

# Amnesty International: RI should ratify the ICC Statute

Jonathan D'Donohue, LONDON | Opinion | Mon, April 13 2009, 10:19 AM

<http://www.thejakartapost.com/news/2009/04/13/amnesty-international-ri-should-ratify-icc-statute.html>

Prof. Hikmahanto Juwana's negative analysis of the work of the International Criminal Court (Should RI ratify the ICC Statute?, The Jakarta Post, April 2) unjustly implies that the ICC is politically biased for not prosecuting crimes in Gaza and Iraq and criticizes the ICC's efforts to bring to justice those who have committed war crimes and crimes against humanity in Darfur.

Disturbingly, these arguments are put forward as reasons why Indonesia should not implement its commitment in the Human Rights National Action Plan to ratify the ICC Statute.

Criticisms of the ICC's inaction in Gaza and Iraq are unfounded. Following the recent conflict in Gaza, the Palestinian Authority has requested the ICC Prosecutor to investigate. The Prosecutor promptly announced that his Office is conducting an initial examination of crimes.

A decision whether to launch a full investigation will be taken by the Prosecutor once the examination has been completed.

In response to thousands of complaints sent to the ICC Prosecutor relating to crimes committed in Iraq, the Prosecutor conducted an examination into the allegations. In February 2006, he concluded that the ICC was powerless to conduct an investigation because both Iraq (where the crimes were committed) and the US (against whose nationals the majority of complaints were made) had not ratified the ICC Statute.

In such circumstances, the ICC is not authorized to investigate unless it receives a request from either government or a referral from the United Nations Security Council. To date, no requests or referral have been made.

The accusation that the ICC acted "beyond its power" when it issued an arrest warrant against Sudanese President Omar al-Bashir is incorrect. The ICC's Statute, which Sudan has signed but not ratified, provides that the Security Council can refer a situation anywhere in the world to the Prosecutor, if it determines that the situation is a threat to international peace and security.

It also states that immunities, including for heads of state, do not apply to such serious crimes.

Arguments that the ICC's arrest warrant for President al-Bashir violates Sudan's sovereignty are based on an antiquated interpretation of international law.

For decades, genocide, crimes against humanity and war crimes have been recognized as so serious that they affect the whole of humanity. As demonstrated by the arrest and surrender of Slobodan Milosevic by Serbia and Charles Taylor by Liberia to other international courts for trial, no-one, including a head of state, can claim the protection of immunity or concepts of national interest for these crimes.

Amnesty International therefore disagrees with Juwana's argument that Indonesia should not ratify the ICC Statute until the international community "treats all those accused to international crimes the same." The ICC is an independent judicial institution, not a politically controlled body.

Although the ICC currently has a limited jurisdiction, which means it cannot investigate and prosecute serious crimes in some situations without a Security Council referral, these limitations will be addressed when more countries ratify the Statute and accept the Court's jurisdiction.

Indonesia should therefore fulfil its commitment to ratify the ICC Statute and encourage other states that have not done so, to join.

Furthermore, Indonesia should not wait, as Juwana suggests, to join the ICC until the US ratifies.

The US, which has opposed the ICC, is reconsidering its position and we hope that the government's commitment to international justice will increase significantly over the next years as its fears of political prosecutions continue to be proved unfounded by the ICC's work.

Importantly, a worldwide campaign by the US for governments to enter into illegal impunity agreements not to surrender US nationals to the ICC — another concern raised by Juwana — has failed and there have been no recent report of countries wanting to join the ICC being asked by the US to sign them.

Amnesty International therefore calls on Indonesia to take a lead role in human rights in the region and the world by fulfilling its commitment to ratify the ICC Statute without further delay, and support a system of international justice that can end impunity for the worst human rights violations that have caused untold suffering to millions of people in the last century.

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