Report on the first

REVIEW CONFERENCE
ON THE ROME STATUTE

31 May-11 June 2010
Kampala, Uganda

COALITION FOR THE INTERNATIONAL CRIMINAL COURT
The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes more than 2,500 nongovernmental organizations in 150 countries around the world working in partnership to advance the cause of international justice. The Coalition works to build global support and visibility for justice; strengthen the effectiveness, independence, and accessibility of the International Criminal Court and Rome Statute systems; and secure stronger national laws that deliver justice to victims of war crimes, crimes against humanity, and genocide.

This report provides a summary of the first Review Conference of the Rome Statute of the International Criminal Court.

The Coalition works in partnership with institutions and individuals around the globe in its mission to end impunity. In addition to the invaluable contributions of the global civil society membership and many other partner institutions, the Coalition would like to express its appreciation to the Secretariat of the Assembly of States Parties for the summary proceedings and list of documents and to the numerous individuals, interns, and volunteers that supported Review Conference activities and the preparation of this report.

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

FROM 31 MAY TO 11 JUNE 2010, ICC states parties, observer states, international organizations, NGOs and other participants assembled in Kampala, Uganda for the first Review Conference of the Rome Statute.

The Review Conference represents another critical milestone in the evolution of the modern system of international criminal justice. This Conference was the first official opportunity to look back at the historic Rome Conference and Statute and look for ways to move forward. The Review Conference’s stated purpose was to discuss proposed amendments to the Rome Statute, as well as to take stock of the progress of the Rome Statute system to date. Accordingly, the outcome of the events in Kampala are already shaping the debate on the development of the International Criminal Court and highlighting the need for proactive engagement from all relevant actors and stakeholders within the international community to ensure the future success of the system.

The first week of the Review Conference included a general session (resulting in a high-level declaration), an event announcing various ICC-supportive pledges by states and an international organization and a two-day stocktaking segment. The second week was devoted to discussing the proposed amendments, with a particular emphasis on the crime of aggression. Throughout the two weeks, civil society engagement and influence was significant, including in overseeing numerous events focusing on key issues.

PARTICIPATION

Participating in the two-week Review Conference in Kampala were international justice experts from 115 governments, high-level UN officials, representatives from the current ad hoc and special international criminal tribunals, international media, academia and more than 600 representatives from 143 NGOs, as well as hundreds of additional NGO representatives participating through the People’s Space. Civil society, led by the Coalition as the official convenor and facilitator of NGO participation at the Review Conference, comprised the largest contingent of delegates. As with Rome in 1998, NGO engagement reinforced the collaborative partnership that continues to exist among governments, international organizations, and civil society within the Rome Statute system.

AMENDMENTS

Discussions focused on three proposed amendments to the Rome Statute. These included: 1) the incorporation of a definition and the conditions for the exercise of the jurisdiction of the Court on the crime of aggression; 2) amendments to article 8 to extend the criminalization of the use of certain weapons
to non-international armed conflicts; and 3) the revision of article 124 which grants an optional seven-year exemption from the Court’s jurisdiction regarding war crimes for a state’s nationals upon that state’s ratification of the Rome Statute.

THE CRIME OF AGGRESSION

Discussions and negotiations on the crime of aggression first began over a decade ago, in Rome. At the Review Conference, discussions focused on one major outstanding issue still preventing agreement: the jurisdiction of the ICC and the role of the UN Security Council in this context.

With the firm commitment of states parties and the leadership of the president of the ASP and the chair of the Working Group on the crime of aggression, states were able to reach consensus on the final day of the Conference. States agreed on a definition, the conditions under which the Court would exercise jurisdiction, and a roadmap for the future activation of that jurisdiction to commence after January 1, 2017.

Exemptions from the jurisdiction of the Court were included in the final package. These exemptions will prohibit the Court from exercising jurisdiction over the crime of aggression when committed by the nationals or on the territory of any non-state party. The same applies to certain states parties who wish to participate in the exemption.

Going forward, the Coalition will monitor the progress of state party ratification of the crime of aggression amendments and the ASP preparations for an eventual activation of the crime of aggression. The Coalition will also be joining with other organizations to oppose exemptions to the Court’s jurisdiction, as such exemptions may likely result in an impunity gap.

THE AMENDMENT ON WAR CRIMES

The Review Conference adopted by consensus amendments to article 8 of the Rome Statute. The amendments extend the criminalization of the use of certain weapons as a war crime to non-international conflicts. Briefly, the amendments make the use of use of poison, poisonous weapons and asphyxiating, poisonous or other gases, and all analogous liquids as well as bullets which expand or flatten easily in the human body in non-international conflicts a crime for the purposes of the Rome Statute. The use of these weapons had already been included as a crime within the Rome Statute in regards to international conflicts.

The jurisdiction of the Court will not extend to the nationals or territories of non-states parties nor to those of states parties that do not ratify the article 8 amendment package.

THE RETENTION OF ARTICLE 124

States parties agreed not to delete article 124 of the Rome Statute. It was decided that the article could be useful for the promotion of future ratifications of the Rome Statute, and that it is an option that ought to be available on principle to future ratifying states (as it was available to current states parties upon ratification). However, states parties agreed to review article 124 again in five years with a view towards its elimination.

STOCKTAKING

In 2009, after instrumental advocacy by the Coalition and other segments of civil society, the Assembly
of States Parties (ASP) decided that the Review Conference would include a dedicated segment devoted to the assessment of the impact and challenges encountered by the Rome Statute system during the first seven years of the Court’s operation.

In advance of Kampala, designated ASP focal points prepared the ground for the Review Conference discussions on the four areas of examination: complementarity; cooperation; the impact of the Rome Statute system on victims and affected communities; peace and justice. At the Review Conference, the high-level stocktaking panel discussions imparted a full account of the ways in which the fulfillment of States’ commitments and obligations under the Rome Statute could be further advanced.

COMPLEMENTARITY

The stocktaking segment on complementarity focused on complementarity’s critical importance to the ultimate success of the Rome Statute system. The principle of complementarity was designed to ensure that states would undertake the primary role in the enforcement of international criminal justice, while permitting the ICC to fulfill its function as a court of last resort. Under the principle of complementarity, states have the duty to take on the prosecution of all Rome Statute crimes that occur within their respective jurisdictions. In the event that a state fails to bring to trial the perpetrators of Rome Statute crimes, the Court can investigate and prosecute in order to prevent an instance of impunity.

The Review Conference discussions on stocktaking were based on the assumption that “positive complementarity”—enabling states to prosecute Rome Statute crimes—is essential in the campaign against impunity given the limited resources of the Court. Participants in the discussions emphasized ways in which states could facilitate the occurrence of positive complementarity: for example, by passing legislation criminalizing atrocity crimes, by committing resources towards the building of the necessary legal infrastructure, and by offering information and other forms of assistance, among themselves.

As a result of the discussions at the Review Conference, attention has shifted to monitoring implementation by states of the agreed-upon means by which complementarity (and thus the Rome Statute system) can be strengthened. In this regard, the Review Conference requested that the ASP Secretariat facilitate the efforts by states parties to promote positive complementarity and that it submit a report on its progress in this regard to the 10th session of the ASP in 2011. Additionally, states parties at Kampala invited the Court to present a report on complementarity to the 10th session of the ASP.

COOPERATION

Upon ratifying the Rome Statute, states undertake certain obligations to cooperate with the Court in furtherance of the Rome Statute system. As the Court lacks the wide variety of tools at the disposal of states, cooperation from states permits the Court to carry out essential functions. The stocktaking on cooperation at the Conference looked at how states, as well as international organizations, can use their respective powers to assist the Court.

The discussions reiterated that for such critical functions as securing the arrest of individuals subject to ICC arrest warrants, transferring these individuals to the Court, collecting evidence for trial, and
the enforcement of sentences, the Court is highly dependant on the power of states. Participants demonstrated that the efficiency and reliability of this assistance can be enhanced through implementing domestic ICC legislation, creating framework agreements between the ICC and individual states or international organizations, and also by engaging the resources of civil society within states.

Following the Conference, the Coalition plans to renew its push for the creation of a dedicated Working Group on Cooperation within the ASP. At its 6th ASP session in 2007, the ASP approved 66 recommendations of the Bureau on cooperation. Yet again in Kampala, states heard ways in which to strengthen the Rome Statute system through cooperation. It is critical to the work of the Court—currently and in the future—that an emphasis on state engagement and cooperation is sustained by the ASP and by civil society.

THE IMPACT OF THE ROME STATUTE SYSTEM ON VICTIMS AND AFFECTED COMMUNITIES

During the stocktaking segment of the Conference, the delegates were able to explore the critical issue of how the ICC has impacted victims and affected communities since the Court’s first investigation began six years ago.

It must be recalled that the goal of ensuring victim justice is one of the fundamental reasons behind the existence and continued promotion of the ICC, and the decision to locate the Review Conference in Uganda (with its close proximity to victims and affected communities) reinforced that this concept could influence the discussions taking place within the Conference.

During the stocktaking segment on victims and affected communities, Conference participants discussed victim participation in the ICC, the protection of witnesses, the role of outreach, and the Trust Fund for Victims. Proposals for improving interaction between the ICC and victims included promoting the role of field offices in ensuring victims’ protection and participation, contributing to the Trust Fund for Victims, and setting up a strong witness relocation program.

PEACE AND JUSTICE

A fundamental debate within the Rome Statute system revolves around the interaction between the pursuit of justice and the need for peace. At times, the public debate on this issue has included commentators that have suggested that the two concepts may be in opposition to one another and that the requirements of one may require the abandonment of the other. At the Conference, participating individuals and states in the stocktaking segment on peace and justice firmly rejected this contention. The Conference accepted the complementary nature of peace and justice and concluded that impunity is no longer an option for those who perpetrate the most serious crimes under the Rome Statute.

PLEDGES

Among other concrete achievements of the Conference, 110 pledges were made by 37 states and regional organizations, including commitments on the ratification of the Agreement on Privileges and Immunities of the Court, implementation legislation, cooperation with the ICC, contributions to the Trust Fund
for Victims, capacity building on national investigations and prosecutions, and on many other important issues. The pledges detailed the specific steps that each state would take in the timely fulfillment of their respective pledges. The Coalition will be monitoring the implementation of these commitments and reporting on their progress going forward.

In addition, the Review Conference adopted the Kampala Declaration¹, which reaffirmed states parties’ commitment to uphold and respect the integrity of the Rome Statute, as well as its universality and full implementation. The Kampala Declaration also announced that July 17th—the date that the states gathered at Rome in 1998 approved the Rome Statute—will be henceforth be celebrated as the Day of International Criminal Justice.

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I. FROM ROME TO KAMPALA: PREPARING FOR THE REVIEW CONFERENCE

1998: THE ROME CONFERENCE

In 1998, upon the conclusion of five weeks of intense deliberations in Rome, 120 states voted to adopt the Rome Statute of the International Criminal Court (ICC). Over the course of the Rome Conference, it had become clear that states would not reach a consensus on a number of issues. However, in order to advance the negotiations and prevent disagreements from negatively affecting the adoption of the treaty creating the ICC, many contentious issues were left to be addressed at a later stage. Resolutions E and F of the Final Act of the Rome Conference recommended the further consideration of certain crimes (specifically the preparation of relevant provisions on the crime of aggression) at a Review Conference. Article 123 of the Rome Statute stipulated that seven years after the Statute entered into force, the Secretary-General of the UN shall convene a Review Conference to consider any amendments to the Statute.

2006-2010: PREPARING FOR THE REVIEW CONFERENCE

INITIAL DISCUSSIONS AND PREPARATORY WORK OF THE ASSEMBLY

The Secretariat of the Assembly of States Parties (ASP) had the task of organizing the first Review Conference. The ASP consists of representatives of each state party to the Rome Statute and is led by the Bureau (which is chaired by its current elected President, H.E. Mr Christian Wenaweser, Ambassador from Liechtenstein). The President of the ASP, H.E. Mr. Wenaweser, therefore served as Chair of the Review Conference. The Bureau established two Working Groups to support its intersessional activity—one in The Hague (The Hague Working Group, HGW) and one in New York (the New York Working Group, NYWG). The ASP also appointed facilitators and focal points to help prepare for the Review Conference.

In advance of the 5th session of the ASP in 2006, the Coalition recommended that the ASP begin preparations for the Review Conference, in order to ensure that procedures, structures, and an adequate budget would be available in time. To this effect, Mr. Rolf Fife (Norway), at the time the ASP Focal Point of the Review Conference, submitted a report exploring the nature and purposes of the Conference and presented options for the consideration of the ASP. In turn, the ASP called upon the Bureau to start preparations for the Review Conference by focusing on procedural issues as well as practical and organizational issues (such as dates and venue).
At the 6th session of the ASP in 2007, a number of key discussions took place, and decisions were made concerning the duration, timing, scope, and venue of the Conference, as well as rules of procedure. The Coalition advised and recommended that in addition to amendment issues, the Conference should also serve as an opportunity for stocktaking, benchmarking, and evaluation of the system of international criminal justice that was established by the Rome Statute. The ASP subsequently agreed to the recommendation, and plans proceeded to include stocktaking as part of the Review Conference planning.

During discussions held at the 7th session of the ASP in 2008, the Coalition pushed for the goal of a productive and successful Review Conference and thus urged that the agenda and scope of the Conference be agreed upon quickly, so that governments and NGOs prepare adequately in advance. The Coalition further noted that the outcome of the Review Conference would influence the international justice system and requested that the stocktaking exercise address key matters (including state cooperation with the ICC, complementarity and the impunity gap, and the impact of international justice on affected communities and peace processes). Several delegations underscored the importance of civil society engagement at the Review Conference and in the larger process.

Following the 7th session of the ASP, the Bureau appointed Mr. Marcelo Bohlke (Brazil) and Ms. Angela Nworgu (Nigeria)—later replaced by Ms. Stella Orina (Kenya)—as co-facilitators to hold consultations and prepare the ASP’s substantive work on the Review Conference in advance of its 8th session. Accordingly, the Bureau NYWG held important consultations on Review Conference issues throughout 2009. These included the different proposals for amendments, as well as the focus and modalities of the proposed stocktaking exercise.

AMENDMENT PROPOSALS

At the 6th ASP session in 2007, states parties agreed that proposals for amendments to be considered at the Review Conference were to be discussed at the 8th session of the ASP in 2009, with a view to promoting consensus and a well-prepared assembly of delegates.

Although the Coalition did not take an official position regarding the specific different proposals for amendments, the Coalition advised on the need to ensure the success of the Review Conference, the importance of protecting the integrity of the Rome Statute, and the need for enhancing international understanding of and support for the ICC. Accordingly, the Coalition considered the Review Conference as an opportunity to discuss and work towards the adoption of broadly-supported amendments to the Statute.

