



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

REPORT

ON THE EIGHTH SESSION OF THE ASSEMBLY OF
STATES PARTIES TO THE ROME STATUTE



18-26 NOVEMBER 2009
THE HAGUE, THE NETHERLANDS

JANUARY 2010

* This document was compiled by the CICC Secretariat, based on reports from CICC caucuses, teams and experts, as well as on official ASP documents on each respective subject and should not be taken to represent the views of all Coalition members.

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I. INTRODUCTION

This report constitutes a summary of the eighth session of the Assembly of States Parties to the Rome Statute. The Coalition Secretariat would like to thank the following people who made it possible to draft this report: the CICC interns for their production of daily minutes of the plenary and working group meetings of the ASP (which are also available through the Coalition); CICC team leaders Alison Smith (No Peace Without Justice), Jutta Bertram Nothnagel (Union Internationale des Avocats), Mariana Pena (Fédération Internationale des Ligues des Droits de l'Homme), Jonathan O'Donohue (Amnesty International), Dadimos Haile (Avocats sans Frontières), Brigid Inder (Women's Initiative for Gender Justice) and David Donat Cattin (Parliamentarians for Global Action)¹; all members of the teams who made the production of the CICC team reports possible; and the Secretariat of the Assembly of States Parties for the summary proceedings and the list of documents.

The Coalition Secretariat takes all care to ensure accuracy. Corrections and additions are always welcome.

The Regular Eighth Session of the Assembly of States Parties (ASP) was held in The Hague, at the World Forum Convention Center, on 18-26 November 2009.

Representatives from the now 110 ICC Member States, who together form the ASP, and the management oversight and legislative body of the International Criminal Court, gathered to discuss and decide a number of issues central to the Court's operations. Amongst these issues were the preparations for the 2010 Review Conference (in particular the definition of the crime of aggression, other amendments and the stocktaking exercise); Judicial elections; establishment of an independent oversight mechanism; the funding of family visits for indigent detainees; the election of the members of the Board of Directors of the Trust Fund for Victims; and the adoption of the budget.

Each year, the ASP is a pivotal event for NGOs participating as observers. More than 200 representatives from NGOs from all parts of the world attended the eighth session of the ASP. The continued commitment of NGOs to invest time and resources in the ASP is a clear indication of the sustained support for the Rome Statute system.

As in previous years, the NGOs coordinated their activities through the Coalition. A number of side-events were held, creating a platform for dialogue between the participating NGOs on the one hand, and the Court, ASP Secretariat and States Parties officials on the other. Although not always of the same opinion, the dialogue between these parties was constructive and informative. Various States Parties continued to invest time and resources in crucial side events, with the intention of building capacity, seeking dialogues and exchanging information.

There were also daily NGO side meetings with government representatives on ratification and implementation, the Review Conference and victim's issues. Most meetings benefited from the contribution of ICC officials.

¹ While the work of the teams reflects the positions of those Coalition members most active on particular issues, their work cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition Teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

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CICC reports of each day's events during the eighth session, as well as a large number of CICC and NGO papers can be found at: <http://www.iccnw.org/?mod=asp8>. You may also connect with us on facebook, <http://www.facebook.com/pages/New-York-NY/Coalition-for-the-International-Criminal-Court/151245993784>, twitter http://twitter.com/_CICC, and flickr <http://www.flickr.com/photos/coalitionforicc/>

The resumed eighth session of the ASP will take place in New York on 22-26 March 2010. The Ninth session of the ASP will take place as early as possible in December 2010 in New York during 5 working days. The Tenth session of the ASP will be held in The Hague with a prior resumed session in New York, during which six judges will be elected.

II. OPENING PLENARY SESSION AND GENERAL DEBATE

The Plenary Session opened with an introductory statement by Ambassador Christian Wenaweser, followed by a minute of silence, and finally the adoption of the agenda for the ASP session. ICC President Judge Song, ICC Prosecutor Luis Moreno-Ocampo and ICC Registrar Silvana Arbia delivered speeches to report on their activities over the past year.

The general debate opened with statements made by 43 States Parties, either in their own capacity or on behalf of a group of states. Furthermore, 6 observer (non-State) Parties; 2 international organizations and 13 NGOs delivered statements.

The following States Parties made statements: Argentina, Austria, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Canada jointly with Australia and New Zealand, Chile, Colombia, Croatia, Denmark, DRC, Ecuador, France, Germany, Guyana, Hungary, Italy, Japan, Jordan, Kenya, Lesotho, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Peru, Poland, Portugal, Republic of Korea, South Africa, Spain, Suriname, Sweden, Switzerland, Trinidad and Tobago, Uganda, United Kingdom and Venezuela. Issues raised by States Parties included, amongst others, budget, cooperation, the review conference (in particular the definition of the crime of aggression and the stocktaking exercise), the establishment of an oversight mechanism, issues related to victims, ICC communications, universality, complementarity and the recognition of the role of NGOs. The United States, who attended the ASP for the first time, made a statement as an observer state.

The following NGOs delivered statements: Amnesty International, Bahrain Coalition for the ICC, the Coalition for the International Criminal Court, Colectivo de Victimas del Terrorismo en el País Vasco (COVITE), Fédération internationale de la Ligue des Droits de l'Homme, Georgian Coalition for War Crimes Documentation, Humanas, Human Rights Network Uganda - HURINET, Human Rights Watch, No Peace Without Justice, Palestinian Center for Human Rights, Parliamentarians for Global Action, and REDRESS. Issues raised by NGOs included the importance of fair trial over expediency, cooperation and universality, prosecutorial strategy, field presence, outreach, the Review Conference, legal aid and legal representation of victims, the work of the Trust Fund for Victims and the principle of complementarity.



All the statements made during the General Debate can be found on the site:

http://www.icc-cpi.int/Menus/ASP/Sessions/General+Debate/GENERAL+DEBATE+_Eighth+Session+of+the+Assembly+of+States+Parties.htm

Jonathan O'Donohue (Amnesty International) giving a statement in the plenary session

III. JUDICIAL ELECTIONS

During the eighth ASP, the fifth judicial election was held to fill two judicial vacancies at the Court. Ms. Silvia Fernandez de Gurmendi (Argentina, List A) and Ms. Kuniko Ozaki (Japan, List B) were elected to serve as ICC judges after six rounds of balloting.

The judicial vacancies resulted from a communication by Judge Mohamed Shahabuddeen (Guyana) of 16 February 2009, where he indicated that he would not be in a position to assume his duties as a judge, and the passing away of Judge Fumiko Saiga (Japan) on 24 April 2009. Judge Shahabuddeen and Judge Saiga had been elected by the ASP in January 2009 for nine-year terms.

The new Judges Ozaki and Fernandez de Gurmendi will serve for the remainder of their predecessor's term of office (2018), in accordance with Article 36 of the Rome Statute, and shall be eligible for re-election.

Elections

The ASP elects those judges who obtain the highest number of votes with a two-thirds majority of States present who vote from a pool of candidates nominated by individual States Parties. Candidates shall have established competence in criminal law and procedure (list A candidates) or in relevant areas of international law (list B candidates). The procedure used for nominations and elections of judges requires States Parties to take into account the representation of the principal legal systems of the world, equitable geographical representation, a fair representation of female and male judges, and judges with legal expertise on specific issues including, but not limited to, violence against children or women.



*Election of ICC Judges at the eighth ASP,
First round of balloting*

In order to redress unbalanced geographic representation, the vacancies filled at the eighth session of the ASP were drawn only from the Group of Asian States or the GRULAC category of Latin American and Caribbean countries.

Following the Czech Republic's ratification of the Rome Statute on 21 July 2009, the Eastern European Group is underrepresented and thus entitled to nominate candidates at the upcoming elections. However, the Eastern European Group had informed the ASP Bureau of their intention to refrain from nominating candidates for the fifth elections.

