



# Newsletter November 2009

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ASP Special Edition #2



## Visit by the President of Chile and two new States Parties

On 26 May, the President of Chile, H.E. Michelle Bachelet, visited the Court, accompanied by a delegation of parliamentarians from both the governing coalition and the opposition, as well as with the President of the United Nations Committee against Torture, Mr. Claudio Grossman, and the President of the Inter-American Court of Human Rights, Ms. Cecilia Medina.

President Bachelet affirmed that the ideal situation would be if no case at all existed to be taken to trial at the Court, as a token of its effectiveness and the reach of its discouraging effect.

A few weeks later, Chile deposited its instrument of ratification with the Secretary-General of the United Nations.

In July, the Czech Republic also deposited its instrument of ratification, thus bringing the number of States Parties to 110.

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## Visit by the President of Chile

*From left:*  
Mr. Luis Moreno-Ocampo, Prosecutor,  
President Michelle Bachelet and  
Judge Sang-Hyun Song, President of the Court

## The 110 States Parties to the Rome Statute



## Deposit of the instrument of ratification of the Czech Republic at the United Nations

*From left:*  
H.E. Mr. Christian Wenaweser,  
President of the Assembly of States Parties,  
H.E. Mr. Martin Palouš,  
Permanent Representative of the  
Czech Republic to the United Nations,  
H.E. Mr. Anders Lindén,  
Permanent Representative of Sweden  
to the United Nations,  
Mr. Bill Pace, Convenor of the CICC, and  
Ms. Annebeth Rosenboom,  
Head of the United Nations Treaty Section.  
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## Bureau of the Assembly

The Bureau submitted for consideration by the Assembly the following reports prepared by its two Working Groups.

### *The Hague Working Group*

Report on the independent oversight mechanism (ICC-ASP/8/2/Add.3);  
 Report on options for replenishing the Contingency Fund and Working Capital Fund (ICC-ASP/8/37);  
 Report on legal aid for victims' legal representation (ICC-ASP/8/38);  
 Report on Legal Aid (Defence): Alternate Methods for the Assessment of Indigence (ICC-ASP/8/39);  
 Report on family visits for detainees (ICC-ASP/8/42).  
 Report on cooperation (ICC-ASP/8/44);  
 and  
 Report on the strategic planning process of the International Criminal Court (ICC-ASP/8/46).

### *The New York Working Group*

Report on the arrears of States Parties (ICC-ASP/8/41);  
 Report on the Review Conference (ICC-ASP/8/43 and Add.1);  
 Report on equitable geographical representation and gender balance in the recruitment of staff (ICC-ASP/8/47)

The Bureau also conveyed the Report of the Oversight Committee on the permanent premises (ICC-ASP/8/34 and Add.1).



From left: Mr. Marcelo Böhlke (Brazil), facilitator for the Review Conference, H.E. Mr. Christian Wenaweser, President of the Assembly, and Mr. Renan Villacis, Director of the Secretariat of the Assembly at the 12 October meeting of the New York Working Group

### Factsheet 2009: Number of meetings

Bureau	18
Hague Working Group	27
New York Working Group	9
Oversight Committee	20

### Review Conference agenda

At the Review Conference of the Rome Statute, scheduled to begin on 31 May 2010, States would consider some mandatory issues and recommendations arising from the Rome Statute and the Final Act of the 1998 Rome Diplomatic Conference:

- Review of article 124 of the Statute;
- Crime of aggression (article 5, paragraph 2, of the Statute; resolution F of the Final Act);

In accordance with resolution E of the Final Act, the Conference would also consider the crimes of terrorism and drug crimes.

Furthermore, the Conference would consider other potential amendments to the Rome Statute, as well as undertake a stocktaking of international criminal justice.

## Proposed amendments to the Rome Statute

As at 30 September 2009, the following proposals were submitted for consideration by States Parties.

### *Belgium*

Amendment n°1: add in the list of the article 8, paragraph 2, e) the use of three sorts of weapons (poison and empoisoned weapons, asphyxiating, poison or other gases and all analogous liquids, materials or devices and bullets which expand or flatten easily in the human body)

Amendments n°2 and 3: add directly to the list of war crimes in situations of international armed conflict and in situations of non international armed conflict the use of biological and chemical weapons, anti-personnel mines and some weapons falling under the Convention on certain conventional weapons

### *Mexico*

Amend article 8, paragraph 2 (b), to include the use or threat of use of nuclear weapons as a war crime

### *Netherlands*

Amend article 5 to include of the crime of terrorism

### *Norway*

Amend article 103, paragraph 1, to establish a mechanism for a possible role for an international or regional organization in the enforcement of sentences

### *Trinidad and Tobago and Belize*

Amend article 5 to include the crime of international drug trafficking

## Inter-sessional meeting on the Crime of Aggression

An informal inter-sessional meeting on the Crime of Aggression was hosted by the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, Princeton University, at the Princeton Club in New York, from 8 to 10 June 2009.

The meeting, chaired by H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini (Jordan) and open to all States and representatives of civil society, focused on the elements of the crime of aggression and on the conditions for the exercise of jurisdiction.



From left: Mr. Wolfgang Danspeckgruber, Director of the Liechtenstein Institute on Self-Determination, H.E. Mr. Christian Wenaweser, President of the Assembly, H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini, Chairperson, and Mr. Renan Villacis, Director of the Secretariat of the Assembly

### Elements of crimes

The non-paper on the elements of crimes had been prepared on the basis of the proposals for a provision on aggression, elaborated by the Special Working Group on the Crime of Aggression in February 2009.

The purpose of the Elements is to assist the Court in the interpretation and application of the definitions of the crimes contained in the Rome Statute. The existing Elements, adopted in September 2002, relate to article 6, 7, and 8 of the Statute, and would thus be amended to also include the elements of the crime of aggression.

The proposed draft elements, which are subject to further consideration by the Assembly, adhere to the logic of article 30 of the Rome Statute by listing the material and mental elements the Prosecutor would have to prove in any given case. The material elements can be categorized as conduct, consequence or circumstance and are followed by the corresponding mental element of intent or knowledge.

### Conditions for the exercise of jurisdiction

The non-paper on the conditions for the exercise of jurisdiction focused on outstanding issues, in particular draft article 15 *bis*, paragraph 4, of the proposals for a provision on aggression, which deal with the possible roles of the United Nations Security Council, the Pre-Trial Chamber of the Court, the United Nations General Assembly or the International Court of Justice in triggering the jurisdiction of the Court. The issue of the

entry into force procedure (article 121, paragraph 4 or 5) is directly linked to this question.

The Chairman noted that the non-paper was based on the following underlying assumptions, which derived from the past work of the Group:

- All three existing trigger mechanisms would apply to the crime of aggression;
- In the case of a Security Council referral, the Court could exercise jurisdiction over the crime of aggression irrespective of the consent of the State concerned; and
- In case of a State referral or proprio motu investigation, the territoriality or nationality requirement of article 12, paragraph 2, of the Statute would apply.

## Seminar on International Criminal Justice

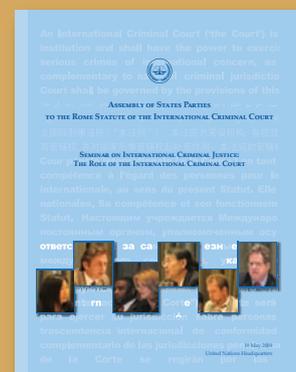


On 19 May 2009, the New York Working Group of the Bureau held a seminar entitled "International Criminal Justice: The Role of the International Criminal Court". The event was organized by the Permanent Mission of Slovenia to the United Nations and co-sponsored by the Permanent Missions of Guatemala, Japan, Kenya, New Zealand and Trinidad and Tobago. The seminar was aimed at engaging stakeholder organizations in a dialogue on the various aspects of international criminal justice by assessing its current stage, with a particular focus on the role, the mandate and the functioning of the Court. As envisioned by Mr. Marko Rakovec (Slovenia), the facilitator for the Plan of action of the Assembly, this event would constitute the first in a series of such seminars which could be organized in different regions and on various topics related to achieving universality and full implementation of the Rome Statute.