At its 8th session in November 2009, the ASP decided to consider only the proposals for amendments concerning the revision of article 124 of the Statute, the adoption of provisions for the crime of aggression, and the first of the proposals put forward by Belgium to extend the jurisdiction of the Court to cover the use of certain weapons in the context of armed conflicts not of an international character.

In addition, discussions were held regarding a number of other proposals, most of which had been con-
The Coalition recalled the need to ensure that the Review Conference would be successful, protect the integrity of the Rome Statute, and enhance international understanding of and support for the ICC.

Considered throughout the year by the NYWG. Such proposals included:

- Proposals tabled by Belgium regarding the classification as war crimes of the use of biological weapons, chemical weapons, and anti-personnel mines in international conflicts and conflicts of a non-international character; adding restrictions on the use of excessively injurious or indiscriminate weaponry in international conflicts and those of a non-international character.
- A proposal put forward by Mexico regarding the inclusion of the use of and the threat to use nuclear weapons in the definition of war crimes.
- A proposal offered by the Netherlands regarding the inclusion of the crime of terrorism in article 5 of the Statute.
- A proposal submitted by Belize and Trinidad and Tobago on the inclusion of the crime of international drug trafficking in article 5 of the Statute.
- A proposal put forward by South Africa on behalf of all the African states parties regarding article 16 of the Statute, aiming to extend the power to defer cases and situations before the ICC to the UN General Assembly.

Although none of the above proposals gathered sufficient support for their consideration at the Review Conference, the ASP agreed to create a Working Group on Amendments to serve as a mechanism to continue discussions on all of the submitted proposals and on any other future proposals starting at the next session of the ASP in December 2010.

STOCKTAKING

Throughout the preparatory process for the Review Conference, a number of states, international organizations, the Coalition, and other members of civil society noted the importance of ensuring that the Review Conference would not solely focus on amendments but would also include a platform for stocktaking. Accordingly, the Coalition welcomed the ASP’s recognition at its 6th session in 2007, that the Conference would be a platform by which to take stock of the current state and impact of the international criminal justice system and in particular the Rome Statute system.

Discussions during the preparatory process focused on two aspects of the stocktaking exercise: (1) the need to identify topics that would become the basis of the stocktaking exercise, and (2) the modalities of the exercise, including the format of the discussions and possible outcomes.
During the consultations within the NYWG, the Coalition put forward a paper detailing the modalities in which the four topics proposed by the Coalition would be discussed at the Review Conference. Accordingly, and consistent with the Coalition's position at past ASP sessions, the Coalition suggested that the stocktaking exercise include discussions on the following issues:

- Impact of justice on affected communities;
- State cooperation with the ICC;
- Complementarity and the impunity gap;
- Impact of international justice on peace processes and peacebuilding.

In general, states expressed their desire to limit the number of issues to be discussed as part of the stocktaking exercise in light of the limited time available and the need for result-oriented discussions at the Review Conference. Discussions concluded with the ASP deciding to forward the four topics as suggested by the Coalition for discussion at the Review Conference.

The Coalition also advised that efforts be made to ensure that stocktaking was not secondary to amendments but an equally important component of the Review Conference. As a result, many delegations stressed the importance of the stocktaking exercise and noted that it should be treated as an integral part of the Review Conference.

During the 8th session of the ASP in 2009, the Coalition continued to stress that the success of stocktaking would depend on the preparations made prior to the Review Conference at ASP meetings and inter-sessionally. The Coalition urged the ASP to establish a follow-up structure mandated to deal with issues concerning the Conference that might arise between the ASP’s session in November 2009 and the Review Conference in May 2010.

The ASP decided to mandate the Bureau to continue the preparations for the stocktaking segment with a view on preparing the format of the discussions, preliminary background materials, and proposals for outcomes of each of the identified topics.

As a result of this decision, the Bureau appointed the following countries as focal points for the respective topics:

- Complementarity: Denmark and South Africa
- Cooperation: Costa Rica and Ireland
- The impact of the Rome Statute system on victims and affected communities: Chile and Finland
- Peace and Justice: Argentina, the Democratic Republic of the Congo and Switzerland

The focal points addressed the modalities of the stocktaking discussions including the format of the discussions and possible achievable objectives.
DISCUSSIONS ON THE VENUE OF THE REVIEW CONFERENCE

At its 6th session in 2007, the ASP requested the Bureau to hold consultations on the venue for the Review Conference. The government of Uganda submitted a bid to host the Conference in its capital, Kampala. The ASP also took note of Argentina’s offer to host the Review Conference as a possible alternative to Kampala, should Uganda’s bid not be accepted. Delegations expressed appreciation for Uganda’s offer to host the Review Conference, and some delegations felt that having the Review Conference in Africa would bring the Court closer to the region where it currently carries out investigations. Other delegations, however, expressed some concern regarding the implications for hosting the Conference where investigations that could involve government officials are being conducted, where there are outstanding arrest warrants, and where there is an ongoing peace process. At the 7th session of the ASP in 2007, a decision was made to hold the Review Conference in Kampala, Uganda, as long as it did not “constitute an unanticipated risk for the essential interests of the Court, its operations or the success of the Review Conference.”

The decision also stressed the need for civil society participation in the Conference and officially requested that the Ugandan government consult with the Coalition on arrangements and preconditions for full access and participation by civil society, including victims’ organizations. The Coalition proceeded to serve as the facilitator and convener of civil society, providing coordination, support, and advice on a range of practical and larger issues at the Conference. Ultimately, civil society, under the leadership of the Coalition, was the largest delegation at the Review Conference, numbering over 600 NGO participants.

2010: OVERVIEW OF THE KAMPALA CONFERENCE

On 31 May 2010, the President of the ASP, Ambassador Christian Wenaweser, opened the Review Conference. His remarks were followed by a high-level general debate in which UN Secretary-General Mr. Ban Ki-moon, President of the ICC Mr. Judge Sang-Hyun Song, ICC Chief Prosecutor Mr. Luis Moreno-Ocampo, and former UN Secretary-General Mr. Kofi Annan, all made statements. The debate continued during the morning and afternoon sessions and through the next day, with statements made by states parties, observer states, entities, international organizations, and NGOs.

During the following two days of the Review Conference, state delegates, officials from international organizations, the ICC and other international tribunals, NGOs, and other high-level experts participated in the four stocktaking exercises. A panel on the impact of the Rome Statute system on victims and affected communities and a panel on peace and justice were held on Wednesday 2 June. The panels on
cooperation and on complementarity were held on Thursday 3 June.

On Friday 4 June, state delegates and observers started their discussions on the proposed amendments to the Rome Statute. These discussions would continue throughout the second week of the Conference. Except for brief interruptions to consider the amendment proposals for article 8 and article 124, the week of Monday 7 June to Friday 11 June was marked by the discussion on the crime of aggression.

Over sixty events in the margins of the plenary sessions were organized by civil society. A detailed overview of these events is given in the last chapter of this report.

**RELEVANT DOCUMENTS**

- Detailed day-by-day informal summary of the Review Conference plenary sessions and civil society events:
- Coalition Report on the Fifth Session of the ASP:
  [http://www.iccnow.org/documents/Coalition5ASP_Resumed_Session.27Mar07.pdf](http://www.iccnow.org/documents/Coalition5ASP_Resumed_Session.27Mar07.pdf)
- Coalition Report on the Sixth Session of the ASP:
- Coalition Report on the Seventh Session of the ASP:
- Coalition Report on the Eighth Session of the ASP:
II. AMENDMENTS TO THE ROME STATUTE

IN KAMPALA, THE STATES PARTIES discussed and eventually achieved consensus regarding three amendment proposals to the Rome Statute. Firstly, states parties extended the use of certain weapons as war crimes in non-international conflicts. Secondly, states parties agreed not to delete article 124 but to review it in five years. Article 124 allows a state upon ratification of the Rome Statute to exempt their nationals from the jurisdiction of the Court over war crimes for a seven year period. Thirdly, States parties adopted amending provisions for the crime of aggression.

The definition agreed upon for the crime of aggression criminalizes the use of armed force by one state against another carried out in contravention of the UN Charter. Individuals responsible for such unlawful acts of war may be prosecuted before the Court subject to the fulfillment of certain jurisdictional criteria. Following long negotiations, states parties adopted provisions governing the Court’s ability to investigate and prosecute individuals for the crime of aggression.

The states parties agreed upon a jurisdictional regime for the crime of aggression that provides separate procedures depending on whether the situation was referred by the UN Security Council or whether it came before the Court through a state referral or upon the ICC Prosecutor’s initiative. Notably, the Review Conference determined that the Court will not be able to exercise jurisdiction until 30 states have ratified the new crime of aggression amendments. In addition to the 30 minimum ratifications, states parties will have to make a positive decision to activate the Court’s jurisdiction after 1 January 2017.

A) The Crime of Aggression

On 11 June 2010, states parties at the Review Conference adopted amendments by consensus containing a definition and the parameters of the Court’s jurisdiction over the crime of aggression. This task was carried over from the Rome Conference twelve years earlier, during which the delegations could not reach an agreement on the issue. At that time, states agreed to include aggression as one of the core crimes under the ICC’s jurisdiction listed under article 5, however decided to postpone the Court’s exercise of jurisdiction over this crime until provisions on its definition and jurisdictional criteria were adopted at a later date. As a result, the Preparatory Commission was charged with creating draft proposals for a definition, elements of the crime, and the conditions under which the Court would be able
to exercise its jurisdiction. In order to build on the progress made by the Preparatory Commission, the ASP created a Special Working Group on the crime of aggression (SWGCA) in 2002. The SWGCA was open to states parties and non-states parties on equal footing and allowed input from civil society. The negotiations that occurred within the SWGCA served as the basis for the decisions that ultimately took place in Kampala.

OVERVIEW OF THE PREPARATORY PROCESS

The SWGCA operated on the principle that “nothing is agreed until everything is agreed.” This meant that states parties had to adopt all amendments as a package, and that nothing discussed prior to adoption was set in stone. Still, there were a number of points on which the states parties had already reached consensus prior to arriving in Kampala. For example, previous negotiations had already led to preliminary agreements on the definitions of the individual’s conduct and of a state act of aggression, on the use of all three existing trigger mechanisms incorporated within article 13, on draft elements of the crime, and on the fact that no outside determinations concerning acts of aggression could prejudice the Court’s ultimate decision. Thus, the SWGCA meetings had a decisive impact on the development and outcome of the crime of aggression provisions.

The Special Working Group on Crime of Aggression agreed that the provisions on aggression would not have retroactive effect and that their inclusion should involve as few modifications to the text of the Rome Statute as possible. Once the provisions on the crime of aggression were adopted, article 5(2), which postponed the exercise of jurisdiction, would be deleted. The parties also discussed the applicability of the Statute’s many criminal law provisions. It was decided that articles 28, 30, 31, 32 and 33, respectively, concerning responsibility of commanders, the required mental elements, the grounds for excluding criminal responsibility, mistake of fact or law, and superior orders and prescription of law, should all apply. This was done with the goal of keeping the rules with regard to the crime of aggression in line as much as possible with those for the other Rome Statute crimes.

The parties also began to explore the scope of the crime’s applicability, focusing specifically on forms of individual responsibility under article 25 paragraph 3. However, progress was not made on this issue until the Princeton meeting of June 2005, where states discussed the insertion of paragraph 3 bis.

Later, states moved on to consider further the definition of the crime, while paying particular attention to those words which would best illustrate the crime’s scope. For example, states agreed that the definition of the crime of aggression should only pertain to those individuals in a position to “exercise control over or to direct the political or military action” of the State. These words indicate that only a person in a leadership position would be accountable. Lastly, there was much debate over whether a threshold clause was needed to qualify the “character, gravity, and scale” of the violation so that only the most
serious cases were brought before the Court. Some felt that this was unnecessary, but it was ultimately agreed that the word “manifest” should be included to describe a violation.

Regarding the definition of an act of aggression, states debated whether it should be defined in a generic manner or a specific manner with an illustrative list. A mixture was chosen based on the definition in General Assembly Resolution 3314 (XXIX), with a generic definition in the first sentence, followed by a specific, non-exhaustive list of possible acts of aggression in the second.

The later SWGCA meetings were dedicated to the Court’s jurisdiction over the crime and to the Draft Elements of the Crime. The Elements are intended to guide the judges in applying the definition of the crime. Thus, it made sense for the Elements to be adopted along with the other aggression amendments at the Review Conference, including the amendment to article 9 of the Rome Statute, which refers to the Elements of Crimes. With this goal in mind, the states parties drafted a final list of elements along with an introduction to be forwarded to the Review Conference for acceptance.

The conditions for triggering the Court’s jurisdiction over the crime of aggression were a contentious issue in the preparatory meetings for Kampala. Some states, led by the permanent five of the UN Security Council, argued that the Security Council should have the sole power to refer a situation that potentially involves the crime of aggression to the ICC for investigation. Within this option, there was further division on whether the Security Council could refer a situation without first making a determination on whether an act of aggression had occurred. The supporters of the solitary Security Council trigger mechanism pointed to the powers given to that body to determine acts of aggression under Chapter VII of the UN Charter.

The majority of states were concerned about limiting the referral mechanism for the crime of aggression to only the Security Council, arguing that this would risk politicizing ICC investigations on aggression. Furthermore, the possibility of Security Council paralysis might result in a crime of aggression going unpunished and the strengthening of impunity. Lastly, a dual system of accountability would arguably be created as the nationals of the permanent members of the Security Council would, protected by their governments’ veto power, be exempt from ICC jurisdiction over the crime of aggression.

Various efforts at achieving a compromise between these two main camps occurred in the lead-up to the Review Conference. One suggestion, called the “green-light” provision, required the Security Council to give the Prosecutor permission to proceed with an investigation, but eliminated the need for an actual determination that an act of aggression had occurred. A second option, called the “red-light” provision, gave the Security Council the ability to permanently stop an investigation where it disagreed with the Prosecutor. A third option was to create a time period, after which the Prosecutor could move on with an investigation in the absence of a determination by the Security Council. A variation of this last option included the possibility of requiring the Prosecutor to then seek further authorization from another body—such as the UN General Assembly, the ICJ or one of the Court’s Pre-Trial Chambers.
Another subject of debate concerned the question of whether to follow the amendment procedure in article 121(4) or the one in article 121(5) of the Rome Statute for the crime of aggression. If the states parties chose to use article 121(4), then no state party would be bound until seven-eighths of the states parties had ratified the amendment, whereupon all states parties would be bound. If they chose to utilize article 121(5), then the amendment would be applicable only to those who ratified it. A third option involved using some variation of one of these paragraphs or a combination of elements from both of them—although concerns were raised regarding the legality of this process.

