

COALITION FOR THE
INTERNATIONAL CRIMINAL COURT



CICC BACKGROUND PAPER

IN PREPARATION FOR
THE RESUMED EIGHTH SESSION OF THE
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I. INTRODUCTION

The first Review Conference of the Rome Statute will take place in Kampala, Uganda from 31 May to 11 June 2010. Thus, the resumed 8th session of the ASP will be the last opportunity for States Parties to decide on a number of important issues in advance of the Conference. Such decisions encompassed matters pertaining to the substantive scope of the Conference as well as matters of a practical and organizational nature.

Regarding the substantive agenda of the Review Conference, at its 8th session, the ASP agreed that in addition to those amendments that command very broad support, the Review Conference should include a stocktaking process of international criminal justice. Discussions at the resumed 8th session of the ASP will focus on both substantive aspects of the Review Conference.

II. GENERAL DEBATE

Since this is a resumed session, there will be no general debate at this meeting. However, the ASP Bureau has decided to hold a general debate during the first two days (31 May and 1 June) of the Review Conference.

III. AMENDMENT PROPOSALS, INCLUDING THE DEFINITION OF THE CRIME OF AGGRESSION

I. Discussion on Amendment Proposals

The 8th session ASP, which took place 18-26 November 2009, was foreseen to serve as a filtering mechanism of the issues that will be discussed at the upcoming Review Conference in Kampala, Uganda (31 May to 11 June 2010). Thus, the ASP decided to forward to the Review Conference for its consideration only the proposals for amendments concerning the revision of Article 124 of the Statute, the possible adoption of provisions for the crime of aggression and the first of the proposals put forward by Belgium to extend the jurisdiction of the Court to cover the use of certain weapons in the context of armed conflicts not of an international character.

In addition, discussions were held regarding other proposals presented by Belgium, Belize and Trinidad and Tobago, Mexico, the Netherlands and South Africa. None of those proposals gathered sufficient support for their consideration at the upcoming Review Conference. Nevertheless, the ASP agreed to create an ASP Working Group on Amendments that will serve as a mechanism to continue discussions on all of the submitted proposals and any other future proposal starting at the next ASP in December 2010.

II. Overview of Proposals to be considered at the Review Conference

a. Article 124

Article 124 of the Statute allows States to choose not to have their nationals subject to the Court's jurisdiction over war crimes for seven years. The article itself provides that it must be reviewed at the upcoming Review Conference. The debate at the Review Conference will focus on whether the provision should be maintained—thus allowing for application to future States Parties—or whether it should be removed from the Statute. If the Review Conference decides to retain article 124, no amendment to the Statute would be necessary.

Since the Statute's adoption in 1998, only two States have invoked article 124. Even then, France withdrew its declaration before the seven year period terminated and Colombia's seven year period ended last October. Thus no State Party currently falls within this

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provision. Despite its alleged ability to increase universality, there is currently no reason to believe that Article 124 will be employed more frequently going forward.

At the Rome Conference, the CICC membership was strongly opposed to the inclusion of Article 124 into the Rome Statute as it was seen to weaken the jurisdictional regime of the ICC and as incompatible with the object and purpose of the Rome Statute: “to put an end to impunity for the perpetrators of [the most serious] crimes [of concern to the international community as a whole] and thus to contribute to the prevention of such crimes”. Since its inclusion in the Rome Statute as a transitional provision, the CICC has continually advocated that States not make use of Article 124.

These issues will be discussed in more depth as State Parties and organizations try to develop solid positions on where they stand on this issue. There is currently no consensus on what the outcome of the Review Conference will be.

b. Crime of Aggression

At the Rome Diplomatic Conference in 1998, the Crime of Aggression was included in the Rome Statute; however, despite listing the crime of aggression under the Court’s jurisdiction, a definition and the jurisdictional conditions under which the Court will have legal authority to prosecute offenders of the Crime of Aggression have yet to be added to the Statute. In the absence of agreement on such provisions, Resolution F of the Final Act of the Rome Conference requested that the subsequent Preparatory Commission prepare draft provisions on aggression to be presented to the ASP for consideration at a review conference. The Preparatory Commission established a Working Group on the Crime of Aggression for this purpose.

