

Judicializing International Criminal Justice?: Perceptions and Realities in Asia

Not only in quantitative terms, but also in the lens of qualitative parameters, development of international judicial bodies has been phenomenal during past few decades, profoundly transforming the landscape of international legal order. When considering numerous narratives regarding remarkable success in the creation and the use of international courts and tribunals, some may simply conclude that the judicialization of international law constitutes a global and universal trend. With a closer look, however, it is deeply puzzling to find a great degree of regional and topical unevenness in the process of judicialization.

Against the foregoing observation, this paper examines how judicialization of international criminal justice has unfolded in Asia-Pacific region, as the regional and topical unevenness is particularly evident in this realm of law and practice. This research has two primary objectives: one is to investigate whether the Asian states substantially lag behind in the process of judicialization of international criminal justice compared to other regions of the globe. Another is to identify historical, political, and cultural reasons for variations in judicialization of international criminal law between Asia and other regions. The marginal role played by the Asian countries in this process of judicialization is not just a matter of academic curiosity. For instance, within the circle of International Criminal Court (ICC), Asian's passive attitude towards the ratification of the Rome Statute has repeatedly noted as a critical concern for the future development of the Court.

The analysis of the paper proceeds in following order. Part II provides an introductory context of the research questions examined throughout the paper. It clarifies the concepts and usage of main terms including the "judicialization" of international criminal justice and the "Asia-Pacific" as a distinct region. Part III contains three pieces of analysis. First, a brief history of regulating armed conflicts and prosecuting atrocities in Asia is introduced. The second section of Part III examines the roles played by Asian states 1) in the making of a modern type of international criminal tribunals, and 2) in the wake of the creation of the ICC, the first permanent judicial procedure established by a multilateral treaty in this field of law. Third, Part III evaluates whether the recourse to international judicial means in this field has well served its intended normative objectives in Asian region. This evaluation is made in consideration with the expected roles of ICs for promoting international criminal justice in the aftermath of horrendous armed conflicts involving massive human rights violations.

Part IV looks at the most recent development of judicialization of international criminal justice with a particular focus on the relationship between Asian states and the Rome Statute. It analyzes Asian states' actual participation at the ICC as well as their domestic policies and legislations adopted for the implementation of the Rome Statute system. In this regard, the paper makes a country-by-country analysis on a fair number of Asian states. Part V finally discusses possible explanations for this problematic Asian participation in the judicialization of international criminal law and justice.