Coalition for the International Criminal Court

REPORT ON THE 14TH SESSION
OF THE ASSEMBLY OF STATES PARTIES
TO THE INTERNATIONAL CRIMINAL COURT

18-26 November 2015 | The Hague
The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes 2,500 non-governmental organisations around the world working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. This report seeks to give a comprehensive summary of the fourteenth session of the Assembly of States Parties to the Rome Statute, and was compiled by the Coalition for the International Criminal Court Secretariat based on reports from Coalition caucuses, teams and experts as well as official ASP documents on each respective subject. The report should not be taken to represent the views of all Coalition members.

The Coalition Secretariat would like to thank the following people who made it possible to draft this report: the Coalition interns for their production of daily minutes of the plenary and working group meetings of the ASP session; Coalition team leaders and all members of the teams who made the production of the Coalition team submissions possible. Particular thanks is given to the donors who support the Coalition’s work: the European Union, Humanity United; the Open Society Foundations; the Samuel Rubin Foundation; the Planethood Foundation; and the governments of Australia, Austria, Finland, Ireland, Liechtenstein, Luxembourg, Norway, the Netherlands, Sweden, Switzerland and a number of committed individuals. The contents of this publication are the sole responsibility of the Coalition for the International Criminal Court and should in no way be taken to reflect the views of the European Union, Irish Aid or any other donor.

The Coalition Secretariat takes all care to ensure accuracy. Corrections and additions are always welcome. For more information about the Coalition, please visit: www.coalitionfortheicc.org. Follow the Coalition on:

COVER PHOTOS: Participants at the fourteenth ASP
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I. Introduction

The present report is an informal summary of the activities of the Assembly of States Parties to the Rome Statute of the International Criminal Court (Assembly) in its 14th session (ASP14), which took place from 18 to 26 November 2015 at the World Forum Centre in The Hague, The Netherlands.

The International Criminal Court’s (ICC/Court) principle management oversight and legislative body, the Assembly comprises all states that have ratified or acceded to the Rome Statute (123 states at the time of ASP14).

The Assembly convenes annually in New York City or in The Hague to discuss and decide matters pivotal to the successful functioning of the Rome Statute system. The system has as its centrepiece the ICC, but its primary aim is to provide States Parties a replicable judicial model based on the Statute and customary international human rights law.

As the Assembly went about its usual work at the 14th session, such as conducting elections and determining the ICC’s programme budget for the following year, discussions were characterized by several thematic undercurrents, both positive and negative. Perhaps most prominent to feature throughout the session were issues around politicization of the ASP decision-making process.

Delegations from Kenya, South Africa and Uganda were particularly vocal during sessions and side events dedicated to cooperation, complementarity, and the competencies of the Assembly, while the majority of delegations were kept busy reminding states to prioritize the Court’s judicial and prosecutorial independence over purely political interests when performing their oversight duties.

For many States Parties and members of civil society, the 14th session stands as one of the most disappointing ASPs in recent memory due political interference with ICC judicial proceedings. Referring to this major concern looming over ASP14, the ASP president welcomed the spirit of cooperation in the Bureau’s decision to set aside a special plenary session to discuss Kenya and South Africa’s proposed supplementary agenda items on interpreting and applying several of the Court’s procedural and substantive rules.

The majority response, however, reflected a second theme across the session: a Court-wide initiative to enhance the efficiency and effectiveness of ICC proceedings. A decision to review the working methods of the Assembly in 2016 may further clarify the respective roles of the Court and its governing body.

As part of the ASP’s constructive dialogue, general debate participants highlighted their capitals and organisations’ priority concerns as well as their respective efforts in the fight against impunity.

Strengthening the ICC’s impact for affected communities was another recurrent issue within various discussions, while developing capacity to prosecute sexual and gender-based crimes featured frequently in meetings on complementarity.

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At the conclusion of ASP14, the plenary adopted stand-alone resolutions on the Court’s budget, on cooperation, on the deletion of Statute article 124 and on the Court’s new permanent premises. The Assembly also adopted language on a broader range of issues as part of the catchall omnibus resolution (Resolution on Strengthening the International Criminal Court and the Assembly of States Parties).

Following discussions and presentations, States Parties adopted the Court’s final 2016 programme budget. The adopted budget of €139,590,600 falls slightly below the amount recommended by the Committee on Budget and Finance (€139,960,600).

As with previous ASPs, the 14th session proved a momentous event for civil society, with more than 100 NGO representatives from all parts of the world attending. Civil society’s continued investment into the ASP is a clear indication of the sustained support for the Rome Statute system and the fight against impunity. NGOs continue to maintain exceptional consultative status with the Assembly and the Court, and this constructive cooperation was evident throughout the 14th session.

The Coalition for the International Criminal Court (Coalition) once again provided the primary framework for civil society to coordinate its efforts and advocacy at the ASP session. The Coalition helped organize numerous side-events, providing platforms for discussion between NGOs, Court officials, States Parties and academics, among other experts. Various states continued to invest time and resources in these events, which enabled constructive dialogue and exchange of information.

Prior to ASP14, the Coalition continued to advocate for a fair, effective and independent Court by pushing a number of key issues. The Coalition published a list of consensus advocacy points, made available prior to and during the ASP, as well as daily reports of events and discussions. The Coalition also published an informal background paper prior to the 14th session for the convenience of all ASP participants.

The next, 15th session of the Assembly of States Parties will take place from 16 to 24 November 2016, once again in The Hague.

The ASP session is far from the sole forum for discussions on the issues raised in this report. As the following chapters demonstrate, the New York and The Hague Working Groups as well as the Assembly’s subsidiary bodies facilitate related discussions throughout the year. The present report briefly surveys the totality of efforts by the Assembly, the ICC and civil society both in the lead-up to and at the 14th session.

The Coalition has taken the utmost care to ensure the accuracy of this report. Corrections, clarifications or additions should be addressed to cicc-hague@coalitionfortheicc.org.
II. The Assembly of States Parties

The Assembly of States Parties serves as the International Criminal Court’s management oversight and legislative body. As of the end of 2015, the Assembly comprised 123 States Parties to the Rome Statute.

It is important to note that while the Assembly oversees the administration of the Court, it is strictly forbidden for the body to interfere with the independence of the judges and prosecutor of the Court.

ASP Bureau

The Assembly elects a Bureau every three years to assist it in the discharge of its responsibilities. The Bureau comprises a president, two vice-presidents and representatives of 18 States Parties. The current ASP Presidency and Bureau were elected in 2013 for a three-year term. H.E. Minister Sidiki Kaba (Senegal) is the ASP president while Ambassadors Álvaro Moerzinger (Uruguay) and Sebastiano Cardi (Italy) serve as vice-presidents, presiding over The Hague and New York Working Groups respectively. The remaining 18 Bureau members are:

<table>
<thead>
<tr>
<th>Chile</th>
<th>Hungary</th>
<th>Samoa</th>
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<tbody>
<tr>
<td>Colombia</td>
<td>Japan</td>
<td>Slovenia (Rapporteur)</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>The Netherlands</td>
<td>South Africa</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Nigeria</td>
<td>Sweden</td>
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<tr>
<td>Germany</td>
<td>Republic of Korea</td>
<td>Uganda</td>
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<tr>
<td>Ghana</td>
<td>Romania</td>
<td>United Kingdom</td>
</tr>
</tbody>
</table>

ASP Secretariat

The ASP has a permanent secretariat (ASP Secretariat) to assist it in its work. The ASP Secretariat is located in The Hague, with Mr. Renan Villacis serving as director.

States Parties

At the time of ASP14, the Assembly comprised 123 states that had ratified or acceded to the Statute. Statute article 112(7) allots each State Party one vote in the Assembly’s decision-making process. However, both the Statute and the ASP Bureau encourage States Parties to attempt consensus in advance of a formal vote, which would only be conducted in the event of an impasse. States that signed but did not ratify the Statute and did not sign the Final Act of the Rome Conference may attend the ASP as observers.
As of November 2015, there were 123 States Parties to the Rome Statute:

<table>
<thead>
<tr>
<th>A</th>
<th>Afghanistan</th>
<th>Czech Republic</th>
<th>Kenya</th>
<th>Portugal</th>
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<tbody>
<tr>
<td>D</td>
<td>Dem. Rep. of the Congo</td>
<td>Denmark</td>
<td>Latvia</td>
<td>Republic of Korea</td>
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<td>Djibouti</td>
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<td>Dominican Republic</td>
<td>Liechtenstein</td>
<td>St. Kitts and Nevis</td>
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<td>Ecuador</td>
<td>Estonia</td>
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<td>Fiji</td>
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<td>St. Vincent &amp; the Gren.</td>
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<td>Finland</td>
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<td>Samoa</td>
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<td>Montenegro</td>
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<td>Switzerland</td>
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Sessions of the Assembly of States Parties

The Assembly congregates in full plenary session at least once a year, in either New York or The Hague. The 14th ASP session took place in The Hague from 18 to 26 November at the World Forum Convention Centre.

States Parties use the annual meeting to discuss and decide issues of importance to the successful functioning of the ICC and the Rome Statute system, whether in relation to the Court’s budget, cooperation, complementarity or other matters. The ICC is dependent on its States Parties and can only exercise its mandate to the extent that states assist and reinforce the Court’s work. As such, ASP decisions impact not only states’ political will and cooperation, whether mandated or voluntary, but also the functioning of the Court itself.

At the conclusion of each annual session, the Assembly tasks the Bureau with discussing a number of topics it deems important to the work of the ICC and the Assembly itself during the following year. These are allocated among the Bureau’s working groups in The Hague and/or New York, with (co-)facilitators or (co-)focal points appointed to lead the discussions on specific topics.

The Assembly typically requires its subsidiary bodies, such as the Committee on Budget and Finance, as well as the Court and its organs to report back on a number of issues and activities the following year. A survey of official ASP reports relevant to the topics covered in the present document has been made available at the end of each chapter.

Observers

Non-States Parties, regional and international organisations, civil society and members of the media may participate at the ASP as observers. Observer status provides these stakeholders an opportunity to engage with the international justice system established by the Rome Statute. For example, non-States Parties may use the occasion to demonstrate their commitment to end impunity for international crimes, either by joining in the general debate and other plenary discussions, or by providing updates on progress towards ratification or implementation of the Rome Statute and the Agreement on Privileges and Immunities of the ICC (APIC).

The 14th session of the ASP

The outcomes of each annual ASP session differ according to the specific issues under discussion in any given year, but those outcomes are usually subsumed under recurring general topics. At ASP14’s conclusion, the plenary adopted language in stand-alone resolutions on the Court’s budget, on cooperation, on the deletion of Statute article 124 and on the permanent premises. The plenary adopted language on a host of additional issues—including universality of the Statute, complementarity, APIC, the ICC’s relationship with the UN, the Trust Fund for Victims and the working methods of the Assembly’s subsidiary bodies—as part of the catchall omnibus resolution.
III. The Opening Session

ASP14 opened on 18 November 2016. The first plenary session is traditionally dedicated to preliminary (and administrative) tasks but usually also includes elections for the Assembly’s independent and subsidiary bodies. The opening session features a number of addresses—typically these include statements by the ASP president, the ICC president, and the ICC prosecutor.

Following the procedure set out by the Rules of Procedure of the Assembly of States Parties, ASP president H.E. Minister Sidiki Kaba began by introducing states present, including non-States Parties and observer states, followed by a moment of silent prayer or meditation. The ASP president next outlined the provisional agenda for the 14th session, which the Assembly formally adopted—including controversial supplementary agenda items requested by South Africa and Kenya—under rule 19 of the Rules of the ASP.

After appointing the Credentials Committee and appealing to states in arrears to satisfy their contribution requirements, the Assembly heard reports from the Court, the Office of the Prosecutor (OTP), the Trust Fund for Victims (TFV), the Oversight Committee on the permanent premises, the Bureau and the Advisory Committee on the Nomination of Judges (ACN).

Judge Silvia Fernández de Gurmendi, ICC president

In her report to the Assembly, Judge Fernández emphasized the vital importance of full cooperation with ICC investigations and prosecutions, framing cooperation within her broader mandate to promote the efficiency and effectiveness of the Court. This includes states’ cooperation with all Court principals, and as requested by the Assembly, the process of developing performance indicators for the ICC. The Court’s strategic plan also serves as a basis for decision-making across the judicial chambers.

Judge Fernández’s report also revisited the Court’s judicial developments while looking ahead to 2016, slated to be the busiest year in the Court’s history. While thanking the United Nations for its support, she also stressed the lack of full cooperation in relation to UN Security Council referrals for Libya and Darfur, Sudan. The ICC president concluded by recalling the institution’s need for sufficient resources to carry out effective operations in relation to its growing caseload.

Ms. Fatou Bensouda, ICC prosecutor

The ICC prosecutor’s opening statement to the Assembly included a report on the OTP’s activities in the past year as well as a detailed account on the nine situations under preliminary examination (PE). 2015 saw the PE in Honduras close and new PEs in Palestine and Ukraine open. The prosecutor’s request to open a formal investigation into events in Georgia was under review at the time of ASP14.²

Ms. Bensouda stressed that the OTP’s increased caseload has yet to be matched with increased resources, reminding the Assembly that the ICC was created because states decided the institution was necessary – to put an end to the commission of the most serious crimes of international concern. State cooperation as well as financial and principled political support are essential in this regard but must be delivered in a way that safeguards judicial and prosecutorial independence.

² In 2016, ICC pre-trial judges authorized the OTP’s investigation in Georgia.
Mr. Motoo Noguchi, chair of the Trust Fund for Victims Board of directors

Mr. Noguchi looked back on 2015 as a significant year for the TFV. In late 2015, in the context of Thomas Lubanga’s 2012 ICC conviction, the TFV submitted its first draft reparations plan. The TFV Board met twice during the year to discuss challenges and options in preparing the Court-ordered plan. Mr. Noguchi also noted the TFV was undertaking several programmes in Uganda focusing on psychological and physical care, and one programme focusing on transitional justice in the Democratic Republic of the Congo. Due to an ongoing security situation, the TFV could not operate in the Central African Republic. 2015 also saw a successful audit of the TFV, leading to a restructuring of the TFV Secretariat and programmes. Mr. Noguchi thanked states for their contributions to the TFV and expressed hope that these financial commitments would continue to grow.

Mr. Roberto Bellelli, chair of the Oversight Committee of the Permanent Premises Project

In presenting the report on the activities of the Oversight Committee (OC) during 2015, Mr. Bellelli informed the Assembly that the Court had taken ownership of the permanent premises and would shift to the new location in December 2015. He stated that the premises should be completed within the €206 million assessed budget, part of which had still to be funded, and that preserving the new building’s asset value over the coming 50 years would cost states an estimated €300 million, or €4.3 million per year beginning in 2017. Mr. Bellelli also urged the Assembly to decide upon a new permanent governance structure to replace the OC as its mandate would expire once the Court moved in.

H.E. Minister Sidiki Kaba, ASP president

In his report on the activities of the Bureau in 2015, H.E. Minister Kaba acknowledged the Bureau’s’ important work on reviewing the proposal to delete Statute article 124, which allowed new States Parties to defer the ICC’s war crimes jurisdiction. Furthermore, expecting an unprecedented number of ICC trials in 2016, the ASP president urged states to pay their assessed budgetary contributions in full and on time. Regarding elections scheduled for ASP14, he encouraged the Assembly to elect the ACN by consensus, and the newly elected TFV Board to take the lead in implementing the important reparations order in the Lubanga case. Referring to a major concern looming over ASP14, the ASP president welcomed the spirit of cooperation in the Bureau’s decision to set aside a special plenary session to discuss Kenya and South Africa’s proposed supplementary agenda items on interpreting and applying several of the Court’s procedural and substantive rules.

Relevant documents

Delegations to the fourteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (13 November 2015)

ASP 14 Statement of Judge Silvia Fernández de Gurmendi, President of the International Criminal Court

ASP14 Report on the activities of the International Criminal Court

ASP14 Statement of Ms. Fatou Bensouda, Prosecutor of the International Criminal Court

ASP14 Statement of Mr. Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims of the International Criminal Court

ASP14 Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2014 to 30 June 2015 (18 August 2015)
ASP14 Oral report on the activities of the Oversight Committee by the Chair, Mr. Roberto Bellelli

ASP14 Report on the activities of the Oversight Committee (16 November 2015)
IV. General debate

Extending across three plenary meetings during the first two days of ASP14 (18 and 19 November 2015), the general debate provided an open forum for ASP participants to comment on the Assembly’s work as well as issues within the wider Rome Statute system of international justice. While special plenary sessions were dedicated to the in-depth continuation of several of this year’s ongoing discussions in the Bureau’s working groups, general debate participants were able to highlight those topics of singular importance to them and their respective efforts in the fight against impunity.

The general debate is largely used by states to inform the Assembly of the steps they have taken to ratify or accede to the Rome Statute and/or the Kampala amendments, as well as to update on the progress of domestic implementation. Efforts to improve cooperation with the Court are also usually mentioned, as is the progress made in conducting investigations and prosecutions of Statute crimes at the national level—in line with the principle of complementarity laid down in Rome Statute article 17. ASP participants can also contribute to the general debate by making advance written submissions, which are published on the ICC-ASP website. The Coalition and its members have a standing invitation to intervene and reflect on the Rome Statute system of justice and civil society efforts.