Interrelated with the issue of whether the amendments for the crime of aggression would enter into force pursuant to paragraph 4 or 5 of article 121 was the issue of consent to jurisdiction by the State. At a roll-call during the resumed 8th session of the ASP in March 2010, many delegations expressed the view that the State’s acceptance of jurisdiction over the crime of aggression should not be sufficient for the Prosecutor to initiate an investigation, instead insisting on the requirement that the aggressor State has (in one way or another) accepted the ICC’s jurisdiction over this crime. However a small majority of States indicated that the victim State’s acceptance of ICC jurisdiction over the crime was sufficient.

The question of the applicable amendment rules, filter mechanisms for the exercise of jurisdiction as well as the discussions over the consent to jurisdiction by the aggressor state persisted as the main challenges to a potential consensus in Kampala.

**INITIAL MEETINGS OF THE WORKING GROUP ON THE CRIME OF AGGRESSION AT THE REVIEW CONFERENCE**

On 7 and 8 June 2010, states parties and observer States formed the Review Conference’s Working Group on the Crime of Aggression to discuss potential amendments to the Rome Statute regarding the crime of aggression.

Credit: CICC/Harrison Davis

The Review Conference’s Working Group on the Crime of Aggression (WGCA) convened informally during the Review Conference on 1, 4, 7, 8 and 9 June under the Chair of H.R.H. Prince Zeid Ra’ad Zeid Al-Hussein of Jordan. 57 states parties made statements during the meetings of the working group, which were open to civil society.

During such statements, almost all delegations emphasized the importance of reaching an outcome based on consensus. Delegations at the Review Conference were mindful that, in accordance with articles 121(3) and 123, the affirmative vote of two-thirds of states parties (74 of 111) would be required for adoption of amendments if consensus could not be reached. An awareness of this, together with issues relating to states parties’ attendance at the Conference, credentials, voting rights and voting instructions reinforced the perception that adoption by consensus was the only viable means by which adoption of an amendment was possible.

Coalition members were actively involved in the discussion on the crime of aggression both during the working group and informally. Several NGOs addressed the WGCA (Human Rights Watch, Amnesty Interna-
tional, Union Internationale Des Avocats and International Commission of Jurists), expressing various concerns and expectations for the outcome. The Coalition did not take a position on the adoption of amendments on this issue, instead focusing on outlining key guiding principles for the discussions. The Coalition coordinated regular strategy sessions in which civil society groups shared information and were kept abreast of developments, creating a platform from which individual members could engage in advocacy.

The Coalition coordinated regular strategy sessions in which civil society groups shared information and were kept abreast of developments, creating a platform from which individual members could engage in advocacy.

The discussions initially focused on a non-paper by the Chair from 25 May, which highlighted timing of entry into force, a possible review clause, and domestic jurisdiction over the crime of aggression as three areas for discussion as set out in the Conference Room Paper of the same date. During these sessions, a large number of states made general statements conveying the readiness of delegations to be flexible in reaching a compromise outcome.

In the second session on 5 June, delegates responded to an updated 5 June Conference Room Paper, which removed Option 2 (the so-called “green light”) from within Alternative 1, meaning that in the absence of a Security Council determination of aggression, no investigation could proceed under this alternative. Within Alternative 2, the paper removed the options for authorisation from the UN General Assembly and the International Court of Justice, as well as the possibility of no additional filter (contained in Options 1, 3 and 4). This left the Pre-Trial Chamber as the only remaining additional filter in Alternative 2.

Reflecting concerns raised regarding the jurisdiction arising from the different trigger mechanisms as set out in article 13 in the first week, the 7 June Conference Room Paper separated (the more controversial) state referrals and proprio motu investigations in article 15 bis from (the less contentious) Security Council referrals in article 15 ter—a separation which was maintained in the adopted amendments.

**THE ARGENTINEAN-BRAZILIAN-SWISS (ABS) PROPOSAL**

On 7 June, after a period of informal consultations, the delegations of Argentina, Brazil and Switzerland presented a proposal which they had developed as a framework for compromise to the WGCA. The proposal centered around the idea of separating the entry into force procedures for the different referral mechanisms by having Security Council referrals (under article 13(b)) enter into force after [x] number

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7 See Non-Paper submitted by Argentina, Brazil, Switzerland as of 6 June 2010.
of ratifications under article 121(5), and having state referrals and proprio motu investigations (under article 13(a) and (c)) enter into force for all states after seven-eighths of the states parties had ratified the amendments pursuant to article 121(4).

This proposal was well received, particularly by Latin American and African states. Japan, however, expressed concerns about the legality of using both paragraphs 4 and 5 of article 121 with Belgium, Canada, Chile, Colombia, Finland, France, Germany, Italy, Norway, Samoa and Spain also raising similar concerns.

THE CANADIAN PROPOSAL AND OTHERS

On 8 June, Canada introduced an alternative paper to the WGCA outlining a menu-based approach to article 15 bis. Under the proposal, the Prosecutor would only be able to proceed with an investigation based on a state referral or the proprio motu prerogative, after a Pre-trial chamber authorization of the investigation, and only where the implicated states had previously declared their acceptance of the Court’s jurisdiction in this regard. This opt-in approach received support from Australia, the Czech Republic, Finland, Italy, New Zealand, the Netherlands and Spain—while the UK and many Latin American states commented less favorably on the reciprocal consent-based regime upon which it was based.

This proposal was developed further by a Slovenian proposal on 9 June that contained two distinguishing features. Firstly, in the situation where not all states had accepted the additional Pre-trial chamber filter with respect to referrals under article 13(a) and (c), the Prosecutor could nevertheless readdress a Security Council referral under article 13(b) with the UN Secretary-General. Secondly, the proposal stipulated that at a time after which seven-eighths of states parties had accepted this Pre-trial chamber filter, then a Review Conference should be convened to consider the possibility of extending the expanded jurisdiction to all states parties.

During the final meeting of the WGCA on 9 June, Canada and Brazil presented a compromise declaration that added a five-year delay to the entry into force of the proposed article 15 bis. During the final meeting of the WGCA on the evening of 9 June, Canada and Brazil presented a compromise declaration that added a five-year delay to the entry into force of the proposed article 15 bis. This text also proposed a restricted opt-out regime for states parties with respect to this article (covering state referrals and proprio motu investigations), whereby declarations to the UN Secretary General would need to be made prior to 31 December 2015. Finally, the text contained an article excluding jurisdiction over non-states parties with respect to these two jurisdictional triggers. While contentious, it appeared that agreement had been reached amongst delegations on the exclusion of non-states parties under article 15 bis, but not article 15 ter.

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8 See Proposal by Canada 8 June 2010 9:30.
9 See Non-Paper by Slovenia 8 June 20:10.
10 See Declaration of 9 June 2010 16:00.
INFORMAL DISCUSSIONS AND DEVELOPMENTS UNDER THE PRESIDENT’S LEADERSHIP

The pace of informal discussions increased during the second week. These informal meetings primarily involved state delegations. Meetings took place on a bilateral level and also with the WGCA Chair and the President of the Review Conference. Additionally, delegations held meetings in various groupings, the most notable of which were the group of African states, the Non-Aligned Movement, Latin American states, the five permanent members of the UN Security Council and an informal grouping of like-minded States including Australia, Canada, Germany, the Netherlands and other European states.

On the morning of 10 June, the discussions entered a new phase with the Review Conference President presenting his first non-paper. Under article 15 bis, this non-paper provided for an opt-out regime for jurisdiction resulting from referrals, whereby a declaration of non-acceptance could be lodged with the ICC Registrar. Additionally, it explicitly excluded ICC jurisdiction over “acts of aggression committed by a non-state party” and maintained both Alternative 1 (determination by the Security Council) and Alternative 2 (investigations after Pre-Trial Chamber authorization). Within article 15 ter, the non-paper notably bracketed, and foreshadowed the removal of, the requirement of a Security Council determination, purporting to facilitate a simplified regime for Security Council referrals under article 13(b).

After a full day of consultations, the President released a further non-paper at 11pm containing numerous changes. For the first time during the Conference, this draft resolution relied upon the adoptions being made under article 5(2) of the Statute. Changes to article 15 bis included a five-year delay and the requirement of 30 ratifications by states parties as a precondition for the Court’s ability to exercise its jurisdiction—this last requirement is a feature of the final amendments resolution.

The opt-out regime was maintained with the added requirement that the withdrawal of such a declaration be “considered by the state party within three years.” Regarding the non-state party exemption, the text also reverted back to language covering the crime of aggression (as opposed to acts of aggression). A bracketed “green light” was added to Alternative 1 and a bracketed “red light” was added as a condition to Alternative 2 in addition to the requirement of authorization by the Court’s Pre-Trial Division (as opposed to a

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11 See Non-Paper by the President of the Assembly, 10 June 2010 12:00.
12 See Non-Paper by the President of the Assembly, 10 June 2010 23:00.

Former Nuremberg Prosecutor Benjamin B. Ferencz gives one of the keynote speeches at a roundtable discussion on the crime of aggression entitled “Respecting existing norms of Public International Law—Protecting the Integrity of the Rome Statute” on 5 June 2010 organized by Coalition Steering Committee member Parliamentarians for Global Action (PGA). Pictured are Roundtable Chair David Donat Cattin (Director of PGA’s International Law and Human Rights Program) and participants Deborah Ruiz Verduzco (Senior Programme Officer at PGA’s International Law and Human Rights Program), Osvaldo Zavala-Giler (Coalition Head of Legal Section) and Professor Roger S. Clark (Samoa representative).

Credit: CICC/ Harrison Davis
Pre-Trial Chamber). Article 15 ter maintained the same preconditions for the exercise of jurisdiction (a five year delay plus 30 ratifications).

On the final day of the Conference, it was still unclear whether an agreement could be reached on the outstanding issues. A brief non-paper at 2pm was significant as it was the first draft which omitted Alternative 1—the exclusive UN Security Council filter—from article 15 bis. In a further development from the day before, it provided that the Court would not be able to exercise its jurisdiction until states parties made a decision to activate the Court’s jurisdiction no sooner than 2017. Alternatively, a jurisdictional regime covering Security Council referrals would enter into force unless states parties decided otherwise. The choice and implications of the words “unless” and “until” remained a point of contention in the informal negotiations until the last minute. A final change in this text proposed a seven-year expiration date on opt-out declarations under article 15 bis.

Delegates were given a further non-paper by the President, who indicated that he was ‘strongly encouraged” by the concessions being made and about the possibility of reaching a “consensual outcome on the crime of aggression.”

In the afternoon, at 4:30 pm, delegates were given a further non-paper by the President, who indicated that he was “strongly encouraged” by the concessions being made and about the possibility of reaching a “consensual outcome on the crime of aggression.” He indicated that delegations should focus their attention on paragraphs 3 within both articles 15 bis and 15 ter—in the articles of the draft resolution these paragraphs only contained the words “insert provision on delayed entry into force.”

Informal consultations continued well past the scheduled 8:30 pm resumption of the meeting, with several consultations of an informal grouping of the Non-Aligned Movement and Latin American and African states taking place. However, the Review Conference met in a plenary session at 11pm, and the Report of the Drafting Committee was adopted. Nonetheless, the President explained that final agreement remained elusive on paragraph 3 in either article regarding the delayed entry into force.

At 12:15am the Plenary was re-convened for the final time to adopt a resolution based on identical paragraphs in article 15 bis and 15 ter outlining that the Court would be able to exercise its jurisdiction only following a decision to activate jurisdiction sometime “after 1 January 2017 by the same majority of states parties as is required for the adoption of an amendment to the Statute.”

Despite doubts raised by the Japanese delegation on the legal integrity of the proposed aggression resolution before its adoption, the resolution was adopted by consensus at 1:15 am. After the adoption, Norway,

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13 See Untitled Non-Paper of 11 June 2010 14:00.
14 See Non-Paper by the President of the Review Conference 11 June 2010 16:30.
Japan, France, the UK, Brazil, Sierra Leone, and the Gambia all took the floor to address various issues such as the implications that the expanded jurisdiction would have on the Court’s budget, the role of the Security Council under the UN Charter, and the expectation that a decision would be made activating the Court’s jurisdiction at the first ASP session after 1 January 2017. non-states parties, including China, Iran, Cuba, the US, Russia, Egypt, and Israel, also addressed similar issues. Representatives of Amnesty International and Union Internationale des Avocats made brief floor statements on the outcome.

**UNDERSTANDINGS**

A set of understandings were passed as part of the resolution adopting the amendments on the crime of aggression at Kampala. These understandings are designed to serve as a non-binding aid to judges in their interpretation of the crime, and in this respect, to evidence the intention of the crime's drafters.

The Chair of the WGCA introduced “Understanding regarding the amendments on the crime of aggression” in Annex III of his 25 May Conference Room Paper.\(^\text{15}\) Paragraphs 1 and 2 of this document asserted that the Security Council would be able to refer any state to the Court irrespective of its acceptance of jurisdiction. It left open however, the issue of whether referrals would be possible from the time of adoption, or from entry into force. These understandings are designed to serve as a non-binding aid to judges in their interpretation of the crime.

Likewise, the language in paragraphs 3 and 4 of the 25 May Conference Room Paper, dealing with jurisdiction ratione temporis, has been condensed into paragraph 3 of the final understandings. The final version contains language reflecting the preconditions for the exercise of jurisdiction decided upon, with the only notable change being the loss of the references to articles 11 and 12(3) of the Statute.

Significantly, the issues raised by paragraphs 5 and 6 of the 25 May draft, dealing with the positive and negative understandings of article 121(5) and victim and aggressor state consent, were expressly addressed in the main provisions of articles 15 bis and ter and consequently are absent in the adopted version of the understandings.

The understandings relating to domestic jurisdiction over the crime of aggression contained in paragraphs 4 and 5 of the adopted Annex III were first introduced in the Chair’s 25 May Non-Paper.\(^\text{16}\) This was one of five understandings subsequently raised by the US delegation in the WGCA at Kampala. In broad terms, the other four understandings proposed by the US related to: a qualification on the requirements needed for a determination on an act of aggression, humanitarian interventions, authorization under the UN Charter, and the “manifest” requirement contained within article 8 bis.

\(^{15}\) The crime of aggression — RC/Res.6. Available at http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf.

\(^{16}\) See Non-Paper by the Chair 25 May 2010.
Having been raised by the US delegation, these five understandings were subject to informal discussions running parallel to the negotiations on the content of the crime of aggression throughout the Review Conference. This process consisted of discussion within the WGCA and informal consultations facilitated by the German focal point on the issue. A final informal negotiation was also open to civil society and took place on 10 June.

After these negotiations, three US-based understandings were incorporated into the final text of Annex III. Of these, the explanation of “manifest” (contained in paragraph 7) was the least controversial and was adopted in a format relatively unchanged from the initial US proposal. In contrast, the final text of the understandings on domestic jurisdiction (paragraphs 4 and 5) and determinations on acts of aggression (paragraph 6), reflect language negotiated informally between delegations.