In 2020, after the Rome Statute entered into force, a Special Working Group on the Crime of Aggression (SWGCA) was set up by the Assembly of States Parties to continue discussions on the definition, elements and jurisdictional conditions of the Crime of Aggression. The SWGCA was open to all States on an equal footing, and both States Parties and non-Parties participated in the meetings. The SWGCA met during the second, third, fourth, fifth, sixth, seventh and eighth ASP sessions and in intersessional meetings every June between the years of 2004 and 2007 at Princeton.

After years of constructive engagement by legal experts representing countries from around the world, an amendment proposal for a provision on aggression was submitted for consideration at a Review Conference in Kampala, Uganda at the end of May, 2010.

The act of aggression generally speaking is the use of armed force by one State against another State without the justification of self-defense or without authorization by the Security Council. According to the amendment proposal, the individual crime of aggression is committed by persons in a leadership position who plan, prepare, initiate or execute an

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act of aggression. In shaping the draft definition for the individual crime of aggression, including the element of the State act of aggression, delegates drew heavily upon the pre-existing language and general provisions in the Rome Statute and the UN Charter.

The most unresolved issue concerns the jurisdictional requirements before the Court can act with regard an alleged crime of aggression, i.e. when can the Court exercise its jurisdiction? The amendment proposal offers two alternatives, each including various options. Further modification may be considered. There is consensus that an investigation can be opened by the prosecutor on the basis of a UN Security Council referral, a state-party referral, or proprio motu – of the prosecutor’s own volition. In other words, the same trigger mechanisms apply as for the other three crimes under the Court’s jurisdiction. When the prosecutor determines that there is a reasonable basis to proceed with the investigation, there is also preliminary agreement that he or she may proceed in accordance with the Statute if the Security Council has made a determination that an act of aggression has been committed by the State concerned. States have not yet agreed about possible additional requirements in the absence of such a Security Council determination. Under one of the options, a procedural ‘green light’ by the Security Council would be sufficient. Under another option, the prosecutor could proceed after a certain time period.. Under a further option, an authorization by the Pre-trial Chamber would serve as an additional judicial filter. The filter would be relevant not only for ex proprio motu actions of the prosecutor but also for other trigger mechanisms. Under still other options, prior determinations of a State act of aggression would be required from either the UN General Assembly (UNGA) or the International Court of Justice (ICJ) .

At the resumed 8th session of the ASP in March 2010 two core outstanding questions on the exercise of jurisdiction will be considered:

- (i) Which situations may be investigated by the Court (prior to notifying the United Nations under draft article 15 bis, paragraph 2): Should they be limited to those where the alleged aggressor State has (one way or another) accepted jurisdiction over the crime of aggression? Or should the victim-State’s acceptance suffice for this purpose?
- (ii) After the Court has begun its investigation and forwarded the case to the Security Council: Should the Security Council be the decisive jurisdictional filter for the case to proceed? Or should there be a way for the case to proceed in the absence of a SC decision (non-Security Council filter such as the UNGA, ICJ, PTC – or no filter at all)?

Adoption of the provision for the crime of aggression requires a two-thirds majority (currently 74 of 110) of the States which are Parties to the Rome Statute. According to article 5 paragraph 2 of the Statute, the Court can exercise its jurisdiction with the adoption of the provision. This may be relevant for Security Council referrals. With regard to entry into force for States, different provisions have been under debate. According to one

minority opinion, the provision can also be binding on States Parties at the moment of adoption. According to the majority either paragraph 4 or paragraph 5 of article 121 is applicable. Under paragraph 4 the provision would enter into force at the same time for all parties after seven-eighths (currently 96 of 110) of the States Parties have ratified or accepted the amendment. Under paragraph 5 the provision will enter into force for a certain State upon its ratification or acceptance while at the same time preventing the ICC from exercising its jurisdiction for crimes of aggression committed within the territory, or by the nationals of those States who do not ratify or accept the amendment.

