



# Newsletter December 2010

ICC-ASP-NL-05/10-En

ASP Special Edition #5



## Review Conference adopts historic amendment on the crime of aggression

### Amendments to the Rome Statute

The Review Conference of the Rome Statute concluded with the late night adoption by consensus of a historic agreement on the crime of aggression. The resolution by which the Conference amended the Rome Statute included a definition of the crime of aggression and the conditions under which the Court could exercise jurisdiction over the crime.

The Rome Statute's new article 8 *bis* defines the crime of aggression as the planning, preparation, initiation or execution of a State act of aggression by a political or military leader. The State act of aggression is referred to as the "use of armed force by one State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations". Furthermore, to qualify as an element of a crime of aggression, that State act must "by its character, gravity and scale" constitute a "manifest violation" of the UN Charter.

As regards the Court's exercise of jurisdiction, the Conference agreed that a situation in which an act of aggression appeared to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective of whether it involved States Parties or non-States Parties.

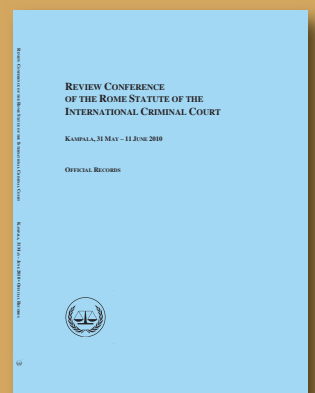
Furthermore, the Court could also proceed on the basis of a State referral or on the Prosecutor's own initiative, except where the State act of aggression was committed by a non-State Party or by a State Party that had declared that it did not accept the Court's jurisdiction over the crime of aggression. In such a scenario, the Prosecutor would have to inform the Security Council of the situation and await a determination of aggression by the Security Council within the following six months. After that period, the Prosecutor could only proceed if so authorized by the Pre-Trial Division of the Court.



## ASP Publication \*

Review Conference

Official Records



\* Arabic, Chinese, English, French, Russian and Spanish

Moreover, the Court may only exercise jurisdiction after 1 January 2017, provided that States Parties then confirm the exercise of jurisdiction in a decision to be taken by consensus or by a two-thirds majority. The Conference also adopted a resolution expanding the list of prohibited weapons in the case of armed conflicts not of an international character. This amendment to

article 8 of the Rome Statute would make it a war crime, subject to the jurisdiction of the Court, to employ certain poisonous and expanding bullets, asphyxiating or poisonous gases, and all analogous liquids, materials and devices, in armed conflicts not of an international character.

Furthermore, the Conference reviewed

article 124 of the Statute, which allows new States Parties to opt out of the Court's jurisdiction over war crimes for a period of seven years and decided to again review this provision in 2015.

## Opening statements (extracts)

Full statements: <http://tinyurl.com/RCICC-OPST>



**Amb. Christian Wenaweser**  
President of the Review Conference

"The future on international criminal justice is a joint undertaking of the States Parties of the ICC and those States that have not yet decided to join the Rome Statute. We must continue to strive for universality in the membership of the Court.

The Kampala Conference should also be a decisive step in our individual and joint efforts to strengthen the will and the capacity of States to carry out investigations and prosecutions. Under all circumstances, we as States have the first obligation to do so."

Video : <http://tinyurl.com/RCICC-PASP>



**Judge Sang-Hyun Song**  
President of the ICC

"Without cooperation, there will be no arrests, victims and witnesses will not be protected, and proceedings will not be possible

Without credible, fair domestic proceedings, the impunity gap will grow large.

If victims and witnesses are not adequately engaged, the potential of justice will not be realized.

And if peace and justice are not pursued "hand-in-hand", we risk losing both."

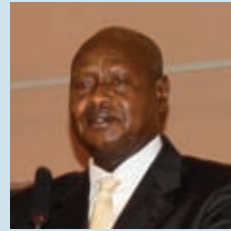


**Mr. Luis Moreno-Ocampo**  
ICC Prosecutor

"Arrest has become the biggest test for States Parties. Some individuals sought by the Court are enjoying the protection of their own militias. Others are members of government which are eager to shield them from justice. They are still committing massive crimes. The victims have no time.