Nomination

Five candidates were nominated as replacements to be considered at the eighth session of the Assembly of States Parties: Marco Gerardo Monroy Cabra (Colombia, List B), Silvia Fernandez de Gurmendi (Argentina, List A), Kuniko Ozaki (Japan, List B), Duke Pollard (Guyana, List B), and Cecilia Medina Quiroga (Chile, List B).

On 26 October 2009, the CICC hosted a panel in advance of the elections, which consisted of all of the judicial candidates. The event, which took place at UN Headquarters in New York, is part of the Coalition's overall campaign to promote the nomination and election of highly qualified candidates. Prior to the panel, the candidates all filled in a questionnaire prepared by the CICC.

The original nomination period ran from 5 August - 21 September 2009 but had to be extended three times (initially to 30 September, later to 14 October and finally to 28 October) in order to ensure that at least twice the number of candidates fulfilling the requirements would be nominated.

Relevant documents

Kuniko Ozaki



Note Verbale

<http://www.icc-cpi.int/NR/rdonlyres/C6E7429F-D82F-4BE8-B52E-960E31F4EA72/0/ICCASPEJ22009JPNNVENG.pdf>

Statement

<http://www.icc-cpi.int/NR/rdonlyres/9CFC0FBB-3B82-40DD-ACF8-8ACDC4EA8D3E/0/ICCASPEJ22009JPNSTENG.pdf>

Curriculum Vitae

<http://www.icc-cpi.int/NR/rdonlyres/20D73DDA-3900-48E9-A73A-695D420DAD18/0/ICCASPEJ22009JPNCVENG.pdf>

Reply to CICC Questionnaire to ICC Judicial Candidates

http://www.iccnw.org/documents/CICC_Questionnaire_2009_Prof_Kuniko_Ozaki_.pdf

Silvia A. Fernandez de Gurmendi



Note Verbale

<http://www.icc-cpi.int/NR/rdonlyres/06A1F4A5-E546-44E4-AADD-40FE0426289B/0/ICCASPEJ22009ARGNVENG.pdf>

Statement

<http://www.icc-cpi.int/NR/rdonlyres/E60E375B-A79E-4B2B-838B-BEB9F3BB2F78/0/ICCASPEJ22009ARGSTENG.pdf>

Curriculum Vitae

<http://www.icc-cpi.int/NR/rdonlyres/4D226D8D-6045-4B3D-8CB2-6855DD1D3C80/0/ICCASPEJ22009ARGCVENG.pdf>

Reply to CICC Questionnaire to ICC Judicial Candidates

http://www.iccnw.org/documents/CICC_Questionnaire_Silvia_Fernandez_Argentina.pdf

IV. TRUST FUND FOR VICTIMS

Background

"The mandate of the Trust Fund for Victims is to provide assistance to victims of the crimes under the jurisdiction of the ICC and to their families, either by implementing reparations awards made by the Court's chambers or by supporting assistance projects through voluntary contributions."

The Trust Fund for Victims focuses its actions on:

- raising awareness of the international community about the plight of victims of war crimes, genocide and crimes against humanity;
- mobilizing resources and partners in reaching out to victims; and
- helping victims rebuild their lives and those of their communities.

The work of the Trust Fund is guided by a Board of Directors, which benefits from the assistance of the Secretariat of the Trust Fund.

Key issues

Elections of the board of directors of the TFV

On the opening day of the ASP meeting, States Parties elected five members of the Board of Directors of the Trust Fund for Victims by acclamation, each member representing one of the five geographical regions of the world:

- Mr. Bulgaag Altangerel (Mongolia) for Asia
- Ms. Betty Kaari Murungi (Kenya) for Africa
- Mr. Eduardo Pizarro Leongomez (Colombia) for Grulac
- Ms. Elisabeth Rehn (Finland) for WEOG
- Ms. Vaira Vike-Freiberga (Latvia) for Eastern Europe

The term of office of three years begins to run for each member of the Board on 1 December 2009. For all members - except for Mr. Altangerel who served already in the previous board - it is their first term of office. (Board members may only be reelected once).

ASP Statement by Mr. Bulgaag Altangerel and press conference

On the day of the elections, Mr. Bulgaag Altangerel on behalf of the outgoing Board of Directors of the Trust Fund for Victims, addressed the Assembly to provide an update on the progress made over the past year. The Assembly took note of the formal report on the activities and projects of the Board of Directors for the period 1 July 2008 to 30 June 2009.

On the same day, Ms. Rehn and the ASP President participated in a press conference addressing questions relating to the Trust Fund for Victims.

Pledges

During the General Debate, a number of States made pledges for contributions to the Fund.

Side event: Meeting between NGOs and newly elected board members

On the day of the elections and under the facilitation of the CICC, NGOs and the three newly elected Board members present at the ASP (i.e. Ms. Rehn, Mr. Altangerel and Mr. Leogomez) met in an informal setting. This was the first time that NGOs and board members of the TFV got together during an ASP session. The meeting was an opportunity to get to know each

other and to have a first exchange on issues pertinent to the Trust Fund. During the meeting, Ms Rehn, Mr. Altangerel and Mr. Leongomes explained their reasoning behind running for elections to the board and what vision they have for the TFV. NGOs shared their views and concerns on the TF's mandate and activities. Issues that came up in the discussion and presentations included: the need for greater visibility and transparency; the importance of the dual mandate of the Trust Fund; the need for a vigorous fundraising campaign; and the need for the inclusion of women's groups in consultations regarding reparations. In addition, some NGO representatives provided a perspective from the ground in the countries where the TF operates.

After the meeting, all sides agreed that the exchange was very useful and should continue in the near future.

Side event: Project update organized by TF Secretariat

The Trust Fund Secretariat organized a meeting in the presence of the newly elected Colombian board member Mr. Leongomes, which was open to State delegates and NGOs, where it launched its second progress report and provided an overview of its project work.

Currently the TFV has 34 approved projects under its mandate to provide general, non-Court ordered assistance to victims of crimes under the ICC's jurisdiction in Northern Uganda and the DRC. Of these, 29 projects are active and there are a few additional ones in the final stages of programming. The TFV estimates that these 29 projects are currently reaching 226.000 victims of war crimes and crimes against humanity, both directly and indirectly. Approximately 39,000 victims are benefiting directly from TFV-supported services, including counseling, community reconciliation workshops, education grants, reconstructive surgery, start-up grants for income generating activities and more. An additional 187.000 of their families and community members are benefiting indirectly from these initiatives.

Following the presentation, NGOs and States representatives engaged in a dialogue on the different TFV activities and initiatives.

Relevant documents

Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2008 to 30 June 2009

<http://www.icc-cpi.int/NR/rdonlyres/E70FB17B-8EAB-4320-B2E4-749A08091B35/0/ICCASP818ENG.pdf>

Third election of members of the Board of Directors of the Trust Fund for Victims

<http://www.icc-cpi.int/NR/rdonlyres/2120D123-C24D-4B54-B13F-7836270C1806/0/ICCASP819ENG.pdf>

Statement to the ASP by Mr. Bulgaa Altangerel on behalf of the Board of Directors

http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-statements-TFV-ENG.pdf

V. REVIEW CONFERENCE

Background

The first Review Conference of the Rome Statute will take place in Kampala, Uganda from 31 May to 11 June 2010. Therefore, the 8th session of the ASP was 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.

Following the 7th session of the ASP, the Bureau of the Assembly appointed Mr. Marcelo Bohlke (Brazil) and Ms. Angela Nworgu (Nigeria) as co-facilitators of the New York Working Group (NYWG). Their role was to hold consultations and prepare the work of the ASP on the Review Conference in advance of its 8th session. At a later stage, Ms. Nworgu was replaced by Ms. Stella Orina (Kenya). Accordingly, throughout 2009 the NYWG held important consultations on Review Conference issues and served as a mechanism to hold inter-sessional discussions on various topics. These included the different proposals for amendments presented or suggested by States Parties as well as the nature and scope of the proposed stocktaking exercise.

