



Report

Assembly of States Parties **15**

The Hague, 16-24 November 2016



COALITION FOR THE INTERNATIONAL CRIMINAL COURT

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Convenor's Note

As the 15th session of the Assembly of States Parties in November 2016 (ASP15) approached, concerns about the challenges confronting the International Criminal Court (ICC) and the States Parties in implementing the Rome Statute were increasing. Already the threats to the ICC were being engulfed by forebodings of a larger peril.

As we prepared this important report in the first months of 2017, it became clear that the threats to the ICC reflect a much greater threat to the systems of multilateralism and world order that have been created since the end of World War II. This report on ASP15 thus addresses the substance and the results of a meeting of more than half of the world community on not only the short-term future of the ICC but of international justice writ large in these very turbulent and troubling political times.



The global community must do better. In important ways the 15th Assembly was more constructive than recent sessions and signaled that the vast majority of states are committed to improvements. A renewed collaborative spirit is visible in this report's descriptions of the largely open and transparent debates that took place at ASP15. That spirit was similarly palpable from an absence of accounts of attempts to interfere with ICC cases, as happened in 2014 and 2015. However, the contradictory policies of major State Parties on funding the Court - one of the few familiar stains during this session - have reached a breaking point and can no longer sustain the real-world demands and pressures facing the Court. During the opening debate of ASP15, the Coalition for the ICC joined the UN High Commissioner for Human Rights and ICC and Assembly leaders in calling for greater unity and dialogue in the face of obstacles to the international commitment that will finally allow the ICC to become the 'Never Again Court' it was intended to be - a Court for all people.

The over 400 NGO delegates in attendance at ASP15 attested not only to the continued relevance of international justice in the face of rising occurrences of grave crimes, but also to the commitment of human rights defenders around the world in the face of increasingly overt and escalating personal security risks.

As 2017 unfolds, there are terrible conflicts where 'ICC crimes' are occurring outside of the Court's jurisdiction, as well as continued political convulsions around the world driven by nationalism and xenophobia. It is now more pressing than ever that this first and permanent International Criminal Court continues to stand for a revolution against the decades - and indeed centuries - of impunity that preceded its existence.

The Gambia's new president affirmed as much when he revoked his predecessor's 2016 Rome Statute withdrawal. Meanwhile, South Africa's judiciary continues to challenge the country's feared regression to rule *by law* as opposed to the post-apartheid rule *of law* - and the dignity, peace and security it promises.

The positive outcomes of ASP15 must now be used as a springboard to deepen dialogue and to address concerns so that the ICC and international justice system work for all.

As this report will show, we - the more than 2500 NGOs that form the Coalition for the International Criminal Court - are far from alone in this mission to achieve lasting peace through the Rome Statute system of international justice.

William R. Pace, Convenor
Coalition for the International Criminal Court



Introduction

This report is an informal summary of the activities of the 15th session of the Assembly of States Parties to the Rome Statute (ASP), which took place from 16 to 24 November 2016.

Since 1995, the Coalition for the International Criminal Court has led the civil society effort that successfully campaigned for the adoption of the Rome Statute in 1998 and the creation of a permanent international court to hold perpetrators of genocide, war crimes, and crimes against humanity to account. The International Criminal Court (ICC) was established just four years later.

The Coalition has since facilitated unprecedented access and participation by civil society from around the world in the ICC process, including its governance by the ASP. At the 2003 ASP session, the Coalition was recognized, by consensus among States Parties, for its “coordinating and facilitating role.”

Civil society continues to build upon its original investment into justice and accountability for victims of the most shocking international crimes. The annual ASP session is a pivotal forum for the Coalition and its members as an essential opportunity for state and civil society actors to exchange and reflect upon their respective positive contributions to the Rome Statute process in the twelve months prior to the session. As such the annual ASP session remains the primary forum to consider existing and future short- and long-term challenges facing the Rome Statute system.

As in previous years, civil society participating at the 15th ASP session coordinated its activities through the Coalition. The Coalition assisted more than 70 nongovernmental organizations from all parts of the world in making their opinions and recommendations known to the ICC governing body during the 15th ASP session. Numerous side-events (co-)organized by the Coalition or by members of civil society took place in the margins of the ASP session, providing a platform for enhanced dialogue between the participating NGOs on the one hand, and the Court and States Parties on the other.

Prior to and during the 15th ASP session, the Coalition continued its advocacy for a fair, effective, and independent Court by addressing a number of key issues through advocacy documents, letters, meetings, press briefings, and other events. At the conclusion of each working day of the annual session, the Coalition published an informal daily report – to be featured on the Coalition’s [#GlobalJustice News Center](#) – of the events that took place.

As we celebrate the Coalition’s 20th anniversary of fighting for the International Criminal Court, or “Never Again Court,” the Coalition encouraged participants at the 15th ASP session to consider using the occasion to make supportive statements on the pressing issues facing the Rome Statute system today, not only during the ASP’s General Debate but throughout the session’s negotiations and discussions.



1. The Assembly of States Parties

The Assembly of States Parties to the Rome Statute serves as the management oversight and legislative body of the International Criminal Court. The ASP comprises all 124 States Parties to the ICC’s founding treaty, the Rome Statute. It is important to note that while the ASP performs management oversight and legislative functions for the ICC, it is strictly forbidden from interfering with the judicial or prosecutorial independence of the Court.

ASP Bureau

The ASP has an executive committee – the ASP Bureau – that consists of a president, two vice-presidents, and 18 States Parties’, taking into account equitable geographical distribution and adequate representation of the principal legal systems of the world. The ASP president and vice-presidents, as well as the Bureau members, are each elected for three-year terms. The Bureau helps the ASP comply with its various mandates and meets regularly throughout the year in New York and The Hague. The Bureau has two working groups: The New York Working Group (NYWG) and The Hague Working Group (HWG), each presided over by one of the ASP vice-presidents.

The current president of the ASP is H.E. Mr. Sidiki Kaba of Senegal, who is supported by vice-presidents Ambassador Sebastiano Cardi of Italy (based in New York) and, up until the conclusion of his tenure in 2016, Ambassador Álvaro Moerzinger of Uruguay (based in The Hague). Since, Ambassador Moerzinger’s departure, the HWG has been coordinated by Ambassador Sergio Ugalde (Costa Rica). The current 18 Bureau members, as elected, are:

Chile	Colombia	Costa Rica
Czech Republic	Germany	Ghana
Hungary	Japan	The Netherlands
Nigeria	Republic of Korea	Romania
Samoa	Slovenia (as Rapporteur)	South Africa
Sweden	Uganda	United Kingdom

The current ASP Presidency and Bureau were elected by consensus in late 2014 for a three-year term and assumed functions at the beginning of the 13th ASP session (December 2014). The newly elected ASP Presidency and Bureau will assume functions at the 16th session in 2017.

ASP Secretariat

The ASP has a permanent Secretariat (ASP Secretariat), which is located in The Hague and directed by Mr. Renan Villacis. The ASP Secretariat provides administrative and technical, as well as independent, substantive assistance to the ASP, the Bureau, and their various subsidiary bodies.

States Parties

The ASP is composed of the 124 states that have ratified or acceded to the Rome Statute and are thus members of the ICC. While each State Party to the Rome Statute receives one vote (Article 112 (7)RS) in the decision-making process of the ASP, both the Rome Statute and the ASP Bureau encourage states to reach prior consensus on matters that require a vote; only when this is impossible, is resort to an actual vote undertaken. All other states that signed the Statute but have not ratified it or signed the Final Act of the Rome Conference may attend the ASP session as observer entities.

States Parties to the Rome Statute in 2016

A

[Afghanistan](#)
[Albania](#)
[Andorra](#)
[Antigua and Barbuda](#)
[Argentina](#)
[Australia](#)
[Austria](#)

B

[Bangladesh](#)
[Barbados](#)
[Belgium](#)
[Belize](#)
[Benin](#)
[Bolivia](#)
[Bosnia and Herz.](#)
[Botswana](#)
[Brazil](#)
[Bulgaria](#)
[Burkina Faso](#)
[Burundi](#)

C

[Cabo Verde](#)
[Cambodia](#)
[Canada](#)
[Cen. Afr. Republic](#)
[Chad](#)
[Chile](#)
[Colombia](#)
[Comoros](#)
[Congo](#)
[Cook Islands](#)
[Costa Rica](#)
[Côte d'Ivoire](#)
[Croatia](#)
[Cyprus](#)
[Czech Republic](#)

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[Djibouti](#)
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[Guyana](#)

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[Nigeria](#)
[Norway](#)

[New Zealand](#)

P

[Palestine, State of](#)
[Panama](#)
[Paraguay](#)
[Peru](#)
[Philippines](#)
[Poland](#)
[Portugal](#)

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[Republic of Korea](#)
[Republic of Moldova](#)
[Romania](#)

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[Samoa](#)
[San Marino](#)
[Senegal](#)
[Serbia](#)
[Seychelles](#)
[Sierra Leone](#)
[Slovakia](#)
[Slovenia](#)
[South Africa](#)
[Spain](#)
[Suriname](#)
[Sweden](#)
[Switzerland](#)

T

[Tajikistan](#)
[Macedonia](#)
[Timor-Leste](#)
[Trinidad and Tobago](#)
[Tunisia](#)

U

[Uganda](#)
[United Kingdom](#)
[Tanzania](#)
[Uruguay](#)

V

[Vanuatu](#)
[Venezuela](#)

Z

[Zambia](#)



Sessions of the Assembly of States Parties

The ASP meets collectively in what is known as a ‘plenary’ meeting at least once a year, in either New York or The Hague. The 15th plenary meeting, or ASP session, took place at the World Forum Convention Centre in The Hague from 16 to 24 November 2016.

States Parties use the annual ASP sessions to discuss and decide upon important issues related to the functioning and success of the ICC and the Rome Statute system as a whole. Such issues may involve core obligations of States Parties in relation to cooperation and complementarity, as well as vital institutional matters like the annual ICC budget and the efficiency of ICC proceedings.

The annual ASP session is an important forum for states and civil society actors to commit to consistent, strategic, and forward-looking actions: international institutions are only as powerful as their members allow them to be. The ICC is dependent on its member states, and as such, ASP decisions not only reflect and impact States Parties’ political will and cooperation, whether obligatory or voluntary, but also the functioning of the Court itself.

In addition to taking decisions, at each annual session the ASP tasks the Bureau with facilitating discussions during the following year on a number of issues that are significant to the activities of the ICC and ASP. These topics are assigned to either The Hague or New York working groups and (co-)facilitators or (co-)focal points are appointed to lead specific discussions.

At every annual session, the ASP has tasked subsidiary bodies like the Committee on Budget and Finance, as well as organs of the Court and sometimes independent external actors, to report back on relevant issues the following year. These reports, and more information about the ASP, can be found on the [ASP website](#).

Observers

States that are not party to the Rome Statute, as well as regional and international organizations, civil society, and the media, may participate in Assembly meetings with ‘observer’ status. Participation in the ASP sessions provides these groups with an opportunity to interact with the Rome Statute system of international justice, for example, by enabling states not party to the Statute to demonstrate their commitment to ending impunity for grave international crimes. They can do by making statements during the General Debate or other plenary discussions, or by providing updates on progress towards ratification and/or implementation of the Rome Statute and the Agreement on Privileges and Immunities of the Court (APIC).

The 15th session of the ASP

While the outcomes of each annual ASP session differ according to the specific issues discussed in any given year, they usually fall under recurring general topics. At the conclusion of the 15th session, the ASP plenary adopted language as part of a catch-all omnibus resolution – on issues related to the 2017 ICC budget, cooperation, complementarity, victims and affected communities, universality, and the relationship between the ICC and the United Nations Security Council, among many other topics. The ASP plenary also adopted a separate or ‘stand-alone’ resolution on the ICC’s 2017 budget; on cooperation; on the permanent premises; and on the amendments to rule 101 and rule 144(2)(b) of the Rules of Procedure and Evidence.



A great number of side events were organized in the margins of the ASP. Many topics on the ASP agenda, as well as others related to the work and broader impact of the ICC, were discussed during breakfast meetings, lunch breaks, or evening events. Civil society (co-)organized a large number of these side events during the ASP. (For a non-exhaustive list of some of the events that the Coalition and/or its members and partners organized during the 15th ASP session, see Annex 1).

All side-events can be found in the ASP Journal, which provided a daily agenda and overview of the plenary sessions and side-events taking place during the 15th ASP session. The [ASP Journal](#) can be found on the ASP website for reference.

2. Opening Session

The 15th ASP session opened on Wednesday 16 November 2016 with a plenary session dedicated to preliminary (and administrative) tasks, as well as two elections. The opening session also featured a number of keynote addresses – by the ASP President and Vice President, the ICC President, and the ICC Prosecutor – as well as the Chairperson of the Board of Trust Fund for Victims and the UN High Commissioner for Human Rights.

Following the procedure set out by the Rules and Procedure of the Assembly of States Parties, ASP began by formally adopting the agenda of the ASP, followed by the appointment of the Credentials Committee. After appealing to states in arrears to satisfy their contribution requirements, the Assembly heard reports from the Court on the ICC activities; the Board of Directors of the Trust Fund for Victims; the Bureau; and the Oversight Committee on the permanent premises.

Sidiki Kaba, ASP President

The Assembly's 15th session opened with a statement by its president, Sidiki Kaba. The ASP president recalled, following the Rules of Procedure of the ASP, the different participants to the ASP: ICC member states, observer states, and civil society. He proceeded with the adoption of the official agenda. In his opening statement, President Kaba called on states to protect the independence and the integrity of the Court in the face of current challenges.

Prince Zeid, UN High Commissioner for Human Rights

Prince Zeid, the UN High Commissioner for Human Rights, used his opening speech to address the recent withdrawals from the ICC and to call on ICC member states to not turn their backs on victims of international crimes. He urged the ASP to take a firm stand on Rome Statute Article 27, prohibiting immunities for heads of state and government officials, and not to make any compromise. He noted that African countries had been the backbone of the Court and urged states to summon their determination to continue to support the Court and to resist such challenges.

Sebastiano Cardi, ASP Vice President

Vice-President of the ASP Sebastiano Cardi called on states in arrears to pay their financial contributions to the ICC budget. At the beginning of the ASP session there was a gap of over 33 million euros due to states being in arrears in paying their contribution to the Court's budget. Vice-President Cardi then proposed that the ASP's Credentials Committee be composed of Kenya, Panama, Peru, Korea, the Czech Republic, Senegal and Slovakia.

Silvia Fernández de Gurmendi, ICC President

The President of the ICC, Silvia Fernández de Gurmendi, used her opening speech to address the importance of constructive dialogue between the Court, civil society and victims. She reiterated the Court's commitment to listen to concerns raised by states, and to act on constructive criticisms. Moreover, she noted the role of the ICC as a Court of last resort to serve to protect victims only where states have themselves failed to bring perpetrators to justice.

President Fernandez proceeded to recall the achievements of the Court in 2016. She pointed to the trial of Ahmad al-Mahdi, which was the first cultural crimes trial to come before the ICC, as well as



being the first time a defendant pled guilty. She noted that reparations were awarded in four cases, and the opening of new investigations. Furthermore, she spoke of external initiatives that will provide support to the ICC in fulfilling its mandate - namely, the establishment of the ICC Bar Association aims to reinforce the fairness and equality of arms.

Finally, she recalled the assistance voluntary contributions had provided in reaching out to affected communities, and in organizing crucial seminars during the year. President Fernandez called on states to expand the universality of the Court, so that significant achievements can continue to be made. She emphasized the need for greater unified approaches between the ICC and international and regional organizations, as the support of the external actors remains of the utmost importance. This was reflected in the cooperation agreements established with regional organizations, as well as the memorandum of understanding with peacekeeping missions in CAR.

Fatou Bensouda, ICC Prosecutor

ICC Prosecutor Fatou Bensouda took the floor underlining the importance of states' participation in the ICC system, and the need for more member states. She also addressed the issue of the recent withdrawals from the Rome Statute, stating that the ICC is more relevant now than ever and that the withdrawals are not a crisis for the Rome Statute system, but is a setback in the joint efforts to achieve peace and justice.

The Prosecutor reflected on the activities the Court has achieved this past year; namely the 10 situations and 10 preliminary examinations underway. She acknowledged the launch of the OTP's Preliminary Examination Report for 2016, which indicates that a decision is imminent on a possible investigation in Afghanistan. Prosecutor Bensouda also highlighted important issues the OTP is focused on: strengthening trust in the OTP by increasing transparency and accountability, increasing cooperation, the need to work more closely with affected communities and to adopt a child-sensitive approach. She called on states for continued support to enable the implementation of the Court's mandate, and noted the importance of continued financial support.

Motoo Noguchi, Chairperson of the Board of Directors of the Trust Fund for Victims

The Chair of the Board of Directors for the Trust Fund for Victims (TFV) Motoo Noguchi presented a report on the activities and projects of the Fund in 2016. He highlighted how crucial the symbolic reparations package that was approved by the Trial Chamber is, as well as the collective reparations ordered by the Appeals Chamber in the ICC trial of Thomas Lubanga. However, Mr. Noguchi also noted that delays in the reparations proceedings has left victims feeling disappointed and despondent. He called on states for continuous political, financial and moral support in order to accomplish the unprecedented mandate before them.

3. Elections

The ASP is typically tasked with electing members to the Assembly's independent and subsidiary bodies during the opening session. In line with customary ASP practice, the ASP Bureau requested that States Parties achieve consensus on which nominees to elect ahead of the 15th annual session, in order to promote cooperation among states and to avoid time-consuming rounds of voting for these posts during the session itself.

Elections at the 15th ASP Session

The Coalition for the ICC monitors all ICC and ASP elections to ensure they are fair, transparent, and lead to the election of the most qualified candidates. The Coalition itself does not endorse or oppose individual candidates, but advocates for the integrity of the nomination and election processes. The Coalition strongly opposes reciprocal political agreements ("vote-trading") in ICC and ASP elections. Time was allotted during the 15th ASP opening session (on 16 November 2016) to elect:

- 1) One vice-president of the ASP Bureau (a replacement candidate); and
- 2) Six members of the Committee on Budget and Finance.

Election of one ASP Bureau vice-president

Ambassador Alvaro Moerzinger (Uruguay) completed his term as ASP Bureau vice-president earlier in 2016, after his tenure as ambassador of Uruguay to the Netherlands ended. The Hague Working Group coordinator/ASP Bureau Vice-president Ambassador Sergio Ugalde (Costa Rica) served in this position in the interim period, and was officially appointed by consensus during the 2016 ASP opening session, for the remainder of the current ASP Bureau term.

Election of 6 members of the Committee on Budget and Finance

The Committee on Budget and Finance (CBF) is an independent [expert body](#) responsible for the technical examination of any document submitted to the ASP containing financial or budgetary implications. The ASP may also entrust to the CBF any other matter of a financial, budgetary, or administrative nature. The work of the CBF is instrumental in the decisions that States Parties make on the Court's annual budget, which in turn impacts ICC decisions around the investigations and cases it can pursue.