**THE CRIME OF AGGRESSION AMENDMENTS**

Adopted by consensus, the amendments on the crime of aggression reflect the delicate compromise negotiated among states and thus include an element of complexity.

Adopted by consensus, the amendments on the crime of aggression reflect a delicate compromise negotiated among states and thus include an element of complexity. Therefore, this section is designed to explain the new regime, with a particular focus on the preconditions for the activation of the Court’s jurisdiction (this was taken out from the—now three—areas below).

In this regard, the resolution containing the amendments on the crime of aggression could be explained from three perspective areas:

1. The definition and the elements of the crime;
2. The regime for the Court’s exercise of jurisdiction as divided between article 15 bis and article 15 ter; and
3. The pre-conditions for the Court’s activation of jurisdiction

**1. DEFINITION AND ELEMENTS OF THE CRIME**

While the definition contained in article 8 bis has given rise to several concerns amongst states and academics, it reflects a compromise settled during the Princeton process and is relatively uncontroversial. Fundamentally, the definition criminalizes the conduct of individual leaders who plan or initiate an act of aggression. An act of aggression is defined as the use of armed force of one state against the territorial sovereignty of another. There is a non-exhaustive list within the definition that contains examples of acts of aggression. The elements of the crime will operate to clarify some of the language used in the definition and were also relatively uncontroversial.

**2. EXERCISE OF JURISDICTION**

Article 15 bis and article 15 ter are two new articles in the Statute which set out the conditions under...
which the Court will have jurisdiction over situations involving crimes of aggression. This is noteworthy as it creates a parallel regime for the crime of aggression which is distinct from the common regime covering the other three crimes. Like article 13, in practice these articles determine the conditions that must be met to trigger an ICC investigation.

STATE REFERRALS AND PROPRIO MOTU POWERS

Article 15 bis establishes a regime for the exercise of jurisdiction covering state referrals and the Prosecutor’s proprio motu investigations. The Court will have jurisdiction over situations arising from these two trigger mechanisms under the following conditions:

(i) where the crime of aggression arises from acts of aggression between states parties to the Rome Statute, unless the state party committing the act of aggression has previously lodged an opt-out declaration with the Registrar of the Court (under article 15 bis (4));
(ii) where the Prosecutor considers there to be a reasonable basis to proceed with an investigation and has ascertained whether the Security Council has made a determination of an act of aggression and notified the UN Secretary General of the situation before the Court; and
(iii) where no such determination is made by the Security Council after six months, and the Pre-Trial Division of the Court authorizes the investigation.

It is noteworthy that article 15 bis explicitly excludes the Court’s jurisdiction with respect to a non-state party over crimes of aggression when committed by that state’s nationals or on its territory. A number of NGOs have strongly opposed this provision, which creates a unique jurisdictional regime for aggression distinct to that of article 12.

UN SECURITY COUNCIL REFERRALS

Article 15 ter covers the exercise of jurisdiction resulting from Security Council referrals. It provides that this regime will operate in a manner unchanged from that set out in article 13(b) of the Statute. That is, a referral of a ‘situation’ by the Security Council (as occurred in the situation in Darfur, Sudan in March 2005) will grant
the Prosecutor authority to investigate any crimes—including any potential crime of aggression—committed in the relevant territory and by any state's national—i.e. it will cover nationals of relevant states parties and non-states parties equally.

3. PRE-CONDITIONS FOR THE EXERCISE OF JURISDICTION

Paragraphs 2 and 3 are identical in both article 15 bis and article 15 ter. They provide that the Court may exercise its jurisdiction over the crime of aggression only after the following two pre-conditions have been met (whichever happens later):

(i) at least one year after the 30th state party ratifies the amendments; and
(ii) after a decision to activate the jurisdictional regime is made after 1 January 2017 by the same majority of states parties required for amending the Statute (consensus or a two-thirds majority of all states parties).

This means that the earliest the Court could exercise its jurisdiction over the crime of aggression would be 2 January 2017, if a decision was passed at an ASP (or Review Conference) on that day and provided that the 30th state party had ratified the amendments on or before 1 January 2016.
B) Article 124 of the Rome Statute

BACKGROUND

According to article 124, a state, on becoming a state party to the Rome Statute, may declare that for a period of seven years after ratification, it does not accept the Court’s jurisdiction with regard to war crimes allegedly committed by that state’s nationals or on its territory. Such a declaration may be withdrawn at any time.

In Rome, article 124 was designed as a transitional provision in order to facilitate ratification. But, as provided by the article itself, states parties were mandated to review article 124 at the Review Conference. In preparation for the Review Conference, states discussed the review of the provision at the 8th session of the ASP in 2009. However, no consensus could be reached and it was decided to defer the matter to the Review Conference.

Until 2010, only two states parties (France and Colombia) have made use of article 124. In 2008, France withdrew its declaration leaving Colombia as the only state party with a declaration under article 124. On several occasions Colombian authorities publicly stated their intentions to withdraw Colombia’s declaration under article 124; and although no effective withdrawal was undertaken, the effects of such a declaration by Colombia expired on 1 November 2009.

At different stages of the discussion, the Coalition recalled that at the Rome Conference, members were strongly opposed to the inclusion of article 124 into the Rome Statute because it weakened the jurisdictional regime of the ICC and was seen as incompatible with the object and purpose of the Rome Statute: “[...] to put an end to impunity for the perpetrators of [the most serious] crimes [of concern to the international community as a whole] and thus to contribute to the prevention of such crimes.” Since its inclusion in the Rome Statute as a transitional provision, the Coalition has continually advocated that states should not make use of Article 124.

DISCUSSIONS AT THE REVIEW CONFERENCE

At the first meeting of the Working Group on other amendments on 1 June 2010, the chairpersons, Mr. Marcelo Böhlke from Brazil and Ms. Stella Orina from Kenya, gave an overview of previous discussions and introduced the possible options regarding article 124. The provision could have been deleted, retained, or redrafted. Some states preferred the retention of the article as a key provision to ensure the Court’s universality by facilitating ratification. However, many other states pointed to its envisaged transitional nature, thereby endorsing its deletion. In the view of these states, the retention would contravene...
the spirit and integrity of the Statute by operating like a reservation, which is prohibited according to article 120. No amendment would be necessary if the article was retained in the Statute.

The discussion was continued on 4 June 2010, taking into account the opinions of states parties, non-states parties and civil society. With a view to achieving consensus, the delegation of Venezuela proposed the insertion of a “sunset clause” in article 124 as a compromise. The article would then expire after a pre-decided fixed timeframe. Some states who favored the complete deletion of article 124 were prepared to accept such a “sunset provision.” Other delegations objected to any retention either with or without a ‘sunset clause.” The view was advanced that a uniform regime applicable to all states should be established.

On the other hand, some states preferred to retain article 124. In this vein, it was pointed out that equal conditions should apply to new candidates as they apply to current states parties upon their past ratification. Additionally, the argument was presented that if the provision constituted an incentive for some states to ratify then it should be kept. Civil society rejected arguments in favor of Article 124, stressing the potential harm to and discrimination against victims of war crimes compared to victims of other crimes.

Civil society rejected arguments in favor of Article 124, stressing the potential harm to and discrimination against victims of war crimes.

Given that the Review Conference did not constitute an exclusive occasion to amend article 124, Japan along with other states advocated its retention.

During informal consultations on 9 June 2010, the Working Group considered a draft resolution (RC/WGOA/2) that retained article 124 in its current form, but with a stipulation that a mandatory review would be undertaken by the ASP at its 14th session in 2015. The draft resolution as well as the report of the Working Group were adopted and conveyed to the Conference.

RESOLUTION / OUTCOME

On 10 June 2010, the Plenary, by consensus, adopted Resolution RC/Res.4 deciding not to delete article 124, but to review it automatically in five years.\(^{17}\) Taking the floor after the adoption, Coalition Steering Committee members Amnesty International, Parliamentarians for Global Action (PGA), and Fédération Internationale des ligues des Droits de l’Homme (FIDH) expressed concerns over the retention of article 124. PGA criticised the potential of article 124 to considerably delay the ratification process, the preference being given to the protection of states and not to human life, and the discrimination against war crimes victims compared to the victims of other crimes. FIDH recalled that the original purpose of article 124 was to enable the adoption of the Rome Statute, and that this was no longer pertinent. Further, article 124 constituted a denial of access to justice for victims of war crimes. Amnesty International was also disappointed with the failure of states to delete the provision, which, it asserted, contradicts the purpose of the Rome Statute to end impunity for war crimes, and leads to a chance to strengthen the Rome Statute system being overlooked.

\(^{17}\) Article 124 of the Rome Statute - RC/Res.4. Available at http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf.
C) Article 8 of the Rome Statute

BACKGROUND

Belgium submitted a proposal to the Review Conference to amend article 8 of the Rome Statute. It was proposed to extend the criminalisation of the use of the following three categories of weapons to situations of non-international armed conflicts:

- poison or poisoned weapons;
- asphyxiating, poisonous or other gases; and all analogous liquids, materials or devices; and
- bullets that expand or flatten easily in the human body (so-called “dum dum” bullets).

The prohibition of the use of these weapons was already included in the Rome Statute as a war crime when committed in the context of an international armed conflict (article 8, paragraph 2(b)); however, the proposal aimed at extending the crime to conflicts of a non-international character.

Belgium complemented its proposal by suggesting “elements of crimes” to further define the crimes of the proposed additional categories.

Prior to and during the Review Conference, the International Committee of the Red Cross, as well as some NGOs, prior to and during the Review Conference, supported the amendment on article 8 because it would promote greater protection for civilians and combatants in non-international armed conflicts and would bring the article more in line with the current status of customary international humanitarian law.

The amendment on article 8 would promote greater protection for civilians and combatants in non-international armed conflicts and would bring the article more in line with the current status of customary international humanitarian law.

The Belgian proposal was co-sponsored by a number of states at the 8th ASP meeting in November 2009, including Austria, Argentina, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxemburg, Mauritius, Mexico, Romania, Samoa, Slovenia and Switzerland. A few other states expressed reservations concerning the third category of expanding and flattening bullets against the background that they make use of these weapons in the context of law enforcement/hostage taking. Despite these reservations, the draft amendment was conveyed by consensus to the Review Conference for its consideration.

OUTCOME AND KEY ISSUES

Following several meetings of the Working Group on other amendments, the Plenary adopted by consensus the resolution amending article 8 of the Rome Statute on 10 June 2010. This was the first amendment in the history of the Rome Statute. After the adoption, France declared its support for the resolution while stressing the need for the mental requirements of the crime to be committed. Canada, the US, and Israel associated themselves with the declaration of France. Belgium welcomed the fact that the amendment

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18 Amendments to article 8 of the Rome Statute - RC/Res.5. Available at http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf.
was achieved by way of consensus and recalled that the so-called Belgian proposal was in fact a text co-sponsored by 19 other States. Amnesty International welcomed the amendment, but expressed concern over certain aspects of the resolution text, which in Amnesty International’s view could negatively impact “other provisions of the Statute, customary and conventional international humanitarian law or international human rights law and standards.” Amnesty International also challenged the competence of the ASP to exclude situations of law enforcement by means of a ‘simple resolution.’

The resolution consists of the amendment to article 8 as well as amendments to the relevant sections in the Elements of Crimes. Reflecting the negotiations during the Review Conference, the resolution—in its preamble—states that the amendment procedure set forth in article 121(5) of the Rome Statute is applicable. Therefore, the Court would not be able to exercise its jurisdiction if a state party had not ratified the amendment to the Rome Statute. With regard to non-states parties, preambular paragraph 3 specified that when ratifying the Rome Statute non-states parties could choose between the amended version and the 1998 version. The preamble further recalled that the use of the prohibited weapons did not constitute a war crime if the conduct was not associated with an armed conflict, thus excluding situations of law enforcement. In addition, the resolution states that the prohibition of the use of “dum dum bullets” as a war crime requires a specific mental element of willfully inflicting or aggravating superfluous suffering.

**RELEVANT DOCUMENTS**

- Coalition Guiding Principles for the Consideration of the crime of aggression at the Review Conference of the Rome Statute of the ICC:
- Non-Paper by the Chair (25 May 2010)—RC/WGCA/1/Rev.2:
- Conference Room Paper on the crime of aggression (25 May 2010)—RC/WGCA/1:
- Conference Room Paper on the crime of aggression—RC/WGCA/1/Rev.1:
- Conference Room Paper on the crime of aggression (7 June 2010)—RC/WGCA/1/Rev.2:
- Report of the Working Group on the crime of aggression—RC/20:
- The crime of aggression—RC/Res.6:
  [http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)
- Amendments to article 8 of the Rome Statute—RC/Res.5:
  [http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf)
- Article 124 of the Rome Statute—RC/Res.4:
  [http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.4-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.4-ENG.pdf)
III. STOCKTAKING EXERCISE

THE REVIEW CONFERENCE PROVIDED states parties with a historic opportunity to assess and reflect upon the progress of the ICC and the new system of international criminal justice established by the Rome Statute. NGOs were instrumental in advocating in favour of using the Review Conference as an opportunity to make such an important assessment. In numerous respects, the stocktaking process began long before participants arrived in Kampala with duly appointed focal points charged with the responsibility of preparing discussions on stocktaking. The Coalition monitored and contributed to the entirety of this process. During the stocktaking process, areas in which the Rome Statute system’s positive impact could be further strengthened were identified. Debates focused on the impact of the Rome Statute on victims and affected communities, complementarity, cooperation, and peace and justice—issues truly central to the system’s fair, effective, and independent functioning. Several outcome documents were adopted, paving the way for further deliberations and concrete action on the strengthening of the Rome Statute system. In addition to the plenary sessions, which focused principally on the role of states, the Coalition organized additional events on stocktaking with a view toward providing a space in which civil society could reflect on its involvement and experience in the issues, which could then form the basis of discussions in Kampala.

While the stocktaking discussions proved to be fruitful in terms of identifying challenges and possible solutions, it is imperative that in the future, states capitalize on those discussions and continue this dialogue in future forums. In this respect, the legacy of stocktaking at the Review Conference will not be the discussions themselves but how states turn the identified successes and challenges to the Rome Statute into concrete action.

A) Peace and Justice

BACKGROUND

The stocktaking exercise on “Peace and Justice” was in many ways an extension of the ongoing debate surrounding the ICC’s impact on peace negotiations in conflict situations. The Review Conference was
seen as an ideal opportunity to address this debate and the ability of the ICC to contribute to peacebuilding efforts through prosecutions and deterrence.

The co-focal points (Argentina, the DRC, and Switzerland) articulated the “Peace and Justice” debate in a background paper, which set out a definition of the topic, a description of the substantive content, and an outline of the proposed discussion. It noted that the four panelists would highlight the importance and challenges of international criminal justice, truth and reconciliation commissions, and the safeguarding of victims’ interests.