The CICC Team on the Review Conference ("Team") has enabled Coalition members to monitor, work and develop positions on key policy issues relating to preparations for the Conference. The Team has closely followed the preparatory process for the Review Conference and has actively and successfully contributed to this preparatory process by coordinating and conveying NGOs' expertise, views and concerns.

Key Issues

1. Substantive scope of the Conference

At its 6th session, the ASP agreed that in addition to those amendments which command very broad (preferably consensual) support, the Review Conference should include a stocktaking process of international criminal justice. Discussions at the 8th session of the ASP focused on both substantive aspects of the Review Conference.

A. Discussion on Amendment Proposals

At the 6th ASP session, States Parties agreed that proposals for amendments to be considered at the Review Conference were to be discussed at the 8th session of the ASP, with a view to promoting consensus and a well prepared Review Conference.

Although the Team as a whole did not take any position regarding the different proposals for amendments, the Team recalled the need to ensure that the Review Conference is successful, protects the integrity of the Rome Statute, and enhances international understanding of and support for the ICC. Accordingly, the Team considered the Review Conference as an opportunity to discuss and work towards the adoption of broadly-supported amendments to the Statute.

At its 8th session, 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 a number of other proposals, most of which had been considered throughout the year at the NYWG. Such proposals included:

- Proposals tabled by Belgium regarding the criminalization of the use of biological weapons, chemical weapons and anti-personnel mines in international conflicts and conflicts of a non-international character as war crimes; and adding restrictions on the use of excessively injurious or indiscriminate weapons in international conflicts and those of a non-international character. Most delegations were of the view that these proposals were not sufficiently mature for their consideration at the Review Conference. In this regard, some delegations differentiated between a comprehensive prohibition of the use of a weapon and the criminalization of its use.
- A proposal put forward by Mexico regarding the inclusion of the use and the threat to use nuclear weapons in the definition of war crimes. Although a number of delegations welcomed this proposal and the idea to continue discussions on this matter, the general feeling was that, due to the nature of the proposal, much more work was needed to be done on the matter before considering this issue at the Review.
- A proposal from Norway pertained to strengthening the enforcement of ICC prison sentences through international or regional arrangements which would enable states to qualify for acceptance of sentenced persons, including through receipt of voluntary financial contributions to upgrade prison facilities and other assistance or supervision. Although the ASP decided not to consider it as an amendment proposal at the Review Conference, the ASP requested the Bureau to consider the issue of strengthening the enforcement of sentences and to submit a proposal for a decision to be considered at the Review Conference.
- A proposal offered by the Netherlands regarding the inclusion of the crime of terrorism in Article 5 of the Statute. In general, delegations supported this proposal. However, there was also a general impression that discussions in this regard were premature, taking into account that there is no agreed definition of the crime to date at the United Nations, which was, for many, a precondition for the inclusion of terrorism as a crime in the Rome Statute.
- A proposal submitted by Belize and Trinidad and Tobago on the inclusion of the crime of International Drug Trafficking in Article 5 of the Statute. Delegations expressed concerns about whether the threshold by which the crime is considered one of the most serious crimes for the international community could be resolved without adequate discussions and suggested to postpone the matter until after the Review Conference.
- A proposal put forward by South Africa on behalf of all African parties to the Rome Statute regarding Article 16 of the Statute aiming at extending the power to defer cases and situations before the ICC to the UN General Assembly. General concern was expressed regarding the possibility of broadening the scope for political interference with the judicial activities of the Court. Similarly, delegations noted the complexity of the issues involving the relationship between the UN organs.

Although none of the above proposals gathered sufficient support for their consideration at the upcoming Review Conference, 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.

Article 124

Article 124 of the Statute is an optional protocol which allows States to choose not to have their nationals subjected 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 to determine if revisions are required. Debate at the 8th session of the ASP focused on whether the provision should be maintained—thus allowing for application to future States Parties—or whether it should be removed from the Statute.

At different stages of the discussion, the Team recalled that at the Rome Conference, the CICC membership was strongly opposed to the inclusion of Article 124 in the Rome Statute for it weakened the jurisdictional regime of the ICC and was seen 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.

No consensus was reached at the 8th session of the ASP on the matter and thus discussions were deferred to the Review Conference. As a result, a draft amendment proposing the deletion of Article 124 was agreed at the 8th ASP session to be considered at the Review Conference. It was further noted that if the Review Conference decided to retain Article 124, no amendment to the Statute would be necessary.

Crime of Aggression

Although no substantive discussions were held on the crime of aggression at the 8th session of the ASP, as part of the consultations in the context of the Review Conference, some time was allocated to update States Parties on the process. Accordingly, the facilitator on the crime of aggression, H.R.H. Prince Zeid Ra’ad Zeid Al-Hussein (Jordan) recalled that a draft proposal for amending the Statute to include relevant provisions on the crime of aggression had been submitted to the UN Secretary-General.

Further, the Working Group noted the outcome of the inter-sessional meeting on the draft elements of the crime of aggression and agreed to transmit it to the Review Conference in order to compliment the text produced by the Special Working Group on the Crime of Aggression.

Interest was expressed to continue discussions on the crime of aggression at the resumed 8th session of the ASP to be held in New York from 22 to 25 March 2010.

The CICC Team on the Crime of Aggression delivered a statement at the session encouraging states to work towards the adoption of adequate provisions on the crime of aggression.

B. Stocktaking

Throughout the preparatory process for the Review Conference, a number of states, international organizations, the CICC and other members of civil society have noted the importance of ensuring that the Review Conference is not solely about the discussions of amendments, but also includes a platform for stocktaking. Accordingly, the CICC welcomed the ASP recognition at its 6th session of the Conference as a platform through which to take stock of the current state and impact of the international justice system and in particular the Rome Statute system.

Discussions at the ASP focused on two aspects of the stocktaking exercise: the need to identify the topics part of the stocktaking exercise; and the modalities of the exercise including the format of the discussions and possible outcomes.

The CICC Team organized a very well attended and constructive side-event on the importance of stocktaking at the Review Conference. Team members, such as representatives from Human Rights Watch, HURINET, No Peace Without Justice and Parliamentarians for Global Action, together with representatives from the ICC Presidency and the South African government presented on key issues related to the scope, focus,

modalities and preparations for the stocktaking exercise. Similarly, the Japanese delegation organized a side-event in which they presented their discussion paper containing a number of similar ideas for the stocktaking process.

During the consultations within the NYWG, the CICC Review Conference Team put forward a paper detailing the modalities in which the four proposed topics by the Team should be discussed at the Review Conference. Accordingly, and in consistency with the Team's position at past ASP sessions, the Team suggested that the stocktaking exercise should include discussions on the following issues:

- Impact of international criminal justice on affected communities;
- State cooperation with the ICC;
- Complementarity, universality of the Rome Statute and the impunity gap; and
- Impact of international criminal justice on peace processes and peace building.

In general, States expressed their desire to limit the amount of issues to be discussed as part of the stocktaking exercise in light of the limited time available and the need to have result oriented discussions at the Review Conference. Discussions concluded with the ASP deciding to forward the four topics as suggested by the CICC Team for the consideration of the Review Conference and name them:

- Complementarity;
- Cooperation;
- The impact of the Rome Statute system on victims and affected communities;
- Peace and justice.

Furthermore, the Team recommended that efforts be made to ensure that stocktaking is not seen as secondary to amendments, but rather an equally important component of the Review Conference. In that regard, many delegations stressed the importance that they placed on the stocktaking exercise and noted that it should be treated as an integral part of the Review Conference.

During the session, the Team continued to stress that the success of stocktaking depends on the preparations made prior to the Review Conference at ASP meetings and inter-sessions and urged the ASP to set up a follow-up structure in the form of an inter-sessional mechanism mandated to deal with all issues concerning the Review Conference arising between the Assembly's session in November 2009 and the Review Conference in May 2010.