### SASP Publications\*

Seminar on International Criminal Justice : The Role of the International Criminal Court

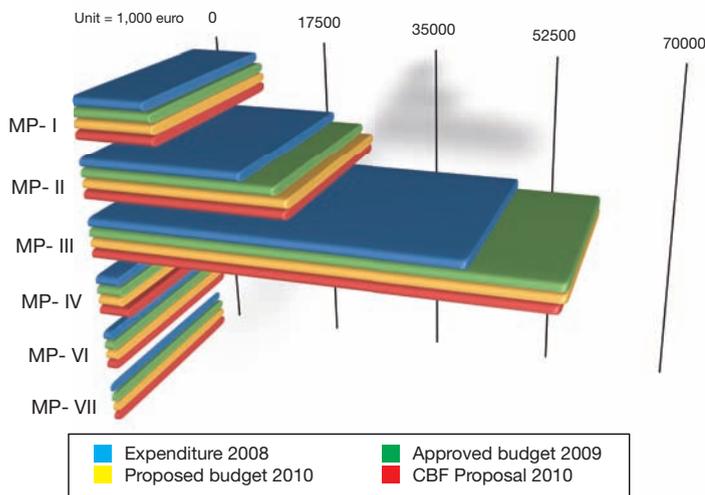


\* Arabic, English, French and Spanish

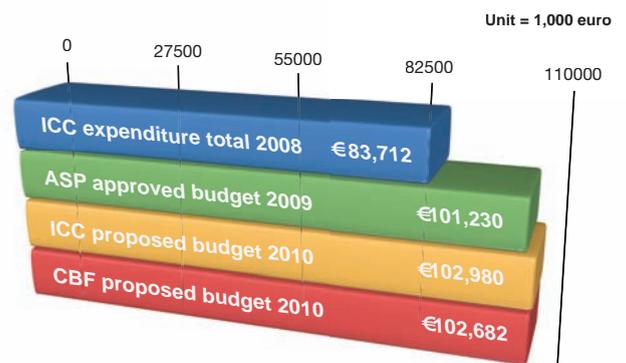
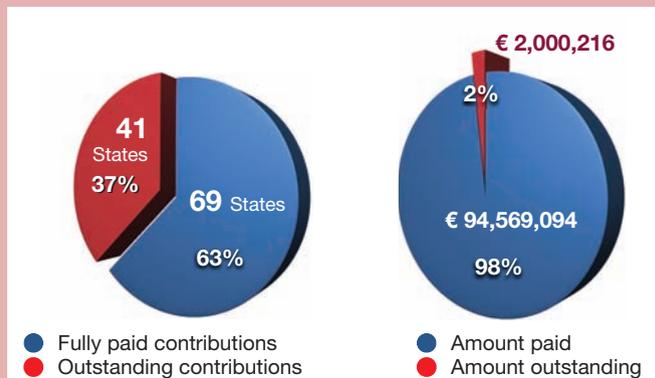
## Committee on Budget and Finance

At its thirteenth session the Committee on Budget and Finance (the "Committee") considered, inter alia, the Court's proposed budget for 2010, the establishment of the independent oversight mechanism, legal aid for defence and for victims' legal representation, possible funding by the Court for family visits of indigent detainees, the level and replenishment of the contingency fund (currently at €10 million), as well as the establishment of a liaison office in Addis Ababa. The Committee's recommendations, contained in document ICC-ASP/8/15 and its addendum, if adopted by the Assembly would result in savings of approximately €298,000 or a 0.3 per cent reduction of the budget proposal submitted by the Court.

### Budget by Major Programme



### Factsheet 2009: Contributions to budget by States Parties as at 1 November 2009



Total programme budget

Major Programmes	Expenditure 2008	ASP approved 2009	ICC proposed 2010	CBF proposed 2010
MP- I - Judiciary	€ 9,573.9	€ 10,332.1	€ 10,501.1	€ 10,462.7
MP- II - Office of the Prosecutor	€ 21,263.9	€ 25,528.9	€ 27,087.6	€ 26,828.3
MP- III - Registry	€ 48,804.6	€ 60,222.7	€ 60,222.6	€ 59,467.8
MP- IV - Secretariat of the ASP	€ 3,006.7	€ 3,342.8	€ 3,150.2	€ 4,121.1
MP- VI - Secretariat of the TFV	€ 979.1	€ 1,301.4	€ 1,432.3	€ 1,217.5
MP- VII - PO Permanent Premises	€ 83.8	€ 502.0	€ 586.3	€ 584.2
<b>TOTAL</b>	<b>€ 83,712.0</b>	<b>€ 101,229.9</b>	<b>€ 102,980.1</b>	<b>€ 102,681.6</b>

(Unit = 1,000 euro)

Note :

This table does not include:

- Oversight mechanism (€ 393.6)
- Working capital fund (€ 7,406.0)

MP-IV - CBF proposed 2010

includes:

- Review Conference budget (€ 1,100.0)



CBF members

From left :

- Mr. David Banyanka (Burundi)
- Mr. Juhani Lemmik (Estonia)
- Mr. Fawzi Gharaibeh (Jordan)
- Mr. Gilles Finkelstein (France)
- Ms. Carolina María Fernández Opazo (Mexico)
- Ms. Elena Sopková (Slovakia)
- Mr. Shinichi Iida (Japan)
- Mr. Santiago Wins (Uruguay)
- Mr. Masud Husain (Canada)
- Ms. Rossette Nyirinkindi Katungye (Uganda)
- Mr. Ugo Sessi (Italy) and
- Mr. Gerd Saupe (Germany)

## Interview with Vice-President Zachary D. Muburi-Muita



**Ambassador Zachary D. Muburi-Muita. Vice-President of the Assembly of States Parties, Coordinator of the New York Working Group of the Bureau and Permanent Representative of Kenya to the United Nations.**

*You were designated Vice-President of the Assembly in November 2008. Has this responsibility changed your perspective of the role to be played by the Assembly?*

Yes indeed. My perspective of the role to be played by the Assembly of States Parties to the Rome Statute as originally seen from an outsider's lens is not as it is now. Speaking from the inside, the Assembly has a much bigger role to play now considering that the Court is fully operational.

*Does the fact that you were also Ambassador to The Netherlands a few years ago have a bearing in your current functions at the United Nations, particularly as regards the role played by international law?*

The Hague is the legal capital of the world. It was a good experience for me, especially with regard to legal issues and it awakened my interest in legal matters, therefore when the opportunity arose it was a welcome development, and I was happy to play a role, no matter how small, to advance international criminal justice.

*What do you see as the most crucial issues facing the Court at the moment?*

The Court has come a long way from its inception to date. It is doing its work well. It has entered the most important phase of its evolution and it should be supported with all the resources and cooperation of States. It is unfortunate that there has been misunderstanding of the Court from certain quarters that it is targeting certain regions. This is not really the case and the misperception is unfounded. The good news is that States continue to have faith in the Court. It is a permanent court and States are encouraged to cooperate with it. Chile just became a State Party. I encourage States to domesticate the Rome Statute to reduce the burden on the Court and empower it to rid the world of impunity.

*African States have made an important contribution to the development of the Rome Statute. How would you encourage States from the region who are hesitant to become States Parties?*

You are right. Africa is not in opposition to the rule of law and in fact African States are strong supporters of the rule of law and non-States parties joining the Statute will merely project this positive image. The Court follows established legal norms as we know in our national jurisdictions. It is only complementary, which means that its jurisdiction is invoked only when national courts are unable or for some reason, unwilling to prosecute crimes that fall under its jurisdiction.

*There are clear misperceptions in certain areas of the international community regarding the Court and there are even rumours of possible withdrawals from the Rome Statute by certain African States in response to the Court's issuance of an arrest warrant for a sitting Head of State. As Vice-President, have you been able to allay some of these concerns?*

Most of what you hear is propaganda and is blown out of proportion by the media. The issue of the arrest warrant of an African Head of State has mostly been blown out of proportion. The three situations before the Court are self-referrals by the States concerned. The fourth case was referred to the Court by the United Nations Security Council in accordance with the United Nations Charter and the Rome Statute. There is nothing arbitrary in this connection. No State was forced to bring matters before the Court.

African States understand these issues, they know the law and abide by it. Many countries in Africa are taking measures to cooperate with the Court in various ways. So many things are happening in Africa regarding the Court. The obligations of States under the Statute are essentially individual. States did not take a collective decision to join the Court, and as to how to discharge their obligations, this is an individual decision.

*As Coordinator of the New York Working Group of the Bureau, what are your plans for the following 12 months?*

- To continue galvanizing support for the Court;
- To pursue and achieve the establishment of an ICC-AU liaison office to strengthen understanding and cooperation between the two institutions. This is very important to narrow the perception gap about the activities of the Court; and
- To coordinate with the President, my co-Vice-President, and the Bureau to organize well for the forthcoming Review Conference.