They are waiting to be rescued; they are calling to stop the rapes and the killings now."

"The Prosecutor and the Court cannot and will not take political considerations into account. This was a conscious decision, to force political actors to adjust to the new legal limits. We cannot both claim that we will "never again" let atrocities happen and continue to appease the criminals, conducting "business as usual."



**H.E. Mr. Yoweri Kaguta Museveni**  
President of Uganda

"... Compensation for the victims should not even wait for justice. It should be done now and all means should be marshaled to assist victims to compensate them even before the criminals are caught and tried."



**H.E. Mr. Jakaya Mrisho Kikwete**  
President of the United Republic of Tanzania

"To eliminate the culture of impunity, and guarantee a culture of accountability, justice and the rule of law, it is imperative that States Parties, mindful of their obligations under the Statute, fully support the Court to bring justice to those victims of gross human rights violations and atrocities."



**Mr. Kofi Annan**  
Former Secretary General of the United Nations

"...it is not "Africa" that is hostile to the Court. When I meet Africans from all walks of life, they demand justice: from their own courts if possible, from international courts if no credible alternative exists.

The ICC does not supplant the authority of national courts. Rather, it is a court of last resort, governed by the principle of complementarity. I am proud, as an African, of our continent's contribution to the success of this great undertaking.

... I am proud too that, in four of the five cases from Africa currently before the ICC, African leaders have either referred those cases to the Court, or actively co-operated with the investigations. In doing so, they seek the support of an international judicial mechanism in the face of their own limited judicial capacity...

In all these cases, it is impunity, not the African countries, that is being targeted. ... Africa wants this Court. Africa needs this Court. Africa should continue to support this Court.

Ending impunity is the solemn pledge we undertook. Let us fulfil it so that when our grandchildren look back they are not haunted by new voices from killing fields yet to be named."

Video : <http://tinyurl.com/RCICC-Annan1>  
<http://tinyurl.com/RCICC-Annan2>



## General debate

A total of 67 States Parties and 18 observers as well as several international organizations and NGOs participated in the general debate. Numerous speakers reiterated their commitment to the Court's mission of fighting against impunity, bringing justice to victims and deterring future atrocities.



Mr. Jean Asselborn, Vice Prime Minister and Minister of Foreign Affairs of Luxembourg



Ms. Aurelia Frick, Minister of Foreign Affairs of Liechtenstein



Mr. Vandi Chidi Minah, Deputy Minister of Foreign Affairs and International Cooperation, Sierra Leone

General debate:  
<http://tinyurl.com/RCICC-GD>

### High ranking officials that attended the Review Conference:

Secretary General of the United Nations

Heads of States : 2

*Uganda and the United Republic of Tanzania*

Deputy Prime Minister : 1

*Luxembourg*

Ministers of Foreign Affairs : 4

*Bangladesh, Liechtenstein, Norway and Uganda*

Deputy Foreign Ministers : 2

*Argentina and Sierra Leone*

Ministers of Justice : 21

*Bangladesh, Botswana, Burkina Faso, Central African Republic, Democratic Republic of the Congo, Ecuador, Fiji, Gambia, Ghana, Guinea, Italy, Mali, Montenegro, Namibia, Netherlands, Nigeria, Poland, Senegal, Slovenia, Uganda and the United Republic of Tanzania*

Deputy Ministers of Justice : 3

*Albania, South Africa and Zambia*

### The most numerous delegations:

1. Uganda	42
2. United States of America	30
3. Democratic Republic of the Congo	25
4. Kenya	18
5. Italy The Netherlands	15
6. Brazil	13
7. South Africa	12
8. Belgium Canada Germany Nigeria Norway	11

## Kampala Declaration

The Conference adopted the Kampala Declaration (RC/Decl.1), by which States reaffirmed their commitment to the Rome Statute and its full implementation, as well as its universality and integrity. States reiterated their determination to put an end to impunity for perpetrators of the most serious crimes of international concern, emphasized that justice is a fundamental building block of sustainable peace and declared that they would continue and strengthen their efforts to promote victims' rights under the Statute. States also decided to henceforth celebrate 17 July, the day of the adoption of the Rome Statute in 1998, as the Day of International Criminal Justice.