In turn, 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. Progress of the preparations in this regard should be considered at a resumed session at the end of March 2010.

The focal points should address the modalities of the stocktaking discussions including the format of the discussions and possible achievable objectives for consideration at the resumed 8th session in March 2010.

Relevant Documents

Resolution on the Review Conference, ICC-ASP/8/Res.6

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf

Crime of Aggression; including the proposal of Liechtenstein on behalf of the Special Working Group on the Crime of Aggression

<http://www.coalitionfortheicc.org/?mod=swgca-proposal>

Belgium's Proposal (Inclusion of specific weapons in the definition of War Crimes)

<http://www.coalitionfortheicc.org/?mod=belgianproposal>

Mexico's Proposal (Inclusion of nuclear weapon use in the definition of War Crimes)

<http://www.coalitionfortheicc.org/?mod=mexicanproposal>

The Netherlands' Proposal (Inclusion of the Crime of Terrorism in the Rome Statute)

<http://www.coalitionfortheicc.org/?mod=resolutione>

Norway's Proposal (on Enforcement)

<http://www.coalitionfortheicc.org/?mod=norwayproposal>

Trinidad and Tobago's Proposal (On International Drug Trafficking)

<http://www.coalitionfortheicc.org/?mod=trinidadproposal>

Japan's Proposal (Amendments on Financial, Administrative and Structural Matters)

<http://www.coalitionfortheicc.org/?mod=japanproposal>

CICC Team on the Review Conference, Comments and Recommendations to the Eighth ASP

http://www.coalitionfortheicc.org/documents/CICC_Review_Conference_Team_Paper_ASP_8.pdf

Draft Provisional Agenda for the Review Conference

http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RevConf-prov-agenda.ENG.15-September-2009.pdf

VI. COOPERATION

Background

With an increase in judicial activity anticipated by the Court as well as the potential for new investigations in 2010, cooperation with the Court will continue to be a pressing issue, if not more so than in previous years.

Informal consultations on cooperation were chaired by Ambassador Yves Haesendonck (Belgium) Focal Point for cooperation, and a draft stand-alone resolution was presented for discussion. While the Coalition's Cooperation Team ('Team') had aimed higher by advocating for a formal working group to be constituted at the ASP in order to afford the issue significant prominence, informal consultations was a step in the right direction as this was the first time the issue appeared on the ASP agenda at all. These informal consultations were preceded by several discussions in The Hague Working Group on the issue of cooperation in reference to the progress report of Ambassador Haesendonck, and the report of the Court on cooperation, which set out the level of success the Court has achieved to date in relation to cooperation with States and international organizations. This was the first such report produced by the Court and one that the Team had persistently advocated for.

Discussions at the ASP

The informal consultations revolved around the draft resolution on cooperation, which incorporated the language on cooperation from the Omnibus Resolution adopted at the 7th Session of the ASP². Also included was the appointment of a Facilitator with a two-year mandate with a comprehensive list of priorities including *inter alia*: developing a framework of action for the adoption of national legislation pursuant to Article 88 of the Rome Statute; exploring and promoting the conclusion of agreements or other arrangements between the Court and States Parties for interim release; the enforcement of sentences; and preparing the issue of stocktaking for cooperation at the Review Conference. Prior to the eighth session of the ASP, The Coalition's Team on Cooperation had strongly advocated for the reappointment of the Focal Point, or in the alternative a Facilitator, to continue the extensive work of Ambassador Haesendonck and in particular to prepare the issue of cooperation in the context of stocktaking at the Review Conference.

There were interventions from a handful of States Parties during the informal consultations with suggested amendments to the language of the draft resolution including that of the text imported from the Omnibus Resolution. The United Kingdom, in particular, recommended the inclusion of language that would grant the prospective Facilitator the explicit authority to "explore where a standing mechanism in the ASP should be established for the purpose of Article 112(2)(f) of the Rome Statute". This would trigger the intervention of the ASP should the Court make a finding to the effect that a State had failed to comply with a request for cooperation, as per Article 87. The proposal of the United Kingdom elicited a positive response from Australia, Finland, Mexico, the Netherlands, Norway, and Sweden, with a vocal minority objecting on the grounds that the extent of States Parties obligations were still subject to debate and that any discussion on the issue of Articles 112(2)(f) and 87 would be premature at this stage.

An agreement was eventually reached in private consultations between the main protagonists to remove any reference along the lines of the aforementioned proposal by the

² ICC-ASP/7/Res.3

United Kingdom. The Team had itself advocated for the inclusion of such explicit language in the resolution on cooperation and as a means for generating discussion amongst States Parties on this specific issue with a view to establishing a mechanism to respond to findings of non-compliance under Article 87.

In both bilateral and multilateral discussions with States Parties, the Coalition's Cooperation and Review Conference Teams had both drawn attention to the need for adequate preparation for the Review Conference, particularly in the context of stocktaking; a topic for which there will be cooperation, as mandated by resolution of the ASP³. As indicated, the prospective Facilitator will be responsible for undertaking those preparations.

Relevant Documents

Resolution on Cooperation, ICC-ASP/8/Res.2

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.2-ENG.pdf

Resolution on the Review Conference, ICC-ASP/8/Res.6

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf

Report of the Bureau on Cooperation, ICC-ASP/7/18

http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-7-18_English.pdf

Report of the Bureau on Cooperation, ICC-ASP/8/44

http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-44-ENG.pdf

CICC Cooperation Team, Comments and Recommendations to the Eighth ASP

[http://www.iccnw.org/documents/CICC_Cooperation_Team_Paper_ASP_8_\(2\).pdf](http://www.iccnw.org/documents/CICC_Cooperation_Team_Paper_ASP_8_(2).pdf)

³ ICC-ASP/8/Res.6

VII. BUDGET AND FINANCE

Background

The report of the Committee on Budget and Finance ('CBF'), and the recommendations contained therein on the Court's proposed budget for 2010, formed the basis of discussion at the ASP. Through the Working Group on Budget, chaired by the Budget Facilitator Ambassador Urbina of Costa Rica, the ASP considered at length some, but not all of the said recommendations.

The CBF found the Courts proposal to be reasonable and acknowledged the efforts made by the Court to make additional savings compared to its budget of 2009. Nevertheless the CBF were of the opinion that there was room for additional cuts and recommended further reductions on top of what was already proposed by the Court for legal aid, for representation of both defendants and victims, despite the increase in judicial activity indicated in the Courts assumptions. The CBF also recommended that a number of posts not be reclassified or reconverted. Also subject to contention was the recommendation that the resources allocated to the prospective ICC-Addis Ababa Liaison Office ('Liaison Office') not exceed that of the ICC-New York Liaison Office, a request for a D1 and P3 level staff members to head the office had been originally requested by the Court.

The CBF report and the budget proposal of the Court was also the subject of discussion within The Hague Working Group, with a number of States of the opinion that the CBF recommendations be adopted as a package negating the need for further scrutiny. The Coalition's Team on Budget and Finance ('Team') raised a number of concerns in its position paper, advocating not for scrutiny of the CBF report in its entirety, but rather that certain recommendations be the subject of further review. Including that of the recommended cuts for legal aid; the non-conversion of the Psychologist/Psychological Trauma expert in the Victims and Witnesses Unit and audio-visual producer in the Public Information and Documentation Section from a temporary to established post; the redeployment of the Associate Field Officer in the Victims Protection and Reparation Section from the Court's office in Uganda to the Central African Republic. In addition the Team highlighted the need for greater communication between the CBF and the Court and beyond the bi-annual sessions of the CBF that facilitate that communication. These concerns were raised by the Coalition in formal and informal diplomatic briefings prior to the ASP. The Registry also raised its own concerns both in The Hague and New York leading up to the ASP, notably in relation to legal aid for defence. The same concerns were raised at the EU Council Working Group on Public International Law (COJUR) and the Court's pre-ASP diplomatic briefing, specifically with respect to legal aid.