*What are the most rewarding and the most challenging aspects of your role?*

My role as Vice-President of the Assembly is humbling in the sense that I have been given the opportunity to be part of the process of fighting impunity worldwide and strengthening the rule of law across the globe. This role is also a challenge because it is a big shoe and requires constant effort to sustain the momentum, in view of the continued growth of the Court and the need

for constant organization hand-in-hand with the President of the Assembly and the Bureau to take decisions to promote the objectives of the Court.

*Would you like to share some thoughts on the progress made in the New York Working Group regarding the preparations for the Review Conference?*

Article 5 of the Statute has already included the crime of aggression in the Statute and what remains is the definition of the crime and the conditions for the exercise of jurisdiction.

The Special Working Group on the Crime of Aggression, chaired by the President of the Assembly, ended its mandate in February 2009. In June, an inter-sessional meeting was convened to continue the work in this respect, under the chairmanship of Prince Zeid of Jordan, who would now chair the negotiations on the crime of aggression. Further progress was made and it is becoming clearer and clearer that the crime of aggression will be defined and will be included in the Statute, which will increase the work of the Court, as I have been saying.

Some States Parties have also made proposals for revision of the Statute and, in some cases, additions to the Statute. These are being taken up in the New York Working Group under the facilitation of two Bureau members, Mr. Marcelo Böhlke (Brazil) and Ms. Angela Nworgu (Nigeria). The proposals will be considered at the eighth session of the Assembly in The Hague in November 2009. Depending on the decision of the Assembly, the proposals might be adopted at the Review Conference in Uganda in 2010.

*As the Permanent Representative of Kenya, you have the opportunity to interact with numerous colleagues, including those on the Security Council. How have you been able to bring to bear your influence, especially in the current political circumstances facing the Court?*

This is not a very easy question, but I will try to say something. I do interact with members of the United Nations Security Council on several fronts. I am also aware that some of the challenges facing the Court may have a bearing to the Council in one way or another. Such matters are solely within purview of the Council to decide, no matter the amount of pressure that may be exerted. My desire however is to see the Court not being dragged into politics.

*What are your expectations for the Court in the coming years?*

I will be happy in future to sit back and watch how the Court would have contributed to efforts towards transforming the world into a more just and peaceful environment where human rights and the rule of law are upheld. I expect the deterrent effect of the permanent International Criminal Court set up by the international community to put an end to impunity.

## Interview with the Head of the New York Liaison Office, Ms. Karen Mosoti



*Can you give us an overview of the work of the office and its achievements?*

The New York Liaison Office (NYLO) was established by the Assembly of States Parties at its fourth session, on the basis of an option paper prepared by the Bureau of the Assembly. The office started operations in September 2006 and I was appointed to head the office in October 2007.

The New York Liaison Office was established to provide support to the Court's investigations, field operations and general functions through facilitating interaction between the Court and the Secretariat of the Assembly of States Parties on the one hand and the United Nations and its agencies on the other. It was also intended to assist in the successful implementation of the 2004 Relationship Agreement between the International Criminal Court and the United Nations and to ensure the requisite operational cooperation between the two institutions.

In practical terms the activities of the office include but are not limited to: Facilitating the exchange of information between the Court and the UN Secretariat by relaying relevant information from the UN to the Court and vice-versa; promoting awareness of the Court to non-States parties through informal interactions with representatives from Permanent Missions of those States; providing practical administrative, logistical and operational support for the activities of the Court by organizing and facilitating visits and meetings between Court officials and UN officials and representatives from Permanent Missions in New York; providing logistical support and servicing meetings of the ASP and its subsidiary bodies based in New York – the Bureau and the New York Working Group; monitoring discussions at relevant UN meetings including the Security Council, the various Committees of the General Assembly, as well as other informal meetings and discussions on justice and ICC related topics and providing regular analysis to the Court; disseminating relevant information to the UN and Permanent Missions in New York to keep them abreast of developments in the Court; providing input (upon consultation with the various organs of the Court) on ICC related issues at UN meetings for instance providing language for inclusion in resolutions on ICC related issues and providing input to UN departments for the preparation of reports/statements on ICC related

subjects; and relaying requests from the Court to the UN and vice-versa and making the necessary follow-up to ensure implementation.

*Can you tell us about the occasions when you also provide support to the Court outside of New York?*

As a member of the external communications group of the Court, and an ad hoc member of the Africa strategy group, I participate in the Court's external relations activities. In this respect I work closely with colleagues in The Hague and contribute to developing and implementing policies and strategies to strengthen cooperation between the Court and States. In relation to Africa, I have the advantage of being stationed in New York where virtually all African States are represented through their Missions to the UN and I have seized the opportunity to cultivate close working relations with African diplomats in New York on issues relating to the Court and can therefore provide the Court with some early insights on the prevailing thinking amongst States in New York. This year, I have on two occasions joined the Court's missions to the African Union meetings in Addis Ababa to encourage support for the Court's work and to explore the possibility of establishing a liaison office in Addis Ababa. In addition, I do participate in ASP sessions in The Hague and provide support as requested by the Court. I also look forward to participating in the Review Conference in Kampala next year.

*How has the 2004 Relationship Agreement facilitated interaction with the United Nations?*

The drafters of the Rome Statute realized early on that while the Court needed to maintain its judicial independence from the political workings of the UN, a close relationship with the UN was necessary for the success of the Court; hence the inclusion of article 2 in the Rome Statute which mandated the Court to negotiate and sign a relationship agreement with the UN in October 2004.

The agreement lays down a broad framework of cooperation between the Court and the UN. It enables me and other representatives of the Court to participate in UN meetings both in the General Assembly and the Security Council, as observer, and to brief the UN on developments within the Court. It also facilitates smooth interaction between Court and UN officials for purposes of information exchange and to explore ways of strengthening cooperation between the two institutions. Most importantly, it provides a legal basis for the interaction and exchange of information between the two institutions and thereby guards against any criticism from detractors of the Court who would otherwise put the UN to task for sharing information with the Court.

*What are the main challenges faced by the office?*

The mandate of the NYLO is very broad.

It entails providing support to all the organs of the Court including the ASP and hence requires constant liaison with these organs. In addition, the office has to establish and maintain links with the UN Secretariat, its agencies, intergovernmental organizations and NGOs accredited to the UN; as well as with Permanent Missions to the UN. The office has only two staff members- the Head of the office and an administrative assistant. While the administrative assistant provides invaluable support on administrative and logistical matters, all the substantive issues including direct contacts with interlocutors have to be covered by the Head of the office. The multiplicity of meetings and reports in the different organs of the UN, and the large number of Missions and organizations accredited to the UN makes it a Herculean task for the Head of the office to monitor all relevant developments and report to the Court, while at the same time respond, in a timely manner, to all requests from the various organs of the Court and service the Bureau and its NYWG.

In addition to the administrative challenges, the political environment at the UN is very challenging. In recent times, the debate on peace and justice has brought to fore a school of thought that is very critical of the role of the Court, especially in situations where peace negotiations are underway as in the case of Uganda and Darfur. Some of the criticism is based on misperceptions, while some of it is deliberately intended to mislead (take for instance the public assertions that the Court is only targeting Africa). Faced with this political atmosphere, the office has to constantly reach out and explain to interlocutors the role of the Court as an independent and impartial judicial institution; and dispel some of the myths about the Court.

*Has your previous experience as a Kenyan delegate to the United Nations facilitated your task?*

Definitely yes. Before joining the ICC, I served as legal adviser to the Kenyan Mission to the UN in New York for four years. This experience has proved extremely useful in my work at the liaison office as it gave me an excellent understanding of the UN system and its working methods. Moreover, it enabled me to build a network of contacts both within the UN Secretariat and amongst Government delegates, whom I often rely on in carrying out my current responsibilities.

*Although the office reports directly to the Presidency of the Court, it also supports the Office of the Prosecutor, the Registry and the Assembly of States Parties' Bureau and the New York Working Group. On an annual basis, what percentage of time does the office allocate among these users?*

Are you trying to get me to play favourites?... I will not fall into that trap!

In accordance with the resolution establishing the office, administratively the office falls under the Presidency, but it serves all the organs of the Court and the Secretariat of the Assembly. On substantive matters the office takes instructions from and reports directly to the instructing organ or the ASP, as the case may be, while taking

measures to respect the independence between the organs of the Court and to safeguard the confidentiality of each organ. In essence, the staff of the New York office wear four hats and we have the unenviable delicate task of shuffling between the different hats, that is, the Presidency, the Prosecution, the Registry, and the ASP or sometimes having to wear all four hats simultaneously!

