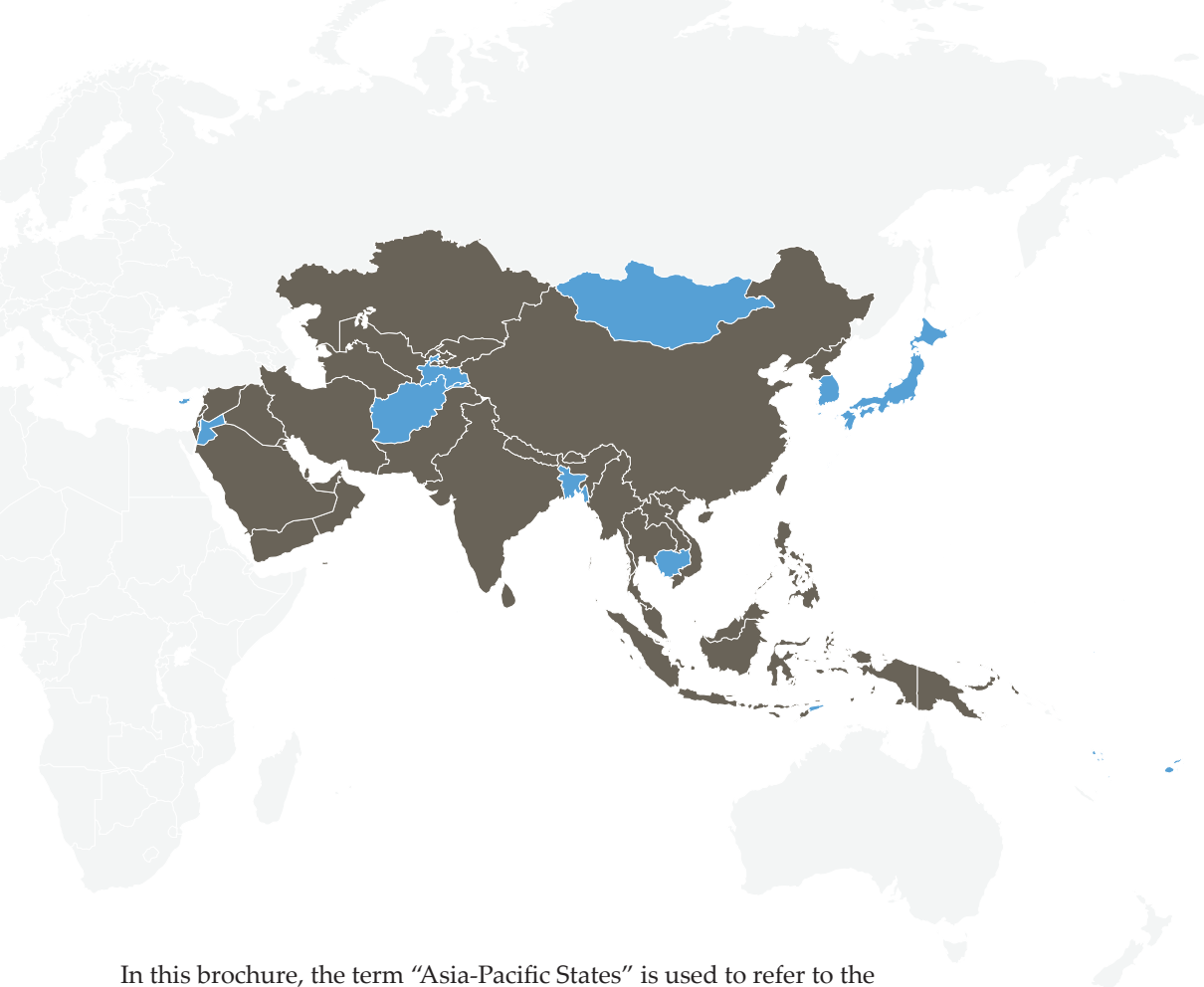
The International Criminal Court and its States Parties call upon all Asia-Pacific States that have not yet done so to accede to the Rome Statute and join the Court's membership to build a more just world.

Asia-Pacific States have played an important role in the development of international criminal law. Yet, they are still under-represented in the Court's membership, with only 19 out of more than 50 countries in the region having joined the Rome Statute. This means that there are large gaps in the legal protection of the region's people against genocide, crimes against humanity, war crimes and the crime of aggression. It also means that, at present, regional perspectives have limited impact on international criminal justice.