The Review Conference was held at the Munyonyo Commonwealth Resort for a period of 10 working days, from 31 May to 11 June 2010.



Photos at : <http://www.icc-cpi.int/Menus/ASP/ReviewConference/Photo+Gallery/Photo+Gallery.htm>

## Review Conference outcomes

### Definition of aggression

[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)

See also Depository Notification C.N.651.2010 Treaties-8, dated 29 November 2010, available at <http://treaties.un.org>

#### Article 8 bis

#### Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

### Working group on the crime of aggression

The Working Group on the crime of aggression considered the proposals which had been the outcome of negotiations held since 2002 when the Assembly established a Special Working Group open to all States. Informal inter-sessional meetings held at the Liechtenstein Institute on Self-Determination at Princeton University from 2004 to 2009 had played an important role in the negotiation process. Given that the definition of the crime of aggression had already attained very broad consensus in that process, in Kampala the focus was on the conditions for the exercise of the Court’s jurisdiction, including the role of the UN Security Council.

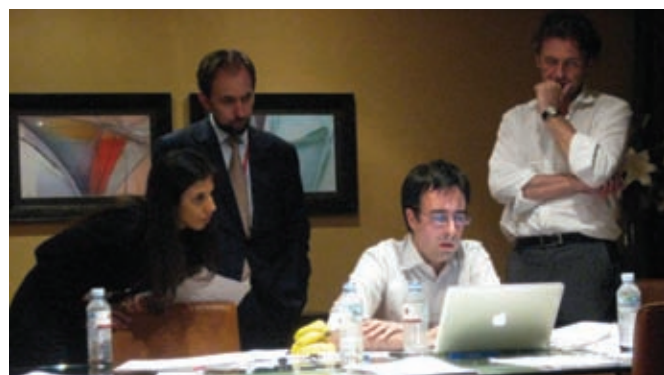


H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini (Jordan), Chair of the Working group on the crime of aggression, and Mr. Renan Villacis, Director of the Secretariat

#### Mr. Ben Ferencz, former Nuremberg prosecutor addressed the working group on the crime of aggression

Video (YouTube) : <http://youtu.be/rg3MI7FxA2c>

Audio (mp3 file) : <https://files.me.com/asp.icc/h0akqo.mov>





## Amendments to article 8 of the Rome Statute

The Review Conference adopted resolution RC/Res.5 entitled "Amendments to article 8 of the Rome Statute", by which it extended the jurisdiction which the Court already has over the crimes in article 8, paragraph 2 (b) (xvii), (xviii) and (xix) when committed in international armed conflict to their commission in armed conflicts not of an international character.

The following crimes were included as article 8, paragraph 2 (e), (xiii), (xiv) and (xv), respectively: employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

By the same resolution, the Conference also adopted the respective Elements of Crimes.

See also Depository Notification C.N.651.2010 Treaties-6, dated 29 November 2010, available at <http://treaties.un.org>



From left: Mr. Gérard Dive (Belgium) with Mr. Marcelo Böhlke (Brazil) and Ms. Stella K. Orina (Kenya), coordinators of the Working Group on other amendments.

## Article 124 (transitional provision on war crimes)

The Review Conference adopted resolution (RC/Res.4) whereby it:

1. Decides to retain article 124 in its current form;
2. Also decides to further review the provisions of article 124 during the fourteenth session of the Assembly of States Parties to the Rome Statute.