To ensure a qualified and impartial CBF assessment, the 12 CBF members are meant to bring recognized financial expertise at the international level to the budget-setting process. To ensure the CBF's assessments are geographically equitable and representative, States Parties at the first ASP session agreed to allocate seats based on the representative composition of the ASP. At this year's session, one CBF member was elected from the group of African states; one from Eastern European states; one from Latin American and Caribbean states; and three from Western European and other states. The eight nominees for the six CBF seats up for election at the 2016 ASP session were:

- **African states:** François Xavier Nsabimana (Burundi); and François Marie Didier Zoundi (Burkina Faso);
- **Eastern European states:** Emina Ćirić (Bosnia and Herzegovina); and Urmet Lee (Estonia);
- **Latin American and Caribbean states:** Carolina Maria Fernandez Opazo (Mexico);
- **Western European and other states:** Gerd Saupe (Germany); Richard Veneau (France); and Helen Warren (United Kingdom).



While each State Party to the Rome Statute receives one vote (Article 112 (7)RS) in the ASP decision-making process of the ASP, both the Rome Statute and the ASP Bureau encourage states to reach prior consensus on matters that require a vote – and only when this is impossible to resort to an actual vote.

Four of the six new CBF members – one from the Latin America group, and three from the Western European and other states group – were elected by acclamation during the opening session of the 15th ASP session. The seat for the Africa group and the seat for the Eastern European group were filled during the week, with the results being announced at the ASP closing session on Thursday, 24 November. The Africa group reached consensus on nominee Mr. François Marie Didier Zoundi (Burkina Faso). The Eastern European group reached consensus on having Mr. Urmet Lee (Estonia) complete the first half of the mandate and have a replacement candidate from Bosnia Herzegovina fill the second half of the term. Belgium noted that in this case, new elections would be necessary following the end of Mr. Lee’s half-term.

The six new members will commence their three-year terms on the 21 April 2017.

Relevant documents

[Procedure for Election of members of Committee of Budget and Finance](#)

[Committee of Budget and Finance Election: List of Candidates and note from the ASP Secretariat](#)

[CICC Background Paper for ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

4. The General Debate

The General Debate took place during three plenary sessions in the first two days of the ASP session (16 and 17 November 2016). The General Debate provided participants with an opportunity to address issues related to their work and the wider Rome Statute (RS) system of international justice. While special plenary sessions were dedicated to the in-depth continuation of several of this year's ongoing discussions in the Bureau's working groups, general debate participants were able to highlight those topics of singular importance to them and their respective efforts in the fight against impunity.

The General Debate portion of the ASP provided an opportunity for high-level statements of support for the ICC and Rome Statute system. In these statements, States Parties, non-States Parties, regional and international organizations, and civil society reiterated their support for the Court and its progress thus far. Many identified areas in which the ICC can continue to improve with an aim to fulfilling its unprecedented mandate.

The General Debate also served as an opportunity to inform ASP participants of steps taken to ratify or accede to the Rome Statute, as well as to update on progress made regarding domestic implementation of the Statute and ratification of the Agreement on Privileges and Immunities of the Court (APIC). Delegations also used the General Debate to highlight efforts undertaken to improve cooperation with the Court, as well as to provide updates on the progress of investigations and prosecutions of Rome Statute crimes at the national level – as per the principle of complementarity.

The Coalition has long encouraged states to take full advantage of this opportunity to express support for an end to impunity through the Rome Statute system, in addition to their taking formal positions with respect to a variety of issues up for discussion. In particular, the Coalition encouraged states to address the following key issues during their General Debate statement:

- High-level political support and commitment to the ICC and Rome Statute;
- A strong response to recent ICC withdrawal announcements;
- The need to safeguard the integrity of the Rome Statute;
- The need for universality of the Rome Statute;
- The importance of fully implementing the Rome Statute into national law;
- Enhanced cooperation, including by pledging to ratify the Agreement on Privileges and Immunities of the ICC ahead of the Rome Statute's 20th anniversary in 2018;
- Acknowledgment of the ICC's independence and States Parties' oversight role;
- Financial commitment to the Rome Statute system, including the ICC budget and voluntary funds;
- The centrality of victims' participation and reparations in the Rome Statute system.

The following states gave a statement during the general debate of the 15th ASP session:

Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burundi, Canada, Chile, Colombia, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Democratic Republic of the Congo, Ecuador, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kenya, Latvia, Lesotho, Liechtenstein, Luxembourg, Mali, Mexico, Namibia, Netherlands, New



Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Slovakia (on behalf of the EU), Slovenia, South Africa, Spain, State of Palestine, Sweden, Switzerland, Tanzania, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay, Vanuatu, and Venezuela. The United States also gave a statement as an ‘observer state’ to the ASP.

Issues of universality, cooperation, budget, the crime of aggression, and recent withdrawals were prominent during states interventions. The majority of states expressed their concern about the recent withdrawals and urged one another to recognize and improve the functioning of the ICC from within the Rome Statute system. Most African states reiterated their support for the ICC and the Rome Statute system. Nigeria called for impunity to be challenged without discrimination, and this support was matched by states like Cote d’Ivoire, Burkina Faso, Mali, and Lesotho, the latter calling on states to take advantage of the major African representation in the ASP to preserve their original resolve to establish the ICC, and stating it would itself nominate a candidate for ICC judicial elections at next year’s ASP session. Uganda and Namibia meanwhile reaffirmed their commitment to the ICC while raising concerns, with Uganda emphasizing that recent withdrawals were avoidable. As one of the three withdrawing states, Burundi justified its decision with alternative narrative for the post-elections violence in the country as well as for why its cooperation with the ICC Prosecutor failed.

There was an overwhelming show of support among ICC member states for the key role of the ICC in the fight against impunity, with many calling for more constructive dialogue to address challenges and criticisms the Court is facing, including cooperation. A number of states highlighted the need for great attention to the investigation and prosecution of sexual and gender-based crimes around the world, including in Iraq and Syria, while acknowledging the positive developments at the ICC this year in this regard, adding that a lack of cooperation has hampered greater progress. States illustrated their commitment to victims’ rights at the ICC as Japan and Sweden announced upcoming voluntary contributions to the Trust Fund for Victims. Spain, meanwhile, noted that it has enacted a domestic immunities law that does not conflict with its international obligations under the Rome Statute. Andorra and Vanuatu underscored that all states have an equal voice in the Rome Statute system, while the latter also called for ICC outreach to expand into the Pacific region and for ICC jurisdiction over environmental crimes. El Salvador was welcomed as the 124th state to ratify the Rome Statute, with the state itself expressing gratitude to the Court and the efforts by the Coalition to bring the country into the international justice process.

While generally supportive, Brazil expressed concern over the potential of the ICC prosecutor’s new policy on case selection to expand the Court’s jurisdiction to cover environmental crimes. Palestine called for expedited investigation into the situation of Palestine. The Philippines noted that while well-intended, a recent statement by the ICC prosecutor on the situation in the country was premature given what the speaker called ongoing investigations into alleged extra-judicial killings and systematic attacks against civilians. The Philippines noted it would await further instructions from its president on the country’s future relationship with the ICC. Kenya, meanwhile, used its general debate statement largely to condemn UN Human Rights Head Prince Zeid’s statement at the opening of the ASP session.

South Africa explained the reason of their withdrawal, emphasizing that its position on Article 98 of the Rome Statute had been ignored by the ICC. Liechtenstein, Botswana, Bosnia and Herzegovina,



Costa Rica, Finland, Norway, and Austria among others voiced their commitment to the fight against impunity and support for the ICC. The Democratic Republic of Congo stressed that it will not withdraw from the Rome Statute, though it “regretted the two-tier justice system of the Court in the face of powerful states”. On behalf of the European Union, Slovakia announced their full support for the mandate of the ICC and the work it is trying to achieve, offering full cooperation with the Court to achieve its goals.

Another issue raised in many statements was diversity in the ICC as an institution. Several states raised their concern over the geographical diversity of hiring for professional positions. Support for the budgetary requirement of the ICC was expressed by the states (Switzerland, France, Chile, and Luxembourg) who argued that the Court requires sufficient resources to fully carry out its mandate.

The General Debate continued on the 17th of November with both statements from states and civil society, focusing on the independence of the ICC, cooperation, the issue of withdrawals, and its functioning, among other matters. Interventions were also made by international and regional organizations, being the International Committee of the Red Cross (ICRC) and the Organisation Internationale de la Francophonie (OIF).

Civil society statements during the 15th ASP General Debate

Civil society took part in the General Debate with 10 individual non-governmental organizations, including the Coalition for the ICC, delivering statements. The General Debate served as a forum for civil society to raise concerns that were not prominently featured – if at all – on the ASP program. The following civil society representatives delivered statements:

- [William R. Pace](#) – Coalition for the International Criminal Court
- [Mohamed Ndifuna](#) – Uganda national Coalition for the ICC
- [Emery Okundji Ndjovu](#) - Parliamentarians for Global Action (PGA)
- Brigitte Chelebian – Justice Without Frontiers
- [Netsanet Belay](#) - Amnesty International
- [Ali Ouattara](#) – Ivorian national Coalition for the ICC
- Guissou Jahangiri – International Federation for Human Rights (FIDH)
- [Chino Obiagwu](#) – Nigerian national Coalition for the ICC
- [Gladwell Otieno](#) – Kenyans for Peace with Truth and Justice
- [Elizabeth Evenson](#) – Human Rights Watch

The statements by civil society organizations covered a range of issues, including civil society's commitment to the ICC, the protection of human rights defenders, the need for States Parties to make strong statements to support the ICC, and the need for justice for victims.

Relevant documents

[List of all General Debate statements](#)

[CICC Background Paper for ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)



5. Withdrawals from the Rome Statute

Article 127 of the Rome Statute outlines the procedure for a State Party to withdraw from the ICC founding treaty. A withdrawing State Party must provide official written notice to the United Nations Secretary-General – the depositary of the Rome Statute – of its intention to withdraw. The actual withdrawal comes into effect one year after the date the notification is received by the UN.

In the weeks leading up to the 15th ASP session, South Africa, Burundi, and The Gambia deposited their instruments of withdrawal to the Secretary-General of the United Nations.

Civil society has overwhelmingly considered the intended withdrawals of several African states as damaging to democracy, rule of law, peace-building efforts, and most of all, victims' access to justice – both in Africa and across the Rome Statute system. A letter from 200 civil society organizations was sent to the Presidents of African States Parties to the ICC before the start of the ASP session. The letter calls for African members of the Court to show greater support for the ICC in the wake of withdrawals by South Africa, Burundi and The Gambia. The letter is an impressive reiteration of support for the court's work to deliver justice with 200 endorsing organizations: 100 local and regional groups based in more than 25 African countries, and several international organizations working on international justice on the African continent. In its [Key Recommendations](#) to the 15th ASP session, the Coalition invited States Parties to use the General Debate and other avenues to defend the Rome Statute system and respond strongly to the withdrawal announcements.

In the lead-up to the ASP, several States Parties voiced their support for international justice and the work of the ICC, and have on different occasions invited the concerned states to reconsider their position on the matter. These states include Botswana, Sierra Leone, Costa Rica, Netherlands, Slovenia, Chile, Austria, Canada, Germany, Mexico, Ecuador, Argentina, and the United Kingdom.

In his opening address on the first day of the ASP, Mr. Kaba, the President of the Assembly of States Parties, recognized the African concerns about selective and discriminatory and possibly even racist justice, and the sense of injustice that is being felt throughout the African continent. He called on those who have deposited their instrument of withdrawal to the UN Secretary-General, as well as all on other States Parties, to remain within the Rome Statute and engage in constructive dialogue within the Assembly. He called for mutual action to defend the integrity of the Rome Statute, while at the same time incorporating the concerns of States in these actions.

The UN High Commission for Human Rights, Prince Zeid, also during the opening session of the ASP, asked ICC member states not to turn their backs to victims and stand by the Court. He urged the Assembly to take a firm stand and not to make any compromise in its discussions on Rome Statute Article 27 prohibiting immunities for heads of state and government officials.

The ASP 15 Open Bureau meeting on Africa and the ICC

In the light of the three withdrawal notifications, as well as long-standing allegations that the ICC is disproportionately targeting Africa in its cases, the President of the Assembly, Mr. Sidiki Kaba, decided to hold an open meeting of the ASP Bureau during the 15th ASP session to engage in a dialogue on the relationship between Africa and the Court. The open Bureau meeting took place on 18 November 2016 and was entitled 'Relationship between Africa and the International Criminal Court: Resuming dialogue to win the fight against impunity.'

Ever since issuing the first of two arrest warrants against Sudanese President Omar al-Bashir in 2009, the ICC has experienced strains in its relationship with some African states, as well as with the African Union. Earlier in 2016, Kenya had tabled a proposal at the African Union for mass withdrawal of African states from the Rome Statute, and while certain members of the African Union backed the proposal, others explicitly stated their continued support for the Court.

Civil society encouraged – and continues to encourage – all concerned parties to engage with the Assembly in open and frank discussion, without compromises on cornerstone principles such as the Rome Statute prohibition on immunity for heads-of-states and high-level government officials. The Coalition called for victim perspectives and opinions to be prioritized above all else during the session, as well as in the fight for global justice more generally.

ASP President Mr. Sidiki Kaba opened the session by expressing his appreciation for organization this session. He stressed that it is necessary to analyze the African perceptions that the Court delivers selective or discriminatory justice. The African sentiment of feeling unheard must be addressed. Mr. Kaba also mentioned that a discussion on the interpretation of certain articles in the Statute, on the reform of the Security Council and the restraint of the veto in the case of mass atrocities must continue to take place in the future. He ended with a positive outlook on the next year, and invited States Parties to continue the dialogue within the cadres of the Rome Statute.

Further presentations were made by the Ambassador of Ghana to the Netherlands, H.E. Mr. J Tony Aidoo, and Mr. Njonjo Mue, a Kenyan human rights lawyer and transitional justice expert. Mr. Adewale Iyande from the African Union made remarks on behalf of the Open-Ended Ministerial Committee on the ICC of the AU, as well as 40 States Parties and 2 representatives of civil society.

Ambassador of Ghana H.E. Mr. J. Tony Aidoo addressed that the basis of Africa’s contention with the ICC is the high number of African cases before the Court, while crimes of similar nature that occur in other parts of the world go unpunished. All must be equal before the law. Africa’s case is that equality before the law is not just a matter of enjoying rights, but also a question of how you fulfill your own obligations. The Ambassador ended his speech by welcoming this opportunity to exchange views during this special session.

Civil society representative and transitional justice expert Mr. Njonjo Mue from Kenyans for Peace with Truth and Justice (KPTJ) spoke to recognize the need for the Court to expand its scope beyond Africa and to address violations wherever they occur in its jurisdiction. He noted that the simple answer to African states that feel targeted by the ICC is that they must prosecute atrocity crimes and deliver justice to victims at home. Mr. Mue suggested that African states direct their criticism to the UN Security Council instead of the ICC, and that an advisory opinion from the International Court of Justice must be sought to find a conclusive interpretation on the issue of head of state immunity. He ended by saying that sentiments of some African peoples of racism, domination, and exclusion are real, but these must be dealt with within the Rome Statute system. The African way is not to withdraw, but to stay and respond. African states must work within the Rome Statute to improve a Court which is now needed more desperately than at its creation.

The representative from the **African Commission, Mr. Adewale Iyande**, noted that while African states remain the leading block of States Parties, concerns regarding head of state immunity, and inconsistent application of the law by the UN Security Council in referring cases to the ICC have



been unheeded by the Assembly. While stressing that the fight against impunity constitutes a fundamental principle of the law of the African Union, and therefore not negotiable, Mr. Iyande stressed that African States Parties have put forward proposals to improve an imperfect Rome Statute system. He concluded by saying that the AU is committed to working on improvement of the international legal system.

All in all, the dialogue on the relationship between Africa and the ICC welcomed a discussion between states parties and NGO representatives. The Open Bureau meeting saw strong reaffirmation of the support for the ICC and international justice from the vast majority of delegations from Africa and beyond. Many governments expressed regret about the announced withdrawals, and called for reconsideration, while recognizing the sovereign right of state to take this decision.

States seemed willing to engage in constructive dialogue to address concerns and some of the challenges the Court is currently facing. South Africa, whilst willing to discuss their withdrawal, was critical that even though all States has professed their willingness to engage with African states, nothing concrete had been put forward. The main consensus was that the Court, particularly the Office of the Prosecutor, must be more responsive to concerns raised by African states. In addition, all states must strengthen their efforts to bolster the Court and engage in constructive dialogues on how the ICC can most effectively achieve its mandate of delivering justice to victims of atrocious crimes.

Many states reiterated remarks by Mr. Kaba and Mr. Iyande on concerns about the referral powers of the UN Security Council. It was stressed that 3 out of 5 of the permanent members of the UNSC are not states party to the Rome Statute. Delegates urged these states to consider ratifying the Rome Statute, to acknowledge the critical role that they play in referring cases to the Court, and to not turn the Court into political instrument. Several states also expressed their support for a proposal to continue discussions on the interpretation of Rome Statute articles on immunities.

Despite fears to contrary, no further withdrawals were announced at the 15th session of the ASP. The approach that was found in a constructive dialogue between States Parties and civil society at this Assembly must now be used as a springboard to deepen dialogue and to address concerns in order to make the ICC and the international justice system work for all.

What the Rome Statute says about withdrawals

- Obligations from before the entry into force of the withdrawal remain (such as **financial obligations**);
- **Cooperation obligations** remain regarding ongoing investigations and proceedings that were opened before the withdrawal came into effect;
- **Investigation(s)** that the ICC prosecutor has opened in the territory of a withdrawing state or involving nationals of a withdrawing state, prior to the withdrawal coming into effect, continue;
- **Ongoing cases** from a situation in the withdrawing state or involving nationals from the withdrawing state continue;
- The Rome Statute does not explicitly mention any potential impact of a withdrawal on the continuation of a **preliminary examination** after the effective date of withdrawal. Article



127 does, however, provide that withdrawal shall not “*prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.*”

- The **United Nations Security Council** can still refer a situation on the territory of the withdrawing state to the ICC Office of the Prosecutor.

Relevant Documents

African civil society group letter to African States Parties to the ICC

Informal summary by the President of the ASP, Mr. Sidiki Kaba, on the Relationship between Africa and the International Criminal Court

Statement from the ASP President at the Open Bureau meeting: Relationship between Africa and the International Criminal Court - (in French)

Remarks by Mr. Njonjo Mue during the open Bureau meeting on Africa and the ICC

CICC Background Paper on ASP15

CICC Key Recommendations and Priorities for ASP15

ASP15 Opening Statement of ASP President

Statement of H.R.H. Prince Zeid Ra’ad Zeid Al-Hussein, UN High Commissioner for Human Rights

ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties

6. Cooperation

Cooperation is an absolutely vital part of the system of international justice set up by the Rome Statute and must be multi-faceted to enable the effective execution of the various functions of the ICC. With no enforcement mechanism of its own, the success of the ICC is largely dependent on the cooperation it receives from states, the UN, regional organizations, and other relevant actors. Part IX of the Rome Statute lays out the various ways in which States Parties are to cooperate with the ICC.

Discussions on cooperation in 2016

Over the course of 2016, and under the facilitation of Ambassador Maymouna Diop-Sy (Senegal) and Ambassador Paul Wilke (The Netherlands), The Hague Working Group (HWG) discussed, among other topics, the 66 Recommendations on cooperation as well as voluntary cooperation agreements.