The values of the ICC are universal. The Rome Statute reflects humanity's aspirations toward peace, security and justice, and respects State sovereignty.

The Rome Statute family is keen to welcome more engagement from Asia-Pacific States. We hope that this publication will help decision-makers in Asia-Pacific States that have not yet joined the ICC to give the matter serious consideration. Tangible justice for the gravest international crimes can only be delivered globally if more States from all regions of the world join the Rome Statute.



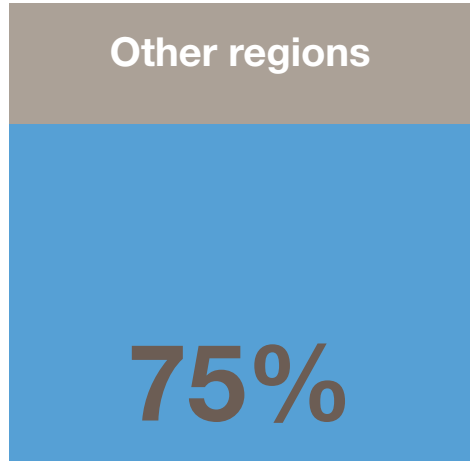
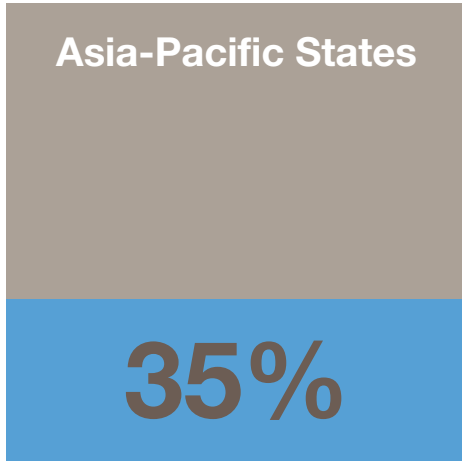
In this brochure, the term “Asia-Pacific States” is used to refer to the Asia-Pacific group of States as recognized by the Assembly of States Parties to the Rome Statute for the purpose of geographic balance at the ICC, in a manner identical to the regional grouping system used by the United Nations.

53

The Asia-Pacific group of States

Comprises 53 States including those of Western, Central, South, East and South-East Asia, as well as Pacific Island States.

35% of States in the Asia-Pacific Group are parties to the Rome Statute as opposed to 75% of States from all other regions of the world.





Asia-Pacific States Parties

1	Fiji	29 November 1999
2	Tajikistan	05 May 2000
3	Marshall Islands	07 December 2000
4	Nauru	12 November 2001
5	Cyprus	07 March 2002
6	Cambodia	11 April 2002
7	Jordan	11 April 2002
8	Mongolia	11 April 2002
9	Timor-Leste	06 September 2002
10	Samoa	16 September 2002
11	Republic of Korea	13 November 2002
12	Afghanistan	10 February 2003
13	Japan	17 July 2007
14	Cook Islands	18 July 2008
15	Bangladesh	23 March 2010
16	Maldives	21 September 2011
17	Vanuatu	02 December 2011
18	State of Palestine	02 January 2015
19	Kiribati	26 November 2019



**Meet
the ICC**

WHAT IS THE INTERNATIONAL CRIMINAL COURT (ICC)?

The ICC is the world's first and only permanent international criminal court. It investigates and, where warranted, prosecutes individuals charged with the most serious crimes of concern to the international community – genocide, crimes against humanity, war crimes, and the crime of aggression. The Rome Statute, the ICC's founding treaty, was adopted on 17 July 1998 by 120 States, and entered into force on 1 July 2002 – the date the Court formally became operational. By helping to end impunity for the perpetrators of international crimes, the ICC contributes to preventing such crimes.

THE ICC IS AN INDEPENDENT ORGANISATION

The ICC is an independent, self-standing organisation with international legal personality. It is not part of the United Nations and is also distinct from the

International Court of Justice, which deals with legal disputes between States. The ICC has a long-standing relationship with the United Nations based on a relationship agreement signed in 2004, which establishes the legal foundation for mutual cooperation in diverse areas such as conference services and security coordination.

IS THE ICC A HUMAN RIGHTS COURT?