c. Proposal to amend Article 8 of the Rome Statute

The Resumed session will also consider the proposal to extend the prohibition on poisoned weapons, poisonous or asphyxiating gas and flattening bullets to conflicts not of an international character. This prohibition, written in the exact same language, already exists for international armed conflicts under Article 8 paragraph 2 (b). Also, it has been argued that the purpose of the amendment, to create a universal ban on the use of these weapons, is highly supported by international customary and treaty law.

According to a recent study by the International Committee of the Red Cross, the use of these three types of weapons, including the use of expanding bullets, is prohibited under customary international law in both international and non-international armed conflicts. The proposed amendment also comports with the 1980 UN Convention on Restriction of the Use of Certain Conventional Weapons, which bars the use of weapons causing superfluous injury such as flattening bullets. In 2001, its Protocols were extended to non-international armed conflicts.

IV. STOCKTAKING AT REVIEW CONFERENCE

Background

Numerous states, the CICC and other members of civil society have noted the importance of ensuring the Review Conference is not solely about the discussion of amendments, but also includes a platform for stocktaking. As the CICC Team on the Review Conference noted at the 7th session of the ASP, “[...] in addition to discussions on broadly-supported amendments to the Statute, the Review Conference should allow for reflection on the performance to date of the system as established by the *Rome Statute*.”

At the 8th session of the ASP, many delegations stressed the importance that they placed on the stocktaking segment. It was mentioned that the stocktaking exercise should be treated as an integral part of the Review Conference. As a result, the ASP placed on the agenda for the Review Conference stocktaking discussions on (i) the impact of the Rome Statute system

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on victims and affected communities; (ii) complementarity; (iii) cooperation; and, (iv) peace and justice.

The various issues—due to their unique nature—each demand a unique mechanism of taking stock appropriate to the subject matter and to the particular parties whose experience is called upon. This will require discourse that is broad and conceptual in some cases and intimate and practical in others; it may require a platform for healing or a stage for debate; it may result in resolutions in some instances and simply the recognition of experiences in others.

In order to adequately prepare for the stocktaking exercise, the ASP decided to mandate the Bureau to continue the preparations of the stocktaking with a view to preparing the format of the discussions, preliminary background materials and proposals for outcomes for each of the identified topics. In turn, the Bureau appointed focal points for the different issues, who have held consultations within the context of both the New York and The Hague working groups pertaining to the adequate preparations for the consideration of their respective issues at the Review Conference. Progress of the preparations in this regard should be considered at the resumed 8th session of the ASP.

Overview of the Stocktaking Issues

a. Impact of the Rome Statute system on victims and affected communities

The decision by the Assembly of States Parties in November 2009 to include the impact of the Rome Statute system on victims and affected communities as one of the four issues to be discussed at the Kampala Conference has been applauded by many NGOs, who offered their support and know-how to make the exercise truly meaningful, ensuring that this discussion offers a good opportunity to consider how victims and affected communities experience and perceive justice eight years after the entry into force of the Statute, while at the same time recognizing that the Court is still at a very early stage of its functioning.

The overarching goal for this stocktaking exercise is to have States recall how important the Rome Statute system and the Court are for victims and affected communities and to engage the latter in the Review Conference. For NGOs, this approach is particularly pertinent as it reinforces that victims and affected communities are stakeholders of the ICC system with valid interests in the proceedings and in the broader system as a whole. It recognizes that their views count, as the direct and indirect beneficiaries of the Rome Statute system, and are significant for the Court's future planning process.

The report of the Focal Points, Chile and Finland, gives the Resumed Session guidance and clarification how the issue could be dealt with at the Review Conference and in the lead up to the conference. The Focal points have consulted broadly from the very beginning of their efforts and included comments and suggestions from civil society experts and NGOs.