In terms of the substantive work, I do not allocate a specific amount of time for the work of each organ or the ASP. I deal with requests from each organ as they come – the work load for each organ fluctuates over the year, with intermittent heavy and light periods. I try as much as possible not to give preference to any particular organ or the ASP as the work of each organ is equally important. However, in situations of overlap, I have to sometimes request some of the organs or the ASP to make alternative arrangements to handle their matters, and this can be done by sending officers from The Hague to cover some of the issues in New York. Nonetheless, in most cases I try to deal with all the issues, but of course this also means that there could be some delays in responding to requests from some organs.

*How do you see the New York Office evolving in the future?*

In view of the complementary nature of the work of the UN to that of the Court, I see the NYLO as a critical player in maintaining a continuous cooperative relationship between the Court on the one hand and the UN Secretariat, its agencies and the UN Member States represented at the UN, on the other hand.

The strategic location of the office also provides an opportunity for the Court to have a presence within the United States and to interact with other intergovernmental, non-governmental, academic and civil society organizations engaged in rule of law and justice issues of relevance to the Court, within the United States, and particularly in New York.

However, the current staff set-up of the office does not allow for maximum utilization of the Court's strategic location in New York. With the current set up of one professional and one administrative staff, all the substantive work of the office, save for practical administrative and logistical work is performed by the Head of the Office; and this greatly limits the number of activities the office can undertake. Perhaps the ASP can in future consider establishing an additional professional post to assist the Head of the office in implementing the its broad mandate. This would enable the Head of the office to delegate some of the more routine substantive functions such as preparing background documentation, taking notes and preparing reports for meetings; and invest more time into meeting with key interlocutors in the various organizations accredited to the UN and NGOs and engage in and organize high level events aimed at promoting a better understanding for the work of the Court.

## Interview with the Chair of the Board of Directors of Trust Fund for Victims, Mme. Simone Veil



### Elected Chair of the Board of Directors of the Trust Fund for two three-year terms, previously having served in the French government and the European Parliament.

*As a member of the board of Directors since its establishment six years ago, what would you consider the main achievements of the Trust Fund?*

During the first few years, the mission of the Board members mainly consisted in seeing to it that the Regulations of the Trust Fund were adopted, and in defining how it would work, who its beneficiaries would be, States Parties etc. To do so, the Board chose to be assisted in its work by a Secretariat, headed by an Executive Director. The latter would report to the Board on Fund activities and to the Registrar of the Court on administrative and personnel matters.

During my entire mandate as Chair of the Fund, the Registrar's opinion on the daily business of the Fund has been extremely helpful to me. Relations based on trust between the Registrar of the Court and the Board of Directors are an additional asset to enable the Fund to operate smoothly.

For the past two years, Board members have been less involved in the operations of the Fund. Operations and activities carried out in countries at war have been decided and managed by the Executive Director of the Secretariat; we were merely informed thereof and were therefore less involved.

*Could you highlight some of the main projects implemented by the Trust Fund?*

The Executive Director has managed to obtain grants from almost 30 different countries and has carried out a lot of work in the field, by raising awareness about the existence of the Fund and by financing programmes to help victims of war, in particular for instance in the Democratic Republic of the Congo and in Uganda. To date, the activities of the Fund have enabled many victims to become part of society again.

As a result of the partnerships established by the Fund, several organizations have joined us to contribute their support, expertise and more, enabling the physical, psychological, financial and social rehabilitation of the victims.

Letters sent to the embassies of States Parties to collect funds have been well received, especially the one for the Central African Republic in 2008. The Fund has thus been able to help one million victims, mainly of sexual violence (providing inter alia financial, psychological and medical assistance). A large programme has been established to help victims of rape. The work of the Fund consists in giving back to victims some sense of dignity and courage to rebuild a normal life within their family and community.

The aid programmes of the Fund work with the survivors of communities which have suffered war, in order to help them rebuild their lives in their country.

All in all, the Fund has collected over €3 million for victim assistance and rehabilitation.

The achievements of these first two years have been, in my opinion, positive and encouraging.

*What key challenges will the new Board to be elected in November face?*

In 2002, the Board members were elected because they were symbolic personalities in their respective countries. Regrettably, however, we were very busy in our own countries with various activities, and not very available; there was also the age factor and geographical distance.

Having chaired the Board of Directors of the Trust Fund for Victims for six years, I believe that the personalities of the Board should be more representative of the diversity of States Parties and be more available. I believe that the needs of the Fund have changed, and that the Board of Directors must also consist of

dynamic persons, who are prepared to travel, to go to the very sites where the activities are carried out, and to take stock at first hand of the impact such activities have on the people concerned.

Without prejudice to their independence, it would also be desirable for Board members to be able to meet Court representatives, to facilitate the activities of both institutions and to enable the Trust Fund for Victims to function smoothly.

In addition, I believe that it is important for the new elected members to be truly experienced in international politics and in the operations of large organisations such as the ICC.

*Given that most of the voluntary contributions to the Trust Fund have been made by Governments, what needs to be done in order to increase the funding from alternative sources, such as international organizations, individuals, corporations and other entities?*

The fact that the Fund is financed by States Parties has the advantage of giving it a degree of financial security, as income does not depend on external factors.

With regard to increasing funds from other donors, an idea would be to find a person who has sufficient standing at the international level to be able to appeal for public funds during highly focused promotional campaigns, such as those already held by large international NGOs with famous actors or personalities.

Another option would be tax-exempt donations. In France, for instance, taxpayers have the option, whether as individuals or businesses, to declare donations to humanitarian associations or organizations, the amount of which is deducted from their taxes. If such an option were to exist in all the



*Backrow from the left:*  
Mr. Bulgaa Altangerel,  
Archbishop Emeritus  
Desmond Tutu,  
Madame Simone Veil  
and Mr. Tadeusz  
Mazowiecki  
*Frontrow:*  
Mr. Arthur Robinson

countries concerned, companies and individuals could be more inclined to make donations to the Fund.

*Do you see scope for an enhanced direct interaction between the Board and the Assembly, which currently seems to be limited to the annual report of the Board?*

Certainly, it is important for the new members of the Board not to feel "isolated" from the organization in The Hague. They must regularly meet with Court representatives, without this affecting their independence.

This is the essential issue, because the particular nature of the Fund is that it is an independent body within the ICC, a criminal court which can only receive referrals by States Parties and which only has jurisdiction for crimes committed after the entry into force of the Rome Statute in 2002.

The mission of the Fund, on the other hand, is to defend and help the most vulnerable victims of crimes within the jurisdiction of the ICC; countries must for this purpose fully participate in the judicial proceedings.

It is essential in the field, that is in the countries at war, for this distinction to be very clear in the minds of the populations of victims. The Fund is there to rescue, help, reconstruct, not to judge or condemn.

The current existing link between the Board and the Court is through the Registrar, whose role is essential for good relations between these two organs and for the smooth functioning of the Fund. In my opinion the current situation with regard to direct exchanges with the Assembly of States Parties, the main administrator and legislative body of the Court, is well balanced.

*How often does the Board exchange views with the Court?*

The Board met with the Court on several occasions during the first years, when, together with the assistance of the Assembly of States Parties, it was establishing the regulations of the Fund.

At present there are very few meetings.

## List of 2010 United Nations Security Council members that are States Parties



- Austria
- Bosnia and Herzegovina
- Brazil
- France
- Gabon
- Japan
- Mexico
- Nigeria
- Uganda
- United Kingdom of Great Britain and Northern Ireland



Archbishop Emeritus Desmond Tutu and Madame Simone Veil

## Interview with Judge Sang-Hyun Song, President of the International Criminal Court



**Elected President of the Court by the plenary of judges on 11 March 2009, after having served six years in the Appeals Division.**

*What do you see as the most crucial issues facing the Court in short and medium term?*

This is still a very young institution. Many questions of law are arising from the judicial proceedings that require first legal interpretations of various aspects of the Rome Statute. The judges are under tremendous pressure to get things right. I can tell you that in the Appeals Division, where I sit, this pressure is keenly felt. Once we deliver a judgement, that's the law. The pace of judicial proceedings is also picking up, and soon the Court will conduct parallel trials for the first time.

Apart from the judicial proceedings, over the short and medium term, the Court continues to be challenged by widespread lack of knowledge of its mandate and functioning. This can lead to opposition to the ICC that is based on misperceptions. We are a judicial institution operating in a political world, and these misperceptions can be exploited by those who may seek to undermine the Court. We must do everything we can to ensure that basic facts about the Court are understood. However we have very limited resources to do this, and rely on States Parties, NGOs, and other partners to help us inform policy-makers and the public at large about our mission and our work.

In various other aspects of cooperation, too, the Court must rely on States. We rely on States in such areas as arrest and transfer of suspects, witness relocation, enforcement of sentences, and adopting implementing legislation to make various forms of cooperation possible in the first place. Securing cooperation in these areas is a great challenge for the Court over the short and medium term.