No, the ICC is not a human rights court or a human rights monitoring body. The ICC is a criminal court. As such, its mandate is to investigate and prosecute individuals for specific crimes defined in the Rome Statute. The Court has no powers to consider the responsibility of States for atrocity crimes or human rights violations.

In contrast to many human rights mechanisms, it is not possible for individuals to initiate proceedings before the ICC.

THE ICC IS COMPLEMENTARY TO NATIONAL COURTS

The ICC is not a substitute for domestic courts; it is meant to complement rather than replace them. The ICC intervenes only in situations where States themselves are either unwilling or unable to genuinely investigate and prosecute the perpetrators of genocide, crimes against humanity, war crimes, and the crime of aggression. This is called the principle of ‘complementarity’, under which States Parties have affirmed their primary responsibility to investigate, prosecute and punish the perpetrators of international crimes when these fall under a State’s national jurisdiction. In other words, the ICC is a court of last resort.

KEYWORDS:

independent | last resort | genocide |
war crimes | complementarity | crimes
against humanity | crime of aggression

A formal meeting is taking place in a grand, ornate hall. In the foreground, several people are seated at a long table covered with a red cloth, facing away from the camera. In the middle ground, a group of men and women are seated at a similar table, some looking towards the speaker. On the left, a man in a dark suit and red tie stands at a podium, speaking into a microphone. Behind him are the flags of the United States and the European Union. In the background, a large, detailed mural depicts a scene with a white horse and several figures. To the right of the mural is a bronze bust of a man. The room is filled with people, some in formal attire and others in more casual clothing, all appearing to be part of a significant event.

Why join the Rome Statute

By joining the Rome Statute, States can contribute to building a more just world.



Benefits of membership in the Rome Statute system

A POWERFUL FOREIGN POLICY STATEMENT

Ratifying or acceding to the Rome Statute signals a commitment to international peace and security, and the protection of human rights. It strengthens the multilateral system and international legal regimes.

SOLIDARITY WITH VICTIMS

The ICC's mandate places unprecedented emphasis upon victims. Victims have the right to participate in the proceedings before the Court through a legal representative, as well as to request reparations for harms suffered. The Rome Statute also established a Trust Fund for Victims, an independent entity associated with the ICC, through which victims and their families can receive assistance and reparations, including restitution, compensation and rehabilitation. By joining the Rome Statute, States help to strengthen a

system of justice that brings hope to millions of victims across the world.

STRONGER NATIONAL CRIMINAL JUSTICE SYSTEMS

Ratifying the Rome Statute provides States with an opportunity to update national legislation regarding the most serious crimes under international law. While not obliged to do so, a State joining the Rome Statute should consider incorporating Rome Statute crimes into national law to ensure that it is in a position to exercise its primary jurisdiction to investigate and prosecute such crimes at the national level. At the same time, it is necessary to ensure that domestic law provides a basis for the various forms of cooperation with the Court to which States commit by joining the Statute. Improving international cooperation regimes for addressing these crimes and enhancing capacity to investigate and prosecute them strengthens national justice systems and better aligns them with the international

legal order, thereby closing impunity gaps. Technical assistance from several sources is available to help States to draft and adopt legislation to implement their Rome Statute obligations. These sources include other States Parties, the United Nations, the European Union, the Commonwealth Secretariat and Parliamentarians for Global Action (PGA).

INCREASED IMPACT ON THE INTERNATIONAL SYSTEM

ICC States Parties can participate actively in shaping the future of international criminal justice and cooperate on issues related to assistance and capacity-building. Each State Party is a member of the Assembly of States Parties, which meets at least once a year either in The Hague or New York. The Assembly oversees the administration of the Court and approves the annual budget. It also elects the Judges, the Prosecutor and the Deputy Prosecutors, the members of the Board of Directors of the Trust Fund

for Victims, the Advisory Committee on the Nomination of Judges, and the Committee on Budget and Finance, as well as its own president. States Parties participate in all elections and put forward candidates for various elected positions in the Assembly and the Court.

PROFESSIONAL OPPORTUNITIES FOR NATIONALS OF STATES PARTIES

Joining the Rome Statute creates many consequential professional opportunities for nationals of States Parties, such as Judges, Prosecutor, staff members, visiting professionals and interns of the Court. In accordance with Article 44(2) and 36(8) of the Rome Statute, the Court shall ensure the highest standard of efficiency, competency and integrity, and shall have regard to a fair representation of women and men for all positions, representation of the principal legal systems of the world for legal positions, and equitable Geographical Representation for positions in the professional category. In the recruitment processes at the

Court, priority is given to nationals of a State Party to the Rome Statute, while nationals from States not parties to the Statute may also be considered.