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Following consultations in the HWG and taking into account their recent trip to Uganda (as organized by NPWJ, HURINET and UCICC), the focal points propose a focus on the following 3 areas: 1) The role of outreach in impacting victims' expectations (of obtaining justice and their enhanced knowledge of their legal rights), 2) Especially in situation countries, the importance of recognizing victims' rights to justice, participation and reparation, (including nationally and particularly for specific groups of victims, e.g. women and children) and 3) A review of how the Trust Fund for Victims has contributed towards individual dignity, healing, rehabilitation, and empowerment and areas in which its work could be enhanced, including obtaining more funds.

In terms of format, the report suggests a panel discussion with diverse participation: which would focus on two subjects: (1) The Role of Outreach in creating the impact: challenges and solutions and (2) Victims' participation and reparations as element of justice. Further, the Focal Points have suggested a lunch side event on the TFV.

The focal points also proposed specific outcomes, including the following elements: A report of the panel and related events as well as, possibly, a resolution; that the results of the stocktaking exercise should also be incorporated into the Review Conference communications strategy in order to inform the broader public about the Court's work on behalf of the affected communities. It was also proposed that other possible outcomes should include: Commitments to contribute to the Trust Fund for Victims, commitments to adopt national legislation relevant to Victims and affected communities, such as the preparation of victims as well as for the achievement of truth, justice and reparation; and commitments to conclude ad hoc agreements with the Court with regard to the victims and affected communities.

NGOs have pointed out that the stocktaking exercise should contribute to identify areas in which the Court's impact can be further strengthened, including where states can make their contributions. Also, NGOs have strongly supported concrete outcomes in terms of pledges, as included in the Focal Points' report.

In keeping with the focal points' efforts, the *Victims Rights Working Group* - a network of over 200 civil society groups and individual experts including from Uganda, DRC and Sudan - developed a questionnaire to assess the Court's impact in particular areas. Questions, for example, refer to the impact on victims' expectations of obtaining justice and on the local recognition of specific types of harm. The questionnaires were distributed to partner organizations on the ground and consultations are ongoing in Eastern DRC, Uganda as well as in other situation and non-situation countries. The aim is to compile the feedback in a report that will be submitted at the Resumed ASP session and ultimately at the Review Conference.

b. Complementarity

Complementarity is one of the foundational principles of the Rome Statute system. What was envisioned by the drafters of the Rome Statute was not simply a self-standing Court,

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but rather a comprehensive system of international justice, where the duty on States Parties to investigate and prosecute international crimes is clearly reinforced. Consequently, the International Criminal Court (ICC) is a court of “last resort”.

This stocktaking exercise at the Review Conference will reflect on the responsibilities of states, as well as the Court and the ASP with regards to ensuring adequate implementing legislation; building preparedness to investigate and prosecute at the national level; recognizing situations where the ICC may have played a role in bringing about domestic accountability processes; exploring the role of various alternative justice mechanisms; and seeking relationships with appropriate institutions and bodies involved with international criminal justice.

The stocktaking exercise on Complementarity at the Review Conference is being prepared by focal points in Denmark and South Africa and has predominantly been handled within the HWG. The Focal Points’ consultations with civil society started early and as part of that, the CICC Team on the Review Conference, as well as individual members, have participated in the discussions in the HWG and the NYWG. These exchanges were complemented by a Paper by the Team.