66 Recommendations

In 2007, the Assembly adopted *66 Recommendations on cooperation*, an extensive list of recommendations identifying the challenges and key priority areas regarding cooperation. In 2016, the HWG continued to review the *66 Recommendations* and, for this purpose, sent States Parties a questionnaire on their implementation of the seven key areas of cooperation identified in the 2015 flyer (*Recommendations on States' Cooperation with the International Criminal Court (ICC): Experiences and Priorities*). The responses were meant to inform future discussions on cooperation, but as of 30 September 2016, only 12 of the 124 states had replied to the questionnaire.

Voluntary cooperation

The Court has developed voluntary framework agreements to facilitate States Parties' ability to accommodate ICC requests, when necessary, in relation to witness relocation and protection, hosting acquitted persons, hosting accused persons who have been granted temporary (interim) release, and enforcing ICC sentences. However, the low number of concluded voluntary framework agreements remains a reality that will continue to hamper the Court's ability to function effectively.

In 2014, the ICC Registry circulated the Court's draft framework agreement on release in case of acquittal, which only applies to acquitted persons who cannot return to their countries of origin. No state has yet concluded such an agreement with the Court. At the end of 2015, the ICC also concluded two *ad hoc* enforcement agreements with the Democratic Republic of the Congo after two Congolese nationals convicted by the Court (Thomas Lubanga and Germain Katanga) requested to serve the remainder of their sentences there. Unlike voluntary framework agreements, which ensure the conditions for compliance are in place prior to an actual ICC cooperation request, *ad hoc* agreements constitute a reactive approach to such requests.

July 2016 finally saw the first new enforcement of sentence agreement concluded since 2012, with Norway joining Austria, Belgium, Denmark, Finland, Mali, Serbia, and the United Kingdom as states with the cooperative framework in place to enforce ICC sentences.

Meanwhile, as the 15th ASP session was already taking place, Argentina and the ICC concluded an agreement on the protection of at-risk witnesses, bringing the total number of such agreements to 18.

To ensure parties and participants to ICC proceedings enjoy full protection of their rights under international law, the Coalition continued to call on states over the course of the year to urgently enter into further voluntary interim release agreements with the ICC – with respect to hosting acquitted and interim release defendants, as well as to protecting witnesses from persecution or influence.

Bureau discussions on Rome Statute Article 97

In 2015, South Africa hosted an African Union summit in Johannesburg, which was attended by Sudanese president Omar al-Bashir. As a State Party to the Rome Statute, South Africa was under obligation to the ICC to assist in the arrest and surrender of al-Bashir due to his existing ICC arrest warrant. Despite this, the South African government allowed al-Bashir to leave the country shortly after the summit. In response to the international condemnation it received for not meeting its obligations to arrest al-Bashir, South Africa invoked Rome Statute Article 98, which outlines rules of diplomatic immunity or other such obligations in certain circumstances. The government claimed obligations as an African Union member for its failure to comply with both its Rome Statute obligations and the formal Court request to arrest and surrender al-Bashir.

At its annual session in 2015, the ASP heard South Africa’s concerns that it had not been adequately consulted by the Court - as prescribed by Article 97 of the Rome Statute - on its decision not to arrest al-Bashir.

In response, the ASP mandated the Bureau to establish a working group on the interpretation of Article 97’s consultation procedures in 2016. The Working Group on Article 97 was subsequently created in early 2016 with Ambassador Maria Teresa Infante (Chile) serving as its chair. The Working Group, open to all States Parties, focused its discussion on possible means of improving the application of Article 97 of the Rome Statute. South Africa submitted its notification to withdraw from the Rome Statute before the conclusion of the Working Groups discussions. The chair of the Working Group issued a report to the 15th ASP to notify states of discussions thus far. The ASP requested the Working Group to continue discussions in 2017 and to report back on its discussion at the 16th session of the Assembly.

ASP15 Special Session on Cooperation

The Bureau organized a special plenary session on 18 November dedicated to how national, regional, and intergovernmental initiatives contribute to effective cooperation and the investigation and prosecution of Rome Statute crimes. The expert panel, including a member from civil society, spoke to the ways that we can enhance the benefits and opportunities afforded by cooperation and coordination networks.

Opening the dedicated session – entitled “Effective cooperation and accountability for Rome Statute crimes: the contribution of national, regional and intergovernmental initiatives” – was **ICC Prosecutor Ms. Fatou Bensouda**, who highlighted that both States Parties and the ICC have recognized cooperation as a central pillar in the functioning of the Court. She noted that under the OTP Strategic Plan for 2016-2018, cooperation is a critical success factor for the OTP and the Court as a whole. She also referred to different parallel coordination platforms, training programs, and

databases being developed to assist national authorities in their own investigation and prosecution of international crimes.

Ms. Michèle Coninx, President of Eurojust, followed by stating the need for a coordinated European Union to ensure the region does not become a safe haven for criminals. Ms. Coninx pointed out that international crimes perpetrators increasingly rely on pre-existing criminal networks, underlining the value of close cooperation between states in any effective judicial response. She closed by highlighting opportunities for synergies arising from an integrated approach, noting that cooperation and coordination in combating Rome Statute crimes will also contribute to the fight against other forms of serious organized crime.

Following the Eurojust president's remarks, **ICC Registrar Mr. Herman von Hebel** addressed three core areas of the Registry's mandate in support of investigations and prosecutions: financial investigations; witness protection; and arrests and surrender. With respect to financial investigations, the Registrar emphasized that depriving perpetrators of their illegally obtained assets means strangling their abilities to sustain criminal operations. On witness protection, he pushed states to conclude cooperation agreements with the ICC on witness relocation. This, Mr. von Hebel argued, would allow such states to incorporate best practices developed by ICC witness protection experts and reinforce national jurisdictions in the context of all criminal investigations, not just those pertaining to Rome Statute crimes. The Registrar laid out a number of new relevant Court initiatives, including the establishment of an inter-organ working group and the focal points on non-cooperation.

International Commission on Missing Persons (ICMP) Director-General Ms. Kathrynne Bomberger identified potential investigative synergies emerging from ICMP's work as well, noting that investigations into missing persons can create opportunities for parallel investigations into international crimes. According to Ms. Bomberger, internationally coordinated strategies and policy platforms like ICMP's lend themselves to the nature and complexities of international crimes investigations and prosecutions, from conflict, human rights abuses, organized crime, irregular migration, and natural disaster.

Mr. Antoine Bernard, Director-General of the International Federation for Human Rights (FIDH), provided a civil society voice on the cooperation panel, using his statement to stress several key challenges to effective national investigations and prosecutions – and provide FIDH's recommendations moving forward. Responding to obstacles like weak domestic justice systems, political interference, and complex crimes with high-level perpetrators, Mr. Bernard reaffirmed that states bear the responsibility to support an exchange of views and a strong, needs-based, ICC budget. Mr. Bernard also highlighted how sharing facts, reports, and advocacy, as well as submitting transparent communications with the ICC, can mitigate the powerful impact of misinformation.

Amnesty International intervened during the open floor debate segment of the cooperation plenary session, which followed the panel presentations. Amnesty stressed the vital role of state cooperation in the Court's functioning, including its ability to deliver justice and reparations. Amnesty expressed particular concern over the increasing instances of non-cooperation, illustrating its point with three findings of non-cooperation referred to the Assembly (pursuant to Rome Statute Article 87(7)) in 2016. As a solution, Amnesty insisted on a three-step approach: (1) the Assembly should review and improve its current methods of promoting national Rome Statute implementation, encouraging information sharing, and offering technical assistance to states; (2) a



judicial determination should be made where a dispute arises during consultations and cannot be resolved through dialogue; and (3) the Assembly must develop stronger mechanisms to respond to non-cooperation when it occurs. In this last regard, Amnesty called for all future ASP sessions to include a standing agenda item on non-cooperation issues arising in the previous year.

ASP14 resolution on cooperation

Apart from several key updates that bear noting, the 2016 stand-alone resolution on cooperation issues and objectives remained largely unchanged from the 2015 cooperation resolution. As usual, the resolution reflects shifts in discussion priorities for the HWG facilitation on cooperation, which, for example, meant this year including language on strengthening cooperation with financial investigations. The Assembly also renewed the HWG facilitation’s mandate for 2017 and requested that the Court report on cooperation developments at the next ASP session.

Civil society’s role

As in previous years, the resolution highlights civil society’s role in promoting cooperation through information exchange that enhances cooperation, concrete solutions, and accountability for Rome Statute crimes. In a departure from previous resolutions, and reflecting recent reports of threats and intimidation against human rights defenders working for a strong and fair ICC, the Assembly this year also recognized the importance of ensuring a safe environment to foster the cooperative relationship between civil society and the Court.

Voluntary agreements

The resolution on cooperation continues to acknowledge the critical importance of states concluding voluntary framework agreements with the Court. On victim and witness relocation, it acknowledges associated safety concerns and humanitarian costs, urging States Parties to make or increase voluntary contributions to the Court’s Special Funds for Relocations. On sentence enforcement, the resolution emphasizes that the need for cooperation with ICC requests is likely to increase in the coming years as more cases near conclusion. Welcoming several agreements concluded in 2016 and late 2015, the resolution specifically urges states to guarantee the rights of accused and convicted persons as well by entering into agreements on hosting persons in the cases of interim release and acquittal.

66 Recommendations

In its cooperation resolution from the 13th ASP session, the Assembly requested that the HWG review the continued relevance of the *66 Recommendations on cooperation* developed in 2007. The next year the HWG prepared and the Assembly took note of a flyer outlining several priorities recommendations for implementation by States Parties. The current resolution on cooperation welcomes replies from States Parties to a 2016 questionnaire on the status of their implementation and requests further exchanges on the topic in 2017.

Draft Action Plan on arrest strategies

As in previous years, the 2016 cooperation resolution emphasizes that timely and effective cooperation with ICC requests is vital to the Court’s mandate, expressing particular concern over outstanding requests for the arrest and surrender of 13 ICC suspects. The resolution reaffirms that concrete steps and best practices need to be systematically considered toward securing arrests, adding that the Bureau should continue to consider a draft action plan on arrest strategies prepared in 2015.



National coordinating mechanism

The ASP15 resolution recalls the complementarity principle as a starting point for developing coordinating mechanisms among national authorities dealing with ICC cooperation requests. The resolution encourages states to establish focal points responsible for coordinating efficient national responses to cooperation requests. Following a report to the Assembly in 2014 on the feasibility of establishing such a national coordinating mechanism, the current resolution invites the Bureau to provide a follow-up report in 2017.

Relevant documents

[ASP15 Cooperation Resolution](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

[Report of the Court on Cooperation in 2016](#)

[Report of the Bureau on Cooperation in 2016](#)

[CICC Background Paper for ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

7. Threats to Human Rights Defenders

Civil society space is shrinking around the world, and intimidation and attacks against NGOs defending international justice are on the rise. At the end of ASP 15, to reflect on these developments, the ASP adopted new language in the cooperation resolution¹ to recognize the need to ensure a safe environment for civil society to cooperate with the ICC and the need to take measures to address threats and intimidation against NGOs. It is the first time the Assembly has adopted such strong language to reflect the increasingly shrinking space for civil society to operate in.

In the omnibus resolution, the 124 member states of the ICC went on to express their appreciation for the invaluable assistance that has been provided by civil society to the Court.² In the same resolution, the ASP expressed its concerns towards the recent reports of threats and intimidation directed at some civil society organizations cooperating with the Court³, such as the ongoing death threats to a human rights activist in The Hague advocating for justice for grave crimes in Palestine.

Side-event: “Protecting human rights defenders: what can States Parties do?”

At the 15th Assembly session itself, the need for a stronger state engagement and vigilance to protect NGOs was made clear. One side-event, ironically on increasing threats to civil society working on the ICC, saw Kenyan human rights defender and ICC activist Gladwell Otieno threatened by a delegate with ties to the Kenyan government.

The side-event, organized by the Institute for Security Studies (ISS) focused on human rights defenders and the risks they face from states opposing their work. Panelists William R. Pace from the Coalition for the International Criminal Court, Shawan Jabarin from al-Haq and Gladwell Otieno from AfriCog discussed increased pressures on space for civil society to operate freely, increased government surveillance and physical attacks, the drying up of funds for NGOs, and the global pattern against regional and international solidarity for human rights defenders. Panelists also shared personal accounts of cyber-attacks, unfounded accusations, physical threats, and death threats. Participants expressed their concern about the shrinking civil society space afforded to them and asked how they can contribute to addressing this concern. Other questions related to the transnational effect of protecting human rights defenders, concrete action that can be taken, and the different forms of pressure human rights defenders are under.

“Those striving to bring justice to all who suffer from genocide, crimes against humanity, and war crimes are crucial to the defense of human rights. The threats against international justice workers are threats not only against the ICC but against all international law and justice. Such violent threats against ICC advocates are hate crimes,”

William R. Pace, Convenor of the Coalition for the ICC

At a time when it could be anticipated that threats against human rights defenders working on International Justice issues would intensify with the ICC taking on more and more contentious cases, the Coalition welcomes the commitment by the Assembly of States Parties to ensure that

¹ Resolution ICC-ASP/15/Res.3.

² Resolution ICC-ASP/15/Res.5 page 2.

³ Resolution ICC-ASP/15/Res.5 page 2.



NGOs and Human Rights Defenders can do their work advancing international justice through the ICC mandate without intimidation or threat of reprisal – a commitment based on the responsibility of states to uphold the UN Declaration on Human Rights Defenders.

Relevant documents

[Cooperation Resolution ASP15](#)

[Frontline defenders report on attacks on Human Rights Defenders in 2016](#)

[The UN Declaration on Human Rights Defenders](#)

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

8. The Court's 2017 Budget

To fund the Court's activities and major programs, States Parties to the Rome Statute must each pay a yearly contribution to the Court, a contribution that is proportionate to their gross national income. At the beginning of each year, the Registry of the Court coordinates the initial drafting of the Court's budget for the following year. The budget proposed by the Court is then submitted to the ASP's Committee on Budget and Finance (CBF) for review. The CBF is an independent subsidiary expert body of the ASP, made up of 12 members nominated and selected according to geographical representation. Evaluating the budgetary needs of an institution like the ICC is a very complicated undertaking. During its biannual meetings, the CBF considers and makes recommendations on the resources that the Court has requested to fulfill its various prosecutorial, judicial and organizational needs as well as its obligations to defendants, witnesses and victims. At the conclusion of its fall meeting, the CBF issues recommendations to the ASP on the ICC's proposed budget for the next year. Final approval of the Court's budget is then given by the Assembly at its annual session.

While the Coalition does not take a position on the specific amount of resources that should be allocated to the ICC in any given year, it urges states to treat the CBF review and recommendations as the bare minimum approach in their discussions and negotiations on the Court's budget. States Parties should oppose arbitrarily limiting the Court's budget, which would undermine the ability of the ICC to deliver fair, effective, and even efficient justice. A lack of resources is a severe impediment to the optimal functioning of the Court.

1. What the Court requested for 2017 (in millions):

- Proposed budget for its programs: €147.25
- This represents an increase of €9.86 (7.2%) from the Court's 2016 budget (€137.39).
- Some states also have to pay for the Host State loan interest for 2017, which amounts to €2.99.
- The total of the requested program budget plus the interest for the host state loan is €150.24.

2. What the CBF recommended for the Court's 2017 budget (in millions):

- Recommended budget: €144.6
- This is a reduction of €2.65 to the Court's requested budget for 2017
- This is a €7.21 (or 5.2 %) increase from the Court's 2016 budget of €137.39

The OTP had requested a budget of €46.280m for 2017 to include for:

- Nine preliminary examinations;
- Ten investigations overall and six active ones (two in the Central African Republic; one in Côte d'Ivoire; one in Libya; one in Darfur, Sudan, where the OTP suggested it has new investigative opportunities and existing cases to bolster; and one in Georgia, which has thus far been financed through the Court's Contingency Fund);
- Three trial teams;
- And two final appeals.

The CBF recommended that the Office of the Prosecutor's (OTP) requested budget of €46.280 million be reduced to €45.648,7 million.



The CBF recommended reducing **the Registry's** €79,603.0 million request to €78,068.4 million. The Registry had sought an increased budget to cover, among other activities, increasing legal aid for reparations proceedings in the *Lubanga* and *Katanga* cases; improving the Court's information security and storage capacities to support increased courtroom activities; and maintaining and operating equipment in the new permanent premises. The increase sought would allow the use of three courtrooms during 2017. The Registry proposed continuing to slightly stagger recruitment for its reorganized structure to reduce the cost of recruitment in 2017 to €2.6 million.

The CBF recommended slightly reducing the **Judiciary** requested budget of €13.24 million (up €813,100 (6.5%) from the 2016 judiciary budget) to €13.138 million. €580,900 of the requested increase is tied to 18 judges' salaries, which, in contrast to other The Hague-based international court or tribunal judges' salaries, have never been reviewed. The budget request considered, as mandated by the ASP in 2015, the feasibility of a departure from the UN Common System. The CBF recommended against doing so, finding that the Common System best fits the needs of the Court, that departing from it would reduce mobility between the Court and other UN organizations, and that a new and costly administrative system, including a pension scheme for newly recruited staff, would have to be put in place. Staff costs rise 2% per year (1.84 million) in the UN Common System.

Among the other 2017 ICC major program budget requests, the **Trust Fund for Victims'** Secretariat requested a €617,600 (32.8%) increase to €2,502.1 million, while the CBF recommended a total budget for the TFV of € 2,224.5.

3. What the Assembly decided on the Court's 2017 budget

With the facilitation of Ambassador Werner Druml (Austria), States Parties started their discussions and negotiations on the Court's 2017 budget upon the issuance on the CBF Fall Report. In the lead-up to the ASP and at the ASP itself, it became apparent that a small minority of States Parties were once again demanding a "zero nominal growth" budget - or similar budget cutting proposals - despite obvious needs for an increase in Court funding in 2017. The Coalition was distressed by these reports and issued a paper calling on states to:

1. Reject "Zero Nominal Growth";
2. Support sufficient funds for 2017, recognizing that the CBF recommendations already reflect a reduction of the Court's requested budget;
3. Oppose the setting of a "financial envelope";
4. Work together with the Court to address its challenges through dialogue and cooperation: a reduced budget does not equal enhanced efficiency;
5. Make all efforts to pay arrears.

The full Coalition for the International Criminal Court paper can be found in Annex II to this report.

The Assembly adopted an overall 2017 programme budget of €144,587.3 million. For the work of the Court, the ASP allocated a budget of €141,600.00 to cover expenses of the Judiciary, the Office of the Prosecutor, the Registry, the Secretariat of the Assembly of States Parties, the Premises, the Secretariat of the Trust Fund for Victims, the Independent Oversight Mechanism and the Office of Internal Audit. The remaining funds allocated to the budget for 2017 include €2,987.3 million in host state loan. The following Assembly decisions on the final 2017 programme budget are contained in a stand-alone budget resolution and are outlined below.

