COALITION FOR THE INTERNATIONAL CRIMINAL COURT

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ARAB STATES AND THE ICC: TWELVE YEARS SINCE ROME

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To date, only 3 of the 22 members of the League of Arab States have joined the International Criminal Court (ICC)—Jordan, Djibouti and the Comoros Islands. Jordan played a leadership role in the lead up to the adoption of the Rome Statute in 1998, a role it has since continued. Egypt is the only other Arab state that has ever come close to playing such a role, all the way up to the statute’s adoption.

After the indictment of Sudanese President Omar Al-Bashir, many of these states have asserted that the ICC is biased against developing nations, particularly in Africa, and is applying a double standard compared to its treatment of western powers such as the United States (U.S.). Yet this does not touch upon the realities of why most Arab states have not moved forward in supporting the ICC.

For many senior government officials in the region, refraining from joining the ICC was not only a sign of support for the U.S.; most Arab states found Article 27, which removes head of state immunity, as incompatible with their own constitutions, basic laws or concepts of government.

I joined the Egyptian delegation in 1994 and served as Vice-Chair of the Ad Hoc Committee, then Vice-Chair of the Preparatory Committee and Chair of the Drafting Committee at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an ICC. Egypt, which voted in support of the ICC at the end of the conference and is one of the 139 signatories of the statute, has yet to ratify.

Egypt’s story is not too different from many other Arab states. In 1999, the U.S. started campaigning very strongly in these countries to sign “Bilateral Immunity Agreements” (BIAs). The BIAs that the U.S. secured with more than 100 states, including some states parties, require the states in question not to surrender U.S. nationals to the ICC, but instead to U.S. authorities. Egypt and other Arab states understood this and other public positions taken by the Bush Administration as an indication of strong U.S. opposition to the ICC.

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CICC and Moroccan Civil Society Launch Ratification Campaign

In February 2010, Morocco was the target of the CICC’s Universal Ratification Campaign (URC), which calls upon a different country each month to join the ICC. Numerous actions were taken to urge Morocco to demonstrate its commitment to international justice and the rule of law by ratifying the Rome Statute, which Morocco signed on 8 September 2000.

In a letter sent to King Mohamed VI of Morocco on 3 February 2010, the CICC urged Morocco to prioritize its ratification of the statute. “Morocco’s ratification would significantly strengthen the Arab voice at the ICC and furthermore encourage your neighbors in the region to join the Court,” stated CICC Convenor William R. Pace in the letter. On 26 January 2010, an event on the ICC and the fight against impunity was held in Casablanca, attended by over 50 participants.

On 9 February 2010, the Moroccan Coalition for the ICC held a press conference with the media and civil society and reiterated its call for Morocco to join the ICC.

On 19 February 2010, the Lawyers Union of Rabat and the Moroccan Coalition organized a seminar in Rabat titled “Morocco and the ICC: Realities and Prospects,” which was attended by more than 100 participants. As part of the campaign, CICC MENA Coordinator Abeer Al-Khraisha and members of the Moroccan Coalition also met with a number of key stakeholders, including President of the Advisory Council on Human Rights Ahmed Herzenni, members of the Moroccan Parliament, members of the Moroccan National Commission for the Implementation of International Humanitarian Law and several journalists.

ICC Releases Summary of Arguments Regarding Declaration 12(3) by the Palestinian National Authority

In March 2010, the Office of the Prosecutor of the ICC issued a summary of submissions, titled the “Situation in Palestine,” on whether the declaration lodged by the Palestinian National Authority (PNA) meets statutory requirements. On 21 January 2009, the Minister of Justice of the PNA lodged with the Court a declaration pursuant to Article 12(3) of the Statute, which enables a state not party to the Rome Statute to accept the exercise of jurisdiction by the Court, “for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002.”