States’ interventions during the ASP14 general debate

58 States Parties, three observer states (non-States Parties), one international organisation and 12 NGOs intervened during the general debate. The States Parties intervening included: Afghanistan; Argentina; Australia; Bangladesh; Botswana; Brazil; Bulgaria; Burundi; Canada; Chile; Colombia; Costa Rica; Czech Republic; Democratic Republic of the Congo; Denmark; Ecuador; Estonia; Ethiopia; Finland; France; Gambia; Germany; Ghana; Guatemala; Hungary; Iceland; Japan; Jordan; Kenya; Liechtenstein; Luxembourg; Madagascar; Mali; Mexico; the Netherlands; New Zealand; Norway; Panama; Peru; Philippines; Poland; Portugal; Republic of Korea; Romania; Samoa; Serbia; Slovakia; Slovenia; South Africa; Spain; Palestine; Sweden; Switzerland; Tunisia; Uganda; United Kingdom; Uruguay; and Venezuela. Observer states China, Israel and the United States of America intervened after the States Parties, followed by the Organisation internationale de la Francophonie.

Civil society interventions during the ASP14 General Debate

Civil society, including the Coalition, presented its observations and recommendations next. Coalition member organisations that intervened included Parliamentarians for Global Action, the Burundi National Coalition for the ICC, Human Rights Watch, the Georgian Young Lawyers’ Association, Amnesty International, the Philippine National Coalition for the ICC, the American Bar Association, Kenyans for Peace with Truth and Justice, Al-Haq jointly with the International Federation for Human Rights and, finally, el Centro de Derechos Humanos.

With opinions on the respective roles of the Court and Assembly underlying many of the year’s discussions, NGOs called for the Assembly to defend the Court’s independence by refraining from interfering with ongoing judicial proceedings. In light of the Court’s growing workload, NGOs also impressed upon the need for an adequate annual ICC budget, enhanced cooperation and prosecution of ICC crimes on a national level.

Coalition convenor Mr. William R. Pace expressed particular concern about attempts to undermine the ICC’s mission through financial strangulation and political interference with ongoing judicial proceedings. He further highlighted the selective application of international criminal justice principles due to the lack of universal ratification of the Rome Statute. Mr. Pace concluded by encouraging the Court and its
governing body to continue considering important initiatives to improve institutional efficiency and effectiveness.

Relevant documents

ASP14 general debate statements by States Parties, observer states, international organisations, and civil society
V. Elections

The Assembly was tasked during the opening session with electing members to three independent bodies:

<table>
<thead>
<tr>
<th>Elected body</th>
<th>Total members</th>
<th>Seats up for election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Committee on the Nomination of Judges (ACN)</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Trust Fund for Victims Board of Directors (TFV Board)</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Committee on Budget and Finance (CBF)</td>
<td>12</td>
<td>1</td>
</tr>
</tbody>
</table>

Ahead of all three elections and in line with the customary ASP practice, the Bureau requested that States Parties achieve advance consensus to avoid the need for an actual vote.

The Coalition monitors all ICC and ASP elections to ensure that they are fair, transparent, and lead to the election of the most qualified candidates. The Coalition itself does not endorse or oppose individual candidates, but rather advocates for the integrity of the nominations and elections procedures.

The Coalition strongly opposes reciprocal political agreements (“vote-trading”) in ICC and ASP elections.

**Election of nine members to the Advisory Committee on the Nomination of Judges (ACN)**

The ACN facilitates the election of the most highly-qualified judges to the ICC, in accordance with Rome Statute article 36. The ACN advises States Parties on each judicial candidate based on face-to-face interviews and candidates’ written submissions, such as statements of qualifications and curricula vitae. The ACN also considers candidates’ language skills, moral character, health and any other factor that may help or hinder the candidates in the exercise of their judicial responsibilities. The ACN submits its assessments in reports to States Parties and observers, allowing for thorough consideration by the Assembly prior to election.

Nine members make up the ACN, and those elected serve three-year terms with the possibility of re-election for a second term. The Bureau recommends approval by consensus as an alternative to potentially lengthy elections. Once elected, ACN members serve in their own personal capacities and not on behalf of any organisation or State Party.

The Coalition encouraged and welcomed the establishment of the ACN and remains committed to supporting it in the fulfilment of its mandate as an independent panel tasked with identifying the judges most competent to handle the complex situations before the ICC. The Coalition is a significant proponent of further improvements to ICC judicial elections and has strongly urged States Parties to fully support the ACN and to pay due regard to its findings and recommendations. The next round of judicial elections is set to take place in 2017.

There were ten nominees for the 2015 ACN elections. During the opening session of ASP14, nine members were elected by consensus to the ACN, their three-year terms beginning immediately.

<table>
<thead>
<tr>
<th>Nominee</th>
<th>Country</th>
<th>Region</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Thomas Barankitse</td>
<td>Burundi</td>
<td>Africa</td>
<td>Elected</td>
</tr>
<tr>
<td>Mr. Bruno Cotte</td>
<td>France</td>
<td>W. Europe and others</td>
<td>Elected</td>
</tr>
<tr>
<td>Mr. Adrian Fulford</td>
<td>United Kingdom</td>
<td>W. Europe and others</td>
<td>Elected</td>
</tr>
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</table>
Election of five members to the Trust Fund for Victims Board of Directors

The TFV Board plays a vital role in managing the Trust Fund. Operating under a strong legal mandate arising from Rome Statute article 79, the TFV Board provides the Trust Fund’s Secretariat leadership and guidance and secures voluntary contributions to finance the TFV’s activities. As such, members of the TFV Board are responsible for developing and maintaining the TFV’s relevance and credibility as an independent restorative justice institution. This has become especially true since March 2015 when the ICC issued an amended reparations order—in the case against Thomas Lubanga. The TFV submitted a draft reparations implementation plan to ICC judges just ahead of the ASP session in 2015.

Serving in their individual capacities and on a pro bono basis, the five members of the TFV Board are elected by the ASP for three-year terms and may only be re-elected once. Each of the five geographic regions (African states, Asia-Pacific states, eastern European states, Latin American and Caribbean states, and western European and other states) is eligible for one seat on the Board.

The nomination period for the TFV Board election ran for 12 weeks, ending in August 2015. By ASP14, all of the regions had put forward nominees; however, the eastern European nominee withdrew just prior to the 14th session. Three African states each put forward a nominee, and thus the African region failed to reach consensus on its candidate prior to ASP14. Prior to the Assembly’s November session, the Bureau encouraged the nominating states—DRC, Mali and Uganda—to consult and return with a regional consensus. Where consensus proves impossible, a candidate must (a) receive a two-thirds majority vote among States Parties present at the ASP and (b) receive more votes than any other nominee from her or his particular region.

During the first ASP14 plenary session, the Assembly elected by acclamation the three following members to the TFV Board of Directors: Baroness Arminka Helić (United Kingdom); Mr. Motoo Noguchi (Japan); and Mr. Felipe Raúl Michelini (Uruguay).

The Assembly held a secret ballot to elect a member from the African group during the 12th plenary session, on 26 November 2015. After several rounds of voting, Ms. Mama Koité Doumbia (Mali) was elected from the African group, obtaining 69 of 77 votes and the requisite two-thirds majority.

<table>
<thead>
<tr>
<th>Nominee</th>
<th>Country</th>
<th>Region</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Felipe Raúl Michelini (incumbent)</td>
<td>Uruguay</td>
<td>Latin America/Caribbean</td>
<td>Consensus</td>
</tr>
<tr>
<td>Mr. Motoo Noguchi (incumbent)</td>
<td>Japan</td>
<td>Asia-Pacific</td>
<td>Consensus</td>
</tr>
<tr>
<td>Ms. Arminka Helić</td>
<td>United Kingdom</td>
<td>W. Europe and others</td>
<td>Consensus</td>
</tr>
<tr>
<td>Ms. Mama Koité Doumbia</td>
<td>Mali</td>
<td>Africa</td>
<td>Elected</td>
</tr>
<tr>
<td>Mr. Sayeman Bula-Bula (incumbent)</td>
<td>DRC</td>
<td>Africa</td>
<td>Not re-elected</td>
</tr>
<tr>
<td>Ms. Mirjam Blaak Sow</td>
<td>Uganda</td>
<td>Africa</td>
<td>Not elected</td>
</tr>
</tbody>
</table>
With the eastern European TFV Board seat remaining vacant, the region was encouraged to find a consensus nominee for election at a later date. On 16 December 2015, the Bureau issued a note verbale stating the nomination period would run from 16 December 2015 to 17 January 2016. Two nominees were put forward: (1) Ms. Alma Taso Deljković (Bosnia and Herzegovina); and (2) Ms. Ekaterina Tredafilova (Bulgaria).

**Election of one member to the Committee on Budget and Finance (CBF)**

The CBF is an independent expert body responsible for the technical examination of any document submitted to the Assembly containing financial or budgetary implications. The Assembly may also entrust to the CBF any other matter of a financial, budgetary, or administrative nature. The CBF’s primary function is to provide the Assembly with an assessment of the Court’s proposed budget—the CBF usually recommends an adjusted budget proposal. The 12 CBF members should bring disinterested and recognised financial expertise at the international level to the budget request process. The CBF is instrumental to States Parties’ decision-making on the Court’s annual budget, which in turn impacts the Court’s activities, including its ability to pursue investigations and cases.

The Bureau fixed a one-month nomination period following the September 2015 resignation of Estonia’s Mr. Juhani Lemmik from the CBF. To ensure an equitable geographical representation, only the eastern European region was invited to put forward replacement candidates. One candidate, Mr. Urmet Lee (Estonia), was nominated and subsequently elected by acclamation at ASP14.

**Relevant documents**

- Designation of the members of the Advisory Committee on Nominations
- Nomination of the election of members of the Board of Directors of the Trust Fund for the benefit of victims (note verbale of 13 March 2015)
- Extension of nomination of the election of members of the Board of Directors of the Trust Fund for the benefit of victims (note verbale of 13 August 2015)
- Fifth election of members of the Board of Directors of the Trust Fund for Victims
- ASP14 Amendments to resolution ICC-ASP/1/Res.6 on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, as amended by resolution ICC-ASP/4/Res.5 (See Annex III for non-regular session TFV election procedure)
- Nomination of the election of member of the Eastern European Group of the Board of Directors of the Trust Fund for the benefit of victims (note verbale of 16 December 2015)
- Election to fill a vacancy on the Committee on Budget and Finance

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3 Ms. Alma Taso Deljković (Bosnia and Herzegovina) was elected by the Assembly as the eastern European TFV Board member after three rounds of voting on 1 April 2016.
VI. Amendments

Throughout 2015, States Parties addressed a number of proposed amendments to the Rules of Procedure and Evidence (RPE) and to the Rome Statute.

Rome Statute article 51 states that RPE amendments can be proposed by any State Party and shall enter into force if adopted by a two-thirds majority at the ASP. RPE amendments must not conflict with the Statute, in which case the Statute prevails.

Under article 121, any State Party can make a proposal to amend the Statute, which must be submitted to the UN Secretary General for circulation among all States Parties. At the first ASP session after a notice period, the Assembly decides by majority whether to consider the proposal, which it would next need to adopt in a two-thirds majority vote. The adoption ‘step’ can occur directly during the ASP session or, where the amendment warrants further discussion, during a review conference. Once adopted, amendments to non-core crime provisions enter into force for all States Parties one year after seven-eighths of States Parties have ratified the amendment (article 121(4)). Core crime amendments only enter into force for those States Parties that have ratified the amendment (article 121(5)).

Discussions on RPE amendments in 2015

In 2012, the Assembly set out a roadmap for a structured dialogue between its subsidiary bodies, the Court and other stakeholders on RPE amendments. The roadmap called for the Study Group on Governance (SGG) to collaborate with the Working Group on Lessons Learnt (WGLL) to finalize RPE amendment proposals before their submission to the Working Group on Amendments (WGA). During 2015 and as an efficiency measure, the ICC judge-constituted WGLL notably considered amending the RPE to reduce the number of judges on the bench in witness-tampering (Article 70) cases. The SGG roadmap does not preclude States Parties from exercising their article 51 right to submit RPE proposals at any time in the year prior to the ASP session.

Discussions on Rome Statute amendments in 2015

The 2015 WGA, chaired by Ambassador May-Elin Stener (Norway) and meeting in New York, operated under several mandates on Statute amendment proposals: to achieve greater substantive clarity; to streamline procedures to be followed when dealing with such proposals; and to inform the Assembly’s consideration of amendments at ASP14. Although discussions continued this year on many such proposals, the WGA only reached consensus on one: the deletion of article 124.

At the 2010 Kampala Review Conference, the Assembly decided to delay adoption of a proposal to delete article 124. The amendment, which the WGA continued to review in 2015, involved a transitional provision allowing States Parties to defer the ICC’s jurisdiction over war crimes committed in their territories or by their nationals for a period of seven years after ratifying the Statute. According to a number of stakeholders, the possibility of a state deferring the Court’s jurisdiction preserves the very impunity gap that the Statute aims to narrow. The WGA proposed that the Assembly delete article 124.

4 In February 2016, ICC Judges provisionally amended RPE rule 165 to allow a single judge to exercise Pre-Trial and Trial Chamber functions and three judges to exercise Appeals Chamber functions.
**ASP14: Resolution on article 124**

Ambassador Stener briefly introduced the article 124 proposal during the WGA meeting at ASP14. She urged States Parties to consider adopting the proposal, recalling its importance to victims of international conflict and the fight against impunity.

The proposal to delete article 124 was adopted by consensus and without comment during the final ASP14 plenary session. The amendment, awaiting entry into force, was enshrined in a stand-alone resolution.

**Relevant documents**

- ASP12 Report of the Bureau on Study Group on Governance (see Annex I for revised Roadmap on reviewing the criminal procedures of the ICC)
- ASP14 Report of the Bureau on the Study Group on Governance
- ASP14 Report of the Working Group on Amendments
- ASP14 Resolution on Article 124
VII. Cooperation

The ICC has distinct prosecutorial, judicial and administrative organs. However, the ICC lacks an internal enforcement organ to execute the very same decisions and requests. The responsibility here falls fully to the States Parties, the UN, regional organisations and other relevant actors. Cooperation is absolutely vital to the Rome Statute system, which necessarily involves many moving parts if it is to be effective and impartial. The various ways in which States Parties may satisfy obligations to cooperate with the ICC are laid out in Part IX of the Rome Statute.

This chapter explores (1) discussions on cooperation in 2015 leading up to ASP14; (2) discussions on cooperation at ASP14; and (3) the ASP14 resolution on cooperation.

Discussions on cooperation in 2015 leading up to ASP14

Ambassadors Maymouna Diop-Sy (Senegal) and Jan-Lucas van Hoorn (The Netherlands) co-facilitated The Hague Working Group (HWG) discussions on cooperation over the course of 2015. The HWG featured initiatives around the 66 Recommendations on cooperation, voluntary cooperation agreements, arrest strategies and groundwork for a coordinating mechanism for national cooperation authorities.

66 Recommendations

The 66 Recommendations on cooperation were guidelines adopted at the 2007 ASP session to facilitate cooperation between States Parties and the Court. In 2015, the HWG reviewed the recommendations and determined they continue to apply today. Delegations to the HWG agreed on priority recommendations to include in a flyer intended to guide States Parties in 2016. The draft flyer—Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities—was submitted for the Assembly’s approval at ASP14.

Voluntary agreements

The HWG considered efficiency gains afforded by voluntary framework agreements when the Court must decide who will enforce an ICC sentence; which countries will accept acquitted suspects or those on interim release; and who will assume the responsibility to protect witnesses. The primary alternatives to framework agreements—bilateral ad hoc agreements—usually require at least one extra ‘step’ to assess whether a proper framework exists to cooperate with the specific request, which prolongs the negotiation process. The HWG thus recommended states make themselves available to the Court in advance by entering into agreements that ensure they have the necessary cooperation frameworks in place.

The HWG as well as members of civil society highlighted the appallingly low number of voluntary agreements in place. Eight states have accepted the framework on enforcement of sentences, but the last such agreement was concluded in 2012. Only one additional state accepted the witness relocation framework in 2015, bringing the total to 15. Belgium became the first—and so far only—state to agree to the interim release framework, and the relocation in case of final release or acquittal agreement still awaits its first signature. There were 123 States Parties to the Rome Statute by the end of 2015.

Arrest strategies

States’ failure to execute ICC arrest warrants negatively impacts both the Court’s ability to fulfil its mandate and its credibility as a criminal justice institution. Thus, the Assembly decided in 2013 to consider concrete measures toward securing arrests in a structured and systematic manner. Mr. Roberto
Bellelli (Italy), under his mandate as Rapporteur on arrest strategies, continued to lead consultations this year as the HWG worked toward a final, consolidated *draft Action Plan on Arrest Strategies*.

Facilitators often reassured the HWG that as it stands the draft would not create any new legal obligations for states when adopted—it merely makes results-oriented recommendations on the implementation of existing duties. After lengthy discussions, the HWG agreed to remove wording some delegations argued could suggest binding effect. Even so, the same states used prosecutorial independence as a pretext to continue to scrutinize—at the 14th session—language encouraging the Court to establish in-house capacity to track ICC suspects.

**High-level seminars and retreats**

To promote an open and depoliticized assessment of the Court’s cooperation needs, the co-facilitators supplemented the traditional HWG format with various high-level events. These included a retreat in Santpoort, The Netherlands in May 2015, regional seminars held in San José, Costa Rica in July 2015 and in Gaborone, Botswana in October 2015 and a seminar with focal points from ICC situation countries held in The Hague in November 2015. The latter of these demonstrated the value of information exchange between national focal points, with incumbents sharing lessons learned on witness and victim protection, outreach and participation of situation countries in Court proceedings.

**Discussions on cooperation at ASP14**

The Bureau organized a special plenary session on 20 November to hear conclusions from the year’s HWG discussions and to decide upon the various draft reports, the *Action Plan* and flyer on 66 recommendations presented. The co-facilitators on cooperation also moderated informal consultations on 23 and 26 November with an aim to attain consensus on disputed language in the draft stand-alone resolution on cooperation. The primary focus of these consultations was the action to be taken with respect to the *draft Action Plan on arrest strategies*.