The Court also has programmes to sponsor visiting professionals and interns from under-represented States Parties.

PREVENTING AND DETERRING FUTURE CRIMES

By joining the Rome Statute, States send an unequivocal message to potential perpetrators of atrocity crimes that they will be held accountable for such acts, either before domestic justice institutions or the ICC. As such, States that ratify the Statute provide concrete legal protection against atrocity crimes to their populations.

KEYWORDS:

[strengthening national systems](#) | [increasing international impact](#) | [preventing international crimes](#) | [supporting victims](#)

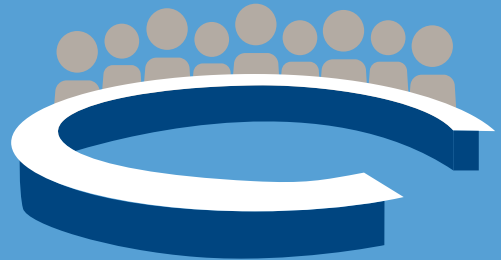
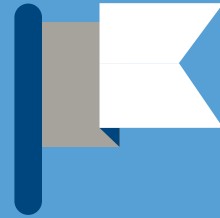


How the ICC works

HOW CAN THE ICC OPEN INVESTIGATIONS?

The ICC does not have universal or unlimited jurisdiction. The Court can only exercise jurisdiction in situations where the alleged perpetrator is a national of a State Party to the Rome Statute, or where a crime was committed on the territory of a State Party or a State that has accepted the ICC's jurisdiction by a declaration.¹ In such situations, the Prosecutor can initiate an investigation following a referral from a State Party, or on his or her own initiative with the authorization of ICC Judges. The UN Security Council can also refer a situation of alleged crimes to the Prosecutor. The Security Council can do so regardless of whether the crimes occurred in a State Party. The Prosecutor will make his or her own assessment of each situation and is under no obligation to commence investigations upon referrals from States or the Security Council.

¹ A stricter standard applies to the crime of aggression.



IS THE ICC JUDICIAL PROCESS SUBJECT TO CHECKS AND BALANCES?

Yes. In drafting the Rome Statute, States included numerous checks and balances to prevent frivolous judicial proceedings. From the moment that the Prosecutor wishes to launch criminal proceedings against any specific person, the case comes under the judicial control of the Court's judges, who are of different nationalities and act with full independence and impartiality. For a case to proceed to trial and for the judges to ultimately convict an accused person, the Prosecution must meet certain thresholds of proof at each stage. Internationally recognised rights of the defence, including the right to appeal, are guaranteed under the Statute, and legal assistance is available to all indigent suspects and accused persons. In a number of cases, judges of the ICC have ruled in favour of the defence, where warranted by the law and the evidence.

DOES THE ICC HAVE RETROACTIVE JURISDICTION?

The ICC can under no circumstances investigate events that took place before 1 July 2002, when the Rome Statute entered into force. For States that ratify or accede after this date, the Court only has jurisdiction over crimes committed after the Rome Statute entered into force for that State Party, unless the State declares otherwise. In other words, ratification of the Rome Statute does not give the ICC any right to investigate past events.

CAN THE ICC PROSECUTE INDIVIDUALS HOLDING HIGH OFFICE, SUCH AS HEADS OF STATE?

Yes, it can. In accordance with explicit provisions in the Rome Statute, no one is exempt from prosecution before the ICC because of his or her current function or because of the position he or she held at the time the crimes concerned were allegedly committed. Acting as a head

of state or government, cabinet minister or parliamentarian does not relieve anyone of criminal responsibility before the ICC. By including these provisions in the Rome Statute, States wished to maximise the preventive effect of the system by making sure that no one could commit atrocities with impunity.

A State that becomes party to the Rome Statute must commit to this principle. Some States may have practical questions regarding how to effectively implement this provision in domestic law, given legal and constitutional protections that may exist regarding heads of state. It is commonly understood that immunity provisions intended to prevent interference with the performance of head of state functions and ensure the separation of powers do not permit the commission of crimes that may fall under the jurisdiction of the ICC. In fact, many states with strong immunity provisions in their national constitutional law have joined the Rome Statute.