These co-focal points also coordinated the preparation of four Background Papers written by experts in the field. These papers by Juan E. Mendez (“The Importance of Justice in Securing Peace”), Priscilla Haynar (“Managing the Challenges of Integrating Justice Efforts and Peace Processes”), Katya Salazar Luzula (“Reflections on the role of victims during transitional justice processes in Latin America”) and Yasmin Sooka (“Confronting Impunity: The role of Truth Commissions in Building Reconciliation and National Unity”) helped to flesh out various aspects of the topic in preparation for the discussions in Kampala.

**DISCUSSIONS AT THE REVIEW CONFERENCE**

Kenneth Roth, Executive Director of Coalition Steering Committee member Human Rights Watch, chaired the Review Conference’s stocktaking session on peace and justice in Kampala on 2 June. Building on the preparatory work of the co-focal points, he used a panel format to facilitate discussions amongst the panelists and the assembled states parties to further explore the issues raised in their individual presentations.

Roth’s opening remarks noted that the movement for ending impunity had changed the world for those wishing to stop armed conflict, and equally important, that we now had a few examples of peace and justice being pursued simultaneously. He drew upon various examples to illustrate several of the negative long-term implications resulting from a failure to ensure justice.

David Tolbert, President of Coalition member the International Center for Transitional Justice, started his presentation by indicating his appreciation that the debate had, in recent years, shifted from peace or justice to peace and justice. While recognizing the short-term tensions which can arise in peace negotiations, he asserted that with amnesties no longer present in the era of the ICC, the focus should now be on the long-term impacts. In his exchange with the Chair, he explored the crucial role played by international prosecutors and their need to be politically astute without “playing politics.”

James LeMoyne contributed to the debate with insights gained from his career as a mediator in Colombia, El Salvador, Guatemala, Haiti, Nicaragua, Northern Ireland, and the former Yugoslavia. He noted that in his experience, peace negotiations with justice components are more sustainable, emphasizing
the value of a degree of flexibility for mediators, especially in respect to timing. He concluded by reflecting on the fact that, in his opinion, the ICC is attempting to set limits upon human behavior comparable to those set during the abolition of slavery, and that success in this endeavour could take many decades with numerous challenges likely to arise along the way.

Barney Afako, legal adviser to the chief mediator on the Ugandan peace process negotiations, spoke of the dilemma arising between the interests of peace and those of justice in the peace negotiations between the Government of Uganda and the Lord’s Resistance Army in northern Uganda. He provided his opinions and insights into the task of responding to this dilemma in light of the Juba peace process and the ICC’s arrest warrants.

Lastly, Chhang Youkm, Director of the NGO Documentation Center of Cambodia, spoke from the position of a former child victim of the Khmer Rouge and an advocate of efforts to bring those responsible to justice during the ensuing decades. From his perspective, an important lesson from Cambodia is that people want to share their story and want justice even after 30 years. He outlined the political, security and networking challenges faced by those who worked for the establishment of the Extraordinary Chambers of the Courts of Cambodia.

An intervention period followed, during which all participants, including NGOs and non-states parties, were given an opportunity to comment on and interact with the panelists. Representatives from Coalition member organizations Amnesty International, International Commission of Jurists, No Peace Without Justice, the Palestinian Society for Human Rights, the Moroccan Coalition for the International Criminal Court, and the International Center for Transitional Justice all contributed to the discussion.

One of the tangible outcomes of these discussions was the Moderator’s Summary (RC/ST/PJ/1/Rev.1), which recorded and reflected upon the contours of the event. The moderator used the paper to emphasize that despite challenges and specific areas of contention it is evident that the establishment of the ICC has created a paradigm shift in the peace and justice dynamic, with “amnesty no longer being an option for the most serious crimes under the Rome Statute.

THE COALITION EVENT: “CIVIL SOCIETY TAKING STOCK—PEACE AND JUSTICE”

The Coalition’s side event on “Peace and Justice” complemented the official session by focusing attention on the interests of victims and affected communities in peace negotiations. The four panelists, Alison Smith (No Peace Without Justice), Nobel Laureate Dr. Shirin Ebadi, Jane Adong (Women’s Initiative for Gender Justice) and Professor Hernando Valencia (Colombian Commission of Jurists) contributed to the debate with perspectives garnered from their experiences of the movements for justice in Argentina, the Middle East, Uganda, and Colombia. Dr. Ebadi emphasized the paramount need for NGOs representing the interests of women to be given a voice during any credible peace negotiation.

B) The Impact of the Rome Statute System on Victims and Affected Communities

BACKGROUND

The stocktaking process offered a unique opportunity to reflect upon the question of how victims and affected communities experience and perceive justice eight years after the entry into force of the Rome Statute.

Discussions on the impact of the Rome Statute system on victims and affected communities were welcomed by civil society, as these reinforced the concept that victims and affected communities were stakeholders in the ICC system with valid interests in the proceedings and in the broader system.

At its 8th session in November 2009, the ASP decided to include the “Impact of the Rome Statute system on victims and affected communities” as one of the four dimensions of the stocktaking exercise. Discussions on the impact of the Rome Statute system on victims and affected communities were welcomed by civil society, as these reinforced the concept that victims and affected communities were stakeholders in the ICC system with valid interests in the proceedings and in the broader system.

Chile and Finland were appointed as focal points to guide the preparations for the Review Conference on this topic. In close cooperation with academics and NGO experts, the focal points prepared several papers, including a discussion paper outlining the parameters and key issues for the discussions in Kampala.

With a view on contributing to the stocktaking process, the Victims’ Rights Working Group (VRWG), a network of over 200 civil society organizations and individual experts, including a number from Uganda, DRC, and Sudan, developed and distributed a questionnaire to assess the Court’s impact from different perspectives. Certain questions, for example, referred to the impact on victims’ expectations of obtaining justice and on the local recognition of specific types of harm. The questionnaire was disseminated among partner organizations in situation countries as well as in non-situation countries. The outcomes from the survey were compiled in a report and submitted to the Review Conference.

Discussions and Outcomes

At the center of the victims’ stocktaking segment in Kampala was a formal panel discussion that took place on 2 June.

In her keynote speech, Ms. Coomaraswamy, the Special Representative of the UN Secretary-General for Children and Armed Conflict, underlined the important role of the ICC in breaking the silence of victims, which in her view was the first step of healing. She considered the right of victims to participate in proceedings as a very positive step forward as long as the due process rights of the accused were ensured and victims were adequately assisted and protected.

The moderator, Eric Stover, Director of the Human Rights Center at the University of California, Berkeley, then facilitated an in-depth discussion amongst the panelists: including, Justine Masika Bihamba, co-
founder and coordinator of Synergie des Femmes pour les Victimes de Violences Sexuelles; Carla Fersten-
man, the Executive Director of Redress; David Tolbert, President of ICTJ; the Registrar of the ICC, Silvana
Arbia; the Registrar of the SCSL, Binta Mansaray; as well as Chair of the Board of Directors of the Trust
Fund for Victims, Elisabeth Rehn.

The discussions of the panel revolved around (1) victims’ participation and reparations, including pro-
tection of witnesses; (2) the role of outreach; and (3) the ‘Trust Fund for Victims. The importance of vic-
tims’ participation and the need to reinforce the position of victims as the stakeholders and beneficiaries
of the Rome Statute were recognized and reaffirmed. The need for the appropriate protection of victims
and witnesses, as well as intermediaries, was also stressed. Moreover, it was held that a robust outreach
program was indispensable to make the Court known, understood, and reachable for the affected com-
munities, taking into account the remote locations of many of the victims.

Following the assessment from the different panelists, the discussion was opened up to states and NGOs,
which took the opportunity to engage constructively in the dialogue. In the discussion, the important role
of field offices in ensuring adequate victims’ protection and participation as well as outreach was highlight-
ed. The debate also tried to reference lessons learned from the work of the ICTY (for example in relation to
cases where victims of sexual crimes had to face the perpetrators in the courtroom). The panel ended with
conclusions drawn by the moderator who addressed achievements, challenges and suggestions for the way
forward (for further information, see the focal points’ “draft informal summary” of the panel segment).

THE COALITION AND VRWG EVENT: “CIVIL SOCIETY TAKING STOCK—IMPACT OF
THE ROME STATUTE ON VICTIMS AND AFFECTED COMMUNITIES”

The larger stocktaking process was not limited to the official panel dis-
cussion of 2 June but also included the numerous additional events that
took place during the first week of the conference.

On 1 June, the Coalition in collaboration with the Victims’ Rights Working
Group hosted an event entitled “Civil Society Taking Stock—Impact of the
Rome Statute on Victims and Affected Communities.” The event aimed to
disseminate the views of civil society on the eve of the formal stocktaking
exercise on the issue in the plenary. In his opening note, Coalition Conve-
nor William R. Pace highlighted the importance of the role that the Rome
Statute attributes to victims and welcomed the panel of experts on the topic.

Nobel Prize Winner Wangari Maathai made the introductory state-
ment, emphasizing the need for civil society and other actors to con-
tinue working on the national level to complement the ICC’s efforts.
She underlined the importance of the ICC as a means to ensure that
victims have access to justice. On behalf of the Nobel Womens’ Initiative, Ms. Maathai stressed the need
to support victims and the impossibility of building peace without justice.

20 Stocktaking of International Criminal Justice – Impact of the Rome Statute system on victims and affected communities – Draft
The subsequent panel discussion was co-chaired by Mariana Goetz from REDRESS and Amir Suliman from ACJPS/FIDH. Chris Ongom of the Ugandan Victims Foundation spoke on why the ICC matters to victims. In particular, Mr. Ongom emphasised five areas of relevance to victims: access to justice, participation, reparation, protection, and assistance. Dadimos Haile from ASF addressed the involvement of victims in the first ICC trial regarding the DRC situation. While emphasizing the significance of the direct participation of victims, he raised further outstanding areas of concern, in particular the length of the proceedings and the heightened expectations raised by the Rome Statute, which were often sources of frustration for victims. In this context, Mr. Haile also referred to the enforcement of arrest warrants, the scope of charges, and issues of protection and security. Raymond Brown, legal representative of victims in the Al-Bashir case, illustrated the hopes of Darfuri victims to receive justice from the ICC. Bernadette Sayo from OCODEFAD then addressed the issue of gender crimes and the experiences from the Central African Republic. She referred to the importance of the protection of victims, especially those who suffered sexual violence. Finally, George Kegoro of the International Commission of Jurists (Kenya) spoke on the impact of the Rome Statute at the national level by focusing on the Kenyan situation.

A lively debate followed in which, among other things, the impact of the ICC in situations under preliminary examination (like Colombia, Afghanistan and Palestine) was addressed, as well as the importance of increased Court outreach.

In her closing remarks, Wangari Maathai highlighted justice as a necessary condition for healing and reconciliation, and appealed to civil society to continue to work on the grass-roots level, thus furthering the work of the Court.

Following the event, an outcome document was issued summarizing the main recommendations arising from the debate. The document was conveyed to states for their consideration. Recommendations included, inter alia, the need for: effective arrests; national witness and victim protection legislation; support for the newly established ICC Relocation Fund; national reparation programs; adequate implementing legislation on asset tracing and freezing; an increased profile and staffing levels for ICC field offices; support for the Court in its efforts to conduct in situ hearings; and general and regular support to the Trust Fund for Victims.

On 8 June 2010, the Conference adopted a resolution on the “Impact of the Rome Statute system on victims and affected communities,” recognizing amongst other things, the victims’ rights to equal and effective access to justice, protection and support, adequate and prompt reparation for harm suffered, and access to relevant information and redress mechanisms. The resolution further encouraged the Court to continue to optimize its victims strategy as well as its field presence, and to pay special attention to the needs of women and children. It also stressed the need for optimizing and adapting outreach activities and contributions to the Trust Fund for Victims.
C) Complementarity

BACKGROUND

Complementarity is a foundational principle of the Rome Statute where the duty of states parties to investigate and prosecute international crimes is clearly reinforced. Consequently, the involvement of the Court will only be triggered where a state has failed to fulfill that duty. However, even in the face of a failure to undertake proceedings at a national level, the Court is only capable of assuming responsibility for the prosecution of those most responsible, leaving an impunity gap for those who fall short of this categorization. In this regard national jurisdictions will always play a role in addressing “Rome Statute” crimes. The Court exists, in part, in recognition of the fact that states, either due to a lack of capacity or political will, can fail to address the commission of such crimes. The stocktaking on complementarity provided an opportunity to reflect on the responsibilities of states and the ASP with respect to ensuring adequate implementing legislation and infrastructure preparedness to investigate and prosecute at the national level; recognizing situations where the ICC can and has played a role in bringing about domestic accountability processes; and seeking relationships with appropriate institutions and bodies involved with international criminal justice.

Following their appointment by the Bureau of the ASP as focal points for the stocktaking on complementarity, Denmark and South Africa began consultations with states in The Hague and New York Working Groups. Those consultations culminated in the issuance of a Bureau Report on Stocktaking of Complementarity, which sought to define the concept of positive complementarity and its operation under the Rome Statute and establish a foundation for further discussion in Kampala. The Report examined how national governments and other tribunals have utilized the principle, and ways in which positive complementarity efforts could be successfully implemented by states in the future. The focal points also produced a compilation of projects as an illustrative example of endeavours that have sought to strengthen the ability of domestic jurisdictions to deal with Rome Statute crimes. Coalition members PGA, No Peace Without Justice, and Avocats Sans Frontières contributed to the appendices with a detailed overview of their respective organization’s work in the field of positive complementarity. Nine other appendices detailing the work of states, regional bodies, UN organs, and the ICTY drew upon their respective endeavors in building capacity in national jurisdictions.

In addition to the aforementioned documents, the focal points produced a draft resolution seeking to reaffirm the commitment of states parties to fulfill their obligations under the Rome Statute by combating impunity at the national level and by investigating and prosecuting those bearing responsibility for the most serious international crimes. The draft also recognized that this undertaking would require states to work with civil society and international organizations towards expanding domestic capacity and
strengthening the rule of law. With a view to assisting in these goals, the draft requested the Secretariat of the ASP to facilitate the exchange of information between the Court, states parties and other stakeholders, including civil society, and that the Bureau continue the dialogue on complementarity. Furthermore, the ASP asked both the Court and the ASP Secretariat to submit reports on the issue of complementarity to the 10th session of the ASP in 2011.

The Bureau report was formally approved at the resumed eighth session of the ASP in New York (22—25 March 2010). Agreement was also reached at the resumed session to transmit the draft resolution for formal adoption at the Review Conference. This agreement followed long and protracted discussions which began prior to the resumed session and which centered on the content and format of the resolution, with one or two states strongly in opposition to the draft.