**Plenary session on cooperation**

A dedicated plenary session on cooperation topics was organized at ASP14 on 20 November 2015.

The dedicated session had as its focus “Cooperation with the Court by means of voluntary framework agreements or arrangements.” **ASP President H.E. Mr. Sidiki Kaba** opened the session, noting the Rome Statute system envisions a degree of non-mandatory cooperation dependent on the goodwill of states, irrespective of ICC membership. The three ICC principals—the president, the prosecutor and the registrar—as well as the Malian minister of Justice and Human Rights and the head of the Belgian Central Authority for Cooperation made presentations during the session co-facilitated by Ambassadors Diop-Sy and van Hoorn.

**ICC President Judge Silvia Fernández de Gurmendi** primarily addressed misconceptions around the nature of voluntary framework agreements, confirming that such model agreements do not create binding obligations for states to act when requested by the Court. Rather, the agreements indicate that a state has the necessary framework in place, expediting the ICC’s process of identifying states capable of cooperating with specific requests. ICC President Fernandez noted that states may attach additional terms to such agreements, which the requesting Court organ will in turn accept or reject depending on the interests and rights at stake. With respect to witness relocation, Judge Fernandez stated that while the customary practice is for the accepting state to bear the financial costs, there exists a special trust funded by voluntary contributions that can be accessed by states lacking financial capacity.
ICC Prosecutor Ms. Fatou Bensouda identified cooperation as a decisive factor in the success of the OTP Strategic Plan for 2016-2018. She noted almost half of the OTP’s requests for cooperation have gone unanswered, with requests to execute ICC arrest warrants an area of particular concern. The prosecutor welcomed the HWG’s attempts to finalize the Action Plan on arrest strategies and pledged the OTP’s continued support to the process. The prosecutor also advised states to take advantage of lessons learned and exchange of experiences in conducting a review of the 66 Recommendations on cooperation.

Mali’s Minister of Justice and Human Rights H.E. Ms. Aminata Mallé Sanogo picked up from the prosecutor’s advice by sharing a perspective on the implementation of cooperation measures in Mali. She explained that cooperation agreements allow for coordinated responses to ICC requests for assistance, as exemplified by a February 2013 cooperation agreement between the ICC and Mali establishing the Ministry of Justice as the point of liaison between the Court and national focal points, with the OTP responsible for following up with legal assistance. The minister highlighted Mali’s historical excellence as a forerunner of cooperation on the African continent.

Head of the Belgian Central Authority for Cooperation Mr. Gérard Dive noted the ability of voluntary framework agreements, if comprehensive, to clarify appropriate focal points and necessary procedures and documents for carrying out requests. Clearer lines of communication in turn minimize confidentiality risks in the case of relocated witnesses and enable extensive national networks for dealing with cooperation requests, including immigration, sentencing, intelligence and enforcement agencies with designated focal points. Mr. Dive also emphasized mounting costs for the Court—and by extension, States Parties—due to prolonged processes around locating host states for witnesses or detainees in its care.

ICC Registrar Mr. Herman von Hebel spoke to the growing value of regional high-level and technical seminars on cooperation; the European Union’s (EU) support for cooperation initiatives; and the Court’s memorandum of understanding on national capacity-building with the UN Office on Drugs and Crimes (UNODC). The registrar also pointed out the Court’s inability to relocate 75 witnesses, each of whom costs the ICC roughly €25,000 annually—finding states willing to host them could produce €2 million in savings for States Parties. This is more important than ever, the registrar remarked, with around 80 additional witnesses expected to enter into the Registry’s care in 2016.

States Parties, international organizations and non-governmental organizations intervened following the high-level panel. Despite its disruptive efforts at ASP14, Kenya welcomed cooperation generally while The Netherlands, Slovenia and Liechtenstein specifically urged assistance in freezing assets of ICC suspects, recalling the importance of such funds being made available for victims’ reparations. The Netherlands further stated it would contribute €175,000 to the witness relocation fund. Others referred to national efforts toward bolstering cooperation with the Court: Finland has established a network of competent national authorities; Argentina hosted a regional seminar in 2014 and is close to signing voluntary cooperation agreements; and Serbia was the first eastern European country to sign such an agreement. Regarding cooperation from international and regional organisations, Luxembourg intervened on behalf of the EU to note its continued cooperation while Colombia and Mexico specifically called for the establishment of a UN Security Council cooperation mechanism.

Coalition members also took the floor during the plenary interventions. Parliamentarians for Global Action referred the Assembly to debates in Latin America around draft laws on interim release; Human Rights Watch urged adoption of the Action Plan on arrest strategies; the International Justice Project stressed the need for states to not only execute Omar al-Bashir’s ICC arrest warrant, but also to refrain from non-essential contact with ICC suspects; and the International Bar Association spoke to the link between voluntary agreements and complementarity.
Informal plenary consultations took place on two separate occasions during ASP14 (on 23 and 26 November) to finalize language within the stand-alone ASP resolution on cooperation as well as the draft Action Plan on arrest strategies. The debate largely revolved around whether the Action Plan would remain in draft form for continued discussion in 2016. Concerns among a minority of states on the implications of the Action Plan ensured that it would, with the resolution on cooperation merely taking note of the vital draft Action Plan.

ASP14 resolution on cooperation

The actions included in the resolution with respect to broader cooperation objectives and issues remained largely unchanged from those in the previous year’s cooperation resolution. The Assembly renewed the mandate of the HWG on cooperation for 2016 and also requested that the Court report to the next Assembly on cooperation. Certain clauses in the ASP14 stand-alone resolution, however, highlight cooperation-related developments and activities specific to 2015.

Preamble

The preamble to the ASP14 resolution on cooperation welcomes a recent memorandum of understanding (MoU) concluded between the ICC and the UNODC for its ability to enhance the capacity of states to receive witnesses and victims from the Court. The same paragraph also recalls the previous MoU between the ICC and the UNODC regarding state capacity to enforce sentences.

Draft Action Plan on arrest strategies

As in previous years, the ASP14 cooperation resolution emphasizes that timely and effective cooperation with ICC requests is vital to the Court’s mandate, expressing particular concern over outstanding requests for the arrest and surrender of 13 ICC suspects. The resolution reaffirms the need to systematize the arrest and surrender process by drawing from best practices within both national and international criminal justice systems. While the ASP13 resolution on cooperation invited states to submit a draft action plan to this effect, a lack of consensus among States Parties in 2015 meant the ASP14 resolution could not adopt a final action plan; rather, it calls for further discussions on the draft during 2016. Meanwhile, the resolution urges States Parties to avoid non-essential contact with ICC fugitives.

National coordinating mechanism

The ASP14 resolution recalls the complementarity principle as a starting point to developing coordinating mechanisms among national authorities dealing with ICC cooperation requests. The resolution encourages states to establish focal points responsible for coordinating efficient national responses to cooperation requests. At ASP13, the Assembly heard a report on the feasibility of establishing a coordinating mechanism of national authorities—the ASP14 resolution pushes back the deadline for the Bureau’s follow-up report, originally set for ASP14, to the ASP session in 2017.

Cooperation in the interest of parties

The ASP14 resolution notes that effective and expeditious cooperation with requests for identification, tracing and freezing or seizure of proceeds, property and assets can impact access to legal aid and victims’ reparation funds. Furthermore, to preserve the fairness of proceedings, the resolution urges cooperation with Court requests in the interest of defence teams. The resolution also highlights the rights and immunities attached to parties’ activities in the field by calling for ratification and
implementation of the Agreement on Privileges and Immunities of the ICC by States Parties and non-States Parties alike.

Voluntary agreements

Reflecting discussions during the special plenary session, the ASP14 resolution on cooperation acknowledges the critical importance of states concluding voluntary framework agreements on victim and witness relocation, interim release, final release and enforcement of sentences. The resolution places particular emphasis on safety concerns and humanitarian costs associated with witness relocation, urging states to voluntarily contribute to the Special Fund for Relocations so that the Court can make comprehensive arrangements for witnesses. The Bureau is requested to report on developments regarding voluntary framework agreements in 2016.

66 recommendations

The ASP13 resolution on cooperation requested that the HWG review the continued relevance of the 66 recommendations on cooperation established in 2007. The ASP14 resolution welcomes the HWG’s activities to this effect during 2015, takes note of the flyer prepared by the HWG as an advocacy tool for stakeholders and requests that the Bureau continue its review in 2016 with an aim to implementing priority recommendations.

Cooperation by international institutions

The resolution welcomes cooperation between the ICC and international and regional organisations, such as the UN, and encourages ICC States Parties to use their capacity as members of these organisations to mainstream diplomatic and political support for the Court and its activities. The resolution pays special attention to the relationship between the ICC and the UN Security Council, urging States Parties to strictly define respective mandates in the case of Council referrals, including with respect to diplomatic and financial support, and to promote the ICC’s mandate through other areas of the Council’s work.

Civil society’s role

The ASP14 resolution highlights civil society’s role in promoting cooperation through information exchange. For example, the ASP14 resolution also credits civil society—and not just the Court and states as the previous cooperation resolution did—with contributing to the Legal Tools Project to raise awareness and to facilitate the drafting of implementing legislation. Furthermore, the resolution encourages civil society to continue to organize events and seminars that promote information exchange and concrete solutions.

ASP14 omnibus resolution

The ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties—informally known as the omnibus resolution—provides several additional broad operative paragraphs on cooperation.

Relevant documents

ASP14 Plenary session on cooperation: concept note

ASP14 Keynote address on cooperation by Judge Silvia Fernández de Gurmendi, President of the International Criminal Court
ASP14 Statement on cooperation by Ms. Fatou Bensouda, Prosecutor of the International Criminal Court: The Importance of Cooperation

ASP14 Statement on cooperation by H.E. Ms. Aminata Mallé Sanogo, Minister of Justice and Human Rights of Mali

ASP14 Presentation on voluntary cooperation by Mr. Gérard Dive, Head of the Belgian Central Authority for Cooperation

ASP14 Remarks on voluntary cooperation by Mr. Herman von Hebel, Registrar of the International Criminal Court: Voluntary Cooperation, the way forward

ASP14 Report of the Bureau on cooperation (including 66 recommendations on cooperation flyer and summary of the Costa Rica seminar on fostering cooperation (9-10 July 2015) as annexes)


Addendum II to ASP14 Report of the Bureau on cooperation: Summary of the Botswana seminar on fostering cooperation (29-30 October 2015)

Central American States reaffirm their commitment to the ICC at High-level Regional Seminar in Costa Rica (ICC Press Release: 10/07/2015)

ASP14 Report of the Court on cooperation

ASP14 Report of the Bureau on non-cooperation

ASP14 Resolution on cooperation

ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties

High-level ICC Regional Seminar concludes in Botswana (ICC Press Release: 30/10/2015)

ICC holds third seminar on cooperation with focal points of States where investigations have been opened or are taking place (ICC Press Release: 02/11/2015)
VIII. Complementarity

The principle of complementarity dictates that States Parties to the Rome Statute endeavour to investigate and prosecute all Statute crimes that occur within their respective jurisdictions. Key ICC officials, like President Silvia Fernández de Gurmendi, suggest the mention of complementarity in the Statute’s preamble qualifies it as a pre-existing obligation for States Parties on the level of cooperation.

A foundational principle, complementarity was designed to preserve each State Party’s role as the primary criminal justice mechanism within its jurisdiction, rendering the ICC a court of last resort. In the event a State Party is unable or unwilling to bring perpetrators of Statute crimes to justice, the ICC Office of the Prosecutor (OTP) may obtain authority to investigate and prosecute—and thereby address egregious impunity gaps.

Complementarity envisions national legal frameworks enabling prosecutions beyond those traditionally pursued by the ICC. The OTP’s policy (refer to ‘Relevant Documents’ below for 2003 OTP policy paper) remains largely to prosecute perpetrators in command positions. Adherence to the principle of complementarity allows a State Party to effectively target a broader spectrum of criminal actors involved in Statute offences. As such, the Rome Statute system envisions a comprehensive solution to the impunity gap.

Discussions on complementarity in 2015

The 2015 mandate on complementarity called for discussions between the Court and its stakeholders on several complementarity-related topics: “capacity-building activities by the international community to assist national jurisdictions [...] possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and [...] assistance on issues such as witness protection and sexual and gender-based crimes.”

In the year leading up to ASP14, the ad country co-focal points—Botswana and Sweden—convened working group discussions in line with this mandate in both New York and The Hague. The report of the Bureau on complementarity, submitted for consideration at ASP14, outlines 2015 discussions from both the HWG and the many events organized around the world by the ad country co-focal points.

On 23 October 2015—just prior to the 14th ASP session—the African Union (AU) and the ICC jointly organised another seminar on complementarity. Hosted in Addis Ababa (Ethiopia), the seminar featured discussions on enhancing national capacity to deal with international crimes as well as the respective roles of the ICC and the future African Court of Justice and Human and Peoples’ Rights. Participants included representatives from the Permanent Missions of the AU Member States, from the Regional Economic Communities and from the AU Commission and ICC. The event took place with the support of the European Union and the International Organisation of La Francophonie.

In its recommendation to the Bureau, the HWG on complementarity proposed consensus language for inclusion in the ASP14 omnibus resolution.

Discussions on complementarity at ASP14

The Bureau held a plenary session on day three of ASP14 for delegations to discuss issues directly related to complementarity. The session, organized as a panel discussion by the ad-country co-focal points, was titled “Exchange of views on strategic action to enhance national capacity to investigate and prosecute sexual and gender-based violence that may amount to Rome Statute crimes.”
National access for victims of sexual and gender-based crimes

During the first half of the plenary session, the panel focused on “Ensuring access to justice for victims of sexual and gender-based crimes at the national level”. The panel comprised H.E Ms. Margot Wallström, minister for Foreign Affairs of Sweden; Ms. Fatou Bensouda, ICC prosecutor; Ms. Thelma Aldana, attorney general of Guatemala; and Mr. Mike Chibita, director of Public Prosecutions (DPP) of Uganda.

Minister Wallström noted that while sexual violence is a chronic problem affecting virtually every country, situations of armed conflict can lead to such violence being commanded as a weapon of war. The minister called on stakeholders to recognize avenues to prevent, stop and prosecute such forms of sexual violence and on states to politically commit to their implementation. Minister Wallström stressed that survivors are not just victims, but also rights-holders, entitled to participate in reparations processes. She thus recognised the ICC’s influential role in the broader movement to advance women’s rights and rebuild war-torn societies—a role that has crystallized with initiatives like the 2014 OTP Policy Paper on Sexual and Gender-Based Crimes.

The ICC prosecutor spoke about effective investigations into sexual and gender-based crimes (sgbc) in the context of the OTP’s strategic goals. The prosecutor recalled the sgbc policy paper and efforts by a new internal OTP working group around the policy’s implementation. In a series of concrete examples, the prosecutor described attempts to integrate gender perspectives and analyses into charging strategies, sentencing recommendations and reparations. The prosecutor disclaimed that implementation can only succeed with national-level training, expertise and enhanced capacity to investigate and prosecute sgbc. She urged the Court, States Parties and other stakeholders to continue to harmonise their efforts toward eliminating sgbc.

The attorney general of Guatemala followed the prosecutor, reporting on the country’s implementation of 2008 legislation protecting women. A special chamber within the domestic court began sgbc procedures in 2012, which Ms. Aldana deemed an historic turning point for women in a country continuing to suffer from the lasting effects of sexual violence committed during a decades-long civil war. She stated that female victims have finally managed to come before a court to provide their testimonies and demand accountability and reparations.

The Ugandan DPP spoke to government efforts to establish a special division responsible for prosecuting war crimes, crimes against humanity and sexual crimes. On sgbc cases in particular, Mr. Chibita described witness protection as a prerequisite to the delivery of justice, noting the glaring absence of a domestic witness protection regime in Uganda and the need for special training to ensure victims feel—and truly are—protected when called to testify.

States’ delegations as well as the International Organization for Victim Assistance (IOVA) followed to express their concerns and comments on the topic of national access. Slovenia, Finland, Burundi, Mexico, Colombia, Luxembourg (on behalf of the EU) and Brazil expressed support and exemplified measures against sgbc in their territories. Australia endorsed the concept of positive complementarity in its intervention.

The IOVA concluded with a statement on victimisation and multigenerational legacies of trauma, stressing the importance of national justice processes that serve to heal rather than further victimize sgbc survivors.
National empowerment of victims of sexual and gender-based crimes

The second segment of the complementarity plenary session—“Ensuring empowerment of victims of sexual and gender-based crimes at the national level”—was led by a panel comprising H.E. Ms. Margot Wallström (Sweden); Dr. Athaliah L. Molokome, attorney general of Botswana; and Ms. Brigid Inder, executive director of Women’s Initiatives for Gender Justice (Women’s Initiatives).

Minister Wallström described women’s empowerment to exercise their rights, including access to resources, as one of Sweden’s foreign policy priorities. The country’s current approach involves supporting civil society in countries like Iraq, Syria and Guatemala as well as connecting international expertise with national mechanisms, for example through organisations like Justice Rapid Response.

The attorney general of Botswana highlighted global engagement as necessary in addressing worldwide impunity for sgbc. Dr. Molokome described gender-based violence as an exercise of power, which states often accept as a social issue. He praised the international criminal justice system—and the OTP in particular—for its success in mainstreaming gender elements, thus furnishing states with tools to combat complacency on this issue. Dr. Molokome noted that adequate funding and women’s access to resources and leadership positions act as indicators of forward national movement.

Ms. Inder of Women’s Initiatives deemed the current political climate ripe for revisions to existing national sgbc strategies. Recalling the vital role to be played by national partners, including local women’s rights advocates, Ms. Inder provided examples of her organisation’s work with women and girls affected by conflicts in Uganda, Sudan, Libya and the Democratic Republic of the Congo. Such work includes enabling access to medical and psychological support as well as advocacy around Rome Statute implementation. On the latter point, Ms. Inder offered the Ugandan Supreme Court’s amnesty law ruling as a sterling example of domestic processes applying undiluted international standards.