Additionally, and as in previous years, members of the Team had the opportunity to address the CBF during its twelfth and thirteenth sessions in April and August 2009, respectively. This complemented the submission of team papers that were submitted to the CBF for consideration at said sessions, and followed consultations with the Court prior to and following the issuance of its budget proposal in order to gauge the needs and priorities of the Court.

ASP Discussions

The budget discussions at the ASP opened with presentations from the Registrar of the Court and by the Chair of the CBF, Mr. Santiago Wins (Uruguay). Substantive discussions on the recommendations of the CBF were held in the Working Group on the Budget and chaired by Ambassador Urbina. Although there appeared to be general consensus on endorsing the CBF

report as a package, there were calls from several States Parties to review certain recommendations, namely the non-conversion of the psychologist/psychological trauma expert; legal aid for defence and the recommendations that impacted on the field offices in general. While States Parties commended the work of the CBF a number of States highlighted the need for further explanation in the report, in order to fully gauge the reasoning behind the CBF's recommendations. As in previous sessions of the ASP the Team, through its Team Leader, Jonathan O'Donohue of Amnesty International, addressed the Working Group at the end of its first session and used the opportunity to raise the concerns that were expressed in its position paper. He also acknowledged the ASP's efforts in avoiding a repeat of last years budget process which saw an arbitrary reduction of the approved budget by some 5 million Euros.

In addition to the Working Group discussions, several informal discussions were held with respect to those issues that bore contention amongst the States Parties, namely that of legal aid for defence; the temporary Psychologist/Psychological Trauma expert post; and the staffing structure of the Liaison Office, the establishment of which had already achieved general consensus amongst the ASP⁴.

The conclusion of the Working Group discussions and the informal consultations resulted in adoption of the CBF recommendations in its entirety and a budget to the tune of 103,623,300 Euros. This includes the budget allocated to the Liaison Office (346,600 Euros), consensus that it be headed by a D1 alone, thereby constituting a reversal of the CBF recommendation, that it be no higher than a level of a P5. This amount also included the start-up costs of the independent oversight mechanism, which would amount to 341,600 Euros. The recommendation of the CBF with respect to the legal aid budget for defence, while endorsed by the ASP, was done so on the condition that the Registrar would be given the flexibility to redistribute funding from the allocated budget to cover any overspending in 2010 and recourse to the contingency fund as a last resort. An outcome that the Team had strongly advocated for as reflected in its position paper and raised in several consultations with States Parties prior in the build up to the ASP.

A written report had been prepared and distributed by Ambassador Urbina at the ASP, but in a break from previous practice, the report was dropped in favor of an oral report which was delivered in a plenary session on the last day of the ASP. In doing so, Ambassador Urbina highlighted the diverging views that had been expressed amongst States Parties and in relation to those areas as discussed above and in the preceding text and the consensus that had been reached at the conclusion of the budgetary discussions.

Key Issues at the ASP

Psychologist/Psychological Trauma expert - Victims and Witnesses Unit

The Court, in its proposed program budget for 2010, requested that the P3 level Psychologist/Psychological Trauma expert be converted from a GTA temporary post to an established post. The CBF however, following consideration of the proposed budget, recommended that the post not be converted. Recognizing that the expert had been utilized extensively by the Court and that the provision of such expertise was envisaged by the Rome Statute, the Team supported the position of the Court. The recommendation of the CBF proved to be a contentious one with several States Parties of the opinion that the permanence of this post was of utmost importance and a level of confusion as to whether retaining a permanent post would be less or more expensive than that of a temporary one. Ambassador Urbina held informal consultations on this specific issue, with a view to

⁴ The Addis Ababa Liaison Office was established by Resolution ICC-ASP/8/Res.3

resolving the differing opinions and clarify the cost of retaining a Psychologist/Psychological Trauma expert. As a consequence of further discussion, a consensus was reached to adopt the recommendation of the CBF with the proviso that the need for an established post would be revisited at the fourteenth session of the CBF, with a view to further discussion at the ASP in 2010.

Legal Aid for Defence

A total of roughly 1,523,000 Euros had been requested by the Court in order to cover the cost of legal aid for defence; this represented a reduction of some 1.2% of the budget that had been granted by the ASP in 2009 and in line with the emphasis on finding savings where possible. The CBF went further in its consideration of the budget and reduced this amount by a further 7%. This prompted calls from the Registrar to be granted access to the contingency fund should the need arise in the context of this expenditure, a solution that the Team had also advocated for should the CBF recommendation be adopted. There were differing views here too amongst the States Parties with some of the opinion that the contingency fund could be accessed in circumstances where the Court had exceeded the budget it was allocated, while other States expressed reservation at accessing the contingency fund in circumstances in which the expenditure was foreseeable or avoidable. Following informal consultations on the same, consensus was reached to endorse the CBF recommendation, with the condition that should the Court need additional funds it can redistribute funds within the budget allocated to the Registry or recourse to the contingency fund.

ICC-Addis Ababa Liaison Office

In its Report on the Establishment of an Office of the International Criminal Court at the African Union Headquarters in Addis Ababa, the Court had envisaged the office consisting of both a D1 and P3 level staff member to staff the prospective office together with two GS level staff as an administrative assistant and driver⁵. The CBF recommended that the resources allocated to the office not exceed that of the New York Liaison Office, which would in practice mean that the prospective office in Addis Ababa would consist of a single P5 level staff member together with administrative staff. There was concern amongst some States Parties that the office needed to be headed by an individual of sufficient seniority in order to gain access and liaise with Member States of the African Union. Not all States Parties however were of this opinion. The Team for its part advocated for an office with sufficient staff resources at such a level that would enable the office to function effectively. Following informal consultations on this, consensus was reached that the office would be staffed by a D1 level staff member as head of the office and one GS-OL and one locally recruited GTA staff member, with no additional resources to be allocated in the near future.

Contingency Fund

Following the recommendation of the CBF, the ASP agreed to maintain the contingency fund at its current level. Should, however, the fund be depleted to an amount below 7 million Euros by year end the ASP would decide on its replenishment up to an amount deemed appropriate, but not less than 7 million Euros.

⁵ ICC-ASP/8/35 (Previously issued as ICC-ASP/8/CBF.2/12)

Relevant Documents

Proposed Programme Budget for 2010 of the International Criminal Court
<http://www.icc-cpi.int/NR/rdonlyres/F945056A-F020-4F6A-A626-B8015D20D925/0/ICCASP810ENG.pdf>

Report of the Committee on Budget and Finance on the work of its twelfth Session
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/OR/OR-ASP8-Vol.II-ENG-Part.B.pdf

Report of the Committee on Budget and Finance on the work of its thirteenth session
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-15-ENG.pdf

Report of the Committee on Budget and Finance on the work of its thirteenth session -
Addendum
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-15-Add.1-ENG.pdf

Report of the Court on the establishment of an office for the International Criminal Court at
the African Union Headquarters in Addis Ababa
<http://www.icc-cpi.int/NR/rdonlyres/B55EF784-86BC-4169-B5C6-92AF5149C69C/0/ICCASP835ENG.pdf>

ASP8 Resolution on the Programme budget for 2010
http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.7-ENG.pdf

ASP 8 Resolution on Strengthening the International Criminal Court and the Assembly of
States Parties (The 'Omnibus Resolution')
http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.3-ENG.pdf

Report on budget performance of the International Criminal Court as at 31 March 2009
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-12-ENG.pdf

Report on budget performance of the International Criminal Court as at 30 June 2009
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-17-ENG.pdf

Report of the Court on the options for replenishment of the Contingency Fund
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-28-ENG.pdf

Report of the Bureau on options for replenishing the Contingency Fund and the Working
Capital Fund
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-37-ENG.pdf

CICC Budget and Finance Team Submission to 12th Session of the CBF
http://www.iccnw.org/documents/CICC_Budget_and_Finance_Team_Submission_to_the_CBF_12th_Session_English.pdf

CICC Budget and Finance Team Submission to 13th Session of the CBF
http://www.iccnw.org/documents/CBF_paper_-_Final_Eng.pdf

CICC Budget and Finance Team Comments and Recommendations to 8th Session of the ASP
http://www.iccnw.org/documents/CICC_Budget_and_Finance_ASP8.pdf

VIII. FAMILY VISITS OF INDIGENT DETAINEES

Background

As a follow up to discussions within the working group on the budget during 7th ASP session, during 2009, States Parties in the framework of the Hague Working Group had controversial discussions on a possible policy decision to fund family visits of indigent detainees. With a number of states being of the view that there was no legal obligation to provide funding, the debate focused a lot on the implications of an ICC decision of March 2009 in which the ICC Presidency found that in the particular circumstances of a case there was a positive obligation for the Court to fund family visits in order to make a detainee's right to receive family visits effective.