## Strengthening the enforcement of sentences

The Review Conference adopted the respective resolution (RC/Res.3) whereby it:

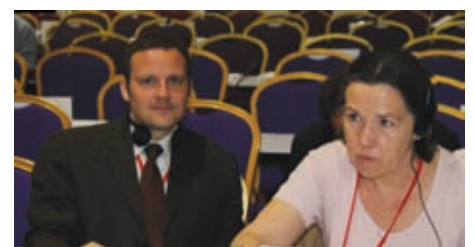
1. Calls upon States to indicate to the Court their willingness to accept sentenced persons in accordance with the Statute;
2. Confirms that a sentence of imprisonment may be served in a prison facility made available in the designated State through an international or regional organization, mechanism or agency;
3. Urges States Parties and States that have indicated their willingness to accept sentenced persons, directly or through competent international organizations, to promote actively international cooperation at all levels, particularly at the regional and sub regional levels;
4. Requests the Secretary-General of the United Nations to bring this resolution to the attention of all members of the United Nations, with a view to encouraging that the above objectives may be considered, as appropriate, in the relevant programmes of assistance of the World Bank, the regional banks, the United Nations Development Programme, and other relevant multilateral and national agencies.



Mr. Martin Sorby (Norway) introducing the draft resolution on the Enforcement of sentences



From left: Ms. Concepción Escobar Hernández (Spain), Chairperson of the Drafting Committee, and Mr. Juan Antonio Escudero and Ms. Ana María Fernández de Soto of the Secretariat of the Assembly



Mr. Jean-François Baffray and Ms. Christina Vasak, French delegation

## Drafting Committee

The Conference established a Drafting Committee, with the mandate to make recommendations aimed at ensuring the linguistic accuracy of and consistency between the various language versions of draft amendments to the Rome Statute as well as the respective draft elements of crime, prior to their adoption by the Conference. The meetings of the Committee were open to all delegations, including observers.

### Drafting Committee Members:

China  
France  
Jordan  
Russian Federation  
Slovenia  
Spain  
United Kingdom

## Stocktaking of international criminal justice

The Conference concluded its stocktaking exercise on international criminal justice with the adoption of the Kampala Declaration, a declaration on cooperation, a resolution on complementarity and a further resolution on the impact of the Rome Statute system on victims and affected communities.

### *The impact of the Rome Statute system on victims and affected communities*

The panel focused on three main topics:

- (a) Recognition of the right to participate;
- (b) Outreach and victim and witness protection as key components in delivering the mandate; and
- (c) Right to reparations and the role of Trust Fund for Victims

There was a wide recognition and re-affirmation of the importance of victims' participation and the need to reinforce the position of victims as the stakeholders and beneficiaries of the Rome Statute. In this regard, the Court had already developed a strategy in order to ensure an increased participation of victims. It was also agreed that a robust outreach programme was necessary in order to make the Court known, understood and reachable for the affected populations, giving a special focus on the remote communities.

The fundamental importance of ensuring appropriate protection of victims and witnesses, as well as intermediaries was highlighted, in addition to physical rehabilitation, psychological assistance and material support, provided by Trust Fund for Victims.

Furthermore, a number of panelists reiterated the importance of putting in place domestic measures to assist victims with a view to strengthening complementarity, which is a core principle of the Rome Statute.

This stocktaking exercise concluded with a resolution on the impact of the Rome Statute system on victims and affected communities, which, inter alia, recognized, as essential components of justice, the right of victims to equal and effective access to justice, support and protection, adequate and prompt reparation for harm suffered and access to information concerning violations and redress mechanisms. Moreover, the Conference underlined the need to optimize outreach activities and called for contributions for the Trust Fund for Victims.

The summary of the discussion is contained in RC/11, annex V (a), while the follow-up is contained in ICC-ASP/9/25.