The first step in the determination of jurisdiction is to ascertain whether the declaration lodged by the PNA meets statutory requirements. The summary states that the Office of the Prosecutor is conducting a preliminary examination in order to determine whether there is reasonable basis to proceed with an investigation into the situation in Palestine, taking into consideration the jurisdiction of the Court, admissibility, and the interests of justice. In particular as part of its assessment of jurisdiction, the Office’s preliminary examination is reviewing information collected from open sources as well as information received from States, international organizations, NGOs and other reliable sources.

Interpretations of Article 12(3) vary with regard to what constitutes a ‘state.’ The document outlines teleological arguments which suggest that Article 12(3)’s use of the term ‘State’ should be examined in the context of the Statute and its object and purpose.

An assessment must also be made determining whether the entity in question exercises sovereign criminal jurisdiction, such that this jurisdiction can be delegated or transferred to the Court.

Another principal topic of contention is the issue of recognition of statehood. A final set of issues examined in the various submissions relates to the situation before 1948, during the Ottoman era and the later League of Nations Mandate period, in order to determine whether Palestinian claims to sovereignty are a continuation of a pre-existing title.

Arguments were presented by the League of Arab States, Al-Haq, and a number of other international law experts and NGOs.

For the full summary, please visit: http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/summary%20of%20submissions%20on%20whether%20the%20declaration%20lodged%20by%20the%20palestinian%20national%20authority%20meets.
To date, only 3 of the 22 members of the League of Arab States have joined the ICC—Jordan, Djibouti and the Comoros Islands.

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MEMBER HIGHLIGHT:
Amman, Jordan – Arab Bridge Center Discusses ICC’s Role in the Region

On 28 January 2010, Amjad Shammout, President of the Arab Bridge Center for Development and Human Rights and Abeer Al-Khraisha, CICC MENA Regional Coordinator, addressed journalists in Amman, Jordan to discuss the ICC’s role in the region. The conference was aimed at raising awareness about Jordan’s commitment to national and international human rights, and using this awareness to encourage other states in the MENA region to ratify the Rome Statute.
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Beirut, Lebanon—Workshop on the ICC and Gender Crimes

On 19-20 March, Justice Without Frontiers (JWF), in cooperation with the CICC, CICC Steering Committee member No Peace Without Justice (NPWJ) and the European Union, held a regional training workshop for women’s organizations on the “ICC and Gender Crimes” in Beirut. The event was held to celebrate International Women’s Day on 8 March and Mother’s Day on 21 March in the Arab World in the framework of JWF’s “End Impunity Now” campaign.

Ghassan Mukhaiber, Parliament Member of the Change and Reform Bloc and Rapporteur of the Parliamentary Human Rights Committee stressed “the need to work in order to push Lebanon to join the Court, building bridges of protection from not only weapons, but for the law and judicial institutions.”

JWF Director Brigitte Chelebian noted that Arab states have shown insufficient political will to join the ICC and that “gives perpetrators an additional motive to repeat their crimes.” NGOs and individuals called on Lebanese President Michel Sleiman and the government of Lebanon to immediately join the ICC. Attendees included the CICC MENA Regional Coordinator, Lebanese and Arab NGOs, civil society and women’s rights organizations, government officials, military officials, and representatives from the ICC.

Cairo, Egypt—Arab States Discuss Review Conference

On 7-8 April, the 27th Meeting of the “Committee of Experts and Representatives of Arab Countries for the Coordination of Arab Positions on International Conferences and Agreements” was held at the Secretariat of the League of the Arab States to study the various proposals before the Review Conference of the Rome Statute of the ICC.

The meeting was attended by representatives from Jordan, the United Arab Emirates, Bahrain, Tunisia, Algeria, Saudi Arabia, Sudan, Syria, Iraq, Palestine, Qatar, Libya, Egypt, Morocco, and Yemen; as well as representatives from the Arab League Council of Ministries of Justice and Council of Ministries of the Interior.