Interventions by France and Chile followed, with France describing its own empowerment efforts and Chile highlighting the ICC’s primary aim to foster national level ownership. The International Federation for Human Rights (FIDH) spoke next about its own work representing sgbc victims in national proceedings, explaining that sgbc is often overlooked during the investigation, prosecution and reparations stages. The International Development Law Organisation (IDLO) advocated that those individuals subjected to sgbc be considered survivors and rights-holders rather than victims and that conflict and societal struggles be carefully considered when responding to gender imbalances.

ASP14 omnibus resolution

The 14th ASP session did not result in a stand-alone resolution on complementarity. A number of provisions on complementarity are, however, included in ASP14’s catchall resolution, entitled the Resolution on Strengthening the International Criminal Court and the Assembly of States Parties.

Relevant documents

ASP13 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties (refer to Annex I, paragraph 12 for complementarity mandate during 2015)

2003 Paper on some policy issues before the Office of the Prosecutor

ASP14 Plenary session on complementarity concept note: Strategic action to enhance national capacity to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes

ASP14 Concept note by the ad country co-focal points for complementarity, Botswana and Sweden
ASP14 Statement by H.E. Ms. Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden: Ensuring access to justice for victims of sexual and gender-based crimes

ASP14 Statement by Ms. Fatou Bensouda, Prosecutor of the International Criminal Court: Ensuring access to justice for victims of sexual and gender-based crimes

ASP14 Statement by Mr. Mike Chibita, Director of Public Prosecutions of Uganda: Ensuring access to justice for victims of sexual and gender-based crimes

ASP14 Statement by H.E. Ms. Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden: Enhancing empowerment of victims of sexual and gender-based crimes

ASP14 Statement by Dr. Athaliah L. Molokomme, Attorney General of Botswana: Enhancing empowerment of victims of sexual and gender-based crimes

ASP14 Statement by Ms. Brigid Inder, Executive Director of Women’s Initiatives for Gender Justice: Enhancing empowerment of victims of sexual and gender-based crimes

ASP14 Report of the Bureau on complementarity

ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties

IX. Efficiency and Effectiveness of Court Proceedings

As it continues to clarify its role within an increasingly visible and binding international legal order, the ICC and its custodians are tasked not only with creating and reforming Court practices to be able to deliver timely justice to victims, but also with cementing the Rome Statute system as a foundation of that international order. Working groups comprising Court and State Party representatives were set up by previous ASPs to optimize the Court’s performance and by extension the example the ICC sets for national jurisdictions.

The Coalition has pressed for institution-wide reviews of the ICC’s judicial processes with a view to improving the fair and independent functioning of the Court. As an example, the Coalition has advocated for reforms to unsustainable appeals practices and for consideration of victims’ concerns and rights when discussing efficiency measures. The Coalition has also called for greater transparency where appropriate under the Statute and beneficial for advocacy around the Court’s impact and institutional credibility.

The Coalition considers civil society uniquely placed to promote dialogue between all proponents of a more efficient Court and continues to support initiatives that coordinate efforts between States Parties, Court officials, civil society and ad hoc and special tribunals experts.

The Study Group on Governance in 2015

The Study Group on Governance (SGG) was established to facilitate a structured dialogue between the Court and States Parties based in The Hague, with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court. The 2015 SGG was chaired by Ambassadors Masaru Tsuji (Japan) and María Teresa Infante Caffi (Chile).

The SGG is divided into two clusters with specific focuses: SGG Cluster I—Increasing the Efficiency of the Criminal Process—with Mr. Alfredo Fortes García (Peru) and Ms. Marisa McPherson (New Zealand) as co-focal points; and SGG Cluster II—Enhancing the transparency and predictability of the budgetary process—with Ms. Lourdes Suinaga (Mexico) and Mr. Reinhard Hassenpflug (Germany, replacing Mr. Klaus Keller in October 2015) as co-focal points.

Cluster I: Increasing the Efficiency of the Criminal Process

In 2015, Cluster I focused on two specific areas of work in addition to generally increasing the efficiency of the criminal process: enhancing victims’ participation; and streamlining the process of amendments to the Rules of Procedure and Evidence of the ICC (RPE).

On victims’ participation, Cluster I discussed a report by judges setting out the existing legal framework for victims’ applications as well as a comparative analysis of the applications systems used by each Chamber. The SGG decided to wait on potential reforms emerging from the judges’ review.

On the RPE amendment process, States Parties discussed at length the system set out by the Roadmap on reviewing the criminal procedures of the International Criminal Court (2013). Some delegations recommended streamlining the process by designating the SGG as the only forum for discussing RPE amendment proposals before they are put to an Assembly vote (with the Working Group on Amendments discussing and transmitting Statute amendment proposals), but the idea did not achieve consensus.
Cluster II: Enhancing the transparency and predictability of the budgetary process

Cluster II’s mandate largely involved determining whether conditions allowed for the setting of a financial envelop as proposed by the Committee on Budget and Finance in its 23rd session. In one concrete example of Cluster II’s work in 2015, the Cluster liaised with the Court on States Parties’ desire for tools to better understand the Court’s proposed needs, with the Office of the Prosecutor (OTP) responding by circulating its ‘Basic Size’ document.

The Working Group on Lessons Learnt in 2015

The Working Group on Lessons Learnt (WGLL), chaired by ICC President Judge Silvia Fernández de Gurmendi, is a focus group composed of ICC judges that arose out of a 2012 exercise by the judiciary to identify RPE provisions that might be amended to address inefficiencies experienced in the Court’s earlier years. The first report of the WGLL in 2012—prior to its formal establishment at ASP11—stressed the need to simultaneously standardize best practices, an avenue that does not require voting at the ASP.

Heading into the 14th ASP session, the most recent result of this approach was the Pre-Trial Practice Manual, which the WGLL issued in September 2015 with the aim of establishing consistent practices among the different pre-trial chambers. The manual guides judges on how to conduct efficient pre-trial proceedings while preserving quality of work. The manual streamlines evidence disclosure procedures, limits the use of live evidence at the pre-trial stage and suggests reducing the time between initial appearances and confirmation of charges hearings, among other initiatives. The WGLL indicated its intention to update the manual to reflect harmonized victims’ application procedures and judicial practices across pre-trial, trial, and appeals proceedings.5

The WGLL also discussed amending the rules of procedure to reduce the number of judges serving in non-core crime proceedings, enhancing the Court’s ability to tackle witness-tampering and contempt issues while continuing to address the most serious crimes of international concern. Although the Advisory Committee on Legal Texts had arrived at such a proposal, no definitive action was taken on the idea in 2015.6

Presentations on efficiency and effectiveness at ASP14

On 24 November 2015, ASP14 hosted a special plenary session to address ways to increase the efficiency and effectiveness of Court proceedings. The session, facilitated by the Cluster I co-focal points, featured presentations by the ICC president on behalf of the WGLL; ICC Prosecutor Ms. Fatou Bensouda; Professor Carsten Stahn of the University of Leiden; and Mr. Richard Dicker, director of Human Rights Watch’s International Justice Program. The panelists spoke to ongoing efforts to enhance the Court’s functioning and avenues for various stakeholders to participate in these efforts, with ASP President H.E. Mr. Sidiki Kaba recalling the legal maxim that justice delayed is justice denied.

Report of the Working Group on Lessons Learnt (WGLL)

The ICC president described the WGLL’s holistic approach as it seeks to achieve harmonization of practices across the Court’s chambers and divisions—without amending the ICC’s legal or procedural


6 Judges provisionally amended RPE rule 165 to this effect in February 2016.
framework whenever possible. Judge Fernández presented the *Pre-Trial Practice Manual*, a non-binding document, as a concrete result of the practice-based approach to improving the Court’s efficiency and effectiveness.

The ICC president acknowledged a need for further harmonization of the chambers’ practices and indicated an internal working group had been established to advance that aim. Judge Fernández also noted the Inter-Divisional Committee on Drafting Style had been created and was in the process of finalizing an ICC chambers style guide.

On amending the Court’s legal and procedural texts, the ICC president noted the avenue remains available but can be fraught with complex and lengthy deliberations. Thus she recalled judges’ power under Statute article 51(3) to modify the RPE in urgent cases. Also in an attempt to expedite amendment discussions among the Assembly, the president reminded that proposals have been comprehensively considered by the judges and by the Advisory Committee on Legal Texts by the time they arrive before the Assembly.

*Further presentations on efficiency and effectiveness*

**Professor Stahn** defined the concept of efficiency and effectiveness in relation to fair, expeditious and transparent trials as well as with respect to the rights of the accused and adequate access for victims. **Mr. Dicker**, meanwhile, warned States Parties against short-term thinking based on false economies, especially in the context of a rapidly evolving international landscape with increased incidence of armed conflict. The **ICC prosecutor** noted that during her tenure, management has been strengthened in her office through a modified organ structure, clearer reporting lines and more active senior trial lawyers. Ms. Bensouda also indicated that in 2015 her office finalized an initial set of 14 performance indicators to better assess the OTP’s efficiency and effectiveness beginning in 2016.

The prosecutor, however, echoed Judge Fernández when she reminded that the ICC’s efficiency and effectiveness are also very much dependent on the cooperation afforded by States Parties in response to Court requests for assistance.

**Discussion on efficiency and effectiveness at ASP14**

Luxembourg, speaking on behalf of the European Union (EU), welcomed the WGLL’s *Progress Report on Clusters A, B, C and E* and the *Pre-Trial Practice Manual*, recognizing the latter’s potential impact as well as its prospects of quick implementation. Luxembourg further noted that the *OTP Strategic Plan 2012-2015* already contributed to raising the OTP’s efficiency, in particular with respect to confirmation of charges, and commended the OTP for showing the same level of commitment in its 2016-2018 strategic plan. Luxembourg also pointed to initiatives to develop performance indicators and the Trust Fund for Victims’ first draft reparations implementation plan as positive signs. Macedonia, Serbia, Albania and Bosnia and Herzegovina aligned themselves with the EU statement.

France emphasized establishing a balance between quality translations and translations that do not consume excessive time and resources, indicating the topic’s central importance under the Statute and particularly in relation to rights of victims and the accused. Norway, meanwhile, recalled that resolving complex cases like those heard by the ICC is inherently a time and labor-intensive endeavor.

Mexico presented scant resources as an obstacle to the measures discussed and proposed a review of the WGA and SGG roles. Mexico also indicated that it has been and will continue to be an active participant in Cluster II on the issue of establishing a budget ceiling, but that in general fewer facilitations and working groups would allow the Court to better focus its efforts. Germany agreed to the extent that the Court and Assembly’s existing machineries require review.
Switzerland added that while amendments should not be discounted as a viable route, the Assembly’s working methods still require review as they can consume resources better used by the Court. Colombia, and Japan to an extent, took a stronger position in considering amendments the ideal avenue, noting the Assembly should perform a self-assessment with a view to improving its ability to efficiently amend the RPE and other legal texts.

**Interventions on efficiency and effectiveness by civil society at ASP14**

The Coalition reiterated its advocacy from the general debate—that electing the most highly qualified judges, strengthening cooperation and complementarity and reducing the unsustainable lengths of proceedings are the ideal way to enhance efficiency and effectiveness, establish a deterrent effect and reduce financial costs. The Coalition further proposed that the Assembly seriously review the positive and negative impacts of importing the entire UN system of rules and regulations into the ICC.

Africa Legal Aid intervened to echo concerns by States Parties Ghana and Uganda: that there is a lack of transparency and equity in ICC practices. Africa Legal Aid insisted that African states should play a greater role in the amendments and budget-setting processes while also noting concerns with the impact of the Registry’s ReVision project on the ICC’s judicial work.

**ASP14 omnibus resolution**

The 14th ASP session did not result in a stand-alone resolution on efficiency and effectiveness of Court proceedings. A number of related provisions are, however, included in ASP14’s catchall resolution, entitled the *Resolution on Strengthening the International Criminal Court and the Assembly of States Parties.*

**Relevant documents**

- ASP11 Study Group on Governance: Lessons learnt: First report of the Court to the Assembly of States Parties
- ICC Pre-Trial Practice Manual (September 2015)
- ASP14 Plenary session on efficiency and effectiveness (Cluster I): concept note
- ASP14 Statement on efficiency and effectiveness by Judge Silvia Fernández de Gurmendi, President of the International Criminal Court
- ASP14 Statement on efficiency and effectiveness by Ms. Fatou Bensouda, Prosecutor of the International Criminal Court
- ASP14 Statement on efficiency and effectiveness by Professor Carsten Stahn, University of Leiden
- ASP14 Statement on efficiency and effectiveness by Mr. Richard Dicker, Director of International Justice Program, Human Rights Watch
- ASP14 Report of the Bureau on the Study Group on Governance (including Working Group on Lessons Learnt reports in annexes I and II)
- ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties
X. Requests by South Africa and Kenya

The Rules of Procedure of the Assembly of States Parties allows any State Party, the Court or the ASP Bureau to request supplementary items for the ASP agenda. The ASP Bureau placed three such requests—one by South Africa and two by Kenya—on a supplementary list, which the Assembly formally adopted during its 14th opening session.

While the Coalition does not take a substantive position on these supplementary agenda requests, it urges States Parties to be vigilant against stepping into matters within the judicial and prosecutorial competences of the Court while performing their management oversight duties. Challenges to the cases before the ICC must be brought before ICC judges and at all times in compliance with the Rome Statute. In the deliberations on the various issues before the Assembly, no decision should be taken that undermines, or could be perceived to undermine, the judicial independence of the Court.

Requested agenda items

South Africa requested one agenda item on the application and implementation of articles 97 and 98 of the Rome Statute. Kenya requested two further agenda items: on the application of amended rule 68 of the Rules of Procedure and Evidence (RPE); and on the establishment of an ad hoc mechanism to audit the ICC Office of the Prosecutor’s (OTP) witness identification and recruitment processes.

**South Africa’s request**

Prior to the start of ASP14, South Africa proposed that the Assembly allot time to review the application and implementation of articles 97 and 98 of the Rome Statute. South Africa proposed developing clear rules and procedures around the application of article 97, which permits a State Party to consult with the Court where the state is prevented from fulfilling a cooperation request under part IX of the Statute. Common problems that may impede the execution of such requests include insufficient information, inability to locate or seek a suspect or conflicts with pre-existing treaty obligations toward another state. According to South Africa, the procedures structuring article 97 consultations around such problems need to be clarified.

In relation to its article 97 request, South Africa also requested that the Assembly interpret the nature and scope of Statute article 98, as well as its relationship with article 27. Article 98 provides for a state to waive official or diplomatic immunity in furtherance of an ICC request for surrender or assistance while article 27 establishes the irrelevance of official capacity.

**Kenya’s requests**

Kenya proposed that the Assembly discuss the application of amended RPE rule 68. At the 12th ASP session, the Assembly amended rule 68 to allow for the admission of prior recorded testimony.

Kenya requested that the Assembly discuss the legislative intent behind the amendment during ASP14, specifically looking for the Assembly to affirm the non-retroactive application of the amendment to cases already before the Court prior to ASP12. Kenya based its request on a need to enhance the ICC’s efficiency and effectiveness, with many States Parties and NGOs wary of the request’s potential to unduly influence judicial proceedings and thus interfere with the Court’s independence.

Kenya also requested discussions on the establishment of an ad hoc mechanism to audit the OTP’s witness identification and recruitment processes. At ASP8, the Assembly established an Independent
Oversight Mechanism (IOM) with a mandate to “provide for inspection, evaluation and investigation of the Court in order to enhance the Court’s efficiency and economy.” Kenya expressed concern that the IOM was not yet operational and thus requested that the Assembly discuss the appointment of an ad hoc mechanism consisting of five independent jurists to audit the OTP’s conduct in relation to its case against Kenyan Deputy President William Ruto.

Discussions on supplementary agenda items at ASP14

South Africa and Kenya’s requests drew reproach from States Parties and civil society alike and in scenes reminiscent to those from the Court’s establishment, the original vision of a fair and independent international criminal court won out against national political interests at the 14th session. States also encouragingly nodded to the spirit of cooperation envisioned by the Statute in entertaining South Africa and Kenya’s concerns during a dedicated plenary session.

South Africa’s argument

Throughout the plenary discussion, South Africa framed its request as a pragmatic one: to develop rights and procedures around article 97 consultations after its own experience as the first State Party to be confronted with the article’s application. South Africa alleged a violation of the fundamental right to be heard when a Pre-Trial Chamber deemed consultations closed and upheld the state’s obligation to arrest and surrender ICC suspect Omar al-Bashir. South Africa echoed the precise complaint lodged against it when it argued the decision blurred political and judicial processes, alluding to ongoing national proceedings to determine South Africa’s obligations vis-à-vis al-Bashir.

On why it failed to execute the Court’s arrest and surrender request, South Africa stressed that the relationship between States Parties and non-States Parties continues to be governed by customary international law, including the doctrine of immunity ratione personae. South Africa emphasized that the article 98 immunity waiver provision contains clear terms intended by the Statute’s drafters to address conflicts with the doctrine and treaty law exceptions to the duty to cooperate. South Africa maintained that it was restricted by its obligation as a member of the African Union not to arrest those protected by such immunities.

Lastly, South Africa suggested States Parties take the time to consider the intention of these provisions, and in particular the relationship between article 98 and the irrelevance of official capacity under article 27.

Interventions on South Africa’s request

Various States Parties, including Costa Rica, Slovenia, Canada, Norway, Switzerland, Liechtenstein, Chile and Australia, reminded South Africa that discussions within the Assembly must respect the competence and independence of the Court—in particular with regard to pending cases. Concerned States Parties also pointed out that memorializing the legal position of any one State Party regarding the application and interpretation of the Statute is outside of the powers of the Assembly (ultra vires).