The Bureau Report leant heavily towards the concept of positive complementarity, principally the development assistance provided by one State to another in building capacity to undertake national investigations and prosecutions. Noting that the prospective discussions at the Review Conference could be more comprehensive, the Coalition’s Review Conference Team issued a position paper on complementarity with several recommendations: that states assess what they had done to fulfill their complementarity obligations in their own jurisdictions and not just in third-party states; that adequate attention be placed not just on the inability of a state to address international crimes, but on its unwillingness to do so; and that rule of law programs, particularly in situation countries, have a particular focus on the investigation and prosecution of Rome Statute crimes. The paper was submitted to the focal points and circulated amongst states as well as the panelists with a view to contributing to the preparation of discussions.

**DISCUSSIONS AT THE REVIEW CONFERENCE**

Plenary discussions at the Review Conference were held on 3 June, during which states parties, observer states, and international and regional organizations as well as civil society organizations took part in the stocktaking discussions. The focal points began the exercise by introducing the panel of speakers and by noting two main points: (1) that it was never the intention of the ICC to try all of the crimes that fall within the Rome Statute and thus relies on complementarity as stated in article 17, and (2) that positive complementarity is a new approach requiring action on behalf of states parties to strengthen their domestic jurisdictions.

The Moderator, Professor William Schabas of the University of Galway, then facilitated panel discussions between Ms. Navanethem Pillay, the UN High Commissioner for Human Rights; Mr. Serge Brammertz, Prosecutor for the ICTY; Justice Akiiki Kiiza, head of the Ugandan War Crimes Division; Col. Toussaint
Muntazini Mukimapa, Deputy Auditor General in the DRC; Ms. Geraldine Fraser-Moleketi, Director of Democratic Governance Group within the UNDP; and Mr. Karel Kovanda, Deputy Director General of External Relations for the European Commission.

Presentations focused on the challenges that states face in attempting to prosecute Rome Statute crimes at a national level. Justice Akiiki Kiiza talked of the Ugandan government’s initiatives in addressing the impunity gap. This involved the creation of a reconciliation commission and the War Crimes Division of the High Court which Justice Kiiza emphasized worked in partnership and not in competition with the ICC. In this regard, Justice Kiiza pointed to the fact that the War Crimes Division was trying the remaining bulk of criminals and not those pursued by the ICC. However, Uganda’s success in trying criminals within the domestic War Crimes Division continues to be hindered by a lack of assistance. Reflecting on the DRC’s experience, Colonel Muntanzini Mukimapa spoke of the challenges it has faced in prosecuting those who commit international crimes domestically, challenges brought on by a lack of implementing legislation, the paucity of human resources in important military roles, poor physical infrastructure such as prisons, and poor access and protection measures with regards to victims and witnesses. Colonel Mutanzini Mukimapa was of the opinion that these challenges could be addressed through training and capacity-building.

The panelists also highlighted ways of alleviating these challenges. The UN High Commissioner for Human Rights described how the mandate of her office includes building national capacity and monitoring human rights violations with a view to closing impunity gaps. Ms. Pillay also warned, however, that inability should not dominate discussions with respect to a state’s failure and that in some cases states deliberately chose to allow impunity. The ICTY Prosecutor, Mr. Serge Brammertz, explained how the international tribunal was able to aid Bosnia and Herzegovina in strengthening its domestic judiciary by sharing its documentation and investigative information, and by training local prosecutors. As a result of its role in helping Bosnian courts, the ICTY was able to transfer the cases of lower level perpetrators back to those courts for prosecution. Lastly, Ms. Fraser-Moleketi from the UNDP and Mr. Kovanda from the European Commission provided additional insight into how international and regional organizations can provide states with assistance in strengthening the rule of law via training, financial assistance, and sharing best practices.

A host of states parties intervened during the discussions, but few took the opportunity for concrete and probing self-assessment with respect to the challenges faced in meeting their own complementarity obligations. States parties did however, acknowledge that the Court is one of last resort and reiterated the importance of national jurisdictions meeting their obligations under the Rome Statute and the primacy
of national jurisdictions over Rome Statute crimes, as well as the importance of capacity-building projects. Non-states parties also participated.

The US, for example, highlighted its endeavours to assist national jurisdictions in meeting their complementarity obligations, and noted the importance of ensuring that financial donations are put to effective use. The President of the ICTY also spoke of the tribunal’s gradual role in positive complementarity that began with the sharing of documentation and which eventually led to a transfer of cases to national jurisdictions.

Unfortunately, little time was left for civil society to take the floor, member PGA spoke on behalf of the Coalition and emphasized that while much has been achieved, far more needed to be done to bring states in line with their respective complementarity obligations.

Following a summation by the Moderator, Professor Schabas, the final word was given to the ICC. Mr. Sang-Hyun Song (President of the ICC) talked of the ICC’s limited, but nevertheless important role in positive complementarity. The Prosecutor talked of the notion of complementarity and positive complementarity enshrined, as he saw it, in articles 17 and 93(10), respectively, of the Rome Statute. He emphasized that the Review Conference was not a means to an end, but merely the start of continuing dialogue and action with a view to addressing national endeavours.

The discussion ultimately culminated in the adoption of the draft resolution on complementarity. There was little to no discussion on the content of the resolution and so it was adopted unchanged from the draft approved at the resumed ASP session in March and as described above. A draft informal summary of discussions was also produced by the focal points.\(^1\)

To complement plenary discussions, the focal points also held a side event to discuss the effectiveness of capacity-building projects. Organizations and states that were referenced in the above-mentioned compilation were invited to participate and reflect on the lessons learned from their experiences. Both PGA and ASF participated in this regard and drew upon their respective mandates in working with parliamentarians to encourage and assist with the drafting of national implementing legislation. ASF spoke of the successes and challenges in the implementation of their DRC project to combat impunity through assisting in the reconstruction of the judicial system.

The success of this stocktaking item is reflected in what is, for all intents and purposes, a comprehensive resolution that not only reaffirms existing obligations enshrined in the Rome Statute, but which seeks to continue the dialogue on complementarity and positive complementarity. Having discussed and identified the challenges to complementarity and the possible solutions, it is imperative that the ASP continue to engage in dialogue and effective action on the topic.

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THE COALITION EVENT: “CIVIL SOCIETY TAKING STOCK—COMPLEMENTARITY”

On 2 June, the Coalition, with a view to providing a platform for the voice of civil society to be heard, held its own event on the stocktaking of complementarity. The event, which was chaired by Mr. David Donat Cattin of PGA, consisted of brief introductory remarks from four speakers including, Ms. Francesca Varda of the Coalition Secretariat; Mr. James Gondi of the Kenyan Section of the International Commission of Jurists; Mr. Dadi-mos Halle from Avocats Sans Frontières; and Mr. James Goldston of the Open Society Justice Initiative.

The speakers addressed the challenges in complementarity. The challenges discussed included the importance of adequate implementing legislation and the obstacles that states have faced in its absence; unwillingness to address the commission of serious international crimes, which can manifest itself not only in inaction but in active steps to impede accountability; the importance of capacity building projects and drawing lessons from their impact; and how states, and the ASP in particular, can assist states parties in strengthening their domestic judicial systems.

The Coalition’s event on complementarity concluded with the idea that states’ success in meeting their primary obligations requires a holistic approach that encompasses capacity building, political will, adequate implementing legislation, skilled lawyers and judges, and an independent judiciary that is able to operate irrespective of a political climate that may be antagonistic to its endeavours, sharing of lessons learned, and lastly for the Court, and principally the Prosecutor, to better educate and inform states on its decision-making process with respect to the initiation and selection of cases. The suggestion was also tabled that an ASP Working Group could be established as a means of assisting states in meeting their obligations by encouraging the inclusion of the Rome Statute into rule of law programs and by acting as a forum for sharing best practices and improving coordination amongst donors, as well as periodically reviewing how states parties have progressed in this regard.
D) Cooperation

BACKGROUND

State cooperation is the backbone of the ICC’s mandate. Unlike national judicial institutions that have numerous tools at their disposal with which to execute their mandate—including a police force to apprehend suspects, penitentiaries in which to incarcerate convicted persons, and the diplomatic support of the executive—the Court is reliant on states to make available those same tools in the execution of its mandate. States parties are obligated in this regard by virtue of Parts 9 and 10 of the Rome Statute to provide assistance as required by the Court. While informal consultations were held on cooperation during the 8th session of the ASP in November 2009, the Review Conference constituted the first forum for discussion since the ICC’s inception on this critical aspect of the Court’s work, and one in which states parties’ compliance with their cooperation obligations was to come under the spotlight.

The Bureau mandated the focal points on stocktaking of cooperation, Ireland and Costa Rica, to prepare preliminary background materials and proposals on the format and outcome for the Review Conference exercise. The focal points thus began engaging in discussions with states on possible sub-topics for discussion. Forming the backdrop to these discussions was the Court’s report on cooperation circulated at the 8th session of the ASP in 2009, which was updated, along with the Bureau’s 66 recommendations on cooperation, following a request to do so by the focal points. The report was seen as including a benchmark of standards for states to follow. These discussions culminated in the issuance of the Report of the Bureau on Stocktaking: Cooperation.

The Report identified the main purpose of the exercise as providing a comprehensive overview of the challenges and achievements with regard to the implementation of Parts 9 and 10 of the Rome Statute, which list various ways in which states are legally bound to aid the Court in fulfilling its mandate. Similarly, discussions would probe the challenges in securing “voluntary cooperation” or the conclusion of framework agreements that would facilitate inter alia the relocation of witnesses and interim release. To that end, the exercise would focus on the Court’s relationship or interaction with states parties, the UN system, international and regional organizations, and civil society. With a view to gauging how and whether states parties have met their cooperation obligations, the focal points recommended that the Plan of Action questionnaire be re-circulated by the ASP Secretariat prior to the Review Conference and encouraged states parties to respond accordingly. The questionnaire probes the measures taken by states in implementing the Rome Statute under domestic legislation, including providing for a cooperation regime with the Court. As a result some 30 states parties completed the questionnaire for the Review Conference. While this is only a fraction of the 111 states parties, it does represent an increase of 28 states parties compared to the number received in 2009.

The focal points also offered a draft “outcome document” prior to the Review Conference, called this because consensus could not be attained prior to Kampala amongst states parties with respect to whether the format of the document should be a resolution or declaration.

Previous drafts of the document sought to codify the pre-emptive outcomes listed in the Bureau Report. Agreement on the format of the draft document would eventually be reached in the fringes of the Review Conference with the document being formally presented at the Review Conference for final approval as a Declaration.

**DISCUSSIONS AT THE REVIEW CONFERENCE**

Plenary discussions on cooperation were held on 3 June. The discussions were organized into two separate clusters of panelists. The first cluster focused exclusively on ways in which states parties have, and should, continue to cooperate with the Court by implementing domestic legislation, entering into framework agreements with the Court, and developing creative ways to overcome challenges. The second cluster would be dedicated to ways in which civil society and regional and international organizations could assist in these efforts. Each cluster of formal presentations followed an intervention from all relevant stakeholders.

Under the first cluster, Mr. Adama Dieng (Registrar of the ICTR) discussed the cooperation challenges the ICTR had faced, which were not unlike those faced by the ICC. He noted that state assistance was vital in the arrest and transfer of fugitives, the collection and obtaining of evidence, and the enforcement of sentences, but that the ICTR could also reciprocate that cooperation through access to records, detention facilities, and logistics. Mr. Akbar Khan (Director of Legal and Constitutional Affairs Division for the Commonwealth Secretariat) noted that states are at very different points in meeting their cooperation obligations due to differing capacity levels and experience. The Commonwealth Secretariat in this regard caters to these differences by providing assistance in many areas, such as helping to draft domestic legislation, drafting bilateral agreements with the Court, and developing domestic infrastructure, including encouraging the appointment of national focal points to handle ICC-related issues. Mr. Khan also stressed the importance of assistance to the defendants before the Court, which is often overlooked, but vital to the principle of equality of arms. Lastly under this cluster, Ms. Amina Mohamed (Permanent Secretary in Kenya’s Ministry of Justice) focused on Kenya’s experience in cooperating with the ICC. The new International Crimes Act, which incorporates the Rome Statute crimes under domestic law and provides a legal basis for cooperation with the Court and the Protection of Witnesses Act were positive steps in this regard. However, the effectiveness of these laws, according to Ms. Mohamed, and thus of Kenya’s cooperation on the whole, are significantly affected by a lack of funds and human resources. Ms. Mohamed also reflected on the unsuccessful attempts at creating a special tribunal in Kenya to address the post-election violence but that this would not impede Kenya’s cooperation with the Court.

The second cluster of presentations focused primarily on the role of international and regional organiza-
tions and enhancing knowledge of, and support for, the Court. President Song focused on ways to increase overall knowledge of, and support to the Court, including garnering diplomatic and public support as a means to securing arrests and the need for the ASP to use the tools at its disposal to secure cooperation. President Song also spoke of the tools at the disposal of the Court, including recourse to article 87 of the Rome Statute, which authorizes the Court to refer instances of state non-cooperation to the ASP or Security Council. Ms. Patricia O’Brien (UN Under-Secretary-General for Legal Affairs) reflected on the UN’s relationship agreement with the Court, which while providing a sound basis for cooperation, was not immune to challenges with respect to litigious matters before the Court—most notably in the Lubanga case with respect to disclosure. Ms. O’Brien contended that while this obstacle presented particular difficulties and was one that could have led to the indefinite postponement of the Lubanga trial, in the end lessons were learned in overcoming it.

States (including Nigeria, Canada, Spain, France, the UK, Germany, the Netherlands, Tanzania, and Australia) reflected on the challenges in implementing domestic cooperation legislation and on the importance of signing bilateral agreements with the ICC. States also reiterated the measures they had put in place to facilitate cooperation with the Court and raise awareness of the Court’s mandate. While there was general consensus that these initiatives were of critical importance to ensuring cooperation with the Court, it was clear that some states had struggled in implementing them, whereas others had clearly been more successful, thus necessitating the exchange of lessons learned and technical assistance. Nigeria in particular spoke of the government’s will to enact legislation that would facilitate cooperation, but that the “ignorance of legislatures” was an impeding factor. There were differing views expressed by non-states parties as to their role in cooperating with the Court. The US for instance was of the opinion that it had a role to play, whereas China reaffirmed that while states parties are under an obligation to cooperate with the Court, their assistance should not infringe on the interests of non-states parties. Malawi, referencing its current chairmanship of the African Union, spoke of the indictment of a sitting president and the application of the Rome Statute on a non-state party as being factors that may impede cooperation with the Court.