Key issues

Following several informal consultations, the ASP at its 8th session adopted a stand-alone resolution on family visits. In this resolution (http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.4-ENG.pdf), the ASP invited the Court to report to the Assembly on the feasibility and the conditions needed for the establishment of a voluntary system of funding family visits with a perspective of establishing it at the 9th ASP session (i.e. in December 2010).

Pending the establishment of such a system, the Assembly decided that "while no legal obligations exists for the detaining authority or any other authority to fund family visits, the Court may, on a temporary basis, partly or fully subsidize family visits for indigent detainees up to an amount to be determined by the Assembly in the context of the approval of the programme budget". With the support of a number of NGOs, including the CICC Team on ASP Structures, a number of states raised concerns about the independence of the judiciary and the fact that this resolution contradicted the Presidency's decision that such an obligation does exist under certain circumstances. In an effort to mitigate this, the initial language of 'while no legal obligation exists for the Court' had been changed to 'while no legal obligation exists for the detaining authority', a solution which offered a little consolation to those who feared that this is a risky precedence for future ASP interference with judicial decisions. It was further decided that the temporary budgetary funding would be subject to re-evaluation upon the establishment of a mechanism of voluntary funding, no later than the 10th session of the Assembly (i.e. in 2011). CICC members active on the issue continue to support Court funding of such visits and remain skeptical regarding the feasibility of raising voluntary funding for such costs.

Following the negotiations of the resolution text, Italy issued a formal "interpretative declaration" in which, among other things, it stressed its view that "none of the provisions under the resolution would constitute recognition of an obligation for State Party to the Rome Statute to finance family visits for indigent detainees". Costa Rica and France formally associated themselves with this "interpretative declaration".

Relevant documents

Resolution on Family Visits for Indigent Detainees, ICC-ASP/8/Res.4

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.4-ENG.pdf

Interpretative declaration by Italy (page 74)

http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/OR/OR-ASP8-Vol.I-ENG.Annexes.pdf

ASP Bureau Report on Family Visits for Indigent Detainees

<http://www.icc-cpi.int/NR/rdonlyres/FCA438AA-6778-48F7-AF21-4B6F44D12644/0/ICCASP842ENG.pdf>

Report of the Court on the financial aspects of enforcing the Court's obligation to fund family visits to indigent detained persons

http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-9-ENG.pdf

IX. INDEPENDENT OVERSIGHT MECHANISM

Background

Under Article 112(4) of the Rome Statute, the Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy”

In this regard Mr. Akbar Khan of the United Kingdom, in his capacity as Facilitator, submitted a Report on the establishment of an independent oversight mechanism to the ASP at its eighth session. This followed numerous deliberations on the same point at the Working Group in The Hague and informal consultations under the guidance of Prince Zeid of Jordan and Mr. Khan’s predecessor H.E. Mr. Andreas Mavroyiannis, the permanent representative of Cyprus to the United Nations.

As a result the Bureau recommended through its draft resolution on the same that pursuant to Article 112(4) of the Rome Statute a permanent and independent oversight mechanism be created with *proprio motu* investigative powers to investigate allegations of serious misconduct on the part of Court staff and elected officials. It was further recommended that the additional responsibilities of the prospective mechanism envisaged by Article 112(4), namely inspection and evaluation, be reviewed by the Bureau for their adoption at a later date and necessarily at the ninth session of the ASP. The draft resolution also called for the secondment of two staff members from the UN Office of Independent Oversight to set up the mechanism and, more importantly, establish its rules and procedures for approval by the ASP. Further, that it has its own dedicated budget appearing as a major program in the annual budget proposal.

The Coalition’s Independent Oversight Mechanism Team, having followed the discussions on the oversight mechanism since its inception, produced a position paper for submission to the eighth session, reinforcing its position stated in previous position papers; namely the importance of establishing such a mechanism, with emphasis on independence, both physically and bureaucratically from the Court. The present paper went further in raising concerns about the ambiguity of the Bureau’s recommendation that the mechanism be “co-located” with the Office of Internal Audit, ambiguity that gave rise to concerns of impeding the mechanism’s independence, both practically and perceived. The Team also stressed the need for the Staff Rules and Regulations to be amended in such a way as to include a more substantive definition of “serious misconduct” to include but not be limited to sexual violence, rape, abuse and harassment and that all staff be provided with training so that there can be no misunderstanding regarding conduct that is not acceptable and the potential consequences of such misconduct.

Discussions at the ASP

Mr. Khan, as facilitator, chaired informal consultations on the Bureau’s Report to establish the mechanism and its corresponding draft resolution. There was overwhelming support in favor of establishing the mechanism in the vain recommended by the Bureau. Following concerns from the Court that there would be no mechanism in place to deal with misconduct while the mechanism was in the process of becoming operational, the draft resolution was amended to allow the existing rules of procedure and evidence, and the Regulations of the Court with regard to the investigation of elected officials, to remain in force until the mechanism was able to assume responsibility for that function.

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The ASP adopted the resolution creating the independent oversight mechanism and a new major program with its own dedicated budget. It further requested the Bureau to prepare a report on the operation of the inspection and evaluation functions within the oversight mechanism, with a view to the adoption of these functions at the tenth session of the ASP.

Relevant Documents

Resolution on the Establishment of an Independent Oversight Mechanism, ICC-ASP/8/Res.1
http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.1-ENG.pdf

Report of the Bureau on the Establishment of an Independent Oversight Mechanism
http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-2-ENG.pdf

Addendum 1

http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-2-Add.1-ENG.pdf

Addendum 2

<http://www.icc-cpi.int/NR/rdonlyres/3CD8D3AA-503D-48CB-A188-A97EB4EF41D1/0/ICCASP82Add2ENG.pdf>

Addendum 3

<http://www.icc-cpi.int/NR/rdonlyres/E603F5B0-F342-4A25-A792-8947AAC8ABDC/0/ICCASP82Add3ENG.pdf>

CICC Independent Oversight Mechanism Team, Comments and Recommendations to the Eighth ASP

http://www.coalitionfortheicc.org/documents/CICC_Oversight_Team_Paper_ASP_8.pdf

X. ICC PREMISES

Background

The International Criminal Court is currently housed in interim premises on the eastern border of the city of The Hague in The Netherlands. The host state, The Netherlands, is providing the building known as the "Arc" free of charge until 2012. The interim premises do not fulfill the Court's requirements in terms of office space and security in the long term, and permanent premises are to be built on the site of the Alexanderkazerne, a former military barracks complex on the outskirts of The Hague near Scheveningen.

A worldwide architectural design competition launched in early 2008 led to the designation of 3 prizewinners by jury. While it had been hoped that a decision on the preliminary version of the final design would be taken in the summer of 2009, this was delayed due to the ICC Project Board still pursuing negotiations with all three architectural firms to determine the winning design and the contract modalities.