Video:  
<http://tinyurl.com/RC-Victims>



### *Peace and Justice*

A moderator and four panelists made brief presentations, followed by an interactive segment with States, international organizations and civil society. Among the conclusions of the debate, the discussions made clear that the establishment of the ICC had brought about a paradigm shift, in which amnesty was no longer an option for the most serious crimes under the Rome Statute. There was now a positive relationship between peace and justice, although tensions between the two remained that needed to be acknowledged and addressed.

The ICC existence, it was argued, posed some new challenges. Mediators had to find ways to convince parties to come to the negotiating table against the backdrop of actual or possible indictments. The potential deterrent effect of justice would be undermined if it was viewed as an exceptional or negotiable measure. The panelists generally agreed that alternative justice mechanisms should not be seen as an alternative, but rather supplementary to criminal justice processes, with the ICC concentrating on the most serious crimes.

One of the conclusions of the panel was that the establishment of the ICC constituted a development as momentous as the adoption of the Universal Declaration of Human Rights.

The summary of the discussion is contained in RC/11, annex V (b).





### **Complementarity**

The panelists, who represented international and regional organizations, as well as domestic jurisdictions, recalled that the jurisdiction of the Court was complementary to national jurisdictions and would operate only where a State was unwilling or unable to exercise jurisdiction in respect of Rome Statute crimes. The panel recognized the challenge which some States faced in this regard, since they did not have the requisite capacity, and also highlighted the importance of States assisting each other at the domestic level, in order to avoid the impunity gap.

The Conference adopted the resolution on complementarity (RC/Res.1), wherein it recognized the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and the desirability for States to assist each other in strengthening domestic capacity in order to ensure that investigations and prosecutions of serious crimes of international concern can take place at the national level. The Conference also encouraged the Court, States Parties and other stakeholders, including international organizations and civil society, to further explore ways in which the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern could be enhanced. Furthermore, the Conference requested the Secretariat of the Assembly of States Parties, within existing resources, to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions.

The summary of the panel discussion is contained in RC/11, annex V (c), while the follow-up is contained in ICC-ASP/9/26.



### **Cooperation**

The panel discussion on cooperation considered, inter alia, the following questions: implementing legislation; specific issues which individual States Parties have encountered and good practices in this area; supplementary agreements and arrangements and other forms of cooperation and assistance; how to overcome challenges encountered by States Parties in relation to requests for cooperation; cooperation with the United Nations and other intergovernmental bodies, including regional bodies: consideration of the present situation and ways in which it can be developed; and enhancing knowledge, awareness and support for the Court: including through mainstreaming and galvanizing public support for and cooperation with the Court within States, including for the enforcement of Court decisions and arrest warrants.

The Conference adopted the Declaration on Cooperation (RC/Decl.2), in which it, inter alia, emphasized that all States under an obligation to cooperate with the Court must do so, reaffirmed the importance of compliance with requests for cooperation from the Court, emphasized the crucial role that the execution of arrest warrants plays in ensuring the effectiveness of the jurisdiction of the Court and encouraged States Parties to continue to enhance their voluntary cooperation with the Court and to provide assistance to other States seeking to enhance their cooperation with the Court. Furthermore, the Conference decided that the Assembly should place a particular focus on sharing experiences and requested it to examine how to enhance public information on, and promote an understanding of, the mandate and operations of the Court.

The summary of the panel discussion is contained in RC/11, annex V (d), while the follow-up is contained in ICC-ASP/9/24.



## Review Conference side events



The co-focal points for pledges, Netherlands and Peru, presenting the pledges to the President of the ICC, Judge Sang-Hyun Song, and the President of the Conference, Amb. Christian Wenaweser.

### Pledging ceremony

The Conference held a pledging ceremony in which States affirmed their commitment to national implementation of the Rome Statute, their willingness to provide assistance or support to such efforts by other States, or their commitment to cooperate with the Court. The co-focal points for pledges, Netherlands and Peru, announced that 112 pledges had been received from 37 States and regional organizations representing all regions of the world.