The Coalition also contributed to the discussions through its members. Human Rights Watch called on states to translate the discussions into concrete action and emphasized the need for the ASP to enter into a dialogue with the Security Council as to how best to resolve instances of non-cooperation, especially in regards to the continuing failure of the Sudanese government to cooperate with the Court as reflected in the Court’s recent finding of non-cooperation in the Darfur situation. Amnesty International spoke of the failure of states to enact adequate implementing legislation, pointing to the fact that of the 111 states
parties, only 44 had done so, and in some cases they had enacted legislation that was flawed. The International Criminal Bar spoke of the importance of states parties ratifying the Agreement onPrivileges and Immunities of the Court as a means to protect counsel, which was vital to the achievement of justice. The International Bar Association reiterated the importance of cooperation with defence counsel, the failure of which undermines the quality of trials and the Court’s legitimacy, and further, that implementing the Rome Statute would incorporate the notion of due process across national jurisdictions.

The roundtable discussions ultimately produced two outcomes. The first was a summary of the discussion outlining the speakers and topics within each of the two clusters, and the second was the adoption of a Declaration mirroring the aforementioned Bureau Report. The Declaration reaffirms the obligation of states parties under Parts 9 and 10 of the Rome Statute and the importance of executing arrest warrants. In addition, it emphasizes the importance of adequate implementing legislation, compliance with the Court’s requests, and state participation in the speedy enforcement of pending arrest warrants. The Declaration also alludes to continuing dialogue on the issue of cooperation.

The immediate value of the discussions is that they entailed open acknowledgement of the problems that exist at a national level with respect to cooperation and that states hold the key to ensuring successful cooperation with the Court. While statements dodging responsibility by pointing to absences of legislation or mechanisms were present, it was a critical part of the process that states themselves for the first time openly declared these deficiencies.

THE COALITION EVENT: “CIVIL SOCIETY TAKING STOCK—COOPERATION”

The Coalition hosted its own stocktaking event on cooperation to highlight further the importance of states parties fulfilling their obligations of cooperation with the Court and to provide all relevant stakeholders with better knowledge of how civil society and state governments can assist in overcoming widespread challenges. Richard Dicker of Human Rights Watch chaired the discussion, which included panelists from Amnesty International, the DRC Coalition for the ICC, and the International Bar Association. The Belgian government was also represented on the panel, with the purpose of juxtaposing the perspective of civil-society with that of a state party and its actual experiences on cooperation.

The first speaker, Christopher Hall of Amnesty International, painted an unfavorable picture of current state party cooperation by pointing out the frequent failures to implement domestic legislation or to aid in the enforcement of arrest warrants, and that what is emerging is a uniform refusal by states to accept interim releases. Lorraine Smith of the International Bar Association agreed that these failures were problematic and added that interim release and compliance with the Court’s arrest warrants and document requests would not be possible without

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Credit: CICC/ Harrison Davis
more political will and voluntary cooperation through bilateral agreements with the Court.

The third and fourth speakers gave the state party perspective on cooperation. Georges Kapiamba, Vice President of the DRC Coalition for the ICC, explained how the ICC’s progress on the four cases currently within the DRC is hindered by a lack of domestic efforts in communicating with and assisting the Court. Conversely, Gerard Dive from the Belgian Ministry of Justice shared successful ways in which the Belgian government has cooperated with the ICC. Mr. Dive's recommendations included creating channels for information-sharing between the Court and various branches within a state's government (including immigration, police forces, and prosecutors’ offices), executing bilateral agreements with the Court in priority areas and prioritizing ICC requests by mainstreaming them through an appointed official within the appropriate ministry.

The audience intervention period reiterated the importance of overcoming the many challenges discussed, and more importantly, led to the sharing of additional solutions. They included the drafting of model legislation by regional bodies that could be adapted to national judicial nuances; the creation of domestic procedures for handling ICC cooperation efforts coupled with training of government employees; and the use of diplomatic channels to encourage political will amongst states. The US was alone in mentioning the importance of non-state party assistance, which could come in the form of diplomatic pressure, information-sharing, and donations.

With a view to encouraging candid discussion amongst participants at the plenary stocktaking session on cooperation, which followed the Coalition’s event, an Informal Note was produced which summarized the discussions that took place and the conclusions reached.

**RELEVANT DOCUMENTS**

- Stocktaking of International Peace and Justice—Moderator’s Summary (22 June):
- Stocktaking of International Criminal Justice—Impact of the Rome Statute system on victims and affected communities—Draft informal summary by the focal points (10 June):
- Stocktaking of International Criminal Justice—Taking stock of the principle of complementarity: bridging the immunity gap—Draft informal summary by the focal points (22 June):
- Stocktaking of International Criminal Justice—Cooperation—Summary of the roundtable discussion (28 June):
  http://www.icc-cpi.int/NR/rdonlyres/FB6E4F55-DCF6-4D5F-9500-6BD25E578667/0/RCSTCP1Rev1ENG.PDF
IV. ENFORCEMENT OF SENTENCES

THERE IS A CLEAR LACK of will among states to volunteer space to accept sentenced prisoners of the ICC. Norway recognized this and sought to avoid future problems of enforcement by encouraging states to volunteer their prisons and to provide financial support to those who were already willing to volunteer but do not have the infrastructure. To that end, Norway suggested that article 103 of the Rome Statute, titled "Role Of States in Enforcement of Sentences of Imprisonment," be amended to strengthen cooperation with the Court without creating additional legal obligations.

On 26 November 2009, Norway presented its original proposal for an article 103 amendment to the 8th session of the ASP. The proposal added the following language to the end of Section 1(a):

"… for enforcement in a national prison facility or in a prison facility made available to the state by an international or regional organization, arrangement or agency, as provided in the Rules of Procedure and evidence."

The states parties supported the purpose behind this proposal, but suggested that an amendment be drafted within future New York Working Group (NYWG) discussions for consideration at the Review Conference. This led to a newer version of the amendment, adding the following to subsections (a) and (b) of section 1:

(a) A sentence of imprisonment can also be served in a prison facility made available to the designated state by an international or regional organization, arrangement or agency.

(b) To this end, states shall, directly or through competent international organizations, promote actively international cooperation at all levels, particularly at the regional and sub regional levels.

It also differed in that it included a Preamble and a closing paragraph requesting that the Secretary-General of the UN bring the amendment to the attention of all UN members, with the purpose of ensuring that the objectives would be taken into account and implemented by the World Bank, regional organizations, the UNDP, and other multilateral and national agencies.

When first presented at the NYWG meeting on 14 January 2010, the second draft received widespread preliminary support. The only issue of contention derived from the closing paragraph, which mentioned various UN bodies that were not directly related to the ICC. Some states felt that this clause would in-
directly place an obligatory burden on states that are not states parties to the Court. The representative of Norway explained that this list was only intended to create publicity for the amendment, so as to encourage support, and that it was not exhaustive, but rather exemplary of the types of organizations that could participate.

The same draft was then presented a second time at the NYWG Meeting on 9 February 2010. Despite Norway’s prior explanations, states parties still felt that the Preamble and last paragraph ought to be altered to reflect: (1) the role of the Court in strengthening enforcement and (2) the voluntariness of the decision to take on sentenced prisoners. non-states parties took this particular issue even further; they refused to support the amendment until the word “states” was replaced with the word “states parties,” to avoid placing new obligations on those countries not party to the ICC. They argued that the distinction was made elsewhere in the Rome Statute and that not doing so here would lead to confusion. Norway and its supporters argued that the word “States” was used in the original article 103 and that the word “States” should remain to allow for flexibility in permitting non-states parties to participate if they chose to. Lastly, Norway noted that non-states parties could not be bound to any newly created obligations due to the legal nature of international treaties.

Taking note of these comments, Norway made edits to the document and released a new draft on 2 March 2010, that read as follows:

(a) A sentence of imprisonment can also be served in a prison facility made available to the designated State by an international or regional organization, arrangement or agency.

(b) states parties and states that have indicated their willingness to accept sentenced persons should, directly or through competent international organizations, promote actively international cooperation at all levels, particularly at the regional and sub regional levels.

Both states parties and non-states parties alike continued to support the purpose behind the proposed amendment but felt that a resolution would better serve Norway’s goals of achieving support for enforcement, without creating new legal duties. This decision led to a round of negotiations within the NYWG on draft language. The final product, which recognized the importance of the role of states in enforcement, and urged broader participation and cooperation among all “States” to encourage voluntary acceptance of sentenced persons, was later submitted to the Bureau for approval.

Following approval, the Bureau notified the resumed 8th Session of the ASP in March 2010 that the Draft Resolution would be forwarded to the Review Conference for consideration. It was later adopted in Kampala on 8 June 2010 (see RC/L.4).24

RELEVANT DOCUMENTS

- Strengthening the Enforcement of Sentences—Resolution RC/Res.3 (14 June):
  http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.3-ENG.pdf

V. PLEDGES

WITH THE PURPOSE OF strengthening the Rome Statute, the ASP Bureau had also encouraged states to make specific pledges or commitments at the Review Conference that would contribute significantly to advancing the Rome Statute and the Court. States agreed that the Review Conference would present an ideal opportunity to increase state commitment to the Rome Statute system.

The Pledging Segment took place during the first week of the Conference. Ultimately, 104 pledges were made by 35 states parties, along with 4 pledges by the European Union and 2 from the US. Included among the pledges were commitments to ratify the Agreement on Privileges and Immunities of the Court, to pass domestic implementation legislation, to increase state cooperation with the ICC, to make contributions to the Trust Fund for Victims, and to engage in capacity-building for national investigations and prosecutions, among others.

The pledges came with firm details of the future steps that the pledging state or international organization would take towards accomplishing their obligations, with the idea that this would be available to judge the progress of the pledges in future sessions of the ASP.

RELEVANT DOCUMENTS

- Explanatory Note on Pledges—ICC-ASP/8/20/Add.1:
- Pledges—RC/9 (15 July):

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VI. COMMUNICATIONS AROUND THE REVIEW CONFERENCE

The Review Conference presented a key opportunity for dialogue and raising awareness of the ICC and the Rome Statute system as a whole. More than 1000 NGOs showed their commitment by using their limited resources to this end, and more than 600 civil society representatives from 50 countries attended the conference.

Coalition members organized debates, round-tables, parliamentary seminars, press conferences and live Internet chats, in capital cities worldwide as well as within Uganda, to build momentum for the Conference. At the Review Conference, a wide range of events were held, including moot courts, panel discussions, screenings, two media briefings, among many others, to touch upon issues related to the proposed amendments to the Statute but also to complementarity, cooperation, victims, and peace and justice. The Coalition also produced vital information materials and advocacy papers distributed widely among diplomats, tribunal officials, academics, civil society, the media, and the general public.

In a letter sent in January 2009, the Coalition’s NGO Issue Team on Communications urged the ICC and ASP Presidents to ensure that an effective Communications Strategy was developed and implemented for the Review Conference, including in terms of media and outreach activities. The Team also exchanged a number of concrete suggestions directly with both the ASP Secretariat and the ICC to make the most of the event, including in terms of information flow (website, publications, social tools, etc.) and media.

Prior to the Review Conference, the Public Information and Documentation Section (PIDS) of the Court supported the efforts of the ASP Secretariat to raise awareness of the Conference and the events in its margin by conducting consultation meetings with international and national media, organizing a live blogging session, producing short spots on the Review Conference, and encouraging the publication of op-eds. During the Conference, the ASP Secretariat hired two press officers to support media activities. In addition
to a press conference, the ICC and the ASP issued a number of press releases and arranged interviews with the media. Also important to note was the organization by PIDS of a photo exhibition at the field office premises in Kampala on the development of the ICC from its conception, as well as the facilitation of a visit by delegates to the ICC field office in Bunia, DRC.

RELEVANT DOCUMENTS

- Coalition webpage on ICC communications and outreach: http://www.coalitionfortheicc.org/?mod=communications
- ICC webpage on outreach: http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Outreach.htm

On 31 May 2010, the Coalition hosted a panel entitled “The Road from Rome to Kampala and Beyond” with UN Secretary-General Mr. Ban Ki-moon, Coalition Advisory Board Chair and former UN Secretary-General the Honorable Mr. Kofi Annan, Coalition Convener William R. Pace, and CIRDDOC Executive Director Oby Nwanko (pictured).

Credit: CICC
PEOPLE’S SPACE AND CIVIL SOCIETY EVENTS
MONDAY 31 MAY 2010

On the first day of the Review Conference, Coalition Steering Committee member Women’s Initiatives for Gender Justice held a Press Conference during which their advocacy paper, “Advancing Gender Justice—A Call to Action” was released. Joining Women’s Initiatives’ Executive Director, Brigid Inder, to speak at the launch of the paper, were three women’s rights activists from ICC conflict situations countries and the Deputy Director of Physicians for Human Rights.

At lunchtime, the Coalition hosted a roundtable discussion entitled “Civil Society Taking Stock: Cooperation.” During the opening discussion, states delegations, NGO representatives and ICC officials voiced their views and concerns with regards to the importance of effective cooperation with the ICC. Discussions on these and other important topics continued during the formal stocktaking exercise.

The Coalition hosted a panel discussion with UN Secretary-General Mr. Ban Ki-moon, former UN Secretary-General and current Chair of the Coalition’s Advisory Board Mr. Kofi Annan, and representatives of civil society, including Mr. William R. Pace (Convenor of the Coalition) and Oby Nwanko (Executive Director of the Civil Resource Development and Documentation Centre/CIRDDOC). Panelists looked back at the historic Rome Conference and forward to the future of international justice and the Rome Statute system. All panelists reflected on the importance of civil society’s contribution to the Rome Statute system, including campaigns for the universality of the Statute, awareness-raising efforts, and other key actions.

In the evening, the International Society for Traumatic Stress Studies hosted an event on trauma and reparative justice, chaired by Kaary Betty Murungi of the Board of Directors for the Trust Fund for Victims. Discussions focused on the potential of the different stages of the justice process to adequately address the healing of victims and their special needs.

In parallel, an event on “Africa and the ICC” was organized by an informal NGO network of African civil society and international organizations with a presence in Africa.
TUESDAY 1 JUNE 2010

Avocats Sans Frontières (ASF) and the Ugandan Law Society (ULS) organized a seminar on the challenges of complementarity under the Rome Statute and the role of lawyers—lessons learned and prospects. The seminar facilitated an exchange of experiences with ULS members and other lawyers involved in the Review Conference on the opportunity and challenges concerning the investigation and prosecution of international crimes at a national level.27

Women’s Initiatives for Gender Justice organized an all-day advocacy event, the “Women’s Court,” in the People’s Space. The event followed the tradition of the “people’s tribunal,” a semi-formal tribunal with witnesses who testify about their experiences as if they were appearing in Court.