Kenya’s argument

RPE rule 68(2)(d) was introduced in December 2013—after the commencement of the cases in the Kenya situation. For prior recorded testimony to be introduced in lieu of live testimony under the former rule 68, both the prosecution and defence would have received an opportunity to cross-examine or question the delivering witness. The amendment removed the cross-examination requirement, a decision that many African countries opposed, and Kenya in particular due to the withdrawal of prosecution witnesses in its pending ICC cases. The amendments passed in 2013 after assurances were
made that the amended rule would not apply to ongoing cases; and that with the Kenyan cases ongoing at the time, the amendment would not apply retroactively to the detriment of an accused person.  

Kenya expected the Assembly at the 14th session to reassert this assurance, arrived at by consensus during ASP12.

Additionally, in line with its concerns about the non-operational IOM, Kenya requested that the Assembly establish an ad hoc monitoring mechanism to review and report at the 15th ASP session the practical impact of the amendments: on enhancing the efficiency and effectiveness of the Court; and on the fair trial guarantees to an accused.

**Interventions on Kenya’s requests**

Uganda was among a small minority supporting Kenya’s position, asserting that RPE amendments should not be applied retroactively and that the Court’s independence should not act as a shield against scrutiny. Liechtenstein reminded Kenya that although such concerns are understandable, it is not within the powers of the Assembly to interpret rules of procedure. On the request to establish a new mechanism, Liechtenstein noted that the Statute contains no basis for such a measure and that such an external assessment would interfere with the independence of the Court’s judges.

The Coalition intervened to express its deep concern about Kenya’s actions, arguing that the exercise at hand would set a dangerous precedent. This view was shared by many States Parties including, Switzerland, Canada, Moldova and the Czech Republic, among others.

**Decisions on supplementary agenda items at ASP14**

Within the spirit of international cooperation, it was determined that interested States Parties could refer the matter raised by South Africa—regarding interpretation and application of articles 97 and 98—to the Bureau for further consideration in 2016.

Following discussions on Kenya’s requests, the Assembly recalled its ASP12 resolution amending RPE rule 68 and, in accordance with the Rome Statute, reaffirmed its understanding that the amended rule shall not be applied retroactively. Additionally, rather than adopt the ad hoc mechanism proposed, the Assembly emphasized the importance and urgency of having an operational IOM and requested the Bureau to follow up on the activation process.

**Related documents**

[List of supplementary items requested for inclusion in the agenda of the fourteenth session of the Assembly](#)

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7 The ICC Appeals Chamber has since handed down a detailed decision on this issue in the context of the joint ICC trial of Kenyan Deputy President William Ruto and broadcaster Joshua Sang.
XI. Trust Fund for Victims

The Trust Fund for Victims (TFV) operates under the guidance of the TFV Board of directors (TFV Board), whose decisions are implemented by the TFV Secretariat. The TFV operates under two mandates: a reparations mandate in the event of a conviction at the ICC; and an assistance mandate, allowing the TFV to support victims and their families separate from and prior to a conviction. Both mandates require voluntary contributions for adequate financing.

The TFV Board headed into ASP14 with each of its five seats up for election. Ms. Elisabeth Rehn, representing western Europe and other states, and Dr. Vaira Vīķe-Freiberga, representing eastern European states, left the TFV Board in 2015. The incumbents from Latin American and Caribbean states, Asia-Pacific states and African states were up for re-election.

The Trust Fund for Victims in 2015: activities and developments

The ICC’s reparations mandate arises from Rome Statute article 75 and is implemented through the TFV, an institution independent from the Court. This reparations mandate remained inactive until around mid-2015, when the TFV Secretariat began work on its first Court-ordered reparations plan: for victims in the concluded Thomas Lubanga case.

Between May and June 2015, with support from the ICC Registry, the TFV conducted extensive field missions in eastern Democratic Republic of the Congo’s (DRC) Ituri district to consult with affected communities as part of its reparations implementation plan. The TFV also contracted with the Transitional Justice Institute (TJI) in Belfast, Northern Ireland to hold an expert consultation at the end of May on drafting the plan. At the 12th annual TFV Board meeting in March 2015, the Board had increased the reparations preparation reserve from €3.6 million to €4.8 million.

TFV activity increased in 2015 with respect to the assistance mandate. At its March 2015 meeting, the Board approved project extensions in Uganda and the DRC and increased the resources available under the assistance mandate to €2.9 million. By the end of 2015 the TFV was involved in 16 active projects across northern Uganda and the DRC. The TFV Board also agreed in March to allocate €900,000 to (a) situational assessment in the DRC, the Central African Republic (CAR), Côte d’Ivoire and Kenya and (b) capacity-building for the TFV’s assistance implementing partners. These partners include grassroots organisations, victims’ survivor groups, women’s associations, faith-based organisations, village savings and loans associations and international NGOs.

A day prior to the annual TFV Board meeting, the TFV, Latvia and The Hague Institute for Global Justice co-hosted a seminar on psychological rehabilitation for victims. A month earlier the TFV had presented at the Inaugural Asia-Pacific Conference on Gendered Violence and Violations in Sydney, Australia, where it also participated in an informal experts’ roundtable on transformative reparations.

2015 also saw the TFV begin the process of overhauling its outdated operational structure when it requested that the ICC Registry include the TFV in its ReVision project. The first steps in implementing the TFV reorganization took place between May and July.

The Trust Fund for Victims in 2015: voluntary contributions

In 2015, the TFV received over €8,000 from private donors and over €2.9 million from donor states. Funds received during 2015 brought the total amount of contributions since 2004 to €24.7 million and the number of states to have supported the TFV to 34. €7 million in contributions have been earmarked to support projects for victims of sexual violence and for ex-child soldiers, as well as for the TFV’s
reparations reserve. Unrestricted contributions have been used to support the TFV’s assistance programmes in the DRC and Northern Uganda.

France made its largest TFV contribution to date in December 2015 in the amount of €750,000. Australia almost doubled its 2014 contribution to over €206,000. The Netherlands, meanwhile, donated €175,000 in unrestricted contributions, and Ireland increased its 2014 contribution by 25% to €75,000.

Other repeat voluntary contributors included: Korea (€45,600); Spain (€30,000); Belgium (€25,000); Luxembourg (€20,000); Poland (€15,000); Austria (€10,000); Latvia (€10,000); Andorra (around €10,000); and Liechtenstein (around €10,000).

Finland paid a fourth—and final—€200,000 instalment earmarked for sgbc victims while Sweden paid €1.27 million in unrestricted contributions as the third—and final—instalment of its agreement with the TFV.

The TFV also welcomed the first donation from Bangladesh in 2015 (around €5,000 in unrestricted contributions).

During the last reporting period (October 2014 to June 2015), more than 59,695 direct beneficiaries and 126,703 indirect beneficiaries received TFV assistance through implementing partners in the DRC and northern Uganda.

Elections to the Trust Fund for Victims Board of directors at ASP14

ASP14 hosted elections to fully constitute the TFV Board with one director from each of the five ICC regions: African states; Latin American and Caribbean states; Asia-Pacific states; eastern European states; and western European and other states. Baroness Arminka Helić (United Kingdom), Mr. Felipe Michelini (Uruguay), Mr. Motoo Noguchi (Japan) and Ms. Mama Koité Doumbia (Mali) were elected for three-year terms beginning on 1 December 2015, with the Assembly requesting that the Bureau elect the director from the eastern European states in the near future. The term of that director will also run until 30 November 2018.

Discussions on Trust Fund for Victims at ASP14

During the opening session of ASP14, Mr. Motoo Noguchi, chairman of the TFV Board, reported on the TFV’s activities and projects during 2015. Mr. Noguchi called the ICC Appeals Chamber’s March reparations order in the Lubanga case a major milestone for the TFV and for victims and their communities. The chairman also commended the TFV’s assistance in northern Uganda, highlighting six new projects from July 2015 focused on physical and psychological care. With respect to the internal control structure under the assistance mandate, Mr. Noguchi noted that the TFV was subject to one internal and one external audit in 2015, the latter of which recommended clarifying the delegation of administrative authority from the registrar to the TFV Secretariat.

Side events taking place at ASP14 highlighted that challenges to victims’ participation in ICC and national proceedings can be ameliorated by the work of restorative justice institutions like the TFV. One of concern raised was victims’ loss of confidence in the Court’s ability to deliver justice with cases becoming so protracted. To address and moderate expectations, civil society suggested the Court

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8 The Bureau has since elected Ms. Alma Taso Deljković (Bosnia and Herzegovina) to the vacant seat.
dedicate more resources to (a) meeting the ongoing needs of victims (i.e. via the TFV’s general assistance mandate) and (b) separating processes by which victims seek reparations and support from those by which they apply to participate directly in proceedings.

**ASP14 omnibus resolution**

The 14th ASP session did not result in a stand-alone resolution on victims’ issues or the TFV. A number of provisions on the TFV and victims are, however, included in ASP14’s catchall resolution, entitled the *Resolution on Strengthening the International Criminal Court and the Assembly of States Parties*.

**Relevant documents**

- **ASP14 Statement by Mr. Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims**
- **ASP14 Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2014 to 30 June 2015**
- **Fifth election of members of the Board of Directors of the Trust Fund for Victims**
- **ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties**
- **The victims’ court? A Study of 622 Victim Participants at the International Criminal Court**
XII. The Court’s Budget

Every year States Parties must contribute to the ICC’s assessed programme budget for that year—the amount each country contributes is proportionate to its gross national income. The ICC Registry coordinates the initial drafting of the Court’s various programme budgets. That proposed budget is then submitted to the Committee on Budget and Finance (CBF), an independent subsidiary expert body of the ASP. The CBF is made up of 12 members, nominated and selected by the Assembly based on equitable geographic representation. Africa, Asia-Pacific, eastern Europe and Latin America-Caribbean are allocated two CBF members each. Western Europe and other states have four spots between them.

Evaluating the budgetary needs of an institution like the ICC is a very complicated undertaking. During its biannual meetings, the CBF considers and makes recommendations on the resources that the Court has requested to fulfil its various prosecutorial, judicial and organisational needs as well as its obligations to defendants, witnesses and victims. At the conclusion of its fall meeting, the CBF issues recommendations on the ICC’s proposed budget for the next year.

Final approval of the Court’s budget is then given by the Assembly at its annual session. Civil society has long advocated for states to provide the ICC with the resources it needs to fulfil its mandates.

CBF reviews Court’s 2016 programme budget proposal

In advance of the ASP session, the Court submitted a budget proposal of €153.32 million for 2016, including a supplementary budget of €198,300 based on estimates of its financial needs. This proposed budget represented an increase of €22.66 million (or 17.3%) on the 2015 approved budget.

The CBF identified areas for savings during its evaluation of the Court’s proposal, ultimately recommending a reduced budget of €139.96 million (a €9.295 million or 7.1% increase on 2015). The ICC Registry itself adjusted its own programme budget request prior to the CBF evaluation, largely in relation to the delayed implementation of its ReVision project.

In preparation for ASP14, The Hague Working Group (HWG) on the budget met both formally and informally to consider first the Court’s proposed 2016 budget, and later to discuss the CBF’s recommendation in preparation for further discussions at ASP14. These informal discussions (facilitated by Ambassador Werner Drüml of Austria) took place with a view to resolving States Parties’ concerns about the recommendations in advance and thus avoiding beleaguered discussions during the ASP session.

States in arrears

‘States in arrears’—or states that have yet to pay their assessed budgetary contributions in full—directly impact the ICC’s functioning by denying the Court its fully allocated budget. The Assembly discussed this issue throughout the year in a separate New York Working Group, facilitated by Mr. Slavomir Kantor (Slovakia). The Bureau report on the states in arrears notes that as of October 2015, €38 million (30%) of its contributions for 2015 remained outstanding. In comparison, the outstanding contributions around the same time in 2014 stood at €9.5 million. The total outstanding contributions among all States Parties since 2002 amount to an additional €8,151,645.
Strategic approach to the budget: discussion on setting a financial envelope

Already in 2014, the Coalition’s Team on Budget and Finance expressed extreme concern at the CBF’s recommendation that “States Parties consider whether a financial target or envelope should be set at each Assembly meeting that would define the anticipated outer limits of the budget for the year following the one immediately thereafter” (refer to CBF report from its 23rd session). To follow the recommendation would be to risk adopting a budget-setting process driven largely by how much States Parties are willing to pay rather than by the ICC’s resource needs. The approach threatens to ignore the ICC’s growing workload and deviates from the Assembly’s important mandate to decide the budget as close as possible to the start of the financial year.

Adopting an envelope means States Parties would set a financial cap more than a year in advance of the budget period. Moreover, there is real danger of such an approach being exploited by a minority of states to impose zero nominal growth policies. Whatever the interests served by the envelope, it is highly certain that the ICC would be denied flexibility to expand its work in response to the realities of impunity. Indeed, States Parties politically motivated to quash a legitimate Court request for additional funds linked to key new activities may resort to the envelope as a means to that end.

In its 2014 submission, the Coalition’s Team called on States Parties in the HWG to expressly reject the envelope recommendation. The Team endorsed a transparent annual budget-setting process centred on the ICC’s work-related needs and incorporating safeguards against politicization. Discussions in 2015, however, were once again muddied by proposals of such an envelope, with civil society continuing to warn against the dangers of that approach.

Presentations by the ICC registrar and CBF chair at ASP14

ICC Registrar Mr. Herman von Hebel and Chair of the CBF Ms. Carolina María Fernández Opazo addressed States Parties during a plenary session on the Court’s and CBF’s budgetary assessments. The Registry coordinates the Court’s budget proposal while the CBF reviews the Court’s proposal for cost-effectiveness.

The registrar explained and defended the reasoning behind the Court’s original proposed budget of €153.3 million. After consultations with States Parties, many of which considered the proposed increase excessive, the CBF recommended a reduced budget in the amount of €139.9 million.

The CBF chair presented reports from the 24th and 25th sessions of the CBF in 2015. In her presentation, Ms. Fernández Opazo stated that the forecasted implementation of the approved 2015 budget (€130.66 million) was 98.0%, or €128.02 million, potentially allowing the regular programme budget to absorb €2.64 million in Contingency Fund notifications. This forecast, however, recognizes that there were three notifications totalling €3.21 million during the first half of 2015, a €3.05 million notification in July 2015 linked to expenses in the Dominic Ongwen case and at least a further four notifications possible in relation to legal aid and detention. This, the CBF noted, served as an indication that the Contingency Fund level should be monitored.

As in previous years, the Committee devoted most of its April (24th) session to human resources and administrative issues. With the implementation of both the Registry’s ReVision and the OTP’s Strategic Plan 2016-2018 set for the second half of 2015, the CBF decided to hold a resumed 24th session on 14 and 15 July 2015.

The main (25th) CBF session in October was devoted to the actual proposed programme budget. The 25th session featured extensive discussions on the significant budget increase (more than 17.3%) proposed by
the Court. The CBF recommended a number of the reductions to reflect postponed spending, which will likely reappear in the proposed budget for 2017. While the Coalition does not take a position on the specific amount of resources that should be allocated to the ICC in any given year, it urges States Parties to treat the CBF’s review and recommendations as the bare minimum approach in their budget discussions. This was not the approach employed by the Assembly in its decision-making at ASP14. States Parties should oppose arbitrarily limiting the Court’s budget, an action certain to undermine the ICC’s ability to deliver timely and effective justice. A lack of adequate resources is a severe impediment to the Court’s optimal functioning.

**ASP14 resolution on the budget**

The Assembly adopted a 2016 programme budget of €139,590,600, falling slightly below the CBF’s recommendation of €139,960,600. The decision was reached during the 11th plenary session, following ASP14 discussions with the Working Group on the Budget and presentations by the ICC registrar and CBF chair. The following Assembly decisions on the final 2016 programme budget are contained in a stand-alone budget resolution.

<table>
<thead>
<tr>
<th>Section</th>
<th>Euros (thousands)</th>
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<tr>
<td>Major Programme I - Judiciary</td>
<td>12,430.6</td>
</tr>
<tr>
<td>Major Programme II - Office of the Prosecutor</td>
<td>43,233.7</td>
</tr>
<tr>
<td>Major Programme III - Registry</td>
<td>72,759.2</td>
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<tr>
<td>Major Programme IV - Secretariat of the Assembly of States Parties</td>
<td>2,808.8</td>
</tr>
<tr>
<td>Major Programme V - Interim Premises</td>
<td>2,824.6</td>
</tr>
<tr>
<td>Major Programme VI - Secretariat of the Trust Fund for Victims</td>
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</tr>
<tr>
<td>Major Programme VII-1 - Project Director’s Office (permanent premises)</td>
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<tr>
<td>Major Programme VII-2 - Permanent Premises Project – Interest</td>
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<tr>
<td>Major Programme VII-5 - Independent Oversight Mechanism</td>
<td>315.1</td>
</tr>
<tr>
<td>Major Programme VII-6 - Office of Internal Audit</td>
<td>681.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>139,590.6</strong></td>
</tr>
</tbody>
</table>

**Interim and permanent premises**

The Host State (The Netherlands) committed at the ASP11 to contribute to costs of the Court’s interim premises. This contribution amounted to €805,000. Additionally, States Parties opting for and having paid in full a one-time payment toward the permanent premises would not be assessed for contributions toward interest on the Host State loan, amounting to €2,200,500.

**Supplementary budget**

The Court requested a supplementary budget of €198,300 following the arrest of a suspect in the Mali situation—the arrest occurred after the Court had submitted its 2016 budget proposal. The Assembly took this development into account when adopting the 2016 budget.