Dr. Marouk Nacereddine from the Algerian Ministry of Justice was chosen as president of the meeting. The agenda of the meeting included discussions on:

- the crime of aggression: definition, conditions for the exercise of jurisdiction, and elements;
- evaluating the performance of the Court since its establishment by focusing on: the principle of complementarity, cooperation with the Court, and the impact on victims and affected communities;
- support for the Belgian Proposal to amend Article 8(2) of the Rome Statute;
- consideration on the deletion of Article 124; and  
- the most important elements of a statement from the Arab Group at the Review Conference.

Amman, Jordan—Jordanian Coalition Meeting

On 23 February, members of the Jordanian Coalition for the ICC gathered at the Sisterhood is Global Institute-Jordan (SIGI-J) premises upon an invitation from SIGI-J and the CICC. The discussion meeting aimed to set a defined organizational structure for the Jordanian Coalition and to foster an agreement on the main features of the coalition’s strategic plan for 2010-2012. Abeer Al Khraisha, CICC MENA Regional Coordinator, initiated the meeting with a general briefing on the ICC and the relationship between the CICC and the ICC. General Coordinator of SIGI-J, Asma Khader, emphasized the importance of reactivating the Jordanian Coalition through the participation of its members in addition to opening the door for other organizations to join. Members also agreed to hold more events pertaining to the ICC, including local and international conferences, and workshops on the laws of the ICC, with a view to mobilize support for the ICC from individuals and organizations alike.

The meeting was well attended by lawyers, judges, representatives of NGOs, and was covered by various press outlets including Assabeel, Al-Ghad, and Al-Arabiya Al-Youm.
The ICC Review Conference was held from 31 May to 11 June 2010. ICC states parties, observer states, international organizations, NGOs, and other participants discussed proposed amendments to the Rome Statute and took stock of its impact to date, making the Conference a critical milestone in the evolution of the Rome system.

More than 600 Coalition NGO members played an active role in enhancing the dialogue on the Rome system and ensured that the voices of civil society were truly heard through a number of debates, roundtables, moot courts, and press conferences. NGO statements were given on behalf of the CICC, as well as by members of the CICC Steering Committee.

NGOs in attendance from the MENA region included the Palestinian Center for Human Rights, Justice Without Frontiers (Lebanon), the Moroccan Coalition for the ICC, Public Committee Against Torture in Israel, the Cairo Institute for Human Rights Studies, the Iranian Islamic Human Rights Commission, and the Al Kawakibi Democracy Transition Center.

The Conference opened with a two-day general debate during which states parties, observer states, international organizations, and NGOs delivered statements. Statements were presented by Jordan, Kuwait, Egypt (on behalf of the Non-Aligned Movement), Iran, Palestine, the Asian-African Legal Consultative Organization, and the League of Arab States. Kuwaiti Undersecretary of the Ministry of Justice Mr. Muhammad Abdullah Alansari stated that Kuwait is seriously considering acceding to the Rome Statute.

112 pledges were made by 37 states and by the European Union including commitments on the ratification of the Agreement on Privileges and Immunities (APIC), implementation legislation, cooperation with the ICC, contributions to the Trust Fund for Victims, capacity building on national investigations and prosecutions among other important issues. No pledges were made from the MENA region.

In addition, the Conference adopted the Kampala Declaration, reaffirming states’ commitment to the Rome Statute and its full implementation, as well as its universality and integrity.

The Review Conference further adopted a resolution on strengthening the enforcement of sentences. The ICC signed three agreements, with Belgium, Denmark, and Finland, on the enforcement of sentences.

The first week of the Conference was dedicated to high-level discussions on the impact of the Rome Statute, which helped identify areas in which the Court’s positive impact can be further strengthened. Debates focused on issues truly central to the system’s functioning, namely: the impact of the Rome Statute on victims and affected communities; complementarity; cooperation; and peace and justice. At the centre of the stocktaking discussions were four high-level panels in the plenary of the conference. The formal panels were complemented and enriched by numerous side events organized by civil society and states. As a result, states adopted resolutions on victims and complementarity as well as a declaration on cooperation. Looking ahead, the Coalition is committed to work with states, the United Nations, other regional bodies, and the ICC to ensure commitments made in Kampala result in concrete actions.