<i>Appropriation section</i>		<i>Thousands of euros</i>
Major Programme I	Judiciary	12,536.0
Major Programme II	Office of the Prosecutor	44,974.2
Major Programme III	Registry	76,632.6
Major Programme IV	Secretariat of the Assembly of States Parties	2,618.8
Major Programme V	Premises	1,454.9
Major Programme VI	Secretariat of the Trust Fund for Victims	2,174.5
Major Programme VII-5	Independent Oversight Mechanism	514.8
Major Programme VII-6	Office of Internal Audit	694.2
<i>Sub-total</i>		<i>141,600.0</i>
Major Programme VII-2	Host State Loan	2,987.3
Total		144,587.3

Presentations by the ICC Registrar and the CBF Chair at ASP 15

In the plenary session on the budget, the ICC registrar, external auditor, and CBF Chair Fernandez presented their reports to the Assembly. The discussion centered around the Registrar’s Report on the *ReVision* Project of the Registry, which aimed at overhauling the Registry structure. Several states called on the Court to optimize its resource allocation and cost efficiency; other states raised concerns over gender and geographical representation at the highest levels in the Court’s staff. The Registrar reiterated his commitment to enhancing efficiencies and synergies within the Registry, and to ensure staff gender and geographical representation.

Other Budget related issues

Strategic approach to budget: discussion on setting a financial envelope

In 2014, the Coalition’s Team on Budget and Finance expressed extreme concern at the CBF’s recommendation that States Parties consider whether a financial envelope should be set at each Assembly meeting, forecasting and defining a budgetary cap for the year following the one immediately thereafter. Such an envelope risks reinforcing a budget process driven not by the resource needs of the ICC, but by how much States Parties are willing to pay. This approach is entirely inappropriate given the fluctuating workload of the ICC, and is inconsistent with the important ASP practice of deciding the budget as near as possible to the start of the financial year. The Coalition’s Team has also warned of the real danger that such an approach could be used to strengthen efforts by a minority of states to impose zero growth on the ICC budget, thereby limiting the mandate of the Court.

Following discussions in 2016 around the feasibility of setting a financial envelope, the Cluster II (governance and budgetary process) of the Study Group on Governance (SGG) proposed language for the omnibus resolution to be adopted at the 15th ASP session. The language acknowledged that



the SGG had concluded its mandate to consider such a practice and echoed the CBF finding that such an approach would be resource-driven.

Interim and permanent premises/ Host State Loan

Payments for the host state loan were taken out of the permanent premises loan in 2017. This amounted to €2,987,300. However, states that chose to pay their part of the premises cost in a one-time payment sum, will not need to contribute to the payments for the 2017 payment of the host-state loan.

The cost of the new Court Premises turned out to be more expensive than initially authorized by the Assembly. As such, states at ASP15 decided to increase the Premises envelope by €1.75 million in order to settle the outstanding financial issues with the general contractor who built the Court. This brings the total costs of the building to €205.75 million.

Working Capital Fund

The Working Capital Fund (WCF) is designed to meet short-term liquidity problems pending the receipt of assessed contributions. It was initially set to retain a minimum of €7.4 million, representing one month of Court expenditure at that time. Moreover, the fund is currently depleted and stands at €3.5 million. The CBF has recommended that the Assembly raise the minimum level of the WCF to €11.6 million to reflect current one-month expenditure assumptions, thereby requiring a €4.2 million payment in 2017. The CBF considered funding this replenishment over a number of years, with the Contingency Fund meanwhile acting as a cash reserve in addition to its intended purpose.

The Assembly noted in the budget resolution that they would resolve for the Working Capital Fund for 2017 to be established in the amount of €11.6 million, and authorized the Registrar to make advances from the fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court. The Assembly also decided that the Court may only use the surplus funds and outstanding contributions to reach the established level of the WCF.

Contingency Fund

The Contingency Fund was established to meet unforeseen and unavoidable expenses, and is currently €1.2 million lower than the €7 million minimum level previously set by the ASP. The CBF recommended replenishing the fund, requiring €1.2 million in contributions in 2017. The fund would then be maintained at the minimum level set by ASP previously, for the years to follow. The Assembly noted the advice of the CBF, and mandated that the Contingency Fund be replenished to the notional level of €7 million for 2017. It also requested that the Bureau continue to review this threshold in light of further experience on the functioning of the Contingency Fund.

States Parties in arrears

When States Parties are in arrears – meaning that the assessed contributions from the previous year remain outstanding – the Court cannot access its allocated budget. The ASP discussed this issue throughout the year in a dedicated New York Working Group facilitation, facilitated by Mr. Slavomir Kantor of Slovakia. According to the Report by the CBF on states in arrears, as of 31 October 2016, the Court had not yet received €33,864,437 in outstanding contributions. This represented an increase of €12,825,264 from 31 October 2015 and was the result of 27 States Parties not having paid their contributions in full. States with arrears that amount to more than two

years' assessed contributions are classified as ineligible to vote during the ASP session. As such, 12 States Parties revoked their right to vote during the annual ASP.

The Establishment of a Credit Line

Due to a number of States Parties not contributing financially in part or whole before the necessary deadline, the Court has faced increasing problems of liquidity shortfalls. At the time of the ASP15, the shortfall due to outstanding contributions stood at over €30 million. To resolve this, the CBF recommended that the Court should be able to apply for seasonal credit from a bank to cover any outstanding finances. The Assembly decided that the Court may seek to establish a seasonal credit line in the amount of up to €7 million in order to cover such liquidity shortfalls, but that this measure would only be used as a very last resort, after the depletion of the Working Capital Fund, and that any related fees should be absorbed by the Court thereby minimizing cost of a credit line. Further, the ASP decided that such a solution must be limited to the period of December 2016 – February 2017 and October 2017 – March 2018. Finally, the Assembly reiterated the need for timely payment of contributions, in order to limit the risk of liquidity and urged all States Parties to reduce the level of arrears and outstanding contributions as far as possible.

United Nations Security Council referrals

At the 14th ASP session, States Parties requested that the Registry report on the approximate costs allocated to activities in the situations referred by the UN Security Council, namely Darfur and Libya. Article 115 of the Rome Statute provides that the expenses of the Court and the ASP are to be covered by contributions from States Parties, but can also be borne by the United Nations in relation to situations referred to the ICC by the Security Council. The Registry reported in November 2016 that costs incurred in relation to Security Council referrals have to date been borne exclusively by States Parties to the Rome Statute, and total €55 million. The Registry has noted this as a point of concern and has urged States Parties to begin discussions on potential solutions to the issue.

Remuneration of Judges

The Court requested that the Assembly discuss a potential revision of the Judges remuneration at the 15th ASP. The Committee of Budget and Finance noted that the annual remuneration of judges must be considered by the Assembly as a policy matter and would therefore require a procedure to review the salary scheme of the judges. As a result, the ASP requested that the Bureau consider the revision during 2017, and report back at the 16th ASP session in December 2017.

The UN Common System

At the ASP 14th session, the Assembly requested that the CBF consider the feasibility of an ICC departure from the UN Common System and that they make a recommendation on this issue at ASP15. During 2016, the CBF appointed several members to consider this issue, and reached a conclusion during its 27th session that the Court should remain part of the UN common system in order to remain part of the UN pension scheme. Further it noted that the Court should align itself with the actual implementation timeline of the changes to the compensation package of the Court, in accordance with the modifications to the UN common system compensation package. Furthermore, the UNGA approved the International Civil Service Commission's proposal on the common system compensation package, including unified salary scale and transitional measures.

The Assembly approved the implementation of all elements of the new compensation package, in alignment with the changes and timelines approved by the UNGA. It further requested the Court to



ensure this decision had no effect on the rights of current staff and to adopt any transitional measures recommended by the UN General Assembly. Finally, it requested the Court to submit to ASP16 a full report on the amended provisional staff rules related to the UN compensation package, and applicable as of January 2017, pursuant to the Regulation 12.2 of the Staff Regulations.

Registry Reorganization

The Assembly noted with appreciation, the Report of the External Auditor on the *ReVision* process, and acknowledged the recommendations that were made. It also noted that the full implications of the *ReVision* process (including financial implications in both the short and long term) would be subject to further clarification by the Committee of Budget and Finance during its 28th session in 2017.

One-Court Principle

The Assembly welcomed the Court's efforts to fully implement the "One-Court principle" when establishing the programme budget for 2017, and noted that this led to improvements in the budgetary process such as increased efficiency in the use of the Coordination Council and other inter-organ mechanisms. It also improved the process and format of budget documents and assisted in ensuring consistency of message and policy of expenditures across the Court. The Court was invited to continue strengthening the One-Court principle approach to guide the budgetary process.

Relevant Documents:

[Proposed Programme Budget for 2017 of the International Criminal Court – Executive Summary](#)

[Proposed Program Budget for 2017 of the International Criminal Court](#)

[Corrections to Proposed Program Budget for 2017 of the International Criminal Court](#)

[Report of the Committee on Budget and Finance on the work of its 26th session](#)

[Report of the Committee on Budget and Finance on the work of its 27th session](#)

[ASP15 statement of Ms. Carolina Maria Fernandez Opazo, Chair of the Committee of Budget and Finance](#)

[Report of the Registry on the approximate costs allocated so far within the Court in relation to referrals made by the UN Security Council](#)

[Audit Report on the *ReVision* project of the Registry](#)

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Budget resolution](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

9. Amendments

Throughout 2016, States Parties addressed a number of proposed amendments to the Rules of Procedure and Evidence (RPE) and to the Rome Statute. Rome Statute Article 51 states that RPE amendments can be proposed by any State Party and shall enter into force if adopted by a two-thirds majority at the ASP. RPE amendments must not conflict with the Statute, in which case the Statute prevails.

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

To allow for a year-round structured dialogue between subsidiary bodies of the ASP, the Court, and other stakeholders on proposals for amendments to the RPE, the ASP set out a roadmap for discussion through the Study Group on Governance (SGG). The ASP also set up a Working Group on Amendments (WGA) for the purpose of considering amendments to the Rome Statute and to the RPE with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

The WGA, chaired in 2016 by Ambassador May-Elin Stener (Norway) in New York, had the goal to achieve greater clarity on both the substantive views on the amendment proposals and the procedure to be followed in dealing with amendment proposals, as well as to inform the ASP in considering the amendments during its annual session.

The SGG roadmap and the WGA, however, do not preclude States Parties from exercising their right to submit amendment proposals to the RPE at any time in the year prior to an ASP session, pursuant to Article 51 of the Rome Statute.

Rule 165 RPE - Offences against the administration of justice

Rule 165 of the RPE relates to the procedures for Article 70 of the Rome Statute on offences against the administration of justice. In February 2016, in the context of the proceedings in *Bemba et al.*, ICC judges provisionally amended the rule, in accordance with Article 51(3) of the Rome Statute. Under this amendment, the number of judges needed at pre-trial and trial stage was reduced from three to one, and the number of judges needed at the appeals stage was reduced from five to three, among other measures. The reasoning offered was that the nature and gravity of offences under Article 70 differ from those under Article 5, and therefore the process for exercising jurisdiction over Article 70 offences could be simplified. The amendment also removed the separate sentencing hearing procedure under Article 76(2) and the interlocutory appeal procedure under Article 82(1)(d) on issues that significantly affect fairness and efficiency of proceedings.



The judges considered that the provisional amendments to Rule 165 would still constitute a fair and efficient manner to address such offences, including upholding the right of the accused to a fair trial. They ruled to urgently adopt this provisional amendment due to resource constraints, such as the judges' workload, so that more resources could be allocated to core crimes trials at the ICC. According to the Rome Statute, such provisional rule amendments by judges are to be applied until adopted, amended, or rejected by the ASP at its annual session.

The SGG reported that it was not in a position to make a concrete recommendation to the WGA regarding the provisional Rule 165 amendment. The WGA carried on discussions and, while a majority of States Parties favored the amendment and related efficiency gains, a few delegations expressed concerns about risks to fair trial standards. Therefore, the WGA in turn reported it was not yet in a position to make concrete recommendations to the ASP and agreed to reconvene during the 15th ASP session to continue the discussion.

During the 15th Assembly discussions on the Rule 165 amendments, a few delegations asked the Court to continue to not apply the provisional rule while the matter is still under consideration by the Working Group on Amendments. Many other delegations took the view that the provisional amendments remained applicable, pending a decision by the Assembly of whether to adopt, amend or reject the amendments. In this connection, it was observed that it would not be for the Assembly to pronounce itself on this issue as it was for the Court to adjudicate the matter. Therefore, the Working Group on Amendments was not in a position to make a proposal for a resolution with regards to the Amendments to Rule 165 of the RPE. The Working Group on Amendments will continue its consideration of the amendment proposals and have been requested to submit a report for consideration at the 16th Assembly session.

Rules 76(3), 101, 144(2)(b) RPE – The Language Cluster

Rules 76(3), 101 and 144(2)(b) of the RPE –the “language cluster” – relate to the translation of witness statements and decisions in a language fully understood or spoken by the accused. The SGG had referred the matter to the Working Group on Amendments in 2014. After a year of discussions, the Working Group refrained from making a recommendation to the 14th Assembly as several delegations continued to have concerns about the amendments. The Working Group agreed the matter remained a priority on its agenda and addressed it during its meetings throughout 2016. Proposed amendments to Rules 101 and 144(2)(b) garnered broad support and the Working Group considered a draft resolution for adoption by the Assembly. While there was strong support for the adoption of amended Rule 76(3), a few delegations continued to voice concerns, therefore the Working Group decided it was not ready to make a recommendation, but agreed the issue would remain on its agenda.

The amendments to rule 101 and rule 144(2)(b) were amendments subsequently adopted by the ASP.

Discussions on Rome Statute Amendments in 2016

Over the course of 2016, the WGA addressed the status of ratifications of the amendments adopted at the first review conference of the Rome Statute that took place in Kampala in 2010. The WGA noted that as of 8 November 2016, 32 states had ratified both the Crime of Aggression amendment and the Article 8 amendment expanding the illegality of employing chemical weapons or expanding bullets to armed conflicts not of an international character.



The discussions on the Rome Statute amendments will continue in 2017 within the Working Group on Amendments. Prominently featured in these discussions will be the activation of the Court's jurisdiction over the Crime of Aggression.

Relevant documents

[ASP15 Resolution on rules 101 and 144\(2\)\(b\)](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

[2016 Report of the Working Group on Amendments](#)

[2016 Report of the Bureau on the Study Group on Governance](#)

[2016 Report of the Study Group on Governance Cluster I in relation to the provisional amendments to rule 165 of the Rules of Procedure and Evidence](#)

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[Amnesty International - Letter on Rule 165RPE Amendment](#)

10. Efficiency and Effectiveness of Court Proceedings

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

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

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

The Study Group on Governance in 2016

The Study Group on Governance (SGG) was established to conduct a structured dialogue between the Court and States Parties' representatives in The Hague to strengthen the institutional framework of the Rome Statute system and to enhance the efficiency and effectiveness of the Court. In 2016, the Study Group was chaired by Ambassador Masaru Tsuji (Japan) and Ambassador María Teresa Infante Caffi (Chile). The SGG is composed of two 'clusters', each with its own specific focus.

Provisional Amendment to Rule 165 RPE

Rule 165 of the RPE relates to the procedures for Article 70 offences against the administration of justice. In February 2016, in the context of the proceedings in Bemba et al., ICC judges provisionally amended the rule, in accordance with Article 51(3) of the Rome Statute. Under this amendment, the number of judges needed at pre-trial and trial stage was reduced from three to one, and the number

SGG clusters in 2016

- I. In 2016, SGG Cluster I addressed **"Increasing the Efficiency of the Criminal Process."** Focal points were Ms. Marisa Macpherson (New Zealand) and Ms. Erica Lucero (Argentina). SGG I was divided into discussions on the provisional amendment to Rule 165 of the Rules of Procedure and Evidence under Article 51(3) of the Rome Statute and other matters relating to increasing the efficiency of the criminal process.
- II. SGG Cluster II addressed **"Government and Budgetary Process,"** focusing on two areas: the establishment of a financial envelope; and providing a space for the Court to share updates on the development of qualitative and quantitative indicators. Focal points were Mr. Reinhard Hassenpflug (Germany) and Ms. Lourdes Suinaga (Mexico). Further information about SGG Cluster II discussions on the financial envelop can be found above in Chapter 8, which covers the Court's budget.



of judges needed at the appeals stage was reduced from five to three, among other measures. The reasoning offered was that the nature and gravity of offences under Article 70 differ from those under Article 5 and therefore the process for exercising jurisdiction over Article 70 offences could be simplified. The amendment also removed the separate sentencing hearing procedure under Article 76(2) and removed the interlocutory appeal procedure under Article 82(1)(d) on issues that significantly affect fair and efficient conduct of proceedings.

The judges considered that the provisional amendments to Rule 165 would still constitute a fair and efficient manner to address such offences, including upholding the right of the accused to a fair trial. They ruled to urgently adopt this provisional amendment due to resource constraints, including judges' workload, so more resources could be allocated to core crimes trials at the ICC.

According to the Rome Statute, such provisional rule amendments by judges are to be applied until adopted, amended, or rejected by the ASP at its annual session.

To allow States Parties to prepare themselves for deliberation on the amendments at the 15th ASP session, the ASP Bureau decided in April 2016 that the provisional amendments would first be discussed in the SGG in The Hague and then proceed to be discussed in the ASP's Working Group of Amendments (WGA) in New York.

The Working Group on Amendments (WGA)

is a formal subsidiary body of the ASP established for the purpose of considering amendments to the Rome Statute and to the RPE with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

In 2016 the WGA was chaired by Ambassador May-Elin Stener (Norway) in New York, and had the goal to achieve greater clarity on both the substantive views on the amendment proposals and the procedure to be followed in dealing with amendment proposals, as well as to inform the ASP in considering the amendments during its 15th session.

With opposing views from different States Parties on the matter however, the SGG was unable to make concrete recommendations to the WGA, which then took up the discussions. The WGA carried on discussions, and while a majority of States Parties favor the amendment and related efficiency gains, a few delegations have expressed concerns about risks to Rome Statute fair trial standards. Therefore, the WGA in turn reported it was not yet in a position to make concrete recommendations to the ASP at its 15th session either and agreed to reconvene during the ASP session to continue the discussion.

During the 15th Assembly discussions on the Rule 165 amendments, a few delegations asked the Court to continue not to apply the provisional rule while the matter is still under consideration by the Working Group on Amendments. Many other delegations took the view that the provisional amendments remained applicable, pending a decision by the Assembly of whether to adopt, amend or reject the amendments. In this connection, it was observed that it would not be for the Assembly to

pronounce itself on this issue as it was for the Court to adjudicate the matter. Therefore, the Working Group on Amendments was not in a position to make a proposal for a resolution with regards to the Amendments to Rule 165 of the RPE.

The Working Group on Amendments will continue its consideration of the amendment proposals and have been requested to submit a report for consideration at the 16th Assembly session in 2017.

The Working Group on Lessons Learnt in 2016

The Working Group on Lessons Learnt (WGLL), chaired by ICC President Fernández, is a focus group composed of ICC judges. The WGLL arose from a 2012 exercise by the judiciary to identify provisions in the ICC’s Rules of Procedure and Evidence that could be amended in order to address inefficiencies in the Court’s earlier years. The first result of this approach was the Pre-Trial Practice Manual, which the WGLL issued in September 2015 with the aim of establishing consistent practices among the different pre-trial chambers. The Manual guided judges on how to conduct efficient pre-trial proceedings while preserving the quality of work. The Manual also streamlined evidence disclosure procedures; limited the use of live evidence at the pre-trial stage; and suggested reducing the time between initial appearances and confirmation of charges hearings, among other initiatives.