**CBF’s mandate**

The Assembly requested that the CBF meet as early as possible in advance of the 15th ASP session and stressed the importance of continuing the inclusive and constructive interaction between the Court and the CBF.
Contingency Fund

The Assembly noted that the Contingency Fund would likely fall below the €7 million minimum threshold by the end of 2015 and requested that the Bureau keep the threshold under review and maintain the Fund at the notional level of €7 million.

Strategic approach: One-Court Principle

The final budget resolution stresses achieving economies of scale next year when implementing the One-Court Principle in the 2017 budget evaluation. Such an approach identifies synergies between the Court’s organs, a goal that the Assembly regretted has only seen limited progress. This prompted a request that the Court itself strengthen the inter-organ dialogue to avoid duplicating work. At the 26th CBF session, the Court will have to present tangible and quantifiable results, including savings. The Assembly thus requested that the Court work with the CBF to improve its own budgetary assessment for the proposed 2017 budget.

Budgetary envelope and performance indicators

The Assembly invited the Court to continue its development of qualitative and quantitative indicators to assess its progress. The Study Group on Governance Cluster II had already been mandated to discuss the matter in 2015. On the CBF’s recommendation that states discuss the setting of a financial envelope, the Assembly noted no consensus had been reached and invited the Bureau together with the Court to continue to consider the recommendation.

Registry reorganization

The Assembly noted the full implications of the Registry’s ReVision project must be clarified and requested that the CBF further consider the project’s financial impact during its 26th session. The external auditor was requested to conduct a full assessment regarding the impact and implementation of the ReVision process.

OTP Strategic Plan 2016-2018

The Assembly noted the Office of the Prosecutor (OTP) had fully integrated its 2016-2018 strategic plan into its 2016 programme budget. The Assembly requested that the OTP submit a final analysis of its 2012-2015 strategic plan to the CBF at its 26th session.

‘Basic Size’ concept

The Assembly welcomed work on the OTP’s Basic Size model but noted the costs and implications were not clear within the context of the One-Court principle. The Assembly requested that the OTP submit a full financial impact assessment to the CBF in advance of its next session.

Pension

The Assembly decided to push back the retirement age from 62 to 65. This change will only affect staff members employed at the Court from 1 January 2016.

UN Common System

The Assembly requested that the CBF consider the feasibility of an ICC departure from the UN Common System and that the CBF make a recommendation on this issue at ASP15.
 Costs of UN Security Council referrals to the ICC have so far been borne exclusively by the ICC programme budget. The Assembly encouraged both States Parties and the Court to engage in discussions on this issue with the United Nations.

**Relevant documents**

Coalition for the ICC Budget and Finance Team: Recommendations to The Hague Working Group on the Budget (18 November 2014)

ASP13 Report of the Committee on Budget and Finance on the work of its twenty-third session

Proposed Programme Budget for 2016 of the International Criminal Court

ASP14 Report of the Committee on Budget and Finance on the work of its twenty-fourth session

ASP14 Report of the Committee on Budget and Finance on the work of its resumed twenty-fourth session

ASP14 Report of the Committee on Budget and Finance on the work of its twenty-fifth session

ASP14 Presentation by Mr. Herman von Hebel, ICC Registrar

ASP14 Presentation by Ms. Carolina María Fernández Opazo, Chair of the Committee on Budget and Finance

ASP14 Resolution on the programme budget for 2016, the Working Capital Fund for 2016, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2016 and the Contingency Fund
XIII. Omnibus Resolution

At each of its sessions since 2003, the Assembly has adopted an omnibus resolution, formally titled *Resolution on Strengthening the International Criminal Court and the Assembly of States Parties*. The omnibus resolution addresses a wide range of substantive, practical and policy issues in relation to the Court, the Assembly and other stakeholders.

**ASP14 omnibus resolution**

Following informal consultations on its draft content, the Assembly decided to adopt an updated version of the omnibus resolution in 2015. The decision picked up from consultations during the year in the New York Working Group (NYWG), chaired by Ms. Damaris Carnal (Switzerland). A number of The Hague Working Group (HWG) facilitations also suggested language for the omnibus resolution. Topics covered by the resolution include: The Agreement on Privileges and Immunities of the ICC; cooperation and non-cooperation; the Court’s relationship with the United Nations and other international organizations and bodies; activities of the Court; elections; legal aid; the Assembly’s working methods; strategic planning; victims and affected communities; the Trust Fund for Victims; recruitment of staff; and complementarity.

**Universality of the Rome Statute**

The Assembly invited states not yet parties to the Rome Statute to join the Court as soon as possible, entreated States Parties as well as international, regional and nongovernmental organizations to intensify their efforts to promote universality and decided to continue to monitor the status of both ratifications and national implementation. The Assembly urged States Parties that have not yet done so to adopt implementing legislation as a matter of priority and specifically encouraged states to adopt victims-related provisions as appropriate. The Assembly welcomed the *Report of the Bureau on the Plan of Action for achieving universality and full implementation of the Rome Statute*.

**Agreement on Privileges and Immunities of the ICC**

The Assembly welcomed new parties to the Agreement and called upon states that have not yet ratified to do so as a matter of priority. The resolution notes that ratifying states must exempt their nationals in the Court’s employ from national income tax. The Assembly stressed the importance of the privileges and immunities, as enshrined in the Agreement, to the work of the Court and appealed to all states not party to the Agreement in whose territory the Court’s property and assets are located to protect said property and assets from interference.

**Cooperation**

The Assembly referred to the stand-alone resolution on cooperation and called upon States Parties to comply with their obligations under the Statute, to continue to express their support for the Court and to ensure full and effective cooperation with the Court, particularly in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants. The Assembly encouraged both States Parties and the Court to consider further measures to enhance the implementation of the 66 *Recommendations* adopted in 2007. The Assembly also took note of the *Report on the draft Action Plan on arrest strategies, submitted by the Rapporteur* as well as the related *draft Action Plan*, recalled the first voluntary agreement on interim release the previous year, welcomed an ICC-UNODC memorandum of understanding on capacity-building for witness protection and welcomed ASP14’s special plenary session on cooperation.
Non-Cooperation

The Assembly took note of the Report of the Bureau on non-cooperation and recognized the negative impact non-execution of ICC requests can have on the Court’s ability to effectively execute its mandate. The Assembly called on all stakeholders to continue to assist the ASP president in supporting regional focal points on non-cooperation, called on States Parties to continue efforts to ensure the UN Security Council’s adequate response to Court communications on non-cooperation and encouraged a strengthened mutual engagement on the matter by the Assembly and the Council.

The Assembly specifically noted Pre-Trial Chamber orders to the registrar concerning actions to be taken on information relating to the travels of ICC fugitives. The Assembly urged states to forward any information regarding potential or confirmed travel of persons subject to ICC arrest warrants.

Relationship with the United Nations

The Assembly noted with concern that UN Security Council referrals had, to date, been borne exclusively by States Parties. States Parties were thus urged to begin discussions on a way forward, taking into account the Rome Statute and the Relationship Agreement between the Court and the United Nations.

The Assembly recognized the need for enhancing the institutional dialogue with the UN and specifically encouraged further strengthening the Council’s relationship with the Court through, among other measures: effective follow-ups on situations referred by the Council; cooperation and national capacity-building by Council-mandated peacekeeping and special political missions; increased cooperation between sanctions committees and the Court; and institutionalization of cooperation between the Council and the Court.

The Assembly welcomed the attention given to Court-related developments at the UN and in particular at the Council in 2015. The Assembly called upon the Bureau and other States Parties to continue providing information about their efforts at the UN and in any other international or regional fora to promote the fight against impunity.

Recalling the Report of the Court on the status of ongoing cooperation between the ICC and the UN, including in the field from its 12th session, the Assembly encouraged the UN to strengthen effective collaboration with the UN Office of Legal Affairs as focal point for cooperation between the UN system and the Court.

Relationships with other international organisations and bodies

The Assembly welcomed efforts by regional and international organisations to support the Court’s mandate and recalled memoranda of understanding and agreements on cooperation concluded between the Court and the European Union, the Asian-African Legal Consultative Organization, the Organization of American States, the Commonwealth, the Organisation international de la Francophonie and the Parliament of the MERCOSUR, Common Market of the South. The Assembly emphasized, however, the need to strengthen dialogue and relations with the African Union (AU), committing to the Court’s regular engagement in Addis Ababa with a view to establishing a liaison office. It also recognized the ASP president’s engagement with the AU.

The Assembly recalled the International Humanitarian Fact-finding Commission’s potential with respect to investigations into alleged international humanitarian law violations as well as prosecutions, where appropriate, of war crimes—both at the national level and before the Court.

The Commission is established under article 90 of Protocol I to the 1949 Geneva Conventions.
Report on the Fourteenth Session of the Assembly of States Parties to the Rome Statute

Activities of the Court

Taking note of the latest Report on the activities of the International Criminal Court, the Assembly recalled its invitation to the Court to consider best practices from other relevant international and national organisations and tribunals. The Assembly welcomed the Court’s efforts to implement the One-Court principle and to enhance the efficiency and visibility of the Court’s field operations.

The Assembly expressed appreciation for the Office of the Prosecutor’s (OTP) efforts to achieve efficiency and transparency in its preliminary examinations, investigations and prosecutions, specifically welcoming the OTP’s ongoing implementation of its June 2014 Policy Paper on Sexual and Gender-Based Crimes.

Elections

The Assembly encouraged and reminded States Parties to put forward only the most highly qualified candidates during judicial elections. In a decisive move, the Assembly adopted amendments to the procedure for nominating and electing judges—the amendment is contained in annex II to the omnibus resolution. The Assembly decided to continue to review the procedure as amended.

Regarding the procedure—established in an earlier resolution—for electing Trust Fund for Victims board members, the Assembly adopted an amendment to address ongoing vacancies following a regular election, as was the case with the ASP14 election of a member from the eastern European region. The amendment is contained in annex III.

Legal aid

The Assembly acknowledged the Court’s efforts to continue implementing the revised legal aid remuneration policy as adopted by the Bureau on 23 March 2012. Noting certain documents and reports of the Bureau pertaining to the legal aid system, the Assembly stressed a need to continuously monitor how efficiently the revised legal aid system can uphold fair trial rights, objectivity, transparency, economy, continuity and flexibility.

Study Group on Governance

The Assembly welcomed the work of the Study Group on Governance (SGG) in 2015 and extended its mandate to facilitate the dialogue between States Parties and the Court on improving the efficiency and effectiveness of a judicially independent ICC. The Assembly also welcomed Court-wide efforts to develop indicators that allow States Parties to more strategically assess the Court.

The Assembly welcomed the Judges’ Working Group on Lessons Learnt (WGLL) reports: the Progress Report on Clusters A, B, C and E as well as the related Pre-Trial Practice Manual; and the Report on Cluster D(1): Applications for Victim Participation. The Assembly encouraged the judges to continue their work toward the Court’s enhanced efficiency and effectiveness in 2016. For their part, States Parties were called upon to consider amendments proposed by the WGLL.

The Assembly further welcomed the Committee on Budget and Finance’s (CBF) recommendation from its 23rd session report—that “States Parties consider whether a financial target or envelope should be set at each Assembly meeting … [to] enhance budget planning and transparency and allow the Court to establish priorities more clearly”—but noted no consensus had been reached on the envelope.
Proceedings of the Court

The Assembly reminded states that effectiveness of proceedings at the ICC impacts various interests other than the budget: victims’ rights; accused persons’ rights; and perceptions of the Court as a judicial institution. The resolution thus welcomed efforts, including the special plenary session at ASP14, toward improving the Court’s efficiency and effectiveness, noting the shared responsibility of the Court and States Parties to continue a dialogue with civil society on the matter.

Working methods review

Welcoming steps already undertaken by the Bureau, the Assembly decided to further improve the Bureau’s working methods and the Assembly’s governance. The Assembly also encouraged Bureau members to strengthen their communication with States Parties within their respective geographical regions—to better represent all States Parties in the Bureau’s discussions.

Strategic planning

The Assembly emphasized that the Court needs to continue to improve and adapt its outreach activities with a view to implementing the 2006 Strategic Plan for Outreach in affected countries. The resolution highlights early outreach—at the outset of the Court’s involvement in a situation—and recalls that such public information and communication are shared responsibilities of the Court and States Parties.

The Assembly took note of updates on both the Court’s Strategic Plan for 2013-2017 and the OTP’s Strategic Plan for 2016-2018. The Assembly also welcomed past and future efforts to celebrate the Day of International Criminal Justice (17 July) as part of an international strategy against impunity. With respect to the Registry’s ReVision project, the Assembly noted that it expects an update on the new structure’s capacity to absorb increases in workload and produce tangible efficiencies.

Long-term strategic planning in general, the Assembly reiterated, should be undertaken in a manner that is coherent with the budget-setting process.

Victims and affected communities, reparations, and Trust Fund for Victims

The Assembly referred to its previous resolution and reiterated several essential elements of the Court’s mandate in relation to victims: the right to present their views and concerns and have them considered at different stages of the proceedings; the rights to safety, well-being, dignity and privacy; and victims’ access to relevant information. As such, the resolution emphasized the importance of effective outreach to victims and affected communities.

The resolution stresses the central importance that the Rome Statute accords victims, in particular their right to participate in judicial proceedings and to claim reparations. The Assembly thus called upon States Parties to contribute to the TFV and the Special Fund for Relocations—as well as to conclude additional relocation agreements—and to form agreements or arrangements enabling the seizure of convicted persons’ assets for reparations purposes.

Recruitment of staff

The Assembly encouraged further progress in the Court’s recruitment strategy, placing particular emphasis on engagement by the Bureau and its members with the Court on achieving equitable geographic representation and gender balance in staffing. In its annexed mandates, the Assembly urged the Registry to implement measures to this effect during recruitments processes.
States Parties were urged to get involved in ensuring equitable geographical representation among the Court staff. Initiatives suggested included disseminating vacancy notices among national institutions and organisations as well as identifying pools of qualified candidates from underrepresented regions, with financing from states participating in the internship and visiting professional programme and the Junior Professional Officer programme.

Complementarity

The Assembly stressed that for the complementarity principle envisaged in the Rome Statute to take effect, whereby the ICC truly assumes its function as a court of last resort, all States Parties should make Statute crimes punishable under national law. The Assembly did, however, recall that States Parties can bolster complementarity within the Rome Statute system simply through international cooperation and judicial assistance, and thus the Assembly resolved itself to strengthen both internationally recognized fair trial standards and capacity to prosecute Rome Statute crimes at the national level.

The Assembly welcomed efforts in 2015, including the adoption of the 2030 Agenda for Sustainable Development, by the international community to mainstream national capacity-building activities, and in particular those promoting the Rome Statute system and the rule of law. The Assembly strongly encouraged more state, UN, international organization and civil society-driven initiatives aimed at incorporating such activities into technical assistance programmes and instruments.

In the absence of a stand-alone resolution on complementarity, the Assembly used the omnibus resolution as an opportunity to welcome the focused exchange of views on strategic action around sgbc victims’ access to justice and empowerment at the national level. Within this context, the Assembly took note of recommendations presented by the International Development Law Organization.

Independent Oversight Mechanism

The Assembly referred to its resolution from the 12th ASP session on the Independent Oversight Mechanism (IOM) and recognized the importance of a fully operational IOM for the efficient and effective operation of the Court. In light of this urgency, the Assembly welcomed the commencement of duties on 15 October 2015 by the newly appointed head of the IOM.

Programme budget

The Assembly took note of the work by the CBF, reaffirmed the CBF members’ independence and recalled the CBF’s mandate. The Assembly also took note—with concern, however—of the Report of the Bureau on the arrears of States Parties, urging states with outstanding assessed contributions to endow the Court with the resources it needs as soon as possible. The Assembly expressed its appreciation to all voluntary contributors.

Review conference

The Assembly recalled the successful first Review Conference of the Rome Statute, held in Kampala, Uganda in 2010 and called upon more States Parties to ratify the amendments adopted there, noting the crime of aggression could begin to take effect as early as January 2017 with enough ratifications. The Assembly called upon 35 States Parties, one observer state and one regional organisation to swiftly implement pledges to increase assistance to the Court and called on other states and organisations to make additional such pledges.
Consideration of amendments

The Assembly recalled its decision to delete Rome Statute article 124, which allows new States Parties to defer the ICC’s exercise of jurisdiction over war crimes committed on their territories or by their nationals for a period of seven years. The Assembly called upon existing and future States Parties to ratify the amendment.

Participation in the Assembly of States Parties

The resolution entrusts the Court, the ASP president, the Bureau, the Advisory Committee on Nominations, the Working Group on Amendments, the focal points on non-cooperation and the ASP Secretariat with specific mandates—contained in annex I—relevant to the omnibus provisions. The Assembly also called for timely and voluntary contributions to the Trust Fund by states, international organizations, individuals, corporations and other entities, with a view to enhancing participation by the least developed and other developing countries in the annual ASP session.

Relevant documents

- ASP13 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties
- ASP14 Resolution on Strengthening the International Criminal Court and the Assembly of States Parties
- ASP14 Report of the Bureau on the Plan of Action for achieving universality and full implementation of the Rome Statute
- ASP12 Report of the Court on the status of ongoing cooperation between the ICC and the UN, including in the field
- ASP12 Resolution on Independent Oversight Mechanism
XIV. Side events

Every year numerous side events take place in the margins of the ASP session, and every year these events provide some of the session’s most dynamic and focused discussions. Court officials, experts from international criminal tribunals, national authorities, experts, and NGOs are among those who profit from this valuable opportunity to exchange a diverse array of practices, experiences, concerns and recommendations.

The Coalition for the ICC organizes several of these events on important issues like cooperation, complementarity, victims’ rights and ratification and implementation developments, among others, reflecting the shared views of its membership. Due to its exceptional consultative status at the ICC, the Coalition is also able to help its members identify co-organizers for events on more specialized topics. Furthermore, the Coalition arranges frequent NGO strategy sessions to allow a broader civil society base to mobilize around topics on which only certain NGOs have expertise.