*What are your plans for the three years of your term as President and the main achievements you expect to constitute your legacy, both externally and internally?*

Externally during my term as President, I am focused on encouraging a broadening and deepening of the Rome Statute system. The system of international criminal justice comprises numerous actors with widely diverging, sometimes conflicting, mandates. Even acting at the best of its ability, the ICC will have a limited role. Too many violent atrocities fall outside the jurisdiction of the ICC. In any case, the Court will only have the resources to focus on the most serious cases within its jurisdiction. Although limited, the Court can fulfil essential functions as a court of last resort; in some situations it can serve as an incentive for credible domestic investigations and prosecutions; and it can serve as a model of fairly administered justice.

I see three main needs in developing a greater reach for global accountability in reaction to war crimes, crimes against humanity and genocide, whether at the ICC or in other jurisdictions. First, the Rome Statute system can broaden through the addition of new States Parties. This will not only extend the geographical reach of the Statute, but further enhance perceptions of its legitimacy. Second, the Rome Statute system can strengthen through enhanced cooperation. Cooperation should come to be regarded as routine, not an exercise of extraordinary political will. This applies to States Parties and also States not yet party. The ICC does not have the tools to enforce its own decisions. It is up to the States who created it and its other supporters to ensure that they are enforced. And finally, the Rome Statute system can deepen by enhancing the capacity of national jurisdictions. States have the primary responsibility to investigate and prosecute crimes. The Court can play an important but limited role as a catalyst, and the bulk of the work of developing national capacities will therefore fall to States, NGOs and multilateral organizations.

Internally, I am focused on fulfilment of important aspects of the Court's Strategic plan – namely, ensuring that the ICC is a model of public administration. Bearing responsibility for the Court's overall proper administration, apart from the Office of the Prosecutor (OTP), I am supporting the Registrar's efforts to identify efficiencies in administration. At the same time, we are working together, and with

the OTP, to ensure a caring environment for our staff. We have tremendously skilled staff across the Court who came here out of deep dedication to its mandate. We must create a positive atmosphere for them, not just because it's efficient – a happy staff is a motivated staff – but also because it's the right thing to do.

*Six months into your Presidency, what are the most rewarding and the most challenging aspects of your office?*

It has been a privilege to come to work each day and interact with staff of high calibre across the Court. They have come from all over the world in pursuit of a common mission. I take inspiration from their dedication. Likewise, I have been honoured to collaborate with members of the diplomatic and NGO communities who are deeply engaged with the Court and committed to effective implementation of the Rome Statute.

Of course there are many challenges, but one stands out. My predecessor, Philippe Kirsch, long said that ignorance was this Court's greatest enemy. After six months as President, I can absolutely confirm this to be true. Where the Court's mandate is not well understood, disappointment, fear and even anger can result. In particular, where the principle of complementarity is not understood, the Court can be miscast as a threat to national sovereignty. I have seen that when the mandate is explained, political criticism can dissipate. Disseminating accurate information about the Court and its activities must remain an important focus for us, and I hope for States Parties too.

*How do you expect to increase your interaction with staff and listen to their concerns?*

From the beginning I have been committed to interacting with staff. I addressed all staff to introduce the new Presidency shortly after taking office, and again in July to mark International Justice Day. It has been a pleasure also to speak at staff inductions to welcome our newest colleagues. Recently, the Coordination Council invited the Staff Council to make a presentation, and I look forward to enhanced interaction with staff through their elected representatives in the future. But staff can also approach me directly. I maintain an open-door policy. Any staff member should feel free to speak with me in the cafeteria or hallways, or make an appointment to come see me in my office.

There is some criticism resulting from comparisons between the time for trials to get started and concluded in other tribunals and the cases before the Court. How would the Court respond to those views?

We are still in the early days, and comparisons are premature. There is a broad commitment to efficiency. The Appeals Division in which I sit, for example, is dedicated to prioritizing those interlocutory appeals on which a continuation of trial or pre-trial proceedings depend. We are also turning around appeals on a timely basis.

It should also be noted that the ICC is quite different from its predecessors in important ways. The Court has a prospective and not a retroactive mandate. This meant that upon beginning of operations, it was dealing with very current situations. Alleged crimes that had just recently been committed – all after 1 July 2002 – needed to be investigated, and the Prosecutor's investigations were taking place during active conflicts. At our sister tribunals, with the partial exception of the ICTY, most investigative work has been conducted in more stable post-conflict environments.

As the world's first permanent international criminal court, the ICC faces unique challenges. We are not focused on a single conflict or region, but must address several at once. The diversity of situations before the Court creates a diversity of challenges in many areas, including language use in the courtroom and the logistics of witness protection and transport. Unlike the ICTR, ICTY or the Special Court for Sierra Leone, the Rome Statute also provides for victim participation in the proceedings. This innovation creates challenges of a legal and logistical nature that the Court has had to work through over the course of its first judicial proceedings.

*Is the Court considering means of expediting the length of its proceedings and is there a mechanism for their periodic assessment?*

We are not yet through our first judicial cycle, but already the Court is making adjustments in order to streamline proceedings. For example, the Registry, responding to a decision by Chambers, has facilitated victims participating in the trials to have group rather than individual representation. There are constant discussions about judicial efficiency and there is a strong commitment to the Strategic plan's most important objective: conducting fair and expeditious trials. I can assure you that the judges are committed to conducting expeditious trials, foremost because this is a core right of the accused. But in some



*From left: Mrs. Magda Marešová and H.E. Mr. Petr Mareš, Ambassador of the Czech Republic to the Netherlands, President Sang-Hyun Song, and H.E. Mr. Jorge Lomónaco, Vice-President of the Assembly at the welcoming ceremony*

instances speed can otherwise conflict with fairness. Then judges have a solemn duty to err on the side of the latter.

*What is the status of the Court Capacity Model (CCM), which the Court began to develop in 2004 in order to assist it in planning its proceedings?*

The Court is using the model in its planning, but the model will need to be adjusted as experience is gained through the conduct of trials. As I've mentioned, the Court has not yet completed a full judicial cycle. Once a few trials are completed, much more accurate data will feed into the model, making this a much more useful planning tool.

*As at the end of September, have all 16 judges been called to serve at the seat of the Court?*

Yes, and in fact there are now 17 judges including Judge Blattmann, who will remain for the duration of the Lubanga trial although his term otherwise would have expired earlier this year. We eagerly await the arrival of two new colleagues following the forthcoming election.

*How do the judges interact among themselves?*

The judges work extraordinarily hard to fulfil the mandate with which they have been entrusted. Upon taking up their mandate, of course every judge first interacts with new colleagues on a professional basis. But even at this stage, they already share a deep dedication to this Court and its mission. Over time they develop much stronger professional and personal bonds. I think I can speak for all of the judges when I say that working with colleagues from diverse national and legal backgrounds is mutually stimulating and simply fascinating. Apart from the usual one-three plenary sessions each year, judges also have informal meetings to exchange views. Each member of the Presidency belongs to one of the three divisions, and this helps to facilitate interaction with the divisions and all judges between meetings.

*Are video/telephone conferences held to communicate with judges that may not be in The Hague?*

The ICC is a criminal court and sometimes important judicial decisions have to be taken within hours. Generally speaking, the judges of the Court are always contactable, even when on leave, in order to react quickly to unforeseen and urgent developments. Information technology may be an important tool in this respect. I can certainly confirm this to be the case for the Appeals Division. The President of the Court is an ex officio member of the Appeals Division, but in fulfilling important external relations duties as President, also must travel frequently. In the past and current Presidencies, there have been numerous telephone conferences to ensure that even in the absence of the President or other colleagues, appellate deliberations can stay on track.

*Are there forums where the Court's judges may exchange views with prior judges or colleagues from other tribunals?*

There are periodic meetings of the Judicial Club of The Hague, which allow judges from the ICC, the International Court of Justice, the ICTY, and the Dutch Supreme Court to exchange views and share experiences. This forum rotates among the tribunals. There are also many opportunities to meet informally around The Hague, at lectures, book signings and other events, where ideas can also be exchanged.

## Election of judges

*You recently asked the Bureau to expedite the election to fill judicial vacancies in order to ease the workload of the current bench. Since 2007, five judicial vacancies occurred, one the result of an untimely passing away of a judge. Does the Court have any suggestion for consideration by the Assembly in order to diminish the occurrence of such vacancies and, when necessary, to expedite filling them?*

Ultimately, of course, this is a matter for the Assembly alone to decide. For the Court it is important that new judges be available to serve immediately upon being sworn in. Yet those elected are professionals of the highest calibre who understandably have many commitments at the time of their election. One way to address this challenge could be simply to move forward the elections. This would leave more time for those elected to wrap-up all of their outstanding professional commitments before being sworn in, and make it much more likely that they could take up their duties at the ICC immediately.