The WGLL updated and complemented the Pre-Trial Practice Manual in 2016 and re-issued it under the name of the Chambers Practice Manual on 1 February 2016. The Chambers Practice Manual includes the best practices identified by the judges across various stages of proceedings, and seeks to contribute to the overall effectiveness and efficiency of the proceedings before the Court.

Judges’ Retreat on Efficiency and Effectiveness

From 28 to 29 October 2016, ICC judges held a retreat in Limburg, The Netherlands, to discuss ways in which the efficiency and effectiveness of the Court could be improved. The retreat considered issues relating to preparation and management of trials, evidence, witness testimonies, and legal representation for victims. It considered whether best practices for preparation of trials could be included in the Chambers Practice Manual.

Performance Indicators

In 2014 the ASP asked the ICC to develop performance indicators so that the Court could better explain and show what it needs and what it has achieved so far. This would also help states to assess how the Court is performing.

In November 2005, the Court issued its first report on performance indicators, identifying four key goals critical to assess how the Court is performing:

- (a) The Court’s proceedings are expeditious, fair and transparent at every stage;
- (b) The ICC’s leadership and management are effective;
- (c) The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court; and
- (d) Victims have adequate access to the Court.

Over the course of 2016, efforts centered on identifying criteria that contribute to achieving the four goals. Briefings and workshops were organized over the course of the year, as well as a retreat in Glion, Switzerland, in April 2016 to discuss the goals and criteria relevant to assess the performance of the Court. The Study Group on Governance’s Cluster II held three meetings to discuss performance indicators in 2016.

Second Court Report on performance indicators

A second draft report was presented by the President of the Court during ASP15. In the Second Report the four key goals identified in the 2015 Report are kept essentially unchanged while some measurable criteria for each goal are developed in more detail and some initial data is already provided as a sample of potential future measurements to be undertaken.

The Court intends to consider feedback from States Parties and civil society on the Second Report. SGG-cluster II will thus continue to serve as a space for discussion on the topic in 2017. Although the Court indicated that it could not tell yet when the work on the development of performance indicators would be finished, it expressed its expectation that its work would be close to finalization in 2017.

Plenary discussion on performance indicators at ASP 15

A plenary discussion on efficiency and effectiveness of the Court's proceedings was held during the 15th session of the Assembly on 22 November 2016, with a focus on the topic of Performance Indicators for the International Criminal Court. The panel was comprised of Silvia Fernandez, President of the ICC; Nicolas Guillou, Chef de Cabinet at the Special Tribunal for Lebanon; Jim Goldston, Executive Director of the Open Society Justice Initiative, and Eduardo Rodríguez Veltzé, Ambassador of Bolivia to The Netherlands and ASP Facilitator on Strategic Planning. The panelists discussed the developed criteria for Performance Indicators, which are seen as a work in progress, but are nevertheless proven to be useful and reliable in assessing the performance of the Court.

ICC President Silvia Fernandez presented the Court's Second Report on Performance Indicators and participants discussed the challenges the report set out. The ICC President indicated that while performance indicators can help to assess the extent to which the Court is fulfilling its objectives, their development is hindered by several factors. Firstly, as a unique international institution, the ICC cannot rely on existing performance indicator models developed at the national or international level. Secondly, external factors over which the Court has no control can impact Court proceedings, such as states cooperation and limited financial resources. President Fernandez acknowledged the difficulty to collect qualitative data to assess the performance of the Court, highlighting the need to address external factors, and suggesting the collection of more data in the future, in order to understand what is needed for a holistic picture.

James Goldston explained that the Open Society Justice Initiative (OSJI) had been acting as a pro bono external consultant to the Court for the development of Performance Indicators for the ICC. He provided an extensive and detailed outline as to how such Performance Indicators can best be developed for an institution with unique characteristics such as the ICC.

Nicolas Guillou, Chef de Cabinet at the Special Tribunal for Lebanon, emphasized the need for quantitative performance indicators over qualitative, specifically those that are easy to measure and manage. He specified three types of indicators: (1) benchmark indicators, which quantitatively measure how well the court works through comparisons to other tribunals as well as general trends; (2) hearing indicators, which measure how efficiently resources and means are used; (3) timeline indicators, which measure the unique timeline of each courtroom and how well it is followed based on circumstances.



Ambassador Veltzé highlighted that Performance Indicators played an important role for the Assembly in regards to its consideration of budget allocations and managerial decisions. He suggested that the responsibilities of collecting data was not for the judges, as their purpose is to focus on delivering justice, but rather for the Registry, academia, and civil society to collect and evaluate the available data.

During the interactive discussion that followed, the European Union, the United Kingdom, Chile, Bolivia, and Mexico all indicated their support for the Second Report. The United Kingdom also supported changes that would occur after trial and error of different Performance Indicators. Chile suggested that if qualitative data was too hard to conduct, quantitative data was limited, but useful. Human Rights Watch (HRW) agreed with the United Kingdom on changes that should occur after trial and error of different Performance Indicators. HRW encouraged the Court to continue its work on Performance Indicators and to make sure it continues to share its Performance Indicators with the communities most affected by the Court’s proceedings.

Many suggested that Performance Indicators on the gender and geographical recruitment of ICC staff should be developed, encouraging employment of staff from states parties that are underrepresented at the Court.

ASP15 omnibus resolution

A number of general provisions are included in the ASP15 Omnibus Resolution taking note of the 2016 SGG Report, the work done so far on performance indicators. The Assembly extended the SGG mandate for another year to continue discussion on the efficiency and effectiveness of Court Proceedings.

Relevant documents

[ASP15 Report of the Bureau on the Study Group on Governance](#)

[ASP15 Report of the Study Group on Governance Cluster I in relation to the provisional amendments to Rule 165 of the Rules of Procedure and Evidence](#)

[Second Court’s Report on the development of performance indicators for the ICC](#)

[Performance Indicators for the ICC Plenary Session: Concept note and the list of the speakers](#)

[Summary of the panel discussions by the ASP secretariat](#)

[James A. Goldston \(OSJI\) Statement](#)

[ICC President Fernández de Gurmendi Statement](#)

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

11. Trust Fund for Victims

The Trust Fund for Victims (TFV) operates under the guidance of the TFV Board of directors (TFV Board), whose decisions are implemented by the TFV Secretariat. The TFV operates under two mandates:

1. A reparations mandate, in the event of a conviction at the ICC. Reparations are not limited to monetary compensation; they can come in many forms, including rehabilitation. Reparations are decided by the Court's judges and – when ordered by the judges – administered by the TFV. Both mandates require voluntary contributions for adequate financing.
2. A general assistance mandate, allowing the TFV to support victims and their families separate from a conviction.

Trust Fund for Victims Board of Directors in 2016

The Trust Fund for Victims is overseen by the TFV Board of Directors, whose decisions are implemented by the TFV Secretariat. The TFV Board is comprised of five members, and the seats are distributed to represent the five major world regions. Board members serve on a pro bono basis and are elected by the ASP to fill three-year terms.

ASP 14 in 2015 hosted elections to fully constitute the TFV Board with one director from each of the five ICC regions: African states; Latin American and Caribbean states; Asia-Pacific states; Eastern European states; and Western European and Other states. Baroness Arminka Helić (United Kingdom), Mr. Felipe Michelini (Uruguay), Mr. Motoo Noguchi (Japan) and Ms. Mama Koité Doumbia (Mali) were elected for three-year terms beginning on 1 December 2015, with the Assembly requesting that the Bureau elect the director from the Eastern European states in the near future. In early 2016, the Bureau appointed Ms. Alma Taso Deljković (Bosnia and Herzegovina) to the vacant seat. The term of that director will also run until 30 November 2018.

Reparation cases at the ICC in 2016

Under its reparation mandate, the TFV was involved in two cases in 2016, including the implementation of the first ever reparations program at the ICC. In October 2016, ICC judges approved the implementation of a symbolic collective reparations plan proposed by the TFV for victims of convicted war criminal Thomas Lubanga. The TFV held consultations with NGOs, governments, and victims prior to the approval of the plan. The Chamber will issue its decision on collective reparations programmes – that are not of a symbolic nature – in due course. Similarly, the TFV is in the process of drafting a reparations plan for victims of war crimes and crimes against humanity committed by German Katanga, who was found guilty in March 2014.

ICC judges have also begun requesting submissions from victims to participate in reparations proceedings for the cases of two more individuals convicted by the Court in 2016: Ahmad al-Faqi al-Mahdi, for war crimes committed in Mali; and Jean-Pierre Bemba Gombo, for war crimes and crimes against humanity committed in the Central African Republic.

Discussions on the Trust Fund for Victims at ASP 15

During the opening ceremony of the 15th Assembly, Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims, presented a report on the projects and activities of the Board of Directors of the Trust Fund for Victims. Under the TFV's assistance mandate, the Board of Directors approved programme extensions in Uganda and DRC and validated project-related activities in DRC, CAR, Côte d'Ivoire and Kenya.

The report highlighted important voluntary contributions to the Fund from several countries in 2016, including Sweden, Australia, Netherlands, United Kingdom, Switzerland, Ireland, Republic of Korea, Spain, Belgium, Luxembourg, Poland, Czech Republic, Andorra, Latvia and Bangladesh. The Chair of the Board of Directors asked the Assembly to approve the requested programme budget for the TFV secretariat in full, underlining that the reparation mandate provided an overwhelming workload for the TFV Secretariat, which clearly exceeded its capacity. Despite restructuring the Secretariat to address its increasing workload, the TFV still needs continuous financial and political support to honor its mandate.

During a plenary session at the ASP, the TFV also launched its Annual Progress Report. At this event, the Director of TFV Pieter De Baan testified that at least 300,000 were beneficiaries of the TFV's programs. He recalled the TFV's assistance mandate had its own scope and wasn't meant to complement reparations. He underlined that although TFV's reparation mandate was growing, the significance of its assistance mandate will remain unchanged. In the face of declining financial participation, De Baan stressed the importance of States contribution. Due to a lack of funds and resources, the TFV has not been able to implement as many programs as it wanted, for example in Kenya. Such programs are included in TFV's 2017 plan and will therefore require increasing financial support.

NGOs meet with the TFV

During the ASP, the Coalition for the ICC organized an NGO meeting with TFV Board and Secretariat. At this event, Mr. de Baan appealed to civil society for assistance in addressing issues such as financing the Fund, and the importance of promoting the TFV assistance mandate alongside its reparation mandate. He also discussed the challenges arising from the time that elapses between the commission of crimes and the implementation of reparations programs. Civil society called on the TFV to expand its communication and outreach activities, increase external consultations around TFV strategies and plans, and explore alternative sources of funding.

Victims, reparations and the TFV in the omnibus resolution

A number of provisions on the TFV and on victims were included in ASP 15 omnibus resolution entitled *Resolution on Strengthening the International Criminal Court and the Assembly of States Parties*. The omnibus resolution reiterated victims' rights to present, and have considered, their views at different stages of ICC proceedings.

In the omnibus resolution, the Assembly also emphasized the importance of effective outreach to victims and affected communities and of involving and informing them at each stage of proceedings. The Assembly also emphasized the importance of providing necessary protection to victims and witnesses. Finally, it called on states to continue to make voluntary contributions - that enable the TFV to carry out its mandate - to broaden its resource base and to increase predictability of funding.



Relevant documents

Statement of Mr. Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims (TFV)

Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2015 to 30 June 2016

ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties

VRWG Paper on victims

TFV Annual Progress Report

CICC Background Paper for the ASP15

CICC Key Recommendations and Priorities for ASP15

ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties



12. APIC Pledging Ceremony

The Agreement on Privileges and Immunities (APIC) - an agreement laid out in Article 48 of the Rome Statute - is a treaty that was adopted by the Assembly of States Parties in 2002 to outline the privileges and immunities that states should extend to ICC officials and materials, in order to guarantee the Court can carry out its mandate in an independent and unconditional manner. The privileges and immunities laid out in APIC are for the most part similar to those enjoyed by UN bodies and other international organizations. While Article 48 of the Rome Statute addresses these privileges and immunities in general, the Agreement on Privileges and Immunities defines these protections and related obligations on States Parties in greater detail.

The APIC also outlines the privileges and immunities accorded to victims, witnesses, and defense counsel, as well as those to be accorded to representatives of states and intergovernmental organizations who participate in Court proceedings or in meetings of the Assembly of States Parties. APIC is an essential element of state cooperation, and is crucial to the Court's ability to operate as an independent judicial institution. However, at the time of ASP15, only 75 states were party to this instrument - far fewer than the 193 UN member states or even the 124 States Parties to the Rome Statute.

At the 2014 session of the Assembly of States Parties, at Belgium's initiative, states agreed to convene an APIC pledging ceremony at the 15th session of the ASP in 2016. The purpose of this was for states to make official pledges to ratify the APIC by the 20th anniversary of the Rome Statute in 2018.

The APIC pledging ceremony was held on 22 November 2016 and was organized by. During the ceremony, Australia, El Salvador and Peru made official pledges to ratify APIC before the 20th anniversary of the ICC. Registrar Herman von Hebel notified the ASP of the most recent accession to the APIC by Samoa while the Belgian ambassador highlighted the low number of ratifications within the Asia-Pacific and Africa regions, calling for enhanced efforts around ratification there. Nigeria expressed its support of APIC, but did not make an official pledge. This expression of support was also reflected in the ASP15 omnibus resolution. The Assembly called upon states that have not yet ratified to do so as a matter of priority.

Relevant Documents

[The Agreement on the Privileges and Immunities of the ICC](#)

[CICC APIC Letter](#)

[CICC Factsheet on APIC as of May 2016](#)

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

13. The Omnibus Resolution

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

The ASP adopted an updated version of the omnibus resolution this year, following New York Working Group (NYWG) consultations chaired by facilitator Ms. Damaris Carnal (Switzerland). A number of the ASP Bureau facilitations that took place within The Hague Working Group (HWG) and the New York Working Group also suggested language for inclusion in the omnibus resolution.

Topics covered by the omnibus resolution include: Universality of the Rome Statute; the Agreement on Privileges and Immunities of the ICC; cooperation and non-cooperation; the Court's relationship with the United Nations and other international organizations and bodies; activities of the Court; the Secretariat of the Assembly of States Parties; Counsel; elections; legal aid; the Assembly's Bureaus working methods review; strategic planning; geographical representation and gender balance of staff; victims and affected communities; the Trust Fund for Victims; programme budget; independent oversight mechanism; review conference; participation in the Assembly of States Parties; consideration of amendments and complementarity.

Universality of the Rome Statute

Ad country focal points: Denmark and Cyprus

The Assembly invited states that are not yet party to the Rome Statute to join the Court as soon as possible. The Assembly also implored States Parties as well as international, regional, and nongovernmental organizations to intensify their efforts to promote universality and decided to keep the status of ratifications under review and to monitor developments in the field of implementing legislation.

The Assembly urged States Parties that have not yet done so to adopt implementing national legislation as a matter of priority and in particular in the areas of criminal law, criminal procedural law, and international cooperation and judicial assistance with the Court. The Assembly welcomed the Report of the Bureau on the Plan of Action for achieving universality and full implementation of the Rome Statute and encouraged the Court, Member States, relevant international organizations and civil society to commemorate the 20th anniversary of the adoption of the Rome Statute in 2018.

Slovenia also put forward language calling on States Parties that have announced their intentions to withdraw to reconsider this decision. The Assembly accepted this language proposal by Slovenia and welcomed the dialogue held in the Open Bureau meeting during the 15th Assembly session on Friday the 18th of November on the *“Relationship between Africa and the International Criminal Court”*. Further information on this event can be found under Chapter 5 of this report.



Agreement on Privileges and Immunities of the ICC

Focal point: Belgium

In the ASP15 omnibus resolution, the Assembly welcomed pledges by three States Parties to the Rome Statute who have announced their intentions to ratify the Agreement on Privileges and Immunities of the ICC (APIC) before the 20th anniversary of the Rome Statute in 2018. Aside from Australia, Peru, and El Salvador's pledges, Nigeria also expressed its support for APIC but did not pledge to ratify the agreement. The Assembly called upon states that have not yet ratified to do so as a matter of priority. Over the course of 2016 and in preparation for ASP15, discussions on APIC were led by Belgium as ad country focal point in The Hague and New York. Further information on the APIC and the pledging ceremony can be found in Chapter 12 of this report.

Cooperation

Co-facilitation (HWG): Mr. Paul Wilke (The Netherlands) and until Fall 2016, Ambassador Maymouna Diop Sy (Senegal)

In the omnibus resolution, the Assembly referred to the stand-alone resolution on cooperation (see Chapter 6 of this report) and called upon States Parties to comply with their obligations under the Statute, to continue to express their support for the Court and to ensure full and effective cooperation with the Court, particularly in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants.

The Assembly encouraged both States Parties and the Court to consider further measures to enhance the implementation of the 66 Recommendations on cooperation. In 2007, States Parties produced and adopted a Bureau report wherein they agreed on implementing the 66 Recommendations relating to enhancing cooperation with the Court. These are annexed to [resolution ICC-ASP/6/Res.2.](#)

The Assembly also took note of the Report on the draft Action Plan on arrest strategies, submitted by the Rapporteur as well as the related draft Action Plan. The report is a result-oriented plan on the 'arrest strategy' to be implemented by the Court, in order to ensure compliance by States with the execution of arrest warrants issued by the Court.

The Assembly recalled the first voluntary agreement on interim release from 2014, and welcomed the conclusion of *ad hoc* agreements between the Court and the Democratic Republic of the Congo, related to the enforcement of two sentences of imprisonment in November 2015. They also welcomed the conclusion of a framework agreement on the enforcement of sentences between the Court and Norway in July 2016.

The Assembly welcomed the enhanced dialogue between States Parties, the Court and members of civil society during the plenary session of the 15th ASP. There was a special focus on the contribution of national, regional and intergovernmental initiatives to effective cooperation and accountability for Rome Statute crimes. The Assembly also underlined the importance of effective procedures and mechanisms that enable States Parties and other states to cooperate with the Court in relation to the identification, tracing, and freezing or seizure of proceeds, property and assets as expeditiously as possible. They also recalled the role of the Assembly and the Security Council with respect to non-cooperation.



Non-cooperation

Regional co-focal points: Australia, Japan, Peru, and Czech Republic

The lack of cooperation from states is one of the great challenges the Court faces in its work. In the past years, two situations before the ICC have been particularly affected by the non-cooperation of states: the situations in Darfur, Sudan and in Kenya. Regarding the investigation in Darfur, ICC judges have made several findings of non-cooperation in the case against ICC suspect President Omar al-Bashir. In each instance, the finding related to a state's failure to enforce the outstanding arrest warrants against the Sudanese president. In 2016 alone, the ICC issued two findings of non-cooperation: against Djibouti and Uganda (July 2016).

Relating to its Kenya situation, ICC judges made a finding of non-cooperation against Kenya itself in the case against President Uhuru Kenyatta. The finding, issued in September 2016, is related to a lack of cooperation with the ICC prosecutor's investigation of post-election violence in the country between 2007 and 2008. The Court's decision was officially referred to the ASP soon after.