The Focal Points presented a draft report and a draft resolution to the Bureau, which were adopted by the Bureau and also debated in the NYWG. In terms of discussion format, the report suggested a panel discussion with experts, with the outcome calling for political support and recommending a follow-up mechanism. The draft report seeks to take stock of challenges so far, and looks at enhancing the readiness of national jurisdictions through positive complementarity, both in situations where no crimes under the jurisdiction of the Court have been committed as well as situations where crimes under the jurisdiction of the Court may have been committed. The paper also looks at how to address situations where the Court is investigating and prosecuting crimes under its jurisdiction and situations where the Court has concluded investigations and prosecution of those most responsible. Further, it addresses the role of different stake holders and ends with a reference to universality. The report suggests that the Review Conference recommends the following: that States Parties reaffirm that national jurisdictions have the primary responsibility, that States, the Court and other actors should strengthen the principle of complementarity by encouraging national proceedings where relevant as a means to bridge the impunity gap; that States Parties should consider the need for further measures at the national level in combating impunity and as appropriate and in cooperation with the Court examine ways in which domestic jurisdictions can be further enabled to deal with the most serious crimes; that The Court should develop a report on positive complementarity and present this report to the Assembly of States Parties; that the Assembly should establish a designated function within the Secretariat of the Assembly of States Parties, tasked with facilitating the exchange of information aimed at strengthening domestic jurisdictions; and that the Assembly and the Bureau of the Assembly should continue the discussion on how best to advance the fight against impunity at the national level through positive complementarity.

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The CICC Team on Review Conference welcomed the affirmation by State Parties of their obligations to strengthen the Rome Statute system by putting forth best effort to use national authorities and courts for the investigation and prosecution of international crimes. Coalition members supported the general approach and content of the Focal Points' draft paper, including its recommendations to State Parties, the Assembly and the ICC, and noting that the paper does not create any new obligations but rather seeks to strengthen those already in existence. At the same time, the Team made the following comments and suggestions: 1) it would be important to collect and examine the State Parties' prior experiences in exercising national jurisdiction to deal with the crimes under the Rome Statute, noting the national legislation and processes used, in order to create a frame of reference for strengthening participation. 2) In addition to addressing the ability of states, there is a need to also address the willingness, or lack thereof of State Parties to use domestic courts for international criminal prosecution, without which any amount of capacity building and outside support will be ineffectual. 3) The Team welcomed the identification of specific scenarios that give rise to the need for positive complementarity efforts, including countries in which preliminary examinations and investigations or prosecutions have already begun, which offer a unique opportunity to promote national proceedings. 4) The Team encouraged the creation of new programs or promotion of existing programs that provide legislative and technical assistance, building capacity, and physical infrastructure with the goal of enabling national jurisdictions to carry out their obligations and with a particular emphasis on the Rome Statute system.

c. Cooperation

The success of the International Criminal Court (ICC) and the Rome Statute is largely dependant on cooperation by external actors, such as states; international and regional organizations. That success therefore rests on the level of cooperation that the Court is able to secure and States Parties are able and willing to provide, although obligated to do so under the Rome Statute.

In this regard and as identified at the eighth session of the Assembly of States Parties (ASP), the stocktaking process regarding cooperation presents a unique and valuable opportunity, never before undertaken, to review the cooperation the Court has or has not received since its inception and to consider ways to ensure the fullest cooperation in the future.

The stocktaking exercise on cooperation at the Review Conference is being prepared by the duly appointed focal points Costa Rica and Ireland. Thus far, the issue of cooperation has been considered within The Hague and New York Working Groups, The Focal Points have issued a Background Paper on this particular stocktaking issue that has formed the backdrop to discussions in those Working Group forums. The Paper suggests a framework for the discussions at the Review Conference which necessarily includes formulating said discussions in a roundtable or panel discussion, with an interactive debate between all

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relevant stake holders on the challenges and ways in which obligations relating to cooperation can be properly given effect.

The Paper, to be further discussed at the Resumed Session, divides the topics of discussion over two clusters. The first covering implementing legislation, supplementary agreements and arrangements and other forms of cooperation and assistance and Challenges encountered by States Parties in relation to requests for cooperation and how these might be overcome. The second cluster would cover Cooperation with the United Nations and other intergovernmental bodies and how to enhance knowledge, awareness and support for the Court.