Another potential idea that States may wish to consider would be to develop a roster of elected judges beyond those needed for immediate openings. If feasible, this would mean that as unexpected vacancies occur, offers could be made to judges at the top of the roster without need for holding a new election. This would save States the substantial cost of holding unscheduled elections. It would also help the Court to minimize the judicial inefficiencies that arise when there are extended vacancies.

*Bearing in mind that the Rome Statute foresees a nine-year term of office for judges, is there scope for possible age limits, as in the case of the European Court of Human Rights and some national systems?*

Regardless of age, it is crucial that those elected are fit to serve in a job that comes with a heavy workload.

*The Rome Statute foresees, insofar as their background is concerned, two categories of judges: List A and list B. How has each category contributed to the Court these past six years?*

It is imperative that the Court have professionals who are familiar with procedural and substantive law. Likewise, we need colleagues with expertise in public international law, who are on top of developing jurisprudence in the field. Their perspectives add insight that greatly enriches our decisions.

## Governance

*Article 38, paragraph 3 (a), of the Rome Statute entrusts the President, with responsibility for the proper administration of the Court, with the exception of the Office of Prosecutor, while paragraph 4 calls for coordination with the Prosecutor on matters of mutual concern. The most recent Report of the Committee on Budget and Finance refers to some risks ensuing from the governance structure of the Court. Can you tell us about the Court's Coordination Council and how effective it has been in addressing those issues?*

The Coordination Council, consisting of the President, Prosecutor and Registrar, meets once a month in sessions attended by the Secretariat of the ASP to discuss such matters of mutual interest as staffing, the budget, and the strategic plan. Various staff members attend to address issues within their expertise that are under current discussion. It is a useful body for the exchange of information and coordination of actions in many areas. Of course, the organs may differ on specific issues. This is inherent in the Court's governing structure, and is an inevitable consequence of the independence of the judiciary and that of the Prosecutor. The Coordination Council itself identified this risk in 2006 as something to be aware of and to address. At the outset, some argued that the OTP should have an entirely separate administration precisely to avoid conflicts. However, in the interests of efficiency, it was deemed that the OTP should rely on common services from the Registry. This requires close coordination, and frank open communication. Roles and mandates are not always clear, but operationally the different organs work well together in practice. Our role as the Coordination Council is to ensure the framework is in place and well-enough understood for our staff to go about their business. The CBF has requested a report from the Presidency on efforts to achieve clarity on the responsibilities of the organs and a common understanding between them. I will continue efforts in this area and report in April.

## Role of the Presidency

*Can you explain the means by which the Court as a whole and the Presidency in particular coordinates and contributes to outreach objectives? Are some judges assigned to undertake such as role on the basis of language, region and specialization?*

I view outreach in the situation countries as a core element of this Court's work. If justice is not seen to be done in the communities most affected by our judicial activities, then our efforts lose much of their

meaning. The Public Information and Documentation Section (PIDS) of the Registry is in charge of outreach. Working through field offices and staff in The Hague, PIDS maintains two-way communication with affected societies. I am always willing to assist in any way possible. For example, recently I answered questions on video posed by participants in an outreach event in the DRC. The video with my answers, part of the outreach programme's "Ask the Court" series, was then later screened in those same communities.

The term "outreach" is sometimes understood in a broader sense to describe all interactions by Court officials to increase understanding of the ICC's mandate and activities. In this sense, the Presidency has been very engaged. Vice Presidents Diarra, Kaul and I have travelled to many countries, meeting with senior officials, speaking at events, and giving media interviews. However, the Presidency receives more invitations than can be accommodated. Some of these are passed to other judges, who then can represent the Court when their judicial schedules allow. The language of a country or specific event may dictate which judge is asked to attend.

*What are the key outcomes of the trip to Africa you undertook earlier this year?*

In June I travelled to the United Republic of Tanzania, South Africa, Lesotho and Botswana. In the United Republic of Tanzania, Lesotho and Botswana I had meetings with senior officials including Heads of State/Government, Ministers of Foreign Affairs and Justice, and Attorneys General. My visit to each country was very much appreciated and I was warmly received, with all courtesies extended.

These meetings provided valuable opportunities to thank States for their support of the Court and listen to their views. It also gave me a chance to provide an update on the Court's activities. In meetings I emphasized the Court's judicial nature and the need for it



President Song presents the report of the ICC to the United Nations General Assembly on 29 October 2009

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to be shielded from political winds. I also encouraged my interlocutors to adopt implementing legislation in their States. This creates a domestic legal basis for cooperation with the Court and advances the principle of complementarity by creating a legal basis for trying atrocity crimes domestically. The connections made on this trip will be valuable going forward and help the Court to maintain an ongoing dialogue with States from our largest regional group.

*What do you believe needs to be done to encourage more States to become parties to the Rome Statute in regions like Asia where, with a few key but notable exceptions, the Court has not garnered much acceptance?*

Asia is terribly underrepresented in the Assembly of States Parties. As the first Asian President of the Court, I am personally committed to addressing this problem. My first trip as President was to Thailand and Indonesia, two States that are considering ratification of the Rome Statute. Each country will make its own sovereign decision about ratification or accession. Misperceptions of the Court's mandate and functioning, however, too often form the basis of national debates. Travel makes possible engagement with senior officials, academics, bar associations, NGOs and journalists, and can substantially enhance understanding of the Court. I am eager to return to Asia and travel to other underrepresented regions to assist in any way possible.

At the end of the day, though, States and NGO networks have vastly greater resources that they can direct to these efforts. I would welcome new efforts by the ASP and individual States Parties to play an active part in informing national debates about the Rome Statute in non-States Parties around the world. This is an area where State and NGO efforts can be closely coordinated with those of the Court.

## Assembly

*How and with what frequency does the Presidency and do you directly interact with the Assembly and its subsidiary bodies?*

My staff and I have extensive contact with the Assembly and its subsidiary bodies. We enjoy a close working relationship with President Wenaweser, who is always available. We also value regular cooperation with the Secretariat here in The Hague. When I travel to New York, I always meet with Assembly representatives. Just last month I had the pleasure of speaking to the Bureau. Likewise, this year I spoke at the opening and closing of the CBF session, and Presidency staff attended the sessions throughout. Many working-level contacts, especially with the New York and Hague Working Groups, are delegated to the Registry. The Registry has extensive contact with The Hague Working Group in particular. The Court appreciates the hard work of the various facilitators; we are truly grateful to have such a dedicated and thoughtful group of ambassadors who are readily accessible. The Court is committed to being responsive to States, and engagement in all of these forums is important to that end.

*Are there means of improving such exchanges?*

These interactions have gone extremely well. I am committed to continuing a full and open dialogue with the Assembly and its subsidiary bodies.

*How much support does the Court feel it receives from States Parties?*

States Parties created this institution, and the Court continues to rely on States Parties to sustain it. We are very appreciative for cooperation that has been forthcoming in a number of areas, including arrests and surrenders of suspects, investigations, witness relocation, enforcement of sentences, and diplomatic support. Of course there are always areas that can be improved. Specifically, I would encourage all States Parties to adopt implementing legislation as a matter of priority. To our knowledge, so far only 39 of 110 States Parties have done so. With judicial activity under way, there is also a great need for more assistance on witness relocation and enforcement. I would urge those States that have not done so to enter into negotiations with the Court on relocation and enforcement

agreements. Where this is not possible, I would encourage States to consider tripartite agreements. Thus States that cannot themselves enter into relocation or enforcement agreements could assist other States Parties that are willing to do so but lack the means. One other area in which I am eager to increase cooperation with States Parties, is the coordination of efforts to encourage new ratifications and accessions to the Rome Statute. We can work together to make even more headway in extending the reach of the legal regime in which we all have a great stake.

## Policy-decisions

*From the perspective of the Assembly, there are some concerns about the Court pre-empting policy-decisions under consideration by States Parties. In this regard the 10 March 2009 decision by the former Presidency regarding the funding by the Court for family visits of indigent detainees comes to mind. Are the judges as a whole, and the Presidency of the Court in particular, cognizant of those concerns and how do they view the way forward on the general approach?*

I am aware of the concerns that some States have in this area. This was a judicial decision, and the same or a similar issue could come before the Presidency for judicial review in the future. To avoid prejudicing potential future deliberations, I cannot address the substance of the decision on family visits.