In both situations, the Court's judges referred the non-cooperation findings to the ASP, in accordance with the process outlined in the Rome Statute. The ASP has adopted a procedure to deal with the issue of non-cooperation. (For more information about the ASP procedures regarding non-cooperation, see Annex 2).

The Assembly called upon States Parties to continue their efforts to ensure that the UN Security Council addresses the communications received from the Court on non-cooperation, pursuant to the Rome Statute. Specifically, the Rome Statute states that where a States Party fails to comply with a request to cooperate by the Court, the Court may refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

The Assembly further called in the Omnibus Resolution for the Security Council to share any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued, with the focal points on non-cooperation. In April 2016, Australia, Japan, Peru, and Czech Republic were appointed as regional focal points for non-cooperation. The Assembly also welcomed the finalization by the 2016 focal points of the *Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation*, and encouraged States Parties to make use of it.

Complementarity

Co-focal points: Sweden and Botswana

Resolution language on complementarity was included in the Omnibus Resolution. In the resolution, the Assembly recalled the primary responsibility of states to investigate and prosecute the most serious crimes, and to adopt appropriate measure to ensure international cooperation and judicial assistance are implemented at a national level. They noted that in enhancing the capacity to prosecute perpetrators of international crimes at a domestic level, they must also ensure that prosecution meets the international standard for fair trials. The Assembly requested the Bureau to remain seized on the issue, and to continue to hold capacity building activities that assist in national authorities and promote partnerships between states and the Court. They also requested that the Secretariat continue to facilitate information exchange between the Court, States Parties and other



stakeholders such as international organizations and civil society, and to report its progress at the 16th ASP session.

Relationship with the United Nations

Facilitation (NYWG): Ambassador Sebastiano Cardi (Italy)

At Slovenia’s suggestion, language was added to the omnibus resolution to have the Assembly recognize that ratification or accession to the Rome Statute by members of the United Nations Security Council would enhance joint efforts to combat impunity. Moreover, it would enhance the Security Council’s call regarding the importance of state cooperation with the Court. This would encourage further strengthening of the Security Council’s relationship with the Court.

The Assembly recognized the need for enhancing the institutional dialogue with the United Nations, including on Security Council referrals to the Court.

The Assembly noted with concern that to date, expenses incurred by the Court due to referrals by the Security Council continue to be borne exclusively by States Parties; and stressed that, if the United Nations is unable to provide funds for the Court to cover the expenses incurred due to referrals by the Security Council, this will, among other factors, continue to exacerbate resource pressure on the Court. The Assembly noted that all cooperation received by the Court from the United Nations is provided strictly on a reimbursable basis, and have mandated that the Registry continue to update the report on approximate costs allocated within the Court in relation to UNSC referrals. The Assembly encouraged United Nations Offices, funds, and programmes to strengthen their cooperation with the Court.

Relationships with other international organizations and bodies

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

Activities of the Court

The Assembly recalled its invitation to the Court to consider best practices from other relevant international and national organizations and tribunals. The Assembly welcomed the Court’s efforts to implement the One-Court principle and to enhance the efficiency and visibility of the Court’s field operations. The Assembly expressed appreciation for the Office of the Prosecutor’s (OTP) efforts to achieve efficiency and transparency in its preliminary examinations, investigations, and prosecutions, specifically welcoming the OTP’s release of its September 2016 Policy Papers on Selection and Prioritization, and on Children; and stressing the importance of the effective investigation and prosecution of sexual and gender-based crimes. The Assembly also showed appreciation for the continued efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court’s field operations. It recognized the important work done by the field-based staff of the Court in difficult and complex environments.

Counsel

The Assembly noted the important work of independent representative bodies of counsel or legal associations. Particularly, the Assembly noted the establishment of the International Criminal Court Bar Association (ICCBA) and invited the ICCBA to report to the Assembly, through the Bureau, on its constitution and activities in advance of the 16th ASP session. It also noted the need to improve gender balance and equitable geographical representation on the list of counsel.

ASP Bureau Working Methods Review

Facilitation (HWG): Ambassador Sergio Ugalde (Costa Rica)

The Assembly this year again adopted language to encourage the Bureau and all States Parties to enhance the Bureau working methods, including the working methods of its subsidiary bodies. This year, the Assembly decided that their annual session will have a duration of seven working days with a possible extension of up to two additional days during election years, with the first two days focused on the election of judges. Facilitators and focal points were invited to commit to their particular mandates for a period of up to three years, as well as to submit a lessons learned report at the end of their term.

Strategic Planning

Facilitation (HWG): Ambassador Eduardo Rodríguez Veltzé (Bolivia)

The Assembly took note of the update to the Court's Strategic Plan for 2013-2017 and invited the OTP to inform the Bureau of the implementation of this strategic plan. The Assembly welcomed the Courts intention to prepare a new strategic plan for 2018-2020, which would include budget assumptions on an annual basis. It also reiterated the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, and took note of the presentation of the *Comprehensive Report on the Reorganization of the Registry of the International Criminal Court by the Office of the Registrar*.

Recruitment of ICC Staff

Co-Facilitation (NYWG): Ms. Georgina Guillen Grillo (Costa Rica) and Mr. Patrick Luna (Brazil)

The Assembly encouraged the Court to strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance. The Assembly requested that the Bureau work with the Court to identify ways to improve geographical representation and to increase the recruitment and retention of women in higher-level professional posts, and in this regard, urged the Registry to seize the opportunity provided by ongoing and future recruitment processes. The Assembly mandated the Court to submit a comprehensive report on human resources during ASP16 including on issues of geographical representation and gender balance in higher level professional posts. The Assembly also urged States Parties to generate pools of qualified potential applicants to the Court's professional positions from States Parties from underrepresented regions.

Independent Oversight Mechanism

The Assembly referred to its resolution from the 12th ASP session on the Independent Oversight Mechanism (IOM) and recognized the importance of a fully operational IOM for the efficient and effective operation of the Court. It noted that the IOM expects to be fully staffed by the end of 2016,



and to be fully operational in 2017. The IOM is currently headed by Ian Fuller (UK). The Assembly noted that the IOM is already fully operational in terms of its investigation and inspection functions. The Assembly invited the IOM to submit a report to the Bureau during 2017 on the interim working procedures concerning areas where the current IOM mandate may conflict with the Court's Rules of Procedure and Evidence. This report would be fully reviewed by the Assembly during the 17th ASP session in 2018.

Programme Budget

Facilitation (HWG): Ambassador Werner Druml (Austria)

The Assembly took note of the work by the CBF, reaffirmed the CBF members' independence and recalled the CBF's mandate. The Assembly also expressed its concern about the outstanding contributions (standing at over 30 million euros at the time of the 15th ASP session) again and urged states with outstanding assessed contributions to pay their dues as soon as possible. The Assembly also noted that states in Arrears should be reported to the Assembly during the 16th ASP session. Please refer to Chapter 8 in this report.

Review Conference and the Crime of Aggression

The Assembly recalled the first Review Conference of the Rome Statute, held in Kampala, Uganda in 2010 and called upon more States Parties to ratify the amendments adopted there. The Assembly welcomed the fact that more than 30 States Parties have deposited their instruments of ratification of the amendments on the crime of aggression, enabling the Assembly to take a decision to activate the Court's jurisdiction over this crime in 2017. The Assembly decided to establish a facilitation (based in New York), which will only be open to States Parties, to discuss the activation of the Courts jurisdiction over the crime of aggression.

The Assembly called upon the 35 States Parties, one observer state, and one regional organization to swiftly implement their pledges made in Kampala to increase assistance to the Court and called on other states and organizations to make additional such pledges.

The language adopted noted that a State Party (Kenya) has lodged an opt-out declaration in accordance with Article 15*bis*, paragraph 4 of Rome Statute. Under this article, the Court may exercise jurisdiction over a crime of aggression committed by a State Party, unless that State Party has previously declared that it does not accept that jurisdiction by filing a declaration with the Registrar. As such, paragraph 120 of the omnibus resolution includes language that reflects this declaration lodged by Kenya.

Amendments

Working Group on Amendments chaired by Ambassador May-Elin Stener (Norway) in New York

The Assembly recalled its decision to delete Rome Statute Article 124, which allowed new States Parties to defer the ICC's exercise of jurisdiction over war crimes committed on their territories or by their nationals for a period of seven years. The Assembly called upon existing and future States Parties to ratify the amendment. Please refer to Chapter 9 in this report.



Relevant Documents

[CICC Background Paper for the ASP15](#)

[CICC Key Recommendations and Priorities for ASP15](#)

[ASP15 Resolution on the Strengthening of the International Criminal Court and the Assembly of States Parties](#)

14. United by Common Bonds Campaign

Drawing inspiration from the Rome Statute preamble declaration that "all peoples are united by common bonds, but this delicate mosaic may shatter at any time," the Coalition for the International Criminal Court has launched a campaign ahead of the 15th ASP session called "United by Common Bonds". The intention of this campaign is to underline the global nature of the Court's mandate and mission, the worldwide movement that brought about its establishment, and of the continuing desire to see it deliver justice to victims in all parts of the world.

Civil society knows as well as any that access to justice remains uneven around the world and that the ICC can improve its delivery of justice. We remain convinced that the solution lies in more and better justice, not less. With the ICC facing mounting political opposition as it grows, the time is now for governments to make this system of international justice work for all victims no matter their location. This is the single most effective way to increase the acceptance of the ICC around the world and bolster the effectiveness of the Rome Statute system.

United by Common Bonds is seeking to rally expressions of support (written, visual, video, demonstrations) from global civil society, states, representatives of international and regional organizations, academia, media, eminent personalities, celebrities, and the general public. Participants in the campaign are encouraged to call for:

- Truly global ICC justice;
- A strengthening of the ICC; and
- Greater state support for the Rome Statute system

Toward this end, the recently launched [new Coalition website](#) serves as tool for providing resources and means of expressing solidarity. This new interactive platform reaffirms who the Coalition is, what the ICC is, and where the Coalition wants this truly remarkable system of international criminal justice to go.

Arriving in the face of threats to the wider Rome Statute system, the Coalition's new website aims to tell the true and complete story of international justice, so that selective mischaracterizations of the ICC do not obscure the Statute's mission to bring global peace and security through justice and rule of law.





Annex 1: Side Events

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

The Coalition Secretariat’s exceptional consultative relationship with the Court and the ASP enables its members to identify co-organizers for events on more specialized topics, with the Coalition Secretariat often serving as moderator. The Coalition also frequently sets up bilateral or group meetings between NGOs and high-level Court officials, and arranges daily NGO-only strategy sessions to mobilize a broader civil society base around topics on which only a limited number with expertise would otherwise be able to follow.

This chapter provides a complete overview of the side events, as well as meetings between the Court and civil society, organized during the ASP session.

The Coalition Secretariat organizes as well as helps its individual members set up side events on important issues like cooperation, complementarity, victims’ rights and ratification and implementation developments, among others. At the same time, the diversity of the Coalition’s membership enables events and discussions on novel as well as less frequently explored topics in international justice, ranging from slavery, to protecting human rights defenders, to climate change and reflections on specific country situations.

Wednesday, 16 November 2016

Trust Fund for Victims - launch of the Annual Progress Report 2016

Co-hosted by Uruguay and the Trust Fund for Victims (TFV)

The Trust Fund for Victims (TFV) launched its Annual Summary Report for 2016, reviewing its work during the year and summarizing its strategic plan for the upcoming work year. The event discussed issues of diminishing funds, as well as the inhibitory impact of this trend on the ability of the TFV to successfully carry out its assistance and reparations mandates. The TFV noted some of the challenges they face working in certain areas of situation countries and noted their intent to expand their programs and build visibility. They finished by calling on ICC member states for continued and enhanced voluntary contributions and discussing strategic and innovative approaches for fundraising.

Challenges for the universality and threats for the integrity of the Rome Statute system: the role of parliamentarians

Co-hosted by Parliamentarians for Global Action (PGA), Luxembourg, and Estonia

This side meeting focused on the active role that parliamentarians play in promoting the role of the ICC and in implementing international law at the domestic level. Panelists stressed that full national implementation of all aspects of the Rome Statute is instrumental in combating global injustice and



impunity. The discussion focused on the positive experiences of the Democratic Republic of the Congo in implementing elements of the Rome Statute to try criminals of heinous war crimes at a national level. Discussions also reflected on the experiences of Sierra Leone in its path toward peace in a post-conflict society, and on the obligation to provide justice for victims by ratifying international treaties. General discussion also took place on how parliamentarians can best support and advocate for the universality of the Rome Statute and prevent further challenges to its integrity, such as withdrawals. Particularly, parliamentarians work at a national level to support and transform international legal norms, and the PGA provides MPs with advice on how to do so.

Towards a multilateral treaty for mutual legal assistance and extradition for domestic prosecution of the most serious international crimes - state of play

Co-hosted by Argentina, Belgium, the Netherlands, and Slovenia

The Mutual Legal Assistance (MLA) Initiative held an event to discuss its work toward establishing a multilateral treaty for mutual legal assistance and extradition in cases of domestic prosecution of the core crimes of genocide, war crimes, and crimes against humanity. The MLA Initiative noted that despite developments in international law and the fight against impunity, there are still issues with the effectiveness of domestic prosecutions of these core crimes. They seek to fill this lacuna by establishing a broader and more comprehensive treaty that incorporates all the core crimes into domestic prosecution. The panelists called on more states to join the Initiative and emphasized that prosecutors from the international courts and tribunals, as well as from the European Genocide Network have all voiced their support for this key legal tool in improving the efficiency of domestic international crimes prosecutions. The MLA Initiative also announced their intention to host a retreat in May or June 2017 in The Hague, in order to inform and negotiate on the process of establishing this multilateral treaty.

Justice Rapid Response General Annual Report - Helping to fulfill the promise of ending impunity

Co-hosted by Finland and Justice Rapid Response (JRR)

Justice Rapid Response hosted a side event to launch its General Annual Report for 2016. As an organization, JRR brings together states, international and regional institutions, civil society, and the private sector in order to effectively manage rapid deployment of criminal justice. The international community can request assistance in investigation, analysis and reporting of serious human rights violations. JRR launched its annual report at their side event, during which they reflected on the accomplishments of the organization from 2016, and outlined the strategic direction it would take in the coming year.

Official launch of the Office of the Prosecutor's Policy on Children

Hosted by the ICC Office of the Prosecutor

During a gala event hosted during the 15th ASP session, the ICC Office of the Prosecutor launched its latest Policy on Children to improve investigation and prosecution of both crimes directed specifically against children, as well as crimes that acutely or disproportionately affect children. The policy further reinforces the OTPs child-sensitive approach that upholds the rights of children as recognized in the Convention of the Rights of the Child (1989). The policy will guide the OTP on how to conduct investigations and prosecutions in a manner that best respects the interests of children involved. Bensouda took the opportunity to stress the need for all actors to work together, and to send a firm and consistent message that humanity stands united against impunity.

Second Lecture on International Law in The Hague: “International Criminal Court – Current Challenges”

Co-hosted by the British Embassy and Temple Garden Chambers

This event was the second lecture in a joint lecture series with guest speaker Justice Richard Goldstone, the former Chief Prosecutor for the ICTY and ICTR. Justice Goldstone’s lecture explored the challenges currently facing the ICC, in particular the interplay between politics and international criminal justice. He also reflected on the role of the United Nations Security Council in enforcing the arrest warrant against Al Bashir and on the recent withdrawals from the Rome Statute. Justice Goldstone concluded with an optimistic outlook of the future of the Court, despite the challenges it currently faces.

Thursday, 17 November 2016

Extraordinary Chamber in the Courts of Cambodia: A Discussion

Co-hosted by Australia and the Extraordinary Chamber in the Courts of Cambodia (ECCC)

During this discussion, the speakers reflected on the 14 years since the inception of the ECCC, particularly the cases that have been brought before the Court, the funding it has acquired and the transformative effect the Khmer Rouge trials have had for Cambodian society. They also noted the progress it must continue to make in future years and the need to continue to fund the activities of the Court. Discussions focused on the challenges for a voluntarily funded tribunal within an international justice framework, the impact of the tribunal on civil society, the importance of international governmental funding, and the positive lessons that can be learned from the ECCC for the ICC and reparations processes there.

A call for investigations and accountability in Nigeria

Hosted by Amnesty International

Amnesty International hosted an evening documentary screening and reception to launch their latest report on the crimes committed by Boko Haram in North-Eastern Nigeria. During this evening event, Amnesty International screened a short documentary about the current security situation in Nigeria and had several guest speakers who discussed the issues the country faces in the fight against terrorism.

NGO meeting with the ICC Prosecutor, Ms. Fatou Bensouda

Hosted by the Coalition for the International Criminal Court

Topics addressed during this meeting with the ICC Prosecutor included the announced withdrawals of three African states (South Africa, Burundi, and The Gambia), the need for better communication around political rhetoric, the role for civil society to play, informing states of the Court’s benefits, and the important impact of the ICC budget on the prosecutor’s ability to investigate. The meeting specifically touched on the level of cooperation from Russia in the recently opened Georgia situation, the possibility of opening a full investigation in Burundi before its official withdrawal comes into effect in 2017, accountability for victims in Mali, the Democratic Republic of the Congo, and other ICC situations around the world.

Friday, 18 November 2016

The role of international criminal justice in the fight against human slavery

Co-hosted by the Coalition for the International Criminal Court and Liechtenstein

This side event considered the role of international justice in the investigation and prosecution of modern slavery crimes, with a general consensus among panelists that strong ICC and civil society engagement will highlight the international and regional reach of the ICC in combating these crimes. ICC related developments highlighted included charges relating to enslavement as war crimes and crimes against humanity in the Dominic Ongwen case as well as the OTP's contemplation of a policy to deal more systematically with these crimes within ICC jurisdiction. Civil society participants highlighted that definitions need to be clarified in several states, and discussed the role of universal jurisdiction and intersections with sexual gender based crimes.

Strengthening financial investigations - alternative sources of evidence for the ICC

Hosted by Liechtenstein

This side event discussed the important role that financial intelligence can play in international criminal investigations. The panel agreed that financial investigations are critical to uncovering all levels of perpetrators in criminal networks and illicit international organizations. They highlighted that while financial investigations are crucial to funding reparations, they are equally important for the purpose of gathering evidence. There was a general call for ICC member states, national organizations, and investigation units to strengthen inter-agency and cross-jurisdictional cooperation to improve financial investigation and enhance the critical role that financial intelligence can play in international crime investigations.

Global civil society and European states: what can be done to advance international justice?

Hosted by Slovakia, the Coalition for the International Criminal Court, and the European External Action Service (EEAS)

The speakers covered a range of topics concerning the role of European Union (EU), global civil society, and the ICC. These included the EU dedication to existing cases and investigation through outreach and communication strategies, and methods of enhancing EU capacity to deliver justice to victims in non-States Parties. They also discussed the promotion by EU states of increased funding and resources, with a focus on EU reinforcement of the imperative principle of complementarity. Finally, attention was paid to the role of the EU in helping to counter misperceptions of the ICC through promoting communication and narrative between the EU and African states.