Discussions at the ASP

During informal consultations on the permanent premises of the Court held during the Eighth ASP, the Chair of the Oversight Committee H.E. Lyn Parker, Ambassador of the United Kingdom of the Great Britain and Northern Ireland to the Netherlands, announced that the architectural design contract should be awarded to Schmidt Hammer Lassen Architects (Denmark), second prize winner of the architectural design competition. The draft resolution (ICC-ASP/8/L.7) on the permanent premises of the International Criminal Court was adopted without a vote, with two minor changes.

The move of the Court to the permanent premises is planned for 2015.



The design for the Permanent Premises of the International Criminal Court

XI. OUTREACH AND PUBLIC INFORMATION

At the eighth ASP session in November 2009, Officials of the ICC Registry, including ICC Registrar Silvana Arbia, PIDS Head Sonia Robla, Outreach Unit Head Claudia Perdomo and field staff from DRC, Darfur, CAR and Uganda, reported on ICC outreach activities conducted in 2009.

It was acknowledged that the Court has achieved substantial progress in the development and implementation of its communications activities throughout 2009. In 2009, the ICC was reported⁶ to have organized a total of 365 interactive sessions in situation related countries targeting directly 39,665 people. Estimated audiences of nearly 34 million people were regularly exposed to information about the ICC through local radio and television stations.

Additionally, the Court started producing and distributing weekly written updates on Court activities by e-mail (in English and French). The ICC also developed a number of audiovisual programmes, including weekly summaries of proceedings, "The ICC at the Glance"⁷ and "Ask the Court"⁸, in which Court officials respond to questions posed by participants in the Court's outreach activities. Audiovisual summaries of proceedings have been used in mobile screenings for affected communities, while a range of programs have been broadcast through television and radio stations.

At its eighth session, the Assembly of States Parties adopted the budget requested by the Court for its 2010 communications activities with the exception of the position of an Audiovisual producer at P-2 level, in spite of NGOs' recommendations in the matter. Indeed, NGOs had emphasized the importance of ICC audiovisual materials to support the Court's outreach and public information activities, and that the approval of a permanent position of P-2 Audiovisual Producer was essential for the production of these programmes to be sustainable.

In its omnibus resolution⁹, the Assembly of States Parties reiterated the need to continue to improve and adapt outreach activities, and encouraged the Court to further develop and implement the Strategic Plan for Outreach in affected countries.

In this regard, NGOs had insisted on the need for the ICC to launch its outreach programmes as soon as -- or preferably before -- an investigation is opened and to define a clearer communications strategy in situations under analysis or those under investigation, notwithstanding the lack of trials. These issues were discussed by States but no commitment was made at this session.

States Parties also mentioned the issue of wider communication on the Court and its activities as part of the omnibus resolution, a point that NGOs had been actively advocating for this year, as ICC outreach work ought to be coupled with robust public information activities. The Assembly of States Parties encouraged the Court, taking into account the distinct responsibilities and mandates of its organs, to report on a Court-wide plan on public information to the ninth ASP session as well as to reinforce the Court's internal coordination of communications activities to maximize their impact.

⁶ "Outreach Report 2009," ICC Public Information and Documentation Section, Outreach Unit, <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/outreach%20reports/icc%20outreach%20report%202009>

⁷ "The ICC at the Glance": http://video.google.com/videosearch?hl=en&rlz=1T4DBNL_en-GBNL266NL266&q=the+ICC+at+the+glance&um=1&ie=UTF-8&ei=sBzvSqzIClrT-Qa0npzrCw&sa=X&oi=v#

⁸ "Ask the Court" programme: <http://www.icc-cpi.int/menus/icc/press%20and%20media/audiovisual%20gallery/ask%20the%20court/drc/ask%20the%20court?lan=en-GB>

⁹ ICC-ASP/8/Res.3, "Strengthening the International Criminal Court and the Assembly of States Parties"

A number of States Parties referred to the importance of outreach and communications in their statement at the general debate. These statements can be accessed on the ICC website at: <http://www.icc-cpi.int/Menu/Go?id=de28fc28-2898-4799-8f1c-2be62940a13c&lan=en-GB>

Background

ICC external communications functions include a) external relations, b) outreach and c) public information. These functions are defined in the Court's Integrated Strategy for External Relations, Public Information and Outreach¹⁰.

External relations activities of the Court include those fomenting the dialogue between the Court and States Parties, Non-States Parties, international organizations, NGOs and other partners that have direct roles in the activities of the ICC. This process aims to build and maintain support and cooperation.

Public information is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media and communications materials such as the ICC website.

Outreach aims at promoting understanding and support for the Court's mandate, managing expectations and enabling affected communities to follow and understand the international criminal justice process. Outreach aims not only at sensitizing or simply providing information but engaging those communities in a two-way dialogue.

The work of the ICC on communications and outreach is the quintessential non-judicial function of the Court. It is vital for conducting investigations successfully in the field by creating conditions conducive for cooperation with the Court and preventing or stemming the spread of misinformation; facilitating participation and legal representation of victims in the proceedings; explaining due process rights; facilitating redress for affected communities; and creating an enabling and supportive environment.

At the Fourth ASP session in 2005, States Parties recognized the importance of outreach as a function of the Court, encouraging the Court to intensify its outreach activities and requesting the Court to present a detailed strategic plan in relation to its outreach activities. Accordingly, the Court adopted a general Strategic Plan for Outreach¹¹ in September 2006 as well as situation-specific strategies and action plans for the Democratic Republic of Congo (DRC), the Central African Republic (CAR), Uganda, Darfur and Sudan.

At the fifth ASP session in 2006, States decided not to follow the recommendation of the Committee of Budget and Finance to reduce the requested outreach resources by half and instead provided the Court with all the resources it had asked for in respect of outreach. In the Omnibus Resolution, States Parties encouraged the Court to, yet again, "intensify" its outreach activities, including through the implementation of the Strategic Plan for Outreach.

At the sixth ASP session in 2007, the ASP granted the requested increase for ICC outreach activities in 2008. The Registry facilitated an informal briefing on the Court's outreach

¹⁰ ICC Integrated Strategy for External Relations, Public Information and Outreach: http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf

¹¹ Strategic Plan for Outreach of the ICC: http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf

activities for government delegates and NGO observers. Sierra Leone also hosted a hearing on outreach, co-sponsored by 30 states.

At the seventh ASP session in 2008, the Assembly granted most of the resources requested by the Court for its outreach. However additional funds for the position of audiovisual producer were declined. Court officials, including field staff from DRC and Uganda, reported on the ICC outreach activities conducted in 2008.

Relevant Documents

Integrated Strategy for External Relations, Public Information and Outreach

http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf

Strategic Plan for Outreach of the International Criminal Court

http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf

ICC Webpage on outreach

<http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Outreach.htm>

ICC Calendar of Outreach activities:

DRC

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/democratic%20republic%20of%20the%20congo/calendar%20of%20activities/calendar%20of%20activities?lan=en-GB>

Uganda

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/uganda/calendar%20of%20activities/calendar%20of%20activities?lan=en-GB>

CAR

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/central%20african%20republic/calendar%20of%20activities/calendar%20of%20activities?lan=en-GB>

Darfur, Sudan

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/darfur%20%20sudan/calendar%20of%20activities/calendar%20of%20activities?lan=en-GB>

ICC Outreach reports

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/outreach/outreach%20reports/icc%20outreach%20report%202009?lan=en-GB>

CICC Webpage on outreach and communications

<http://www.iccnw.org/?mod=communications>

CICC Communications Team, Comments and Recommendations to 8th Session of the ASP

http://iccnw.org/documents/Comms_team_paper ASP8_draft_91109.pdf

XII. OMNIBUS RESOLUTION

Background

For the seventh consecutive year, the ASP adopted an omnibus resolution, formally entitled 'Strengthening the International Criminal Court and the Assembly of States Parties. The resolution addresses a large number of substantive issues which are discussed throughout this report. These resolutions usually call for ratification and implementation of the Rome Statute and other agreements; note developments linked to institution-building and to each organ of the Court; and deal with administrative issues as relevant to the ASP.