The Outcome, according to the Focal Points' Paper, would reaffirm the importance of all stakeholders meeting their obligations fully; take note of any announcements on steps to increase cooperation. The outcome would also emphasize the importance of mainstreaming support to the Court within national administrations; note the importance of the enforcement of Court decisions including arrest warrants, urge States Parties, the Court and other stakeholders to explore innovative ways to provide assistance. One outcome would also be a decision to include on the agenda of future Assemblies of States Parties (on a biennial or some other regular basis) an item on cooperation with a particular focus on sharing experiences and distilling best practice. In addition the Focal Points would encourage the development of a public information strategy by the Court.

The Focal Points opened the door at an early stage for input from civil society, and individual NGOs as well as the CICC Team on cooperation, who have presented input and participated in the meetings of the Working Groups in The Hague and New York. The Cooperation Team has expressed its general support for the efforts of the Focal Points and raised a number of points in order to further develop discussions at the Review Conference. This includes the importance of recognizing the Court as a key player in this exercise and reflecting on its experiences by supporting the submission of an updated and candid report on cooperation. The Team has also supported the reissuance of the questionnaire previously circulated by the ASP Secretariat in the context of the Plan of Action. This also extends to complementing the responses to the questionnaire, by urging States Parties to provide a short description/presentation of good practices and challenges in the identified priority areas.

The Team has also encouraged States Parties to take full advantage of the Review conference by publically announcing or pledging endeavors that will serve to facilitate greater cooperation with the Court in the future. Further, The team has supported the proposal of the Focal Points for cooperation as a regular agenda item at the ASP and hope that consideration would be given to formulating those discussions in a permanent working group with the Bureau's Cooperation Facilitator as Chairperson and in order to accord cooperation the proper attention that is warranted and to carry forward the outcomes of the Review Conference.

d. Peace and Justice

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Although there is a common understanding among UN organs and the majority of the international community that there cannot be lasting peace without justice, among the central controversies surrounding the ICC are those claims that accountability efforts, including prosecution, can threaten ongoing peace efforts. Thus, the Review Conference provides an ideal opportunity to open up a grounded dialogue on the role of the ICC in peace efforts.

This exercise will need to take into account the unique position of the ICC in the spectrum of international justice as a permanent institution which can be mandated to investigate ongoing crimes. This distinct position raises unique challenges, such as questions regarding the role of the ICC in ongoing peace building efforts as well as in contributing to peace through deterrence.

The focal points on Peace and Justice, Argentina, the Democratic Republic of the Congo (DRC) and Switzerland, have made considerable progress in organizing this stocktaking exercise. Recent developments, which they summarized in a Paper distributed to the NYWG on 5 March, include a definition of the topic, a description of the substantive content, and provide a tentative outline of the schedule planned.

The central focus is the need for balance in the ICC's pursuit of the mutual goals of peace and justice. The event will be framed by how the relationship between 'peace and justice' is referenced in the preamble of the Rome Statute, by the recognition in the UN of justice as a valid and legitimate goal, and by the importance for the future efficacy of the ICC of justice as a fundamental element of peace. The panelists will convey these themes through panel presentations focused on international justice, its challenges, the truth and reconciliation process as a complement to justice, and safeguarding the interests of victims. Lastly, former UN Secretary General Kofi Annan was preliminarily chosen as the keynote speaker and Ken Roth, Director of Human Rights Watch, will act as moderator.

As of now, the key-note speaker will open the event with a 15-minute presentation, followed by presentations by four diverse panelists. Afterwards, there will be an interactive discussion between the panelists, the State Parties, international organizations, victims and other members of civil society. The proposed outcome will include a Chair's summary of the event and reference to the desirability of continuing discussions on 'Peace and Justice' within future ASPs. The entire event will be complemented by side events, one of which is being planned by the CICC.

The panel is scheduled for the morning session on Wednesday, 2 June, but it is still open to change. Further developments will be discussed at the resumed session and voted on by the Assembly prior to being presented at the Review Conference. Until that time, the focal points will concentrate on deepening the understanding of the topic's substance (drawing on the Nuremberg Declaration on Peace and Justice), creating background papers for the

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panelists, developing a way to facilitate participation from NGOs and representatives of affected communities, and looking into the possible inclusion of a reference on the issue within a Ministerial Declaration.