IS CONSTITUTIONAL MONARCHY COMPATIBLE WITH THE ROME STATUTE?

Yes, constitutional monarchy is compatible with the Rome Statute. In fact, at least 25 ICC States Parties are constitutional monarchies. Such States have ensured conformity between national constitutions/legislation and the Rome Statute in a variety of ways, for example, by interpreting that absolute immunity provisions in national constitutional law do not extend to crimes under international law, or that the possibility of the monarch committing such crimes is purely hypothetical and the question of immunity is therefore irrelevant. Technical assistance is available for States that wish to accede to the Rome Statute and require solutions for reconciling national constitutions and legislation with the treaty obligations accession entails.



WHAT PENALTIES MAY BE IMPOSED BY THE ICC?

ICC judges may impose a prison sentence, and/or a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime(s) committed. In addition, the Court may order reparations to victims. The Court cannot impose a death sentence. The maximum sentence is 30 years. However, in extreme cases, the Court may impose a term of life imprisonment. Ratification or accession to the Rome Statute does not affect domestic sentencing regimes – States Parties are not required to mirror Rome Statute sentencing provisions.

KEYWORDS:

accountability | checks and balances | non-retroactive



**The ICC
and
States**

WHAT IS THE ROLE OF STATES PARTIES?

Each State Party to the Rome Statute forms a crucial part of the multilateral system aimed at ensuring accountability for the gravest crimes, their prevention, and justice for victims. States Parties created the ICC and give the Court its jurisdiction, as well as the funds it requires to operate.

Cooperation

The ICC does not have its own police force or enforcement bodies. States therefore play a key role as the enforcement arm for the investigative and judicial functions of the Court. They provide cooperation in many forms, ranging from access to evidence and witnesses to the arrest and transfer of suspects and the freezing and seizure of assets. This cooperation is obligatory for all States Parties.

Legislation

Collectively, as the Assembly of States Parties, States form the Court's

legislative body, which can amend the Statute, the Elements of Crimes, and the Rules of Procedure and Evidence.

Participation

Regarding judicial proceedings, States can make submissions to the Court in specific circumstances: A State Party that has referred a situation to the ICC can challenge the decision by the Prosecutor to not initiate an investigation; a State can challenge the admissibility of a case or the jurisdiction of the Court; and a State can apply for leave to submit *amicus curiae* briefs before a Chamber.

Financial contribution

The Court is funded by annual contributions from States Parties. Each State Party's annual contribution is determined in accordance with an agreed scale of assessment based on the scale used by the United Nations. The Court can provide an estimate of the annual budget contribution to any State upon request. In addition to their annual contributions to the Court's budget, States can make voluntary contributions

to a number of important special funds, such as the Trust Fund for Victims, the Special Funds for Family Visits of Indigent Detained Persons, or the Special Funds for Witness Relocations.

WHAT HAPPENS IF A STATE DECIDES TO JOIN THE ICC?

The Rome Statute is open for all States to accede to – there are no other requirements for membership. Joining the Rome Statute is a voluntary, sovereign decision for each State to make. In accordance with the Rome Statute, the United Nations Secretary-General acts as the depositary of the treaty.

TECHNICAL ASSISTANCE FOR RATIFICATION/ACCESSION

There are many resources available to assist States interested in joining the Rome Statute with ratification/ accession and national implementation processes. PGA, which has extensive

experience supporting such processes at the request of governments and parliamentarians, can provide legal advice and technical support for drafting necessary documents and legislation. The Commonwealth Secretariat has produced a Commonwealth Model Law to Implement the Rome Statute, with an accompanying report by an expert group, and can provide technical assistance at the request of Commonwealth Member States. Other States that have already joined the Rome Statute, including those within the Asia-Pacific, are an additional source of technical assistance.

ARE THERE REPORTING REQUIREMENTS FOR STATES PARTIES?

No, there are no reporting requirements under the Rome Statute.

KEYWORDS:

sovereignty | cooperation |
contribution | technical support

Cooperation

Participation

Complementarity

Prevention

Solidarity

If you wish to receive more information on ratification/accession, as well as available technical support, please contact JointheICC@icc-cpi.int



FOLLOW US        INTERNATIONAL CRIMINAL COURT



This publication was produced with the financial support of the European Commission. Its contents are the sole responsibility of the International Criminal Court (ICC) and do not necessarily reflect the views of the European Commission.