Domestic Accountability for Crimes Against Humanity in Mexico

Hosted Open Society Justice Initiative (OSJI)

This side event involved the discussion of the situation of violence and impunity in Mexico, as well as a report recently published by the OSJI on the subject. The report found that there was a reasonable basis to believe that crimes against humanity had been committed by cartels since 2006 with the complicity and involvement of state and non-state actors. Panelists favored the creation of an independent investigative mechanism with international involvement over an ICC Preliminary Examination or investigation at this point in time. Further discussions included the aggravation of the situation in recent years, the appropriate jurisdiction of such a mechanism and the likelihood of this being enacted. Civil society members debated the pros and cons of ICC involvement.



Crimes against humanity, sex crimes, and command responsibility: development in international crime practice

Co-hosted by Norway, the United Kingdom, and Centre for International Law Research and Policy (CILRAP)

Panelists, including from the UC Berkeley School of Law Human Rights Center (USA), the Case Matrix Network, Queens University (Canada), and the ICC, touched on issues including the evolution of sexual and gender-based crimes (SGBC) and command responsibility in national investigations and prosecutions, as well as the significance of the 2016 ICC judgment against Jean-Pierre Bemba for such prosecutions. The Commission for International Justice and Accountability (CIJA) further gave an overview of its investigative work in the Middle East region, such as in Syria, as well as their acquired expertise in investigating and documenting SGBC. The Mexican Commission for the Promotion and Defence of Human Rights discussed crimes against humanity committed by public servants in Mexico over the past decade.

Child soldiers: prevention and accountability

Co-hosted by Canada, the OTP, Roméo Dallaire Child Soldiers Initiative and Justice Rapid Response (JRR)

This side event discussed the ways to prevent the recruitment and use of child soldiers and create accountability around the issue, specifically focusing on the role of the ICC and civil society in combining resources and efforts in addressing it. Panelists outlined the enduring problems regarding child soldiers, while also highlighting international normative advancements. They discussed a range of issues, including the gap between international efforts and national implementations, the moral dilemma experienced by soldiers and policemen who must interact with child soldiers, challenges faced during former child soldiers’ rehabilitation, the roles of the ICC Office of the Prosecutor (OTP), Justice Rapid Response, and Child Soldiers Initiative in addressing these challenges, and the OTP policy on children launched on Wednesday, which all panelists commended as a groundbreaking and long-term initiative.

National Jurisdiction in the Front Line of Fighting Impunity

Hosted by the European Union Network for investigation and prosecution

During this side events, panelists from Sweden, Germany, and France presented cases in relation to the ongoing conflict in Syria, and the prior conflict in Rwanda. The presentations highlighted the European Union’s role in the international justice system, the role of social media in assisting prosecution, especially in areas of restricted access, the importance of specialized units and staff, the need of international cooperation for funding and resources, and the issue of blurred lines between terrorism and international crimes. Panelists specifically addressed the fact that international crimes may seem far away from Europe, but terrorism is relevant to Europeans. Therefore, complementarity and outreach need to be focused on.

Innovation of Extraordinary African Chambers for the Prosecution of Habré

Co-hosted by the Netherlands, Uganda, Africa Legal Aid (AFLA), and The Hague Institute for Global Justice

Panelists at this side event discussed the how the Extraordinary African Chambers in Senegal can serve as an example of Rome Statute principles in practice at the state and regional level. Specifically, it noted that justice is not just a national concern, but transcends borders, referring to the main added-value of former Chadian leader Hissène Habré’s trial. The EAC general prosecutor highlighted that it is the responsibility of states to proactively set up courts like the EAC, which

follow the ICC example in providing victims access to justice for their leaders' crimes. It also called for the creation of a fund to help African states investigate and prosecute international crimes. Human Rights Watch illustrated the instrumental work NGOs can do in collecting evidence for trials. They also highlighted cooperation between Senegal and Belgium, as well as victims' crucial activism as significant factors in bringing Chad's ex-leader to justice. In the question and answer segment, civil society members raised questions about alternative methods of addressing the issue of prosecuting a *sitting* head-of-state.

ICC withdrawals: Is Africa running away from justice?

Co-hosted by Africa Legal Aid (AFLA) and the Southern Africa Litigation Centre (SALC)

During this side event, panelists discussed the imbalance in the jurisdiction of the ICC, which the panelist saw as the fault of powerful states refusing to support the Court, rather than the fault of the institution itself. Panelists from South Africa and Burundi shed light on the situation in both countries, with SALC presenting its cases against the government of South Africa, and the Burundi Coalition explaining how the judicial system is used as a tool of repression. SALC also mentioned the possibility that the South African withdrawal notice itself may be declared null for the manner in which it was delivered, namely without consulting Parliament. The discussion focused on understanding the motivations behind the withdrawals and considering what we can do to address them.

Building or breaking international criminal justice in Africa?

Co-hosted by France, the Netherlands and the Institute for Security Studies

The Institute for Security Studies (ISS), France, and the Netherlands hosted an event on the role of the ICC in Africa, with speakers from ISS and l'Observatoire Ivoirien des Droits de l'Homme and chaired by Ms. Helene Cisse, an international barrister and victim representative in Darfur. The discussions centered on the challenges the ICC faces in its complex relationship with African states, and particularly the unresolved issue of immunity for sitting heads of state and the scope of consultations under Article 97 of the Rome Statute. Discussions reflected on the recent withdrawals and explored how strains on cooperation, including the draft Arrest Strategy, have exacerbated issues between the ICC, the African Union and African states. The event also reflected on developments in the cooperation and complementarity, acknowledging African states that have continued to support the Court in its fight against impunity, and made proposals on how to resolve the current stalemate between the ICC and the AU.

NGO meeting with TFV Board and Secretariat

Hosted by the Coalition for the International Criminal Court

Four of the five Trust Fund for Victims (TFV) Board members as well as the TFV Executive Director Mr. Pieter de Baan met with the Coalition for the ICC and its members and appealed to civil society for assistance in addressing issues such as financing the voluntary Fund, the importance of promoting the TFV assistance mandate alongside its reparations mandate, and challenges arising from the time that elapses between the commission of crimes and the implementation of reparations programs. Civil society called on the TFV to expand its communication and outreach activities, increase external consultations around TFV strategies and plans, and explore alternative sources of funding.

Saturday, 19 November 2016

Justice in Kenya after the International Criminal Court

Co-hosted by Open Society Justice Initiative (OSJI) and the International Commission of Jurists Kenya (ICJ-Kenya)

This side event focused on the search for justice for the 2007-8 post-election violence (PEV) in Kenya following the collapse of the ICC Kenya cases. It featured a sexual and gender-based crimes (SGBC) survivor's experience during and in the aftermath of the crisis. Panelists explored the Kenyan government's response to the PEV, while highlighting victims' accounts of not having received reparations or recognition from the government. Participants reflected on the way forward and how to put victims at the forefront of all considerations.

Moving reparation forward, some lessons learned

Hosted by REDRESS

Participants discussed the role and expectations of the international community and the ICC in providing reparation and justice to victims of the gravest crimes. They noted the approval of the ICC's first concrete symbolic reparation program in the Thomas Lubanga case as an important milestone for the Court. However, they also acknowledged the impact lengthy ICC proceedings had on child soldiers awaiting reparations. In relation to the ICC Germain Katanga case, participants discussed the methodology used in the identification of victims; the collaboration of the government with local villages and other actors; and the role of the Trust Fund for Victims in providing both financial and symbolic reparation. Participants also noted the need for judges with reparative expertise, and drew attention to victims' misunderstandings that reparation would come at the beginning or at arbitrary stages of prosecutions.

Accountability options for Syria

Co-hosted by Canada, Liechtenstein, and No Peace Without Justice (NPWJ)

This side event discussed accountability for the situation in Syria. Panelists discussed a range of topics, including the possibility of a UN Security Council referral, alternative justice mechanisms, evidence collection by various NGOs, the alleged use of chemical weapons by Syria. It also discussed positive developments such as national proceedings against suspected perpetrators of grave crimes in various countries. Panelists commended the efforts made by governments like Germany, France, and Sweden to bring perpetrators of war crimes in Syria to justice.

The ICC's children's policy: an essential response to child victims

Co-hosted by Palestine and the Institute for Security Studies (ISS)

Participants welcomed the OTP policy on children, launched on 16 November 2016, which aims to ensure consistency of OTP investigations around crimes directed at or disproportionately affecting children. Participants discussed logistical aspects of the policy, such as the practicalities needed to achieve its mandate, and recommendations towards ensuring its effectiveness. The discussions touched on the ICC trial of Thomas Lubanga, guidelines for the OTP's use of intermediaries in investigations, and challenges in investigating and prosecuting crimes against children. Discussions also focused on grave crimes allegedly committed against children in Palestine during the 2014 Gaza war and in Israeli detention; the children abducted and conscripted by both the Lord's Resistance Army and the national forces in Uganda; and the intersection of sexual and gender-based crimes and crimes against children.

NGO meeting with the ICC Registrar, Mr. Herman von Hebel

Hosted by the Coalition for the International Criminal Court

The meeting with the ICC Registrar focused on the Court's annual budget, the aftermath of the Registry's restructuring project, the functioning and efficiency of the Registry, gender and geographic representation in the Registry's staffing assignments, the availability of resources for outreach activities, the communication and exchange of information between the Registry and States Parties, victims' issues, and the reform of the ICC legal aid system.

Monday, 21 November 2016

Liability for public statements: the case of the Philippines

Hosted by No Peace Without Justice (NPWJ)

During this side event, No Peace Without Justice (NPWJ) presented its study on liability for public speeches, in particular those made by the president of the Philippines in the context of a recent statement by the ICC prosecutor on an alleged policy of extra-judicial killings in the country. The NPWJ study explores whether incidents in the ongoing "war on drugs" in the Philippines could constitute the crime against humanity of murder. They concluded that, given the findings, it is possible for the OTP to open a preliminary investigation into the Philippines situation. During the discussion, delegates from the Philippines stressed the principle of complementarity and pointed out that the OTP's statement could have a negative impact on achieving universality of the Rome Statute in the Asia-Pacific region.

The role of the ICC in promoting accountability for crimes committed in Ukraine

Co-hosted by International Partnership for Human Rights (IPHR) and International Renaissance Foundation

This event highlighted the ongoing efforts of civil society organizations to gather evidence to tackle impunity related to gross violations of human rights and international crimes allegedly committed in Ukraine during the protests of 2013-14 and the consequent armed conflict in Crimea. NGO representatives argued that the alleged acts amount to war crimes and crimes against humanity, which fall within the ICC's jurisdiction. The panelists also argued that, through the evidence collected, a clear link could be drawn between the combined law enforcement and government crackdown of the peaceful protests in 2013 and 2014, and the consequent Russian annexation of Crimea.

The Bemba ruling and beyond: prosecuting conflict related sexual violence

Hosted by the Institute for Justice and Reconciliation (IJR)

This panel discussed the ICC's first ever trial judgment for sexual and gender-based crimes (SGBC) in conflict, namely the landmark judgment against Jean-Pierre Bemba. The panelists discussed the specific legal findings of the Bemba ruling and highlighted the historical importance of this judgment and the importance of accountability for SGBC. A representative from the OTP's Gender and Children Unit presented the Unit's involvement during SGBC investigations. Panelists also raised the question of how to discuss the topic of SGBC and sensitively interact with all parties involved. Further issues discussed included the construction of a narrative of victims; entrenching notions of rape as an unjustifiable practice during warfare; states' responsibility and accountability, and the importance of the SGBC issue in international criminal justice. Civil society members raised questions about the OTP's recent policy's applicability to male victims of rape; how

civil society can address SGBC issues to help the work of the Court, and what lessons were learned from the Bemba case.

Strengthening ICC Cooperation through Legislation and Access to Legal Sources: The Cooperation and Judicial Assistance Database

Co-hosted by Norway, Centre for International Law Research and Policy (CILRAP), the Chinese Initiative on International Law (CIIL), and International Nuremberg Principles Academy

This side event introduced the Cooperation and Judicial Assistance Database (CJAD), a newly developed legal tool. The purpose of this tool is to create a platform where legal documents can be shared in order to facilitate the development of cooperation legislation and to enable the drafting of domestic legislation that will conform to states' international obligations. It was noted that by providing access to legal documents, CJAD could democratize learning in the field of international criminal law, enhance access to knowledge equally in underdeveloped countries, and implement procedures for the incorporation of domestic legislation by observing the work of other states. The event further presented the benefits of this new platform from the perspectives of the Court, states, and civil society. Questions from the floor focused on the actual reach of the database, the use of the platform, and how it can facilitate the work of the Prosecutor's office. The meeting concluded with the official launch of the CJAD.

Activation of the Kampala Amendments on the crimes of aggression

Hosted by Liechtenstein

This side event focused on the activation process for the Kampala Amendments on the crime of aggression. The panelists started the event by giving an overview of the negotiations in Kampala and the eventual agreement on the definition and conditions for exercise of jurisdiction of the crime of aggression. The authors of the *Travaux Préparatoires of the Crime of Aggression*, including Stefan Barriga of Liechtenstein, explained the relative positions of parties on ratification in Kampala, and explained the emergence of a restricted understanding of the crime of aggression. He further explained the principle of 'opting out' of ICC jurisdiction over the crime of aggression under the amendment to the Rome Statute, which has now received 32 ratifications. The event paid particular attention to the future of the ICC once the crime of aggression is activated, stressing that the move will further strengthen the Rome Statute system.

The ICC and crimes against humanity in North Korea

Co-hosted by the Republic of Korea, Geoffrey Nice Foundation, Giordano Bruno Foundation, and International Coalition to Stop Crimes against Humanity in North Korea (ICNK)

The discussion during this side event centered on alleged crimes against humanity committed by DPRK authorities and any potential role of the ICC and the Assembly of States Parties in holding authorities to account. The event featured testimony on systematic grave human rights abuses such as enforced disappearance, forced labor in detention centers and political prisoner camps, torture, and murder. It also featured accounts of punishment for attempts to defect or access foreign media such as news, music, and television and provided an insight into the severe reality of what escaping isolationism entails in North Korea. Referral of the situation to the ICC was offered as one potential avenue to justice and accountability, but some participants stressed that there are still lessons to be learned in documenting evidence of these widespread human rights violations. Panelists also discussed the role for informal tribunals as another potential avenue and substitute of international criminal proceedings.



Draft convention on the prevention and punishment of crimes against humanity

Co-hosted by Germany, the Republic of Korea, and the Whitney R. Harris World Law Institute

In this event, the Special Rapporteur on Crimes against Humanity, Sean Murphy, appointed by the ILC, introduced the draft Convention on Crimes against Humanity (CAH) by outlining the drafting process, ten articles that have already been agreed upon, and the expected timeline for the draft's finalization. Panelists discussed the need for such a legal convention in the international justice framework and touched on developing national capacities to criminalize CAH, improve existing laws, provide robust bases of jurisdiction, and cater to stronger cooperation between states in fighting this crime. The discussion highlighted the convention's aim to complement and remain consistent with the Rome Statute by placing an explicit obligation on states to prosecute CAH or extradite suspects. The side event also underscored the draft convention's progressive nature in regards to corporate liability.

Through the looking glass - Imagining the future of international criminal justice

Co-hosted by Africa Group for Justice and Accountability (AGJA) and Wayamo Foundation

To mark the first anniversary of the establishment of the Africa Group for Justice and Accountability (AGJA), AGJA and the Wayamo Foundation hosted a panel discussion on the future of global accountability, with artist Bradley McCallum's exhibition "Weights and Measures: portraits of justice" serving as a backdrop to the discussion. During the event, which was opened by ICC President Silvia Fernandez de Gurmendi, panelists discussed possible forums and forms of dialogue between African states and the ICC, the future of hybrid tribunals in Africa, and South Africa's position towards the ICC following its notice of withdrawal.

NGO meeting with ASP President Mr. Sidiki Kaba

The ASP President Mr. Sidiki Kaba responded to a number of questions from civil society organizations regarding the recent ICC withdrawals, proposals to reduce the Court's requested 2017 budget, and the role for civil society to play in responding to these challenges.

Tuesday, 22 November 2016

The ICC in Kenya: Lessons learnt, loose ends and legacy

Hosted by Kenyans for Peace, Truth, and Justice (KPTJ)

This event focused on the lessons learned from the collapse of the ICC Kenya cases, the continuing need for justice for victims disillusioned with national and ICC judicial processes, and the ways in which the Court can work more effectively in the future. The diverse panel consisted of a civil society representative as well as a representative from the OTP's office, the Registry and a legal representative for victims in the Kenyatta case. Central to the discussion was the necessity for improved investigative strategies, evidence gathering, understanding the national political landscapes, the cooperation of governments, and the need for stronger engagement and communication from the Court with victims and affected communities.

Victims' rights and complementarity: paving the way towards transition in Colombia, Uganda, and the Central African Republic

Co-hosted by Avocats sans frontières Canada (ASF-Canada), Avocats sans frontières (ASF), REDRESS, and Canada

This event discussed victims' participation and national prosecutions of ICC crimes - specifically the challenge of ensuring effective victims' participation throughout ICC and/or national proceedings. Panelists discussed ICC investigations in Uganda, the Central African Republic, and Colombia to highlight a number of topics, including the nature of victims' participation, integration into domestic law, international law on victim and witness protection, complementarity, delays in the delivery of justice, the need for financial resources, and the role of civil society. Panelists agreed that the international community, including ICC stakeholders, must continue to support these processes as well as supporting civil society organizations in situation countries, stressing that victims' participation is integral to ensuring clarity in complementarity processes.

Climate justice

Co-hosted by the Institute for Environmental Security and Vanuatu

During this side event, which was moderated by the Coalition, panelists highlighted the challenges faced by Pacific Island states stemming from climate change and environmental destruction, noting that natural disasters have increased over the last years and have become a costly and existential threat to these states. Panelists appealed to the ICC to increase its involvement on this matter, proposing that Ecocide be introduced to the Rome Statute as an ICC crime in order to hold individuals criminally accountable for environmental and climate related crimes. A proposed draft law includes provisions for prosecuting man-made environmental destruction as well as an obligation to provide assistance to those most affected by climate change and related natural disasters. Questions touched on the level of support for the initiative, the possibility of creating a special court for environmental crimes, challenges in measuring the gravity of pollution and global climate change, and accommodating the notion of collective responsibility into the structure of international criminal law.

Protecting human rights defenders: what can States Parties do?

Hosted by Institute for Security Studies (ISS)

This side event focused on human rights defenders and the risks they face from states opposing their work. Panelists discussed the shrinking space for civil society to operate freely, increased government surveillance, physical attacks, the drying up of funds for NGOs, and the global pattern against regional and international solidarity for human rights defenders. Panelists also shared personal accounts of cyber-attacks, unfounded accusations, physical threats, and death threats. Participants to the event expressed their concern about the shrinking civil society space afforded to them and asked how they can contribute to addressing this concern. Other questions concerned the transnational effects of protecting human rights defenders, concrete action that can be taken, and the different forms of pressure faced by human rights defenders.

Evidence in international criminal trials: developments and challenges

Co-hosted by Switzerland and the International Bar Association (IBA)

This panel discussion began with a presentation of IBA's latest report "International Criminal Law Perspectives" as part of the series 'Evidence Matters in ICC Trials.' The panelists looked at how emerging digital evidence and technology can provide information relevant to ICC

proceedings, as well as some of the limitations of using such evidence in an international criminal tribunal. The panelists drew together their diverse experiences as prosecutors, defense counsel, judges, and members of civil society in the field of international justice, with the discussion touching on the 'pyramid approach' to investigation and evidence at the International Criminal Tribunal for the former Yugoslavia (ICTY); the ICTY's witness-centered approach in collecting evidence from witnesses of sexual and gender-based crimes; the use of technology such as smartphones, internet, and drones; the Special Tribunal for Lebanon's use of three types of evidence; and innovation's impact on judicial independence. A debate followed on the balance between efficiency and fair trial and concluded with a look at the way forward.