However, as I recently expressed to the Bureau of the Assembly, as a matter of procedure I am very concerned about a draft resolution currently circulating in The Hague Working Group that would in effect seek to overturn the decision. Any attempt to overturn a judicial decision by an ASP resolution raises concerns of precedent and perception. Observers could well ask, if a Presidency decision can be overturned by a political body, why not an Appeals Chamber decision? At a time when some accuse the Court of being prone to political influence, I would urge that every measure be taken to underscore and respect its judicial independence. I would hope that any actions



Welcoming ceremony for Chile

*From left:*  
Mrs. María Cecilia Borgoño de Martabit and  
H.E. Mr. Juan Martabit,  
President Song,  
Ms. Silvana Arbia, Registrar,  
H.E. Mr. Jorge Lomónaco,  
Ms. Fatoumata Dembele Diarra,  
First Vice-President of the Court,  
and Mr. Luis Moreno-Ocampo,  
Prosecutor

contemplated would be carefully considered in this context.

*The Rome Statute could not foresee all possible scenarios that the Court would face and, accordingly, left some areas ambiguous or for future decision-making by the Court and the judges in particular. Now that the Court has been functioning for several years, could there be a role for the Assembly in providing guidance on lacunae or other matters where there may be a risk of divergent interpretations by the Court's judges?*

The Statute and the Rules of Procedure and Evidence could be amended to adapt it to changed circumstances or in light of lessons learned. This is a matter for States, but I would urge that any changes be based on broad policy visions and not in reaction to specific decisions – especially judicial decisions. It is true that many things could not have been foreseen in 1998, but I think it is important to keep in mind that many future developments also cannot be foreseen. After all, the Court has not yet completed its first judicial cycle. For this reason, too, I would recommend that any contemplated amendments be made with a view to potential long-term implications.

*How can the Assembly best contribute to the Court?*

The Assembly can and does contribute to the Court in many ways. I would start by mentioning financial support, and in this area Assembly members have an excellent record of prompt payment of dues. With management issues, I find that the Assembly's oversight function is most effective when focused on general policy guidance, allowing the Court flexibility to work out the details as best suit it. The Assembly can also play a key role in coordinating among States on cooperation issues, from public and diplomatic support to adoption of implementing legislation.

## Cooperation

*How would you evaluate the cooperation between the Court and the United Nations?*

The Court's cooperation with the United Nations has been excellent in such diverse areas as logistics and diplomatic support. The Relationship Agreement sets a solid framework, and subsidiary agreements, such as the memorandum of understanding with MONUC, have also been very valuable. We have enjoyed consistent support from the Secretary-General on down. I particularly appreciate the responsiveness of the Office of the Legal Counsel, which is the focal point for ICC cooperation at the UN. This July, the Court hosted a two-day roundtable with the UN (one

in a series that rotates between New York and The Hague) to allow a detailed exchange of information and views at the working level and ensure that concerns of both organizations are taken into account by the other.

*How would you evaluate the cooperation with regional intergovernmental organizations and how could that be improved?*

This is an area that needs to be worked on. The Court has an intensive relationship with some organizations, such as the European Union and is still seeking a formal relationship with others, for example the African Union. Over the past several months, we have reached out to other regional and thematic intergovernmental organizations. This May, Judge Kuenyehia represented the Court on a trip to Nigeria, where she addressed the Parliament of the Economic Community of West African States. I have asked my staff to reach out to various organizations, including the League of Arab States, Organization of the Islamic Conference, the Organization of American States and the North Atlantic Treaty Organization, in order to explore options for greater communication and collaboration.

## Review Conference

*Would you share some of the Court's views on some of the issues to be addressed at the Review Conference in June 2010?*

The Review Conference in Kampala and especially proposed amendments to the Statute to be discussed there are matters for States. Yet naturally, the Court shares a great interest in the Review Conference's success. It is my hope that the Review Conference can serve as another major milestone in the development of international criminal justice. Big issues including aggression may be discussed, and I'm sure technical issues will be too. The Conference offers an opportunity to review the efficiency and effectiveness of the Court. But I would encourage this all to be inserted into a broader context. I would also encourage the ASP to think creatively about involving affected communities – from all situation countries – in discussions of the Court's work. To the extent that the Court exists to serve victims, their voices should be heard in the preparations for Kampala and at the Review Conference itself.

*As regards the stock-taking item, what key areas should it focus on?*

I am pleased that a stock-taking exercise will look at the entire Rome Statute system. Critically, this should include various issues of cooperation, complementarity and

State support. I am keen to learn why more States haven't adopted implementing legislation. Even after the Bureau's plea to the fifth session of the ASP, only 39 States Parties have done so. How can States better support each other in developing national capacity to credibly investigate and prosecute ICC crimes? These are just some of the issues that could be addressed. With enough notice and where appropriate, the Court could collaborate in brainstorming and refining proposals in these areas.

*What are the Court's expectations in terms of the outcome of the Review Conference?*

Beyond the outcome of the debate of substantive legal proposals on which I cannot comment, it is my hope that the Review Conference can be effective in charting the further development of the entire system of international criminal justice. I would like to see the Conference develop strategies to broaden and deepen the Rome Statute. This includes bringing in new States Parties, while also strengthening the Court and exploring methods to further develop national capacities.

*What is your typical day as President like?*

The typical day is incredibly hectic. I come to work very early and can never be sure what to expect. I have a wide range of responsibilities. I am a judge in the Appeals Division and have a full workload there. As a member of the Presidency, I am deeply involved in conducting judicial review of the Registrar's administrative decisions. And then of course as President, I have my hands full with external relations matters. I travel and speak frequently to represent the Court, receive many ambassadors and senior dignitaries here in The Hague, and in the evenings I try to attend diplomatic functions around town. It is a heavy workload, but the lifestyle is facilitated by the unfortunate fact that I'm often geographically single! When my wife is able to visit, I try to take some personal time.

*Do still have time to indulge in golf, your favourite pastime?*

I have very little time for golf these days, and have only played twice since becoming President.

*What other activities do you enjoy in your free time?*

I enjoy reading and writing when time allows.

## Interview with H.E. Juan Martabit, Ambassador of Chile to the Netherlands



*How important is the ratification of the Rome Statute for Chile, and what are your expectations for the Court?*

This is a very important step that Chile has taken very seriously and in full awareness of its history, following a process of dialogue involving various political sectors of society. Upon joining the International Criminal Court, Chile has already achieved a high level of implementation, having already adjusted its national legislation to incorporate the crimes described in the Statute. Now we wish to participate as actively as possible as a country in everything necessary to contribute to the ICC.

*This ratification turns South America into the only continent on which all States are Parties to the Rome Statute. What political and legal obstacles did you have to overcome to ratify the Statute?*

In Chile the process lasted several years during which some sectors needed to reflect in order to overcome certain reservations. This led to a productive democratic dialogue which yielded strong results. First there were concerns about the application of the principle of complementarity, then the Constitution had to be amended, and finally an interest grew in incorporating the crimes under the Rome Statute into our national legislation to ensure its full application.

*What role did Chilean civil society play in this process, and how did it react to the ratification?*

Civil society participated in this dialogue through its own organizations, as well as through important NGOs, in addition to the matter being discussed at the highest level. The government of President Michelle Bachelet was particularly interested in

gathering the proposals of all sectors, but always with a view to moving the ratification forward, as Chile could not stay at the margins of this important development in international law and universal jurisdiction.

*Unlike many other States, Chile proceeded to penalize the crimes provided under the Statute before ratifying it, which represents an important step with regard to the principle of complementarity, the cornerstone of the Rome Statute, according to which it is the responsibility of the respective State Party to investigate the crimes. The Court only intervenes when a State is unable or unwilling to investigate or to prosecute. What role did this prior criminalization play in the ratification process?*

The purpose of the criminalization was to bring the Statute to life, for it to be recognized in the domestic judicial sphere. Chile wanted to avoid facing obstacles to its full application when the moment would arrive. Now that it has the law on the penalization of the crimes as part of its legislation, Chile incorporated the definitions at the national level, and it is equipped with the necessary legal tools to recognize the crimes described under article 5 of the Statute, in accordance with the principle of complementarity.

*When do you expect to submit the Agreement on Privileges and Immunities for consideration by Parliament, its ratification constituting an essential step to facilitate the work of the Court, and how much time could its ratification take?*

As yet no date has been set to consider the Agreement, but this step forward, as well as others, covering important areas such as co-operation with the ICC, is currently being studied by the relevant legal authorities of my country.