The Coalition, in collaboration with the Victims Rights Working Group, hosted a side event entitled “Civil Society Taking Stock—Impact of the Rome Statute on Victims and Affected Communities.” The event aimed at sharing the views of civil society on the eve of the formal stocktaking exercise that took place in the plenary.28

The Coalition also held a media briefing on pressing issues at stake at the Review Conference and answered questions from journalists.29

On the same day, two other press conferences on the Review Conference were held; one by representatives of the European parliament and one by the ICC Prosecutor Luis Moreno-Ocampo.

During an official ceremony, the governments of Belgium, Denmark, and Finland formally signed agreements with the ICC to enforce the judges’ final sentences of imprisonment.30

The Open Society Justice Initiative and U.C. Berkeley Human Rights Center held a meeting on innovative approaches to outreach.31

A roundtable was held on the plight of war victims and affected communities in Northern Uganda and the implications of the Rome Statute on child victims and affected families, organized by World Vision Uganda (WVU) and sponsored by Finland and Chile, who were focal points for the stocktaking exercise on impact on victims and affected communities. Speakers included the director of the WVU, who emphasized the need for protection and the importance of the Victims Trust Fund among other issues. Also speaking was a former child soldier and child mother who gave their testimonies on their experiences when abducted by the Lord’s Resistance Army (LRA). Presentations were followed by a public debate.32

30 For more information read: http://www.icc-cpi.int/NR/exeres/93D88DCD-C4AE-4432-89FA-3D15146B67FE.htm  
31 For more information on the work of OSI and the Human Rights Center, see: http://www.soros.org/ and http://hrc.berkeley.edu  
32 To read more on WVU, see: www.worldvision.org.
Women’s Initiatives for Gender Justice launched its new publication, “In Pursuit of Peace—A la poursuite de la paix,” which was followed by a reception. “In Pursuit of Peace” is a new bilingual publication that includes statements and documents as well as calls to action from women peace activists in relation to Uganda, the DRC, and the Central African Republic.\(^{33}\)

In the evening, the ICC hosted a reception and a photograph exhibition on the Rome Statute system in its Kampala field office.

**WEDNESDAY 2 JUNE**

The Coalition hosted a side event entitled “Civil Society Taking Stock: Complementarity,” to share the views of civil society on this critical issue on the eve of the formal stocktaking exercise. The event was chaired by David Donat Cattin from Parliamentarians for Global Action and included four speakers who discussed the challenges and possible solutions regarding the states parties’ primary obligations to investigate and prosecute Rome Statute crimes within their domestic judicial systems.\(^{34}\)

The governments of Chile and Finland hosted an event entitled “Hope Empowerment and the Experience of Justice” to discuss the preliminary findings from the Trust Fund for Victims research and consultation with victims and affected communities.\(^{35}\)

A public dialogue on the impact of the Rome Statute on victims and affected communities was held by World Vision at the People’s Space and focused on the plight of children and affected communities in Northern Uganda, with interventions by WVU representatives as well as a child survivor and a child mother. Main issues discussed related to peace and justice, reparations for victims and affected communities, and the access to the ICC Trust Fund for Victims.

An event focusing on prosecuting persecution on the basis of gender was held by No Peace Without Justice (NPWJ) at the People’s Space. Panelists highlighted the issue of discrimination against women, sexual orientation, gender identity, and article 7(3) of the Rome Statute.\(^{36}\)

CIRDDOC/Nigeria Coalition for the ICC and HURINET/U held a joint panel with African civil society groups at the People’s Space to share their experiences representing NGOs on the Coalition steering committee.\(^{37}\)

The International Criminal Defence Attorneys Association (ICB) held a meeting “The ICC: An Inde-

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\(^{33}\) The publication can be downloaded at: http://www.iccwomen.org/documents/Pursuit-ENG-4-10-web.pdf.


\(^{35}\) For more information on the Trust Fund for Victims, see: http://www.trustfundforvictims.org/.

\(^{36}\) To read more on No Peace without Justice, see: http://www.npwj.org/ICC/ICC-Review-Conference-NPWJ-calls-a-stronger-international-criminal-justice-system-through-implem

\(^{37}\) To know more on the Coalition steering committee, see: http://www.coalitionfortheicc.org/?mod=steering
dependent Review” to enable a frank conversation among diplomats, legal experts, journalists and NGOs on vital issues of international justice.

The ICB also held a press conference on the same day, with lawyers Allison Turner, Ken Gallant, and Raymond Brown condemning the Rwandan Government’s recent arrest of the ICTR Defence Counsel Peter Erlinder in Kigali, Rwanda. 38

The International Center for Transitional Justice held an event on “taking stock on the impact of the ICC in Kenya, Uganda, the DRC, Sudan and Colombia.”39

HURINET-U, UCICC, and NPWJ held a reception with photo exhibitions and film clips of states parties delegates’ visits to Northern and Eastern Uganda. From January to May 2010, these organizations, with the support of Denmark and in cooperation with the government of Uganda, arranged visits to Uganda for ICC states parties delegates to meet and engage in dialogue with affected communities, victims, civil society, and other stakeholders.40

The movie “War Don Don” was screened and followed by a panel discussion with Steven Rapp, US Ambassador-At-Large for War Crimes Issues; Sulaiman Jabati, Executive Director of the Coalition for Justice and Accountability, Sierra Leone; Binta Mansaray, Registrar of the Special Court for Sierra Leone; and Elise Keppler, Senior Counsel at the International Justice Programme of Human Rights Watch.41

The European Union presented its new brochure on “The European Union and the ICC.”42


Also noteworthy was the pre-launch of the book “The ICC and the Juba Peace Process—Global Governance and/or Local Solutions,” edited by John Francis Onyango and Mr. Pal Wrange.44

The International Committee of the Red Cross (ICRC) launched a manual on the domestic implementation of international humanitarian law, which is based on the extensive experience of the ICRC in the field. It aims at providing guidelines to governments in fulfilling their obligations under the Geneva Conventions and the Additional Protocols.45

38 To read more on the issue, see: http://www.aiad-icdaa.org/index.php?section=1
40 To read more about the project and see pictures of the visits, please refer to http://www.hurinet.or.ug/
41 To read more about the movie, visit: http://www.wardondonfilm.com/
43 To learn further on this, visit: http://www.aalco.int
44 See: http://www.icc-cpi.int/NR/rdonlyres/850861F0-F083-4DF1-B9E1-C1A0FC279508/0/advanceRCJournal29may.pdf.
45 For more information on the manual, visit http://www.icrc.org/web/eng/siteeng0.nsf/swpList2/Humanitarian_law?OpenDocument
THURSDAY 3 JUNE 2010

The Coalition hosted a side event providing the opportunity for civil society to take stock of the relationship of peace and justice as it pertains to the ICC and international criminal justice more broadly.\(^\text{46}\)

The plenary session on complementarity was followed immediately by a side event on complementarity, organized by South Africa and Denmark, which sought to reflect on practical examples of positive complementarity efforts to build capacity in national jurisdictions. The panelists, drawn from both government representatives and civil society organizations involved in encouraging and implementing national capacity projects, addressed the lessons learned in their respective endeavours and the role of the ASP in this regard.

A meeting on “Positive Complementarity: Best Practices and Cooperation in Supporting National Prosecutions in the Democratic Republic of Congo,” was also hosted by the USA, Norway, and the DRC to explore best practices and challenges in supporting national prosecutions in ICC situation countries, with a special focus on the DRC, as well as ways to foster greater strategic cooperation and coordination amongst and between the Government of the DRC, donor states, NGOs, and international institutions. Particular attention was given to difficulties encountered in setting-up judicial institutions and cooperation between the DRC and the ICC and particularly the former’s attempt to prosecute crimes locally, principally with respect to the sharing of information.

The Fédération Internationale des Ligues des Droits de l’Homme (FIDH) hosted a panel on “Implementing Victims’ Access to Justice.”\(^\text{47}\)

The Fédération Internationale des ligues des Droits de l’Homme (FIDH) and Palestinian Centre for Human Rights (PCHR) organized a roundtable discussion entitled “Is There a Court for Gaza?” Participants talked about the situation in Gaza, the issue of the statehood of Palestine under the UN Charter, possible ways for Israel to be held accountable for its alleged crimes, and also reiterated the importance of accountability as a deterrence mechanism and the role of the ICC. The session concluded with the screening of the documentary movie titled “Gazastrophe.”\(^\text{48}\)

The Trust Fund for Victims (TFV) Board of Directors and the Executive Director of the TFV programs held a panel at the People’s Space.\(^\text{49}\)

The Refugee Law Project of the Law Faculty of Makerere University held a panel discussion on “The Politics of Peace and Justice.” Participants engaged in a debate on the philosophical foundation of the ICC versus the reality of the politics involved.\(^\text{50}\)

\(\)\(^46\) Visit the Coalition website for further information on Peace and Justice: http://www.coalitionfortheicc.org/?mod=peaceandjustice
\(\)\(^47\) To read FIDH report on victim’s participation, see: http://www.coalitionfortheicc.org/?mod=victimswitnesses
\(\)\(^48\) More on the movie: http://www.gaza-strophe.com/
\(\)\(^50\) More on the Trust Fund for Victims, see: http://www.trustfundforvictims.org/
\(\)\(^\)\(^50\) More on the Refugee Law Project: http://www.refugeelawproject.org/
The Legal Tools Advisory Committee, on behalf of the ICC, presented the Legal Tools Project, a database of 44,000 legal sources which provide an international criminal law bibliography on core international crimes. The Legal Tools database, which will be completed within 3 years, is updated and quality-controlled by the ICC, and freely available to the public.51

In the evening, Professor William Schabas launched the book “The International Criminal Court: A Commentary on the Rome Statute” during a reception hosted by the government of Ireland.52

A number of movie screenings also took place during the day, including “Children of War” (Uganda), “The Reckoning,” “Pray the Devil Back to Hell” (Liberia), and “Sturm.”53

FRIDAY 4 JUNE 2010

Parallel to the conference, DOMAC, Redress, and Denmark, co-sponsored by South Africa, held a one-day seminar on “The Joint Role of International and National Courts in Prosecuting Serious Crimes and Providing Reparations to Victims: the African Experience” with eminent academic speakers, NGOs, governments, and international organizations. The seminar was aimed at discussing ways to improve coordination of national and international proceedings, with a view to optimizing the complementarity nature of international and national courts.54

Women’s Initiatives for Gender Justice held a press conference featuring Executive Director Brigid Inder and women’s rights activists from four conflict situations. The Women’s Initiatives delegation includes 35 women’s rights and peace activists from Uganda, Central African Republic, the DRC, and Sudan.55

The Kenyan Section of the International Commission of Jurists (ICJ—Kenya) held a panel on “Preventative Aspects of Prosecutorial Justice at the ICC Review Conference 2010,” focusing on comparative deliberations on the Kenyan and Uganda complementarity challenge. The panel assessed the effect of prosecutions at both the national and the international level.56

The International Bar Association and the ICC launched a national campaign to increase the number of Ugandan female lawyers authorized to practice before the ICC. The campaign is part of a broader, international, six-month campaign jointly-conducted by the ICC and the IBA to encourage experienced female lawyers from Africa to play a crucial role at the ICC by representing victims or defendants in proceedings before the Court.57

51 For more information on the Legal Tools, see: www.casematrixnetwork.org
53 To learn more about these movies, see: http://www.pbs.org/pov/reckoning/
54 Read more on the DOMAC project at: http://www.domac.is/ More on REDRESS: http://www.redress.org
55 Read more at: http://www.iccwomen.org/news/berichtdetail.php?we_objectID=74
56 More on ICJ-Kenya: http://www.icj-kenya.org/
Canada hosted a meeting of the Board Members of Justice Rapid Response (JRR). JRR is a multilateral stand-by facility to rapidly deploy criminal justice and related professionals who are trained for international investigations and the service of states and international institutions. The purpose of this meeting was to update JRR Policy Group members and other interested delegations at the Review Conference on the latest developments and to engage in a policy discussion relating to the JRR’s potential to enhance cooperation and complementarity.58

A meeting on “Transitional ‘Justice’ in Afghanistan” was held in the People’s Space by the Afghanistan Independent Human Rights Commission (AIHRC) and No Peace Without Justice (NPWJ) to discuss the challenges of implementing transitional justice in the country.59

NPWJ also organized the launch of the book “Closing the Gap: the Role of Non-judicial Mechanisms in Addressing Impunity,” based on extensive research and studies in 12 countries that have implemented transitional justice measures and analyzing the role that non-judicial mechanisms can play in addressing impunity for crimes under international law.60


The Open Society Justice Initiative and the International Refugee Rights Initiative held a meeting on “NGOs and the ICC: A State of the Union?” with NGO representatives, Court officials, States representatives, and international bars to take stock of the NGO experiences in working with the Court and the Rome Statute.62

MONDAY 7 JUNE 2010

Parliamentarians for Global Action (PGA) organized a roundtable discussion on the crime of aggression entitled “Respecting Existing Norms of Public International Law & Protecting the Integrity of the Rome Statute” with states delegates, NGOs, and international organizations. The discussion enabled an exchange of views and concerns on the current status of the Review Conference negotiations, particularly regarding the conditions for the exercise of the Court’s jurisdiction on the crime of aggression.63

The American NGO Coalition for the ICC (AMICC) held an informal meeting with NGOs attending the Review Conference on the US position towards the ICC and the Rome Statute.64

TUESDAY 8 JUNE 2010

The Institute on World Problems organized a meeting entitled: “Empowering the ICC Toward Effective World Law.”

58 Learn more on the JRR: http://www.justicerapidresponse.org/
60 Read more on NPWJ’s Non-Judicial-Accountability project: http://www.npwj.org/ICC/Non-Judicial-Accountability.html
61 Read the paper at: http://www.refugeeresearch.net/node/662
63 Read more on Parliamentarians for global action: www.pgaction.org/
64 Read more on AMICC: http://www.amicc.org/
WEDNESDAY 9 JUNE 2010

The ICC Office of Public Counsel for the Defence (OPCV) and the International Bar Association (IBA) held “The Rome Statute in Action: a demonstration confirmation hearing” at the People's Space attended by various lawyers, NGOs, academics, and state delegates.65

NPWJ and the Kawakibi Democracy Transition Center held a presentation and discussion on the work of the Arab Working Group on Transitional Justice, which was established in 2009 and includes NGOs, academics, lawyers, researchers and Arab experts in the issues of transitional justice, peaceful resolution of violent conflicts, national reconciliation, human rights and democracy transitions.66

THURSDAY 10 JUNE 2010

NPWJ and the Inter-African Committee on Traditional Practices (CI-AF) held a seminar on accountability for political violence in Guinea and the work undertaken by CI-AF, particularly in addressing crimes of violence against women.67

The Refugee Law Project held a panel on “Reviewing the Review Conference” to reflect on the Conference's successes and failures.68

FRIDAY 11 JUNE 2010

The Coalition held a media briefing on key issues discussed during the two weeks of the Review Conference.