The pledges (RC/9) presented covered a variety of topics such as the conclusion of agreements or arrangements with the Court on the enforcement of sentences, relocation of witnesses or other cooperation issues, becoming a party to the Agreement on Privileges and Immunities of the ICC, promoting universality of the Rome Statute, financial support to the Trust Fund for Victims and the Trust Fund for the participation of least developed countries and other developing States in the sessions of the Assembly of States Parties, a well as the designation of national focal points.

### Enforcement of sentences agreements



From left: Amb. Yves Haesendonck (Belgium), Amb. Jaakko Laajava (Finland), ICC President Judge Sang-Hyun Song and Amb. Thomas Winkler (Denmark) during the signing ceremony.

### Moot court



A Moot court was held in the "People's Space" with an important participation of civil society and professional associations.



### War Victims' Day Football Game

From left: Ms. Miia Aro-Sánchez (Finland) and Ms. Elena Bornaad (Chile), focal points on victims





## Special Evening on Justice

The Board of Directors of the Trust Fund for Victims and the Cinema for Peace Foundation, organized a "Special Evening on Justice" in order to highlight the plight of victims. The United Nations was honoured with the Justitia Award.

Video: <http://tinyurl.com/CfP-ICCRC>

Photo/Video: © Cinema For Peace



Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the TFV, Mr. Ban Ki-moon, UN Secretary-General, Ms. Yoo (Ban) Soon-taek, Mr. Jaka Bizilj, the founder of Cinema For Peace, Ms. Bianca Jagger and Mr. Luis Moreno-Ocampo, ICC Prosecutor.



Ms. Bianca Jagger presenting the Justitia Award to Mr. Ban Ki-moon, United Nations Secretary-General.

## Trust Fund for Victims projects

### Approved projects

The TFV fulfils two mandates for victims of crimes under jurisdiction of the ICC:

1. Reparations: implementing Court-ordered reparations awards against a convicted person when directed by the Court to do so.
2. General Assistance: using voluntary contributions from donors to provide victims and their families in situations where the Court is active with physical rehabilitation, material support, and/or psychological rehabilitation.

Under its second mandate, The Trust Fund has 29 active projects in the situations of the Democratic Republic of the Congo (13) and northern Uganda (16). These projects are reaching an estimated 70,200 direct beneficiaries (victims) and 275,000 indirect beneficiaries (victims and their families) in both situations.

Since late 2008, the TFV has directly reached an estimated 70,000 victims of crimes under the jurisdiction of the ICC. The great majority of these are victims from affected communities.

- 72% Being reached through the TFV's reconciliation projects.
- 4% Victims receiving other forms of direct assistance include mutilated victims receiving reconstructive surgery and other forms of medical rehabilitation.
- 5% Children orphaned by and/or made vulnerable by crimes under the ICC's jurisdiction.
- 7% Victims of sexual and gender-based violence (SGBV).
- 8% A category of victims and their families impacted by mass crimes.

### Implementing partners

The TFV now has an extensive network of international and local implementing partners both direct grantees and sub-grantees:

- (a) 8 international partners
- (b) 12 local partners
- (c) 16 local sub-grantees

### Funds

Total TFV voluntary contributions : € 5.8 million (November 2010)

- € 4.8 million <sup>1</sup> have been obligated for grants in the DRC and northern Uganda since 2007/08.
- € 1 million has been allocated for activities in the Central African Republic and for any potential Court orders for reparations.

<sup>1</sup> This amount includes project cost-extensions in DRC and Uganda which will extend to end of 2011.



Mr. Pieter de Baan,  
Executive Director of  
the Secretariat  
of the Trust Fund for Victims

## Review Conference: Reflections

### ΚΡΙΣΗΜ ΚΟΝΦΕΡΕΝΣ: ΚΕΦΑΛΑΙΟ

**Judge Sang-Hyun Song, President of the International Criminal Court**



The Review Conference held in Kampala was a significant milestone which drew attention globally to the Rome Statute and the ICC. The Conference reaffirmed the strong conviction of States that a multilateral system aimed at ending impunity for the most