Some key issues related to the establishment of an ICC-AU liaison office, legal representation, outreach, prosecutorial strategy, the strategic plan, recruitment, and other issues dealt with by the working groups of the Bureau.

The Resolution was coordinated this year by Mr. Emmanuel Bichet (Switzerland). States Parties met in informal sessions and adopted the resolution by consensus at the plenary meeting on 26 November.

The different Coalition Teams and Team Leaders followed the omnibus resolution's development and gave input to developments.

Legal Aid for Victims

The Omnibus Resolution in its paragraphs 16 - 19 reflects important consultations that were held throughout 2009 on the issue of legal aid for victims. Significantly, the ASP "agreed that it is necessary to fund legal representation for indigent victims in order to give effect to their rights to participate." This constitutes the first formal recognition by the ASP in this regard. It was a step very much welcomed by NGOs. (A suggestion from a State Party to add the formula "within existing resources" was not followed by the ASP).

Victims' Strategy

Paragraph 25 of the Omnibus Resolution makes reference to the Court's strategic planning process and in particular to the victims' strategy that the Court has developed over the past 2 years. The ASP considered that the "implementation of this strategy constitutes a priority of major importance for the Court in the years to come". It recommended that the Court "continues a constructive dialogue with the Bureau on the strategic planning process, including the victims' strategy". The ASP further requested an update to submit to the next ASP session. In the next year, NGOs will continue to advocate for a victims' strategy with concrete, operational targets.

Language on gender aspects

The Omnibus Resolution, as in previous years, contains several references to gender issues (importance of gender balance in the recruitment of ICC staff, etc). This year - and upon advocacy from the NGO side - the ASP strengthened the language in relation to the ICC list of external counsel. Given that of the 305 counsel on the list only 57 are women (i.e. less than 20%) the ASP felt it had to highlight "the need to improve gender balance ...on the list of counsel" (see para. 14 Omnibus Resolution). Gender balance among ICC staff on the other hand has improved in the course of 2009 which was also reflected by slightly modified language in the omnibus (see para. 26 OR where the ASP welcomed "the Court's continued efforts").

South African Proposal on Prosecutorial Strategy

Following a decision taken by the AU meeting in Addis Ababa at the beginning of November, South Africa proposed the introduction of the following language into the ASP omnibus resolution:

“Requests the Office of the Prosecutor to review the 2009 Regulations and the 2007 Policy Paper regarding the guidelines and code of conduct of the exercise of Prosecutorial powers to include factors of promoting peace and submit them to the Assembly of States Parties.”

NGOs, Court Officials and a number of States Parties expressed concern about this language mainly because it seemed to interfere with the Prosecutorial independence and because it was introducing elements into the Prosecutorial strategy (to take into account factors of promoting peace for the selection of cases) that are not contemplated in the Rome Statute.

In reaction to this proposal, some alternative language was suggested by the Netherlands on the one hand and Canada and Peru on the other.

The language introduced by Canada and Peru - with some modifications - was the basis for a compromise solution. According to the proponents of this language, the first paragraph is drawn directly from Article 53 of the Rome Statute and the second paragraph recognizes the importance of communication between the Prosecutor and states and other interested parties. The final language as it is now in the resolution is:

“Recalling under article 53(1), the Prosecutor, in initiating an investigation, is to take into account the gravity of the crime and the interest of victims, as well as to consider whether there are nonetheless substantial reasons to believe that an investigation would not serve the interest of justice.”

Welcomes the consultations held by the Office of the Prosecutor on the Prosecutor on the Prosecutorial Strategy with States, international organizations and civil society, and encourages the Office of the Prosecutor to continue to carry out such consultations on its policy papers and keep the Assembly of States Parties informed in this regard.”

Relevant Documents

Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/8/Res.3

http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.3-ENG.pdf

XIII. SIDE EVENTS

CICC Side meetings with government delegates

The CICC organized several meetings with government delegates. Organized by region, the aim of these meetings was to establish a dialogue between NGOs and government officials on ICC issues specific to that region. These issues included ratification and implementation progress, cooperation, perceptions of the Court, and the Review Conference among other topics of discussion.

On the first day of the ASP, the CICC organized a lunch meeting on the Review Conference with NGOs, ICC officials and Governments Officials. Many participants emphasized the necessity of identifying the issues that should be dealt with during the stocktaking exercise as well as deciding on necessary preparations for the Kampala conference.

On Thursday 19 November, members of NGOs and government representatives from the Middle East and North Africa (MENA) gathered to discuss ICC issues relevant to the region. Discussions focused on the issue of ratification and implementation of the Rome Statute in the region, as well as recent developments in Sudan and Palestine.

On Friday 20 November, a lunch meeting took place between governments from the Asia and Pacific region and NGOs. Attendees exchanged views on strategies for encouraging ratification and implementation in the region and greater engagement with the ICC.

On Saturday 21 November, three meetings took place. In the morning, the CICC hosted a regional meeting for CICC NGO members of the European region to address senior official of their governments on ICC-related matters in their respective countries. The CICC organized a lunch meeting with African Governments and NGOs, which included several high-level officials such as the Minister of Justice for the Central African Republic. Issues raised included the 2010 Kampala Review Conference, ratification and implementation, and the latest AU Summit.

In parallel, a CICC lunch meeting was held with governments and NGOs of the Latin American region to discuss, among other issues, campaigns and strategies for ratification and implementation of the Rome Statute in the region and the 2010 Review Conference.

Side event on “Victims’ Participation: Experiences from the Field”

On 23 November 2009, the Victims’ Rights Working Group together with the CICC and the Embassy of South Africa organized a meeting on “Victims’ Participation: Experiences from the Field”. After opening remarks from the South African Ambassador Peter Gossen and ICC Registrar Silvana Arbia, the following main topics were discussed: 1) Bridging the distance between the ICC and the field; 2) Effective legal representation; and 3) Preparing for reparations. The meeting was well attended by NGOs, diplomats and Court officials and allowed for a fruitful exchange. In particular, NGO representatives from the Democratic Republic of Congo and the Central African Republic had the opportunity to provide their views and insights on the matters.

Launch of a new Registry project on ICC victims’ decisions

On 25 November 2009, the ICC Registry presented a new project it had initiated in 2008. The United Nations Interregional Crime and Justice Research Institute UNICRI in Turin was assigned to prepare summaries of all ICC decisions that relate to victims’ issues. The aim was to prepare accurate and objective summaries of the Court’s decisions relating to the role of victims before the Court, which is a novelty in international criminal proceedings and

generated a high volume of jurisprudence during the early years of the Court's existence. The summaries at this stage cover the period 2005 to 31 March 2009 and can be accessed at <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Victims/Summaries+of+public+ICC+Decisions+on+Victims/9.htm>. During the launch, the Registry expressed interest in receiving feedback on the usefulness of these summaries and suggestions on how to improve them.

Launch of the WIGJ Gender Report Card on the ICC

In the margins of the ASP, *Women's Initiatives for Gender Justice*, on 19 November, launched its 2009 Gender Report Card (http://www.iccwomen.org/news/docs/GRC09_web-version.pdf) which comprises a comprehensive gender analysis of the ICC, including institutional developments and substantive work of each of the organs during 2009. (The publication also contains a new section on trial proceedings that highlights testimony about sexual violence given by witnesses in the ICC's first trial).

CICC Press briefings

Two CICC press briefings were organized. The first press briefing was on pressing issues debated at the ASP, where statements were given by William Pace (CICC), Mohammed Ndifuna (Human Rights Network -Uganda), and Elizabeth M. Evenson (Human Rights Watch). The second was organized to brief the press on the opening of the second ICC trial in the Katanga and Ngudjolo-Chui case on 24 November 2009, where statements were given by Robert Falay Yuma (League for Peace and Human Rights), Georges Kapiamba (Association for the Defence of Human Right) and Brigid Inder (Women's Initiatives for Gender Justice).