This chapter provides a complete overview of the side events organised during ASP14.

WEDNESDAY 18 NOVEMBER

NGO meeting with ASP President H.E. Mr. Sidiki Kaba
The NGO meeting with the ASP president featured an open discussion on issues related to the ICC as a whole as well as issues specific to the 14th ASP session. Civil society expressed concern regarding Kenya and South Africa’s proposed agenda items and their potential negative impact on the Court’s judicial independence.

Muddying the water: Interpreting the Rome Statute
The Institute for Security Studies hosted discussions on the competing obligations that States Parties may face when dealing with the question of immunity for heads of state. The side event also featured discussions on the conduct of parties under Rome Statute Articles 97 and 98 and how to apply Rule 68 of the Rules of Procedure and Evidence (RPE).

Caesar Files Exhibition Opening Reception
On the first evening of ASP14, No Peace Without Justice (NPWJ) hosted a reception for the opening of its Caesar Files Exhibition, which displayed authenticated photographs of detainees tortured and killed in Damascus prisons between March 2011 and August 2013. Presenters highlighted prior roadblocks and potential avenues to securing a UN Security Council referral of the situation in Syria to the ICC.

THURSDAY 19 NOVEMBER

NGO meeting with ICC Prosecutor, Ms. Fatou Bensouda
The prosecutor noted several areas of work by the Office of the Prosecutor (OTP) that could benefit from civil society action. She highlighted a critical need for robust NGO advocacy on the OTP’s budget and discussed, *inter alia*, the importance of fact-finding missions and local impact. Other topics discussed included the situation in Georgia and monitoring Burundi.

The place of victims in national procedures and the ICC
Le Club des Amis du droit du Congo (Le Club) hosted discussions on gaps regarding victims’ participation in the Democratic Republic of the Congo’s (DRC) justice system. Speakers from Le Club, the South African Litigation Centre, and the Forum for International Criminal and Humanitarian Law discussed ways for NGOs to help fill these gaps. South Africa proved a viable model during the discussions, with its national
implementation of the Rome Statute covering opportunities for victims to participate in proceedings through civil society’s assistance.

**Africa can bridge the international criminal justice divide between policy and practice**

The Netherlands and the Institute for Security Studies (ISS) held an event on closing the impunity gap through complementarity. The Netherlands noted that it has sponsored evidence-collection organisations and has entered into bilateral agreements to assist several countries where they do not have cooperation procedures in place. ISS’s Ms. Otililia Anna Maunganidze spoke to different domestic and regional initiatives, such as the Extraordinary African Chambers in Senegal trying former Chadian leader Hissène Habré and prospects of a tribunal in South Sudan. ISS’s Dr. Max du Plessis followed up by noting that the South African Constitutional Court’s ruling on South Africa’s duty to investigate allegations of torture in Zimbabwe establishes a progressive legal framework for prosecuting international crimes. The Nigerian Coalition for the ICC’s Ms. Melissa Omene highlighted specific legislative and political challenges to complementarity and accountability in Nigeria and suggested the Economic Community of Western African States (ECOWAS) compel the Nigerian government to prosecute members of its national forces.

**Annual General Report and Introduction of JRR’s International Investigations Deployment Fund as a way of strengthening the international community’s investigative capacity**

Finland hosted an event on behalf of Justice Rapid Response (JRR) to share results from the JRR program in 2015 and to present the 2016 program. The panel comprised JRR’s executive director, Mr. Andras Vamos-Goldman, who was accompanied by representatives of the Executive Board, constituted by ten member states (Argentina, Canada, Netherlands, South Korea, Sweden, Sierra Leone, Switzerland, Uganda, Finland, and Colombia). Speakers explained JRR’s principal goal—to ensure credible accountability for international crimes—and informed participants of their unique roster of experts before appealing to States Parties to contribute to JRR’s Deployment Fund. JRR stressed its neutrality and the fact that it only works when specifically requested by a body with jurisdiction to investigate.

**Towards a Multilateral Treaty for Mutual Assistance and Extradition for Domestic Prosecution of Atrocity Crimes**

Argentina, Belgium, the Netherlands, and Slovenia co-hosted an event on the initiative to establish of a multilateral treaty ensuring international cooperation for domestic prosecutions of atrocity crimes. Speakers at the event included: Slovenian Ambassador to the United States Mr. Roman Kirn; ICTR prosecutor Hassan Jallow; head of the Belgian Central Authority for Cooperation Mr. Gerard Dive; Mr. Maarten van der Vlught of the Netherlands National Prosecutor’s Office; and Mr. Raul Comelli from the Argentinian Ministry of Foreign Affairs. 48 states are already members of this rapidly growing initiative. Such a treaty would enhance the efficiency of domestic legal procedures through improved international cooperation.

**Digital Evidence: The Present and Future of ICC Investigations**

Open Society Justice Initiative (OSJI) and the Human Rights Center of the University of California, Berkeley (HRC) hosted the event to exchange views on topics such as the improvement of information technology for the purpose of OTP investigations. The event’s panel included HRC’s executive director Ms. Alexa Koenig, OSJI’s Ms. Alison Cole, the OTP’s Ms. Christina Ribeiro, and director of HRC’s Human Rights and Technology Program Mr. Keith Hiatt. Ms. Ribeiro in particular described the OTP’s growing reliance on investigation technology with a view to improving the quality of investigations and setting up efficiency goals to monitor both short-term and long-term costs.
FRIDAY 20 NOVEMBER

The Victims’ Court? A study of 622 Victim Participants at the International Criminal Court
In the second side event arranged by the Human Rights Center of the University of California, Berkeley (HRC), director of HRC’s Atrocity Response Program Mr. Stephen Smith Cody presented the findings of a multi-country study and stressed the ICC’s legal responsibility to provide for meaningful participation by victims. The Atrocity Response Program’s recommendations included enhanced field support, expeditious trials, and clear and unequivocal outreach stating what the Court can and cannot provide to victims participating in proceedings.

Strengthening financial investigations at the ICC
The event, aimed at generating discussions among different stakeholders on how the Court and states can improve practices related to financial investigations, was hosted by Liechtenstein and moderated by the country’s deputy permanent representative to the UN Mr. Stefan Barriga. The panel was comprised of ICC registrar Mr. Herman von Hebel; director of the International Centre for Asset Recovery Ms. Gretta Fenner; head of the Netherlands Financial Intelligence Unit Ms. Hennie Verbeek Kusters; and OTP legal advisor Dr. Rod Rastan. Participants explored avenues for States Parties, international organisations, financial intelligence units, and other actors to cooperate in tracing, seizing, freezing, and forfeiting assets of an ICC suspect.

Coalition for the ICC press briefing
The Coalition held a media briefing to highlight the most pressing issues at ASP14. William Pace, who convened the Coalition, moderated the panel, which included: Ms. Alison Smith, director of No Peace Without Justice’s International Justice Programme; Mr. Shawan Jabarin, executive director of Al-Haq and vice president of the International Federation for Human Rights (FIDH); Mr. Netsanet Belay, Africa director at Amnesty International; and Mr. Gladwell Otieno, executive director of the Africa Centre for Open Governance.

Global Civil Society & European States: What can be done to advance international justice
During the side event co-hosted by the Coalition, Luxembourg, and the EU and chaired by the Coalition’s director of programmes Ms. Kirsten Meerschaert, participants namely considered recommendations for the European Union (EU) to engage with civil society on issues of international justice. Speakers hailed from states, international organisations, and global civil society alike: Ambassador Carlo Krieger, director for legal and cultural affairs at the Ministry of Foreign and European affairs in Luxembourg; Dr. Christian Behrmann of the EU External Action Service; Mr. Lothar Lehner of the EU Genocide Network Secretariat; Dr. Aman Savarian, law lecturer at the University of Surry; Mr. Michael Y. Liu, executive director of the Chinese Initiative on International Law; Mr. Gladwell Otieno, executive director of the Africa Centre for Open Governance; and the American NGOs Coalition for the ICC’s (AMICC) delegate professor Linda Carter. The EU External Action Service reiterated its commitment to meeting consistently with civil society, in particular to ease the process of Rome Statute implementation after ratification.

Civil Society & the International Criminal Court: Local Perspectives on Fact-Finding
The Open Society Justice Initiative and the Philippines organized the side event to discuss different experiences that civil society encounters when collaborating with the ICC prosecutor in investigations and preliminary examinations. Speakers included: Ms. Tatiana Viviane Bangue, director of Femme-Homme-Action Plus in the Central African Republic (CAR); Mr. Thomas Ebbs, programme officer at Lawyers for Justice in Libya; Mr. Shawan Jabarin, director of Al-Haq and vice president of International Federation for Human Rights; Mr. Panhavuth Long, programme officer at Cambodia Justice Initiative; Mr. Araceli M. Olivos, defence coordinator at Centro Prodh in Mexico; Ms. Beatrice Okero, team leader at the Civil Society Organisations Network in Kenya; Mr. Lino Ogora Owor, executive director of the Foundation for Justice and Development Initiatives in Uganda; and Ms. Nancy Valdez, Transnational
Justice Project coordinator at the Guatemalan Forensic Anthropology Foundation. CAR, Uganda and Libya were among the ICC situation countries discussed.

**Palestine and the ICC: Accountability, Opportunities and Obligations**

Palestine, the International Federation for Human Rights (FIDH), AI-Haq, and the Open Society Justice Initiative (OSJI) co-hosted the event, with speakers from each of the delegations, including Mr. Shawn Jabarin, executive director of AI-Haq and vice president of FIDH, and Mr. James Goldston, executive director of OSJI. Professor John Dugard of Leiden University also presented. The side event covered the ICC’s, and in particular the prosecutor’s, role in ensuring accountability for the grave crimes perpetrated in Palestine or by Palestinian nationals—the preliminary examination in Palestine is based on events in Gaza, East Jerusalem, and the West Bank.

**Launch of ‘Historical Origins of International Criminal Law (HOICL): Volumes 3 and 4; preparatory works of ICL treaties; and new features of the public commons of ICL legal sources**

Martin Sørby, director of the Department of Legal Affairs at the Norwegian Ministry of Foreign Affairs, facilitated the event co-hosted by Norway and the Centre for International Law Research and Policy (CILRAP). The ‘Historical Origins of International Criminal Law’ (HOICL) is the largest international criminal law research project to date. With its four volumes, HOICL now encompasses more than 3,300 pages of content and 80 chapters written by 100 authors from around the world.

**Complementary: Beyond the ICC**

Uganda, Africa Legal Aid (AFLA), and the South African Litigation Centre (SALC) picked up discussions on complementarity, with specific attention to situations on the African continent. Speakers included AFLA’s executive director Ms. Evelyn A. Ankumah; international criminal justice lawyer at SALC Ms. Angela Mudukuti; and programme director at the International Commission of Jurists in Kenya (ICJ) Ms. Stella Ndirangu. AFLA stressed that the ICC only intervenes where national systems fall short. SALC highlighted political challenges within complementary legal regimes, referring to South African authorities’ decision to uphold head-of-state immunity in allowing ICC suspect and Sudanese president Omar al-Bashir to attend the African Union Summit in South Africa in June 2015. ICJ added a perspective on Kenya, noting it has been eight years since the country’s post-election violence and still there is no competent national justice mechanism in place.

**The confirmation of charges process: Scale back and speed up**

Switzerland and the War Crimes Research Office of the American University Washington College of Law organized the event moderated by Mr. Jürg Lindenmann, Ambassador of Switzerland; Ms. Susana Sacouto, director of the War Crimes Research Office; and Judge Silvia Fernández de Gurmendi, ICC president. Speakers noted common challenges encountered during the confirmation of charges stage while participants discussed recommendations for speeding up ICC pre-trial proceedings.

**Assistance & Reparations – Achievements, Lessons Learned, and Transitioning**

Japan and the Trust Fund for Victims (TFV) organized a reception to welcome the newly elected TFV board members from Africa, Asia-Pacific, Latin America and the Caribbean, and western Europe.

**Reception in honour of the 20th anniversary of the Coalition for the ICC**

The Coalition was honoured to join the City of The Hague in organizing the first event held in the ICC’s new permanent premises. The traditional annual Coalition reception was attended by all principals of the Court and Bureau—ICC president Judge Silvia Fernández de Gurmendi; ICC prosecutor Ms. Fatou Bensouda; ICC deputy prosecutor Mr. James Stewart; ICC registrar Mr. Herman von Hebel; and ASP president Mr. Sidiki Kaba—all of whom expressed appreciation for the Coalition’s continuous contribution to the Court’s work. Coalition Convenor Mr. William Pace opened the reception. Judge Fernández followed to commend civil society for its persistence, noting that it was fitting for civil society...
to host the first event in the premises as it was civil society that acted as the ICC’s main advocate when it was viewed as little more than an idealistic concept.

SATURDAY 21 NOVEMBER

States must lead in ensuring victim’s rights
The Institute for Security Studies (ISS), REDRESS, the International Federation for Human Rights (FIDH), and Kenyans for Peace with Truth and Justice (KPTJ) organized an event to present and discuss a variety of perspectives on victims’ participation and reparations across the Africa. Speakers at the event included Mr. Allan Ngari of ISS, Mr. Chris Ongom of Uganda Victims’ Foundation, Ms. Edith Waruru of the Kenyan Human Rights Commission, Ms. Gaelle Carayon of REDRESS, Central African Republic consultant Mr. Boris Youcogo, and Mr. Yacuba Dubian of FIDH. Substantive comparisons were drawn between the ICC as a court of last resort and the need in domestic systems to better develop ‘first resorts’ in order to provide victims with the fullest opportunity to participate. Speakers also put forward recommendations to ensure enhanced reparation plans.

NGO Strategy Meeting and briefing on ICC-US relations
Members of the American NGOs Coalition for the ICC (AMICC) briefed ASP participants on the status of United States relations with and policies affecting the ICC. Professor Linda Carter touched on aspects of the Obama administration’s “principled engagement” with the ICC and urged reactivation of the US signature on the Rome Statute. She also noted the US’s involvement with the ICC on a case-by-case basis where there is a shared interest. Professor Jennifer Trahan addressed the US’s contribution to the lapse of ICC cases arising from UN Security Council referrals, partly due to carve-out clauses preventing the Council from funding investigations that it refers. Ms. Enid Adler noted that there is a standing resolution that the US cannot fund the Court, and because the US pays for a quarter of UN dues, the Council cannot in turn pay for situations that it refers to the ICC.

Permanent Premises presentation
The Permanent Premises Project Director’s Office presented on behalf of the Oversight Committee. The presentation on the ICC’s new permanent premises featured a short video highlighting the stages of building.

From admission to reparation: heeding the voices of victims
The Victim’s Rights Working Group (VRWG) and Finland organized the event with a panel composed of grassroots victims’ organizations and representatives, including an ICC counsel for victims: Mr. Fidel Nsita Luvengika, legal representative of victims in the Katanga case; Ms. Betty Abade-Oker of the Civil Society Organizations Network; Ms. Jane Anwar Adong of Avocats sans Frontières in Uganda; Ms. Tatiana Viviane of Femmes Hommes Action Plus; and Ms. Tamar Avaliani of the Human Rights Centre in Georgia. Panellists offered perspectives from the field and shared moving accounts by victims affected by ICC crimes. They offered recommendations and called on states and the Court to strengthen efforts to keep victims’ interests at the centre of the ICC’s work.

Enhancing the Court’s impact on the ground: A strategic approach to ICC field presence and external operations
The ICC Registry organised the event on the Court’s field impact and constituted a panel with: Mr. Herman von Hebel, ICC registrar; Ms. Anniken Ramberg Krutnes, Ambassador of Norway to the Netherlands; Mr. Luzolo Bambi Lessa, special adviser to the president of the Democratic Republic of Congo; Ms. Harriet Solloway, chief of legal affairs at MINUSCA (United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic); and civil society’s Ms. Greta Barbone, senior associate at No Peace Without Justice. Panellists highlighted the importance of field operations to the ICC’s mandates, including with respect to victims’ participation, outreach, security, and witness.
Regional meeting with Latin American and Caribbean delegations
As in past sessions, the Coalition organized—this year jointly with the International Federation for Human Rights (FIDH)—a Latin American and Caribbean (LAC) regional meeting, which brought together about 15 state delegations in addition to NGO and Court representatives. The Coalition’s Regional Coordinator for the Americas Ms. Michelle Reyes Milk began with a brief overview of work and developments in the region. Parliamentarians for Global Action Secretary-General Mr. David Donat Cattin followed up on the status of the Kampala amendments’ ratification in the region while also advocating for more concluded voluntary cooperation agreements. FIDH’s Ms. Carrie Comer took the floor to discuss complementarity, inviting states to reflect on how to implement a structure of complementarity in accordance with international standards. Ms. Comer further commented on how to best make use of the OTP’s findings and civil society communications following the OTP’s decision to close the preliminary examination in Honduras in 2015. Ms. Mariana Pena of Open Society Justice Initiative (OSJI) next explained some of OSJI’s projects as well as the technical assistance it provides to different actors. Ms. Pena recalled the historic capacity of the LAC region to support victims and to fight for the right to justice, truth and reparations. On the Court’s side, Mr. Osvaldo Zavala addressed states on behalf of the Registry, discussing witness relocation and other aspects of cooperation.

Documenting Serious Human Rights Violations: A Tool for Civil Society?
The Public International Law & Policy Group (PILPG) organized an event on civil society participation in evidence collection for international crimes cases. Speakers included: Mr. Paul Williams, president of PILPG; Mr. Steven Rapp, former US Ambassador-at-Large for Global Criminal Justice; Ms. Colleen Rohan, president of the Association of Defence Counsel, International Criminal Tribunal for the former Yugoslavia; Ms. Alison Cole, legal officer at Open Society Justice Initiative; and Ms. Federica D’Alessandra, PILPG’s UN Representative. The panel noted that civil society’s role in this field has existed for some time but has become enhanced through technology. PILPG presented guidelines for both NGOs and individuals conducting evidence collection, for example with respect to security of witnesses, chain of custody, and transport and delivery of information—all to ensure admissibility of such evidence before international courts.

Promoting accountability for violations of international humanitarian law and international crimes committed in the context of the conflict in South-eastern Ukraine
The International Partnership for Human Rights (IPHR) and the International Federation for Human Rights (FIDH) co-hosted this event on promoting accountability for international crimes committed within the context of the conflict in south-eastern Ukraine. The panel consisted of Ukrainian human rights advocates including: Mr. Simon Papuashvili, the IPHR project manager; Ms. Evgeniya Zakhrevskaya, a defence attorney representing victims of war; Mr. Roman Martynovsky from the Regional Centre for Human Rights; Ms. Svitlana Valko, IPHR’s documentation coordinator in Ukraine; Mr. Roman Romanov, director of the International Renaissance Foundation’s Human Rights and Rule of Law Program; and Ms. Oleksandra Matviychuk from the Centre for Civil Liberties. With amnesties threatening to fuel further conflict in the region, the panelists highlighted the role for the international community in building Ukraine’s capacity to prioritize justice.

Can another Hague-based international court (the ICJ) contribute to accountability in Syria?
The event, co-hosted by Open Society Justice Initiative, Germany, and Switzerland, set up an engaging discussion between key actors working toward international accountability for atrocities in Syria. Participants considered the UN General Assembly’s request for an advisory opinion by the International Court of Justice (ICJ), addressing both the potential scope of the opinion and the risk of negatively
impacting victims’ confidence in the international justice system. Speakers agreed the ICJ opinion could be significant to setting a legal framework for national jurisdictions and preparing the ground for an ICC investigation into the situation in Syria.

**Creation of an ICC Association of Counsel: enhancing the active role of lawyers before the Court**
The Drafting Committee for the Constitution of an ICC Bar Association (ICCBA) hosted this event related to their work together with Guatemala and the Netherlands. Mr. Michael Karnavas, chair of the ICCBA, discussed the drafting process, explaining efforts to ensure the draft constitution meets the demands of ICC list counsel in manners consistent with the ICC legal framework. The chief of the ICC Registry’s legal office Mr. Thomas Henquet referred to the Registrar’s mandates regarding defence and victims’ rights as the principle links between the ICC and the ICCBA. The ICC registrar Mr. Herman von Hebel closed the side event by expressing the Registry’s support for the project, adding that while the work of the Court and the work of the Association of Counsel could be complementary, there would need to exist a direct line of communication between the envisioned Association and the Assembly of States Parties.

**Making Justice Count: Pushing Forward the ICC’s Local Impact**
In an event co-hosted by the United Kingdom, Denmark, and Human Rights Watch (HRW), participants explored how the Court can maximize local impact for affected communities through its various areas of work. The panel at the event comprised: Ms. Alison Smith, director of the International Justice Program at No Peace Without Justice; Ms. Elizabeth Evenson, senior counsel in the International Justice Program at HRW; Mr. Rod Rastan, legal advisor for the ICC Office of the Prosecutor; Mr. Chris Ongom, coordinator at Uganda Victims’ Foundation; and Ms. Fiona McKay, chief of the Victims Participation and Reparations Section of the ICC Registry. The panel reflected on the Court’s practice to date in situational justice, dealing with related crimes (sgbc) and the application of the amended rule 68 within the Court’s evidence. The chief of the ICC Registry’s legal office Mr. Thomas Henquet referred to the Registrar’s mandates regarding defence and victims’ rights as the principle links between the ICC and the ICCBA. The ICC registrar Mr. Herman von Hebel closed the side event by expressing the Registry’s support for the project, adding that while the work of the Court and the work of the Association of Counsel could be complementary, there would need to exist a direct line of communication between the envisioned Association and the Assembly of States Parties.

**PSV – Prosecuting Conflict-Related Sexual Violence Network**
The event was co-hosted by Australia and Sweden to reflect on the work of the Prosecuting Conflict-Related Sexual Violence Network (PSV Network). The event’s panel comprised: Mr. Per Holmström, Ambassador of Sweden to the Netherlands; Mr. Serge Brammertz, chief prosecutor at the ICTY; Ms. Michelle Jarvis, PSV Network coordinator; Ms. Janne Holst Hübner, executive director of the International Association of Prosecutors (IAP); Ms. Rea Abada Chiongson, senior gender advisor at International Development Law Organization; former ICTR prosecutor Ms. Holo Makwaia; and Ms. Priscilla Israel, assistant director of prosecution in Botswana. The IAP launched the PSV Network to promote communication, exchange of information, and support to prosecutors around the world dealing with sexual and gender-based crimes (sgbc). Participants shared lessons learned from prosecuting sgbc at the ICTY while the African Prosecutors Association encouraged cooperation between prosecutors across Africa dealing with sgbc.

**Fair trial process in the Rome Statute system**
Kenya hosted this dedicated discussion on the application of the amended rule 68 within the Court’s Rules of Procedure and Evidence. The side event, which supplemented Kenya’s requested plenary session on the same topic, featured a panel including Chief Charles Taku, international criminal law expert from Cameroon and lead counsel on the ICC’s article 70 case.

**NGO meeting with ICC President Silvia Fernández de Gurmendi**
ICC president Silvia Fernández de Gurmendi met with civil society to share her vision for a more effective and efficient Court as well as to discuss possible means of enhancing the Court’s impact, victims’ participation, universality, and the Court’s ability to respond to challenges ahead.
"Tech4Truth: Guatemala forensic database & WITNESS video guide"
Open Society Justice Initiative (OSJI) hosted an event facilitated by OSJI’s New York program coordinator Ms. Carolyn O’Neil. The event focused on the use of technology to collect data and evidence on atrocity crimes. Examples put forward included the eyeWitness App, an International Bar Association project.

Africa and the ICC – Looking Back, Moving Forward
This event—co-hosted by Botswana, Finland, Germany, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom, and the Wayamo Foundation—featured members of the ‘Africa Group for Justice and Accountability,’ an expert group created on the initiative of the Wayamo Foundation to strengthen complementarity through national capacity building and to improve the relationship between the African continent and the ICC. A long list of speakers attended the event: Ms. Bettina Ambach, director of the Wayamo Foundation; Mr. Femi Falana, Nigerian human rights lawyer; Mr. Hassan Bubacar Jallow, chief prosecutor for the ICTR; Mr. Richard Goldstone, former chief prosecutor for the ICTY and the ICTR; Ms. Navi Pillay, former UN High Commissioner for Human Rights; Mr. Mark Kersten, research director at Wayamo Foundation; Ms. Fatiha Serour, UN deputy special representative for Somalia; Judge Silvia Fernández de Gurmendi, ICC president; and Ms. Athaliah Molokomme, attorney general of Botswana and women’s rights activist. The expert panel recalled that African countries were among the most enthusiastic parties at the time of the ICC’s establishment, regarding the Court as an avenue to truth and justice in the context of post-colonial military dictatorships that have ravaged the region.

Reception for the launch of “The Politics of Gender Justice at the International Criminal Court” by Louise Chappell, in recognition of the International Day for the Elimination of Violence against Women
Australia and Women’s Initiatives for Gender Justice hosted an event at the Australian residence to launch University of New South Wales Professor Louise Chappell’s book “The Politics of Gender Justice at the International Criminal Court.” The event, which also celebrated the International Day for the Elimination of Violence Against Women (25 November 2015), was followed by a reception.

TUESDAY 24 NOVEMBER

Why We Monitor: Engagement, Advocacy and Accountability
RNW Media and Open Society Justice Initiative co-hosted a discussion between a diverse set of actors involved in trial monitoring. The event’s panel featured Mr. Lino Ogora Owor of the Foundation for Justice and Development Initiative in Uganda; Ms. Jennifer Easterday, a trial monitor and consultant for OSJI; Ms. Janet Anderson of RNW Media; Mr. Alioune Seck of TrustAfrica; Mr. Alpha Sesay of OSJI; Mr. Franck Petit of the Extraordinary African Chambers; and the International Commission of Jurists Kenya’s Ms. Rosemary Tollo, program manager of the web portal “Journalists for Justice.” Ms. Easterday underlined the importance of neutrality while noting challenges related to the inherently politicized context in which international trials often take place. Ms. Tollo, on the other hand, argued that trial monitoring offers advocacy and outreach tools capable of reversing existing power relations in local communities. The speakers agreed that while trial monitoring strategies differ based on organizational goals, target audience, and context and needs on the ground, all should incorporate creative outreach strategies to reach local communities.

Towards the activation of the Kampala amendments on the crime of aggression
Liechtenstein hosted an event to discuss the ratification process for the Kampala amendments. Speakers included Ms. Romina Morello of Parliamentarians for Global Action; the permanent representative of Liechtenstein to the UN Mr. Christian Wenaweser; and Mr. Donald Ferencz, founder of the Global Institute for the Prevention of Aggression. The panel referred to the amendments’ legal origins in the Nuremberg trials and to the Kampala Review Conference, which under Rome Statute article 5 was authorized to define the modalities and conditions for the Court’s exercise of jurisdiction over the crime of aggression. On the applicability of the Court’s jurisdiction, the panel argued that absent a UN Security
Council referral, a State Party exercising the amendment’s opt-out clause will not be subject to the Court’s jurisdiction unless it commits the crime of aggression on the territory of a State Party.

**Ecocide law: timely and necessary**
Greenpeace Switzerland hosted a discussion on the universal problem of ecocide and the question of whether it is a crime that the ICC and Rome Statute system could realistically and directly prosecute. The event’s panel comprised international lawyer and award-winning author of “Eradicating Ecocide” Ms. Polly Higgins; Greenpeace Switzerland’s Mr. Michael Bomgard; lawyer, writer, and creative director of Dirt Foundation Ms. Bronwyn Lay; and Friends of the Earth Europe’s Ms. Anne van Schaik.

**Performance indicators of the Court**
The United Kingdom and Open Society Justice Initiative (OSJI) hosted this event bringing together a panel consisting of civil society, states’ delegates, and Court officials: Mr. James A. Goldston, executive director of OSJI; OSJI’s Ms. Kathryn Fahnstock; Mr. Shehzad Charania, legal advisor and head of the International Team at the UK embassy in The Hague; Mr. James Stewart, ICC deputy prosecutor; Judge Silvia Fernández de Gurmendi, ICC president; and Mr. Herman von Hebel, ICC registrar. The panel noted the Court has already identified four key goals in measuring the Court’s performance and has set up indicators to assess those goals. The OTP has identified 14 performance indicators to measure its own work. The panel, however, warned that developing the indicators would be a lengthy process.

**International Nuremberg Principles Academy**
Germany hosted an event to present the opening of the International Nuremberg Principles Academy. The expert panel, which made presentations on the Academy, included Dr. Pascal Hector, director of international law at the German Federal Foreign Office; Ms. Navi Pillay, former UN High Commissioner for Human Rights; Professor Sang-Hyun Song, former ICC president; Mr. Thomas Buergenthal, former judge at the International Court of Justice and president of the Academy’s advisory board; Ms. Athaliah Molokomme, attorney general of Botswana; and Mr. Surge Brammertz, chief prosecutor at the ICTY.

**Complementarity: The situation relating to international crimes and sexual violence in Colombia**
Organized by the Colombian Commission of Jurists, SISMA Mujer, Corporación de Abogados José Alvear Restrepo (CAJAR) and ASF Canada, this side event featured an expert panel comprising Mr. Simon Crabb (ASF), Mr. Luis Guillermo Perez (CAJAR), Ms. Lilibilit Cortes (SISMA Mujer), and Mr. Gustavo Gallón (CCJ). The event was moderated by the Coalition’s Regional Coordinator for the Americas Ms. Michelle Reyes Milk and organized with the support of the EU, the Crossroads Project, ASF and the Coalition.

In one segment, ASF and CAJAR shared initial reactions to the 23 September 2015 preliminary agreement emerging from the Colombian peace negotiations. These included concerns about the Special Jurisdiction for Peace being under-inclusive with respect to crimes against humanity and unclear regarding the scope of modes of liability. Speakers highlighted the role that the ICC OTP must continue to play as the agreements are implemented. In another segment, panellists discussed the decision issued by the Colombian Constitutional Court to prioritize sgbc investigations given the high level of impunity for sgbc in the country. The decision’s implementation is being monitored by a working group comprising several human rights organisations, while speakers called upon the OTP to also continue to monitor these crimes.

**WEDNESDAY 25 NOVEMBER**

**Coalition for the ICC meeting with ICC Registrar Herman von Hebel**
ICC registrar Mr. Herman von Hebel spoke to civil society on a range of topics, including the ongoing ReVision project to restructure the Court’s administrative arm. The registrar stressed efforts to strengthen ICC field offices and reiterated his commitment to gender balance and equitable geographical representation in the Registry’s recruitment strategy.
Prosecuting Sexual and Gender-Based Violence: conversations with the OTP

The event—hosted by the Institute for Justice and Reconciliation (IJR) and moderated by IJR’s project leader for international justice Ms. Kelly-Jo Bluen—featured a conversation between the Office of the Prosecutor’s (OTP) Ms. Gloria Atiba-Davies and Ms. Shamila Batohi, head of the Gender and Children’s Unit and senior legal advisor to the ICC prosecutor, respectively. Ms. Batohi suggested international criminal law’s conventionally hesitant approach to sexual and gender-based crimes (sgbc) is beginning to evolve. Ms. Atiba-Davies referred to the ICC prosecutor’s sgbc investigation and prosecution strategy, highlighting the importance of engaging with victims and responding to their needs. The OTP representatives stated their office has developed gender analysis guidelines to assist the OTP in making comprehensive budgetary requests that reflect adequate field support.

Operationalization of Independent Oversight Mechanism in the Rome Statute System

Kenya hosted a side event in connection to its second ASP14 agenda request—to discuss the operationalization of an independent oversight mechanism established in a prior ASP resolution. Kenya specifically advocated an audit of the ICC prosecution, repeating the government’s allegations that the prosecution interfered with witnesses throughout its investigation into the Kenya situation.

Dispelling misconceptions and confronting challenges: Moving towards universality and full implementation of the Rome Statute

Cyprus and Denmark co-hosted this event dealing with the successes and challenges for contemporary universality of the Rome Statue. The event panel comprised ICC Judge Sanji Mmasenono Monageng; Ms. Marie-Pierre Oliver of the Rule of Law Division in the Commonwealth Secretariat; Dr. Rod Rastan, legal advisor in the OTP; and Ms. Kirsten Meersschaert, director of programmes at the Coalition. Many of the identified challenges were of a political nature. Among the issues discussed were the particularities of accepting ICC jurisdiction, the lack of executive immunity, the lack of access to information, and the lack of states’ fiscal capacity to implement changes that would bring their national laws into conformity with the Rome Statute. Panellists from both civil society and the Court highlighted successful processes that have led to ratification while explaining that a degree of slowdown in the number of ratifications was statistically expected after two-thirds of the States Parties had ratified. Panellists also agreed that while universality is an essential step in pursuing international peace and justice, it is just as important to fully implement the Rome Statute.

OTP preliminary examinations report

The Office of the Prosecutor (OTP) brought together ICC prosecutor Ms. Fatou Bensouda, deputy prosecutor Mr. James Stewart, and head of the Situation Analysis Section Mr. Emeric Rogier to present the OTP’s fifth preliminary examinations report. The prosecutor stressed her office’s commitment to confidentiality as well as its respect for principles of complementarity. The different phases of preliminary examinations were explained with several concrete procedural illustrations. The deputy prosecutor discussed preliminary examinations in more technical terms together with the head of the Situation Analysis Section.

Accountability and the Prospect of a Political Solution to Conflict in Syria

Belgium, France, Italy, Liechtenstein, the Netherlands, and No Peace Without Justice (NPWJ) hosted this event to discussion avenues for accountability in Syria. Speakers included Mr. Niccolò Figà-Talamanca, NPWJ secretary general; Mr. Hussein Sabbagh, secretary general of Euro-Syrian Democratic Forum; Syrian human rights defender Ms. Raheb Alwany; NPWJ’s Syria project coordinator Mr. Rami Nakhla; human rights defender Mr. Ayman Ghojal; former US Ambassador-at-large for war crimes Mr. Stephen Rapp; the former prosecutor for the Special Court for Sierra Leone; and Ms. Elizabeth Evenson, senior counsel in Human Rights Watch’s International Justice Programme.

The panel agreed that justice and accountability need to be included in any future political solution for Syria and that the Syrian people should be invited to participate in any negotiations.
The Vital Role of Professional Associations of Lawyers. 25th Anniversary of the Adoption of the Basic Principles of the Role of Lawyers

The International Criminal Bar (ICB) hosted this side event, which did not appear on the ASP14 Journal but featured keynote speaker ICC president Judge Silvia Fernández de Gurmendi, with Mr. David Levy, president of the ICB, giving the introductory remarks. The event acknowledged successes laid out 25 years ago with the Basic Principles on the Role of Lawyers and enumerated the needs and potential challenges around establishing a bar association for counsel at the ICC. Significant emphasis was placed on training programs for all counsel as well as the judiciary and victims’ representatives, with a view to holding all Court actors to a certain standard of expertise and legitimacy. One identified challenge involved how to present the idea to the Assembly at future ASP sessions.


**Book Launch:** Triffterer/Ambos, Rome Statute of the Criminal Court – A Commentary: launch of the 3rd edition, published November 2015 (co-hosted by Germany, C.H. Beck Publisher (Munich), Hart Publishing (Oxford) and Nomos Publishing (Baden-Baden)).