The Review Conference adopted by consensus a set of amendments to the Rome Statute pertaining to the crime of aggression. States parties adopted a definition which criminalizes the use of armed force by one state against another carried out in contravention to the UN Charter. On this basis, individuals in a leadership position responsible for acts of aggression may be prosecuted before the ICC. The amendments also set out a unique jurisdictional regime outlining when the ICC prosecutor can initiate an investigation into a crime of aggression. Where a situation is referred by the UN Security Council (UNSC), the Court’s jurisdiction is triggered in the same manner as other ICC crimes. However, the prosecutor may only proceed with an investigation on his own initiative or upon a referral by a state after first ascertaining whether the UNSC has made a determination of the existence of an act of aggression. If not, the prosecutor should seek the authorization of the ICC pre-trial division to open an investigation after a period of 6 months.

It was also decided that states parties may opt out of the Court’s jurisdiction over aggression by lodging a declaration with the ICC registrar. In addition, the activation of jurisdiction is still subject to a positive decision by the ASP which cannot be taken before 1 January 2017 and one year after the ratification or acceptance of the amendments by 30 states parties, whichever is later.

Two important decisions were made on other proposed amendments. First, states amended Article 8 of the Statute by criminalizing the use of poison, poisoned weapons, asphyxiating, poisonous or other gases and all analogous liquids, materials or devices and the use of bullets that expand or flatten in the body as war crimes in non-international conflicts. Second, states agreed not to delete Article 124 of the treaty but to review it in five years. Article 124 allows states parties to opt out of the Court’s jurisdiction over aggression by lodging a declaration with the ICC registrar. In addition, the activation of jurisdiction is still subject to a positive decision by the ASP which cannot be taken before 1 January 2017 and one year after the ratification or acceptance of the amendments by 30 states parties, whichever is later.

Other proposals which did not gather sufficient support for consideration at the Review Conference will be discussed in an ASP Working Group on Amendments starting at the next ASP in December 2010.

On 23 May 2010, a conference was held in Irbil, the capital of the Kurdistan Regional Government of Iraq, titled “We are also a Part of International Justice,” under the auspices of Kurdocide Watch (CHAK) and in coordination with the Ministry of Martyrs and Anfal Affairs of the Kurdistan Regional Government of Iraq. The event was attended by civil society organizations, lawyers, parliamentarians, experts and human rights activists with the goal of discussing and exchanging views on the ICC and Iraq. The event concluded with participants agreeing to engage in the following:

- urging the Iraqi government to accede to the Rome Statute;
- issuing appropriate legislation to compensate victims of international crimes and human rights violations;
- implementing legislation on the international crimes contained in the Rome Statute into the Iraqi Penal Code;
- inviting the Iraqi Government to preserve evidence, documents, and information relating to international crimes;
- inviting media and participants to provide information on the role of the ICC and nature of its work to inform citizens and public opinion in exercising their rights;
- coordination, cooperation and communication between civil society and human rights organizations inside and outside Iraq to achieve the goals of the conference;
- forming a committee to pursue the implementation of the decisions of the conference in coordination with the Ministry of Martyrs and Anfal Affairs in the Kurdistan Regional Government.
2010 Schedule of Events—July-December

**JULY/AUGUST**
- 1 July – Amman, Jordan – Amnesty International Seminar on the ICC at Jordan University
- 17 July – International Justice Day commemorating the 12th Anniversary of the Rome Statute

**SEPTEMBER/OKTOBER**
- 23-25 Sep & 27-30 Sep – New York, USA – General Debate of the 65th Session of the General Assembly
- 27-29 Sep – Amman, Jordan – CICC MENA Regional Strategy Meeting

**NOVEMBER/DECEMBER**
- 6-10 Dec – New York, USA – 9th Assembly of States Parties to take place in the United Nations Headquarters

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**Cairo, Egypt—ACIJLP Holds Workshop on the Review Conference**

On 17 May 2010, the Arab Center for Independence of the Judiciary and Legal Profession (ACIJLP) and the Egyptian Coalition for the International Criminal Court (ECICC) organized a workshop on the Review Conference of the Rome Statute. The workshop was attended by experts from the field of international law and international criminal law, as well as Egyptian NGOs, political actors, and the media.