According to the CICC Team's view, the outcome of the event should amount to a broader understanding of the peace-justice dynamic as a mutually reinforcing relationship, subject to variable application in different contexts, and potentially a statement of principles to this effect.

VI. TRUST FUND FOR VICTIMS

In parallel with the ASP Resumed Session, the Board of Directors of the Trust Fund for Victims will hold its annual meeting on 23-25 March 2010 in New York. This is the first formal meeting of the board in its new composition since its election in November 2009. (During the last ASP meeting, States Parties elected 5 new Board members for a 3 year term: Bulgaa Altangerel (Mongolia, representing the Asian States); Betty Kaari Murungi (Kenya, representing African States); Eduardo Pizarro Leongomez (Colombia, representing the Americas and Caribbean States); Elisabeth Rehn (Finland, representing Western European and Other States); Vaira Vike-Freiberga (Latvia, representing Eastern European States)

The Board will deal with a range of different issues during its annual meeting (eg the TF's programme work in the field; review of on-going projects; fundraising strategies; review conference activities; nomination of the Board's chairperson; recruitment process of the Executive Director of the TF Secretariat). The Board members will also attend the informal consultations of States Parties during the resumed session on the stocktaking preparations for the Review Conference.

Civil society organizations have been invited to a consultation meeting with the Board members on 25 March where NGOs and board members have the opportunity to engage in an open dialogue.

VI. OTHERS

a. High-Level Declaration

On 15 March 2010, the Bureau appointed a facilitator for consultations on a high-level declaration to be possibly adopted at the Review Conference as part of the high level segment scheduled at the beginning of the Conference. Although consultations are at an early stage, a number of States and NGOs have expressed support to the idea of having such a declaration as a concrete outcome of the Review Conference that could set a positive tone and create a constructive framework for discussions at the Conference. Further, early

negotiations of a draft text could encourage the constructive engagement of officials at the ministerial level in the preparations for the Review Conference.

b. Strengthening the Enforcement of Sentences

On 26 November 2009, Norway presented a proposal for an amendment to Article 103 of the Rome Statute to the ASP. It sought to strengthen cooperation with the Court regarding the enforcement of sentences without disrupting the obligations of the State Parties and their relationship with the Court. While the ICC has not yet carried out any sentences, other international criminal tribunals have met challenges in finding States willing to accept sentenced, international criminals. Norway therefore seeks to address these problems for the ICC by encouraging parties to take on sentenced persons and to provide support to those States who are already willing to volunteer but do not have the infrastructure. At the 8th session of the ASP, States Parties agreed with the fundamental purpose of the proposal, but did not think an amendment to the Statute would be necessary or desirable. As a result, the ASP agreed to mandate the Bureau to consider ways in which this issue could be addressed at the Review Conference.

Within informal consultations of the NYWG, Norway put forward a draft resolution on strengthening the enforcement of sentences. As a result of a number of suggestions made by States Parties and non parties alike, changes were made to draft resolution. The main concerns expressed during the consultations were that the document should reflect (1) the role of the Court in strengthening enforcement and (2) the voluntariness of the decision to take sentenced prisoners. Both issues have since been addressed. The Bureau agreed to include the consideration of the draft resolution on the issue as part of the Review Conference agenda.

As said, non-state parties also have concerns. For example, Egypt, representing various parties, has repeatedly refused to support the amendment unless it distinguishes between the responsibilities of State Parties v. other States throughout the text and doesn't place new obligations upon the international bodies that it is party to.

The most recent draft of the proposed resolution was discussed at a meeting of the NYWG on 15 March and received broad support from the States Parties present. The text of the draft resolution will continue to be reviewed at the resumed session prior to its consideration at the Review Conference.