Book Presentation: *The International Criminal Court and Africa: One Decade On*
Co-hosted by Ghana, the Netherlands, and Africa Legal Aid (AFLA)

During this side event, AFLA presented the new book *The International Criminal Court and Africa: One Decade On*, edited by its Executive Director Evelyn Ankumah. The book contains 25 topics from expert authors on universal jurisdiction, impunity for sexual and gender based crimes, state cooperation, head-of-state immunity, and complementarity among others. Panelists highlighted that the book aims to evaluate events that have both fractured and strengthened the relationship between African states and the ICC. The book discusses the progress being made by the ICC and its journey from a novel concept to a working Court holding perpetrators to account through core principles, statutes, and cooperation. Although the prevalence of ICC situations in Africa has been met with criticism, the book aims to stay away from political commentary, manifesto, or agenda and instead aims to contribute to meaningful, rational discussions on the development and role of international criminal justice in Africa.

Grave crimes and grand corruption

Co-hosted by Sierra Leone and Open Society Justice Initiative (OSJI)

This event discussed the links between grave international crimes and grand corruption and their cyclical effect in perpetuating injustice. A representative from the Special Court for Sierra Leone, the Prosecutor General of Ukraine, and representatives from Mexican and Guatemalan civil society groups presented their in-country experiences. Panelists illustrated that civilians are the ones most adversely affected by grand corruption while highlighting the importance of international cooperation to uncover chains of corruption and criminal networks in order to fight impunity. The positive experiences of Guatemala and Sierra Leone in particular regarding international involvement and cooperation to uncover these activities and their perpetrators were highlighted.

The future of the ICC: Facing the challenges and strengthening its legitimacy

Co-hosted by the Netherlands and Public International Law & Policy Group (PILPG)

This side event brought together experts from civil society, academia, and the ICC to analyze and critically engage with the underlying reasons for the withdrawals of three African states and the reluctance of other states to join the ICC. It discussed the challenges in meeting the needs of victims, and whether these victims had lost confidence in the Court. Panelists discussed the fact that international criminal trials cannot meet all the needs for justice, such as establishing a historical truth or building livelihood. They also analyzed the relationship between peace and justice, and how definitions of justice are interpreted differently, making it difficult to reach a consensus. Speakers reflected on the need for better dialogue and investment in aspects of the Court's work that stakeholders can agree upon. With regards to the recent withdrawals, speakers noted that



while the criticisms that the ICC unfairly targets Africa may not necessarily reflect reality, they are indeed a perception, and that perceptions carry weight and must be addressed.

Launch of the handbook on complementarity and a subsequent panel discussion on complementarity

Co-hosted by Botswana, Sweden, and International Center for Transitional Justice (ICTJ)

This side event marked the launch of the *Handbook on Complementarity*, a book intended to explain the principle of complementarity to broader audiences. The ICC President, Judge Silvia Fernandez de Gurmendi, outlined three reasons why she was pleased with the book: it highlights the importance of going back to the basics of the Court's mission; it's easy to read and explains both the theory and practice of the issue of complementarity; and it addresses the issue of national capacity-building and the extent of the Court's role in this regard. Panelists then discussed the issue of complementarity more broadly, including the possibility of a paradigm shift within the Rome Statute system and the role of complementarity in that; contested forms of jurisdiction; and the role of hybrid tribunals in applying Rome Statute norms on a domestic level. Questions from the floor focused on the Court's role in ensuring fair trials in national proceedings, responsibility for promoting complementarity, and the use of national proceedings in the case of high-ranking figures accused of alleged grave crimes.

The Heart of Nuba: screening and reception for new documentary film on Sudan

Hosted by International Justice Project

The International Justice Project screened a documentary film on the humanitarian situation in the war-torn Nuba Mountains of Sudan. The documentary follows the work of an American Doctor Tom Catena in the region, as the bombings by Omar al-Bashir continue to inflict severe harm to local populations. Despite a ban on humanitarian aid that has been imposed by al-Bashir, Dr. Catena and his local staff continue to work to care for victims of these crimes.

NGO meeting with the head of the IOM, Mr. Ian Fuller

Topics discussed during this meeting included the role of the Independent Oversight Mechanisms (IOM) in insuring ethical and professional standards at the Court, challenges with respect to ICC judicial and prosecutorial independence, and the role for NGOs in assisting the office as well as in evaluating the impact of the Court's practices and decisions. It was highlighted that the IOM will become fully operational in terms of its evaluation functions in 2017, already having reached full staffing and having assumed its inspection functions this year.

NGO meeting with MICT Chef de Cabinet, Ms. Gabriella McIntyre

This event offered insights into efficiency exercises at the UN tribunals' residual mechanism, the Mechanism for International Criminal Tribunals (MICT). Topics discussed included the UN Security Council's focus on making MICT proceedings 'leaner,' which has led to novel initiatives involving judges' working methods, staffing, and rules of procedure; challenges and consequences arising from these initiatives, including in relation to MICT's remote judging model, to judicial independence, to a certain lack of clarity in MICT's mandate by the UNSC, and to ensuring fair trials; harmonization of practices among different jurisdictions in which MICT operates; the MICT's fugitive tracking system; and cooperation by states.

Wednesday, 23 November 2016

Redress for Kenyans after the ICC: Perspectives and possibilities

Co-hosted by the International Federation for Human Rights (FIDH), Kenyan Human Rights Commission (KHRC), and Impunity Watch

This side event focused on victims' continuing demands for justice in Kenya and disillusionment with the national and ICC judicial and reparation processes. Panelists discussed the achievements and gaps in national and international efforts to provide redress for victims of the 2007-08 post-electoral violence in Kenya. They highlighted the Kenyan government's one-sided assistance, which focused only on IDPs and neglected other PEV victims, in particular those affected by sexual and gender-based crimes. Other topics discussed included the ICC's problematic distinction between victims in the Kenya situation overall and those eligible for reparations through particular cases; the possibility of delinking reparations processes from judicial processes to ensure that victims receive timely assistance; the failure of the Trust Fund for Victims (TFV) to meet the expectations of victims in Kenya; the need for improved action by the TFV and funding from states; the legal challenges facing the Court, and lessons learned by the TFV in Kenya.

L'affaire Al Mahdi: et maintenant? Les enjeux de la lutte contre l'impunité au Mali

Co-hosted by Avocats sans frontières Canada (ASF-Canada), the International Federation for Human Rights (FIDH), Association malienne des droits de l'Homme (AMDH), and Avocats sans frontières Mali (ASF-Mali)

The side-event discussed the fight against impunity in Mali following the Ahmad al-Faqi al-Mahdi conviction at the ICC this year for the war crime of intentionally destroying cultural and religious heritage. Panelists addressed the main issues and obstacles to justice for victims in Mali; the progress being made in the ongoing domestic proceedings; mechanisms of transitional justice, in particular the Truth, Justice and Reconciliation Commission, expected to begin investigations in December 2016, and national political projects of the Malian government for reconciliation. Concerns were raised about the interaction between judicial and transitional justice mechanisms in Mali; the threats to security of NGOs and victims in Mali, and the Trust Fund for Victims established by the Malian government.

Witness Interference

Co-hosted by the Republic of Korea and Open Society for Justice Initiative

During this side event, panelists discussed the issue of witness-tampering as well as challenges faced by the ICC Registry's Victims and Witnesses Section (VWS) in dealing with these incidents. Panelists agreed that witness interference - which can manifest through means such as bribery, (online) intimidation, scripting, and personal threats - is an issue that needs to be dealt with swiftly and effectively. Topics discussed included the ICC Office of the Prosecutor's power to protect witnesses; checks and balances for witness selection; reforms to the ICC Victims and Witness Unit Questions; the integrity of witnesses and victims; victims' protection after the trial phase, and the criteria for witness relocation.

An Introduction to the ICC Bar Association: The new voice for the legal profession

Co-hosted by France, the Netherlands, Senegal, and the United Kingdom

During this inaugural event of the International Criminal Court Bar Association (ICCBA), which was attended by several counsel and legal practitioners from the ICC and other tribunals, the president of the newly established ICCBA, David Hooper, outlined the underlying rationale behind the ICCBA.

Currently already made up of 607 members, the ICCBA will have several functions: primarily to protect the independence of counsel and also to enhance the quality of justice at the Court by creating a channel for dialogue between counsel and the Court. Panelists reminded participants that the ICCBA will contain counsel for defense but also legal representatives for victims. Panelists noted that there is far more that unites lawyers for the defense, victims, and prosecution than there is that sets them apart, with ICCBA helping all of them to work together to enhance the delivery of justice at the ICC. ICC representatives expressed their full support for the establishment of the ICCBA as another step towards enhancing the quality of justice delivered by the Court.

Book launch and discussion: *Two Steps Forward, One Step Back: The Deterrent Effect of International Criminal Tribunals*

Co-hosted by Germany and International Nuremberg Principles Academy

During this event, the International Nuremberg Principles Academy presented its first book, *Two Steps Forward, One Step Back: The Deterrent Effect of International Criminal Tribunals*. The purpose of the event was to engage the authors, panelists and attendees in a discussion on the role of international criminal prosecutions and international criminal tribunals in deterring future international crimes and violence. The book, which includes a study derived from in-country analysis and field-work from ten situation countries, indicates that there is a positive trend regarding deterrence of mass atrocities, in part thanks to international criminal cases and the establishment of international tribunals and courts. The editors, however, noted that the international community must still focus its efforts on national capacity building to investigate and prosecute international crimes.

Truth? What truth? Journalists from Africa, Asia and the Middle East talking about the ethics of journalism and truth of reporting

Hosted by Hague Project Peace and Justice

During this installment of the HagueTalks series, a panel made up of three journalists from around the world reflected on a picture of war photographer Jeroen Oerlemans from the Netherlands, who was recently killed while carrying out his work in Libya. Inspired by Oerlemans' picture and their own experiences in the field, the journalists shared their own stories about ethics in journalism and answered questions about what they do to contribute to peace and justice through their reporting.

NGO Meeting with ICC President, Judge Silvia Fernández de Gurmendi

This meeting with the ICC President Judge Silvia Fernández de Gurmendi focused on the work of the Court and the Coalition for the ICC, both over the past year as well as in the future. The exchange addressed some of the main challenges that the Court faces, such as the troubling global context in which both the ICC and the Coalition operate; the need for sufficient resources and universality of the Rome Statute; the need to engage in dialogue with different parties; and the issue of withdrawals. Questions from civil society related to possible ICC interventions in Georgia, the strengthening of domestic systems of justice, and the issue of complementarity.



Thursday, 24 November 2016

Complementarity in Central and West Africa

Co-hosted by France, Senegal, Amnesty International, and the International Federation for Human Rights

The side event focused on developments of complementarity in Central and West African states, namely the Central African Republic (CAR), Democratic Republic of the Congo (DRC), Guinea, and Mali. Panelists provided witness testimonies of the situation in Guinea, presented developments in the domestic judicial processes in Mali, the jurisprudence of Congolese tribunals on Rome Statute crimes in DRC, and the creation and mandate of the Special Criminal Court in CAR. During their presentations, the speakers highlighted some of the domestic challenges in these countries and the need for political will and capacity building. They also agreed that complementary justice efforts are necessary in providing justice to victims. Questions from the floor concerned the applicable law for the CAR Special Criminal Court and its locations of operation due to security reasons.

Syria's Refugees: Exploring Deepening Drivers of Inequality & Insecurity

Hosted by The Hague Institute for Global Justice

During this event, panelists discussed the uncertain and often damaging legal consequences for Syrian refugees due to statelessness, in particular for groups like children from fatherless households and for Kurds in Syria. Discussions centered round the challenges for host-states when refugee status no longer applies but statelessness remains, obstacles to repatriation and discriminatory host-state resettlement policies. It also explored the role for civil society in driving global awareness-raising – about both the situation of stateless persons and the procedures and rights at play – and UN inter-agency cooperation to eradicate statelessness by 2024.

Annex 2: Coalition’s Paper on the 2017 Budget



Coalition for the International Criminal Court Recommendations on the 2017 budget of the International Criminal Court 15th Assembly of States Parties session – 2016

Since the International Criminal Court was established, civil society has been working to ensure that governments’ financial contributions allow the Court to function effectively, fairly, and independently.

The Coalition for the International Criminal Court is distressed by reports that, while many States Parties indicated support for an increase of the Court’s activities during the 15th session of the Assembly of States Parties (ASP) General Debate, a small minority of States Parties are once again demanding a “zero nominal growth” budget - or similar budget cutting proposals - despite obvious needs for an increase in Court funding in 2017. States Parties have mandated the Court to enforce the Rome Statute and to respond to demands for justice from victims and the global community. States cannot expect and demand the Court to do more each year, while simultaneously reducing its resources.

At the 15th Assembly of States Parties session, the Coalition calls on States Parties to:

1. Reject “Zero Nominal Growth”

To require the ICC to respond to more and more atrocity crime situations, referrals, investigations and trials every year, while decreasing its funding is a prescription for disaster. “Zero nominal growth” (ZNG) is a flawed approach that will undermine the effectiveness of the Court. Indeed, the term ‘growth’ is a misrepresentation. ZNG is the proposal that the ICC budget remains the exact same amount over a period of years. ZNG means that the yearly inflation and increase of costs, such as staffing costs following the UN Common Staff System, need to be absorbed by the Court’s program budget. Thus, ZNG is a *de facto* reduction of the ICC’s budget.

Imposing “zero nominal growth” on the budget would directly and immediately affect the Court’s ability to fully, effectively, and efficiently execute its mandate: it would impact the discretionary allocation of funds and staffing of the prosecution, defense function, victims’ participation, and outreach. It would also directly impact the Prosecutor’s ability to open new investigations and cases, with the consequent effect of delaying, if not denying, justice to the victims in whose interest it was established.

2. Support sufficient funds for 2017, recognizing that the CBF recommendations already reflect a reduction of the Court’s requested budget

States Parties must ensure that the budget for 2017 provides the International Criminal Court with sufficient resources to perform the preliminary examinations, investigations, and cases foreseen by the Court next year. This requires a detailed technical analysis of the ICC’s budget request, not arbitrary decisions based on what some states are willing to pay. The Assembly should therefore focus their discussions on the recommendations of the Committee on Budget and Finance (CBF) - an independent and technical body that is composed of independent experts of recognized standing and experience in financial matters at the international level - recognizing that it has already proposed a significant decrease in the Court’s budget request for 2017. Rather than proposing further cuts, the Assembly should review the Committee’s recommendations carefully to ensure that they do not undermine the Court’s ability to carry out the essential and important objectives identified by the Court for 2017.



3. Oppose the setting of a “financial envelope”

In 2014, the Coalition’s Team on Budget and Finance had expressed its extreme concern at the CBF’s recommendation that “*States Parties consider whether a financial target or envelope should be set at each Assembly meeting that would define the anticipated outer limits of the budget for the year following the one immediately thereafter.*” Just ahead of the 15th ASP session, the Study Group on Governance reached the clear conclusion that “*an eventual financial envelope, would likely have a resource driven approach*”,⁴ considering the discussions on the matter effectively concluded.⁵

The approach of setting a financial envelope is entirely inappropriate for the ICC given its fluctuating workload. Moreover, there is a real danger that it would be used to strengthen efforts by a minority of states to impose zero nominal growth on the ICC budget and that the ICC will be denied the flexibility it needs to expand its work when required to respond to impunity. The budget of the ICC should be determined on a regular basis taking into account the workload of the Court, not the budgetary demands of some states, in a transparent process with effective safeguards against politicization of the budgetary process.

4. A reduced budget does not equal enhanced efficiency

Justifications given for a “Zero Nominal Growth” approach to the budget include concerns about the yearly increase of the Court’s budget and perceptions of inefficiency in the Court’s work.

The Coalition is not calling for the ICC to be given unlimited funds. Nor should States Parties refrain from pressing the Court to reform practices, enhance budgetary transparency, and strive for maximum efficiency. Indeed, over the past years, the ICC has worked to respond to the legitimate concerns of States Parties about the efficient use of resources. Reforms have been undertaken to strengthen investigations and prosecutions, speed up trials, bring justice closer to - and make it more relevant for - victims and affected communities.

The reality is that the Court’s current workload continues to expand as atrocities continue at an alarming rate around the world. States need to work together with the Court to address these challenges through dialogue and cooperation; arbitrarily cutting the budget will not lead to court efficiencies. In fact, indiscriminate budget constraints on a developing institution such as the ICC are likely rather to compound inefficiencies, resulting in delays in the delivery of justice for those who need it most, while undermining efforts to make international justice truly global and feeding perceptions of bias in the Court’s investigations and prosecutions.

5. Governments should make all efforts to pay their arrears

The issue of states in arrears – or states that have not yet paid in full their assessed contributions to the Court’s budget – has an impact on the Court’s work when it cannot access its full allocated budget. Arrears of contributions to the Court’s budget currently stand at over 30 million Euros. The Coalition calls on all states in arrears to pay all outstanding contributions without further delay.

⁴ Report of the Bureau on the Study Group on Governance, ICC-ASP/15/21, 14 November 2016, paragraph 77. Accessed at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ICC-ASP-15-21-ENG.pdf

⁵ Ibid., para 78.

Acronyms and Key Terms

ACN	Advisory Committee on the Nomination of Judges
ASP	Assembly of States Parties
ASP 15	The 2016 session of the ASP
AU	African Union
BoD	Board of Directors
ASP Bureau	The President, Vice-Presidents, and Rapporteur along with 18 States Parties
CBF	Committee on Budget and Finance
CICC	Coalition for the International Criminal Court
EU	European Union
GRULAC	Latin America and Caribbean Group
HWG or THWG	The ASP Bureau’s Hague Working Group
IOM	Independent Oversight Mechanism
MENA	Middle East and North Africa Region
NGO	Non-Governmental Organization
NYWG	New York Working Group
OAS	Organization of American States
OP	Operative Paragraphs of a Resolution
OTP	Office of the Prosecutor
Omnibus	An ASP resolution formally named “Strengthening the International Criminal Court and the Assembly of States Parties”
PE	Preliminary Examination
PP	Preliminary Paragraphs of a Resolution
Plenary	General discussions at the ASP with all States Parties attending
ICC Presidency	President: Judge Silvia Fernández de Gurmendi (Argentina); First Vice-President: Judge Joyce Aluoch (Kenya) and Second Vice-President: Judge Kuniko Ozaki (Japan)
RPE	Rules of Procedure and Evidence
SASP	Secretariat of the ASP
Statute / RS	Rome Statute, founding document of the ICC and the legislation that states must ratify to become members of the ASP and to the ICC
SGBV	Sexual and Gender-Based Violence
SGG/Study Group	Study Group on Governance
TFV	Trust Fund for Victims
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VWU	Victims and Witnesses Unit (of the ICC’s Registry)
WGLL	Working Group on Lesson Learnt