*What do you think of the innovative provisions of the Statute that allow victims to participate in the judicial proceedings before the Court and the possibility for them to receive reparations from the Trust Fund for Victims?*

In Chile we have experienced a long process with successive reparation phases for victims through the Truth and Reconciliation Commissions and the National Commission on Political Imprisonment and Torture, the important work of which involved, inter alia, taking statements and recognizing victims of human rights violations committed under the military regime. Therefore we deem this aspect of the Rome Statute to be of vital importance, as it concerns principles which

my country recognizes and which it is concerned with as a society. Societies must evolve, and to do so they must have a legal system which provides for the participation of victims and, of course, for reparations. As such the Statute represents a model of universal justice.

*Victims' reparations may be individual or collective, depending on the applicable national laws. In Chile's experience, what has been considered the best way of giving victims some form of reparation?*

It must be emphasized from the outset that no form of economic compensation or any other kind of compensation will return the lives of lost ones or repair the harm inflicted by torture; this is taken into account in the compensation system established. In Chile's experience, reparations have been mainly individual, in view of the nature of the crimes perpetrated against victims, who were individuals. We did not experience any group factors such as ethnic and/or racial cleansing, as occurred in other parts of the world under very different contexts; we experienced persecutions of a political nature. It is important to emphasize that the reparations proposed and/or paid for by the State have come in various forms and have included direct family members. They were translated into pensions, medical and educational assistance, bonuses in the form of acquittals and benefits for the return to the country of those who had suffered from being exiled; the objective was to attempt to widen the scope of reparations as much as possible.

*On the subject of transitional justice, the Truth Commission of Chile served as an inspiration and guide for several similar processes in different Latin American countries and also some from different continents such as South Africa. In retrospect, what changes do you deem necessary for the objectives of a Truth Commission to be more effective?*

The work of the Truth Commission deserves to be recognized. It has functioned on the basis of voluntary cooperation between the parties. It has improved with experience, and has had to adapt to new circumstances, but despite everything it has achieved, there will always be room for improvement. However, it has been an important motivating force in moving on from the past, and we are proud to have created a model for other societies that have suffered similar situations. From that perspective, it is necessary to recognize the progress fostered by the institution, including

with regard to the objective of national reconciliation. We know that the scars of the past cannot be erased, but surely we can work together to improve the future of our country and of future generations.

*In the light of what has happened in Latin America and in particular in Chile during the last decades of the twentieth century, could you give us your opinion on the alleged dilemma between peace and justice?*

The situation experienced in Latin America at the time of the dictatorships of the second half of the twentieth century was particularly distressing. However, we have learned from it. And now, as with most societies that have had to go through such difficult situations, we respect and value democracy more than before. We understand the importance of the right to dissent, the right to freedom of expression and the right to justice, all with the objective of achieving an increasingly peaceful co-existence. And I

would like to emphasize that what is most important is that we have learned from our history. Justice is necessary in all societies to move forward and achieve peace, which is why we are proud that the whole of South America has ratified the Rome Statute and participates actively in the ICC.



*What do you think of the much desired objective of universal participation in the Rome Statute?*

I believe that it will definitely represent a step forward on all fronts, an unprecedented achievement, which all 110 States Parties to the Rome Statute support. As our President Bachelet said when she visited The Hague last May, whose words I fully endorse: "Ideally the ICC would not have anyone to prosecute, would not have any cases, as that would mean that it had met its objective of acting as a deterrent. I believe that deep down inside, we all want universal justice to have the effect of deterring acts of genocide or other types of horrors, and for it no longer to be necessary in future ever to prosecute anyone anymore for atrocities perpetrated by humans against other human beings".

## Ceremonies for new States Parties

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The Court held ceremonies for the new States Parties in The Hague on the dates when the Statute entered into force for those States.

During the ceremonies welcoming the new States Parties, reference was made to the legal, political and technical challenges which had to be overcome in order to ratify the Rome Statute. The importance of conveying a proper understanding of the principle of complementarity, enshrined within the Statute, constituted an essential pillar in the arduous process of reaching a consensus at the national level, since it would dispel doubts about a possible cession of jurisdiction to a supranational judicial organ. In this connection, both Chile and the Czech Republic expressed their appreciation to the Court, which had always been open to addressing politicians and jurists, both in The Hague and in capitals, for its assistance in facilitating an understanding of the Court's jurisdiction.

The Ambassador of Chile to the Netherlands, H.E. Juan Antonio Martabit, emphasized that although the ratification of the Statute was the result of the efforts of many sectors within his country, it was most of all due to the personal interest of President Michelle Bachelet who had made it a primary goal of her government; he recalled that President Bachelet herself had also been a victim of the excesses suffered during the period of authoritarianism that preceded the return to democracy.

For his part, the Ambassador of the Czech Republic to the Netherlands, H.E. Petr Mareš, in addressing the challenges of the international community with regard to criminal justice, noted the relevance of the thoughts of Ms. Hannah Arendt who had written over 40 years ago that Eichmann should have been tried by an international court for the crimes committed against mankind on the body of the Jewish people and not for the crimes against the Jewish people as the Jerusalem Court did. She had also affirmed that the purpose of a trial is to render justice, and nothing else, even the noblest of ulterior purposes.



*"... nobody is above the law, nobody can evade responsibility for any crimes that States agreed to identify as dangerous to international peace and security. International peace and security will never work, if we do not bear the consequences of that responsibility. Every individual is responsible for his or her crimes against humanity, war crimes or crimes of genocide. Every State is responsible for the punishment of such crimes. The International Criminal Court is here not as a substitute for the responsibility of States, but to make them bear their responsibility themselves."*

*Ambassador Petr Mareš*



*"A total of 396 million South Americans, from the Caribbean coast to Cape Horn, from the Galapagos Islands to Recife, are under the aegis of the normative regime that sovereign States established 11 years ago. Just as Latin America established the first "nuclear-weapons free-zone" under the umbrella of the Tlatelolco Treaty, let us hope that, within the next few years, other regions will follow and we can progressively celebrate the establishment of "Rome-Statute-zones" around the globe."*

*Vice-President Jorge Lomónaco*

The Vice-President of the Assembly, Ambassador Jorge Lomónaco (Mexico), highlighted that the addition of two new States Parties constituted a significant accomplishment for the international community as a whole, in advancing towards the cherished goal of universality, particularly as both South America and the European Union had thus fully embraced the Rome Statute system.

## Deposit of Chile's instrument of ratification at the United Nations

*From left:*  
 Ambassador Claudio Troncoso, Director of Legal Affairs, Ministry of Foreign Affairs, congressman Gabriel Ascencio, H.E. Ambassador Heraldo Muñoz, Permanent Representative to the United Nations, Mr. José Antonio Viera-Gallo, Secretary-General of the Presidency of Chile, and Ms. Annebeth Rosenboom, Head of the United Nations Treaty Section.



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### President meets Staff Council members

*From left :*  
 Mr. Sibomuturi (2nd Vice-President), Ms. Muriel Meric (Treasurer), President Christian Wenaweser, and Ms. Romana Maumbu (1st Vice-President)

## Oversight Committee on Permanent Premises



*From left:*  
 H.E. Ambassador Lyn Parker (United Kingdom), Chair of the Oversight Committee on permanent premises, and Ms. Esther Halm, Associate Legal Officer of the Secretariat of the Assembly

### Departures

#### The Hague

H.E. Lyn Parker (United Kingdom) left his post as Ambassador to the Netherlands and returned to the Foreign and Commonwealth Office in London; Mr. Akbar Khan (United Kingdom) became Director of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat; Mr. Masud Husain (Canada) assumed his new functions in New York; Mr. Erasmo Lara (Mexico) was transferred to Vienna; Ms. Michèle Dubrocard (France) concluded her posting.

#### New York

Mr. Marko Rakovec (Slovenia) finished his posting, Ms. Polly Ioannu (Cyprus) was transferred to Vienna, Mr. Tomohiro Mikanagi (Japan) assumed his new functions in Beijing, while Ms. Angela Nworgu (Nigeria) began to work in the office of the President of the General Assembly of the United Nations.

## Colophon

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## ASP Calendar

### 2010

#### Assembly of States Parties

Resumed eighth session  
 New York  
 between 22-25 March

#### Ninth session

New York  
 mid-December

#### Review Conference

Kampala, Uganda  
 31 May to 11 June 2010

#### Committee on Budget and Finance

Fourteenth session  
 The Hague - 19 - 23 April

#### Fifteenth session

The Hague - 23 - 31 August

### AGREEMENT ON PRIVILEGES AND IMMUNITIES : MALAWI

With the deposit of the instrument of ratification by Malawi on 7 October 2009, a total of 62 States are now parties to the APIC.