The participants at the workshop proposed a number of recommendations to the members of the international community in preparation for the Review Conference of the Rome Statute, held from 31 May to 11 June 2010 in Kampala, Uganda. The proposals included a call for Arab states to ratify and accede to the Statute and a call specifically for the Arab Group participating in the Review Conference to coordinate efforts in order to support the role of the ICC.

The workshop participants also called on participants at the Review Conference to amend the text of Article 124 of the Rome Statute, which allows a new state party to exclude themselves from Court’s jurisdiction for war crimes allegedly committed by its nationals or on its territory for a period of seven years.

The workshop participants also included recommendations to limit the role given to the UN Security Council under the Rome Statute to postpone an investigation or trial, and to assign this role to the Court itself or the UN General Assembly. They also encouraged all states to sign and ratify the Agreement on the Privileges and Immunities of the Court (APIC), and to include the criteria of fair trials set forth in the Rome Statute in their national legislations.

Additionally, participants called for the Review Conference to discuss ways to facilitate international cooperation surrounding issues related to the arrests of the accused, provisional release, and for States to conclude supplementary agreements relating to the defense of the accused. Participants also urged States during the General Debate to promote the importance of the role of the ICC as a fair and impartial institution that respects the rights of victims and accused persons.
The Coalition for the International Criminal Court includes 2,500 organizations around the world working in partnership to strengthen international cooperation with the ICC; 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.

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Together for Justice:
Civil society in 150 countries advocating for a fair, effective and independent ICC.

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ADVOCACY ON PALESTINE AT THE REVIEW CONFERENCE

On 6 June 2010, CICC members Al-Haq, the Public Committee Against Torture in Israel (PCATI), and the Palestinian Center for Human Rights (PCHR) released a joint statement calling on states “to uphold victims’ rights and seek accountability for international crimes” on the historic occasion of the first Review Conference. The organizations stated that for Palestine, “the Prosecutor should submit the request to open an investigation to the Pre-Trial Chamber as soon as possible.” In a separate statement, PCHR stressed that “the ongoing situation in the occupied Palestinian territory (oPt) demands that crimes committed there be brought before the Court. The international community’s continued granting of impunity to Israel denies victims’ rights, undermines international justice, and is in conflict with the object and purpose of the ICC.” During the Review Conference, on 4 June, PCHR, in cooperation with Fédération internationale des droits de l’homme (FIDH), organized a side-event entitled ‘Is There a Court for Gaza?’ which featured a roundtable discussion addressing the current situation in the oPt, and the Palestinian Authority’s declaration accepting the jurisdiction of the ICC in accordance with Article 12(3) of the Statute. The panel featured a number of international law experts and was attended by a number of States and NGO representatives.

For more information please visit: http://www.pchrgaza.org (links here and here).

IHRC Issues Review Conference Recommendations

The Iranian Islamic Human Rights Commission (IHRC) released a number of recommendations on the possible amendments to the Rome Statute during the Review Conference. The IHRC proposed: the deletion of Article 124; the deletion of Article 98(2); the inclusion of the Crime of Aggression based on the “second Option” indicating that the Prosecutor may proceed with an investigation in respect of a crime of aggression “provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15”; that on the Belgian Proposal to amend Article 8 of the Rome Statute regarding the criminalization of certain weapons as war crimes, to include all prohibited war methods in international conflicts be prohibited in non-international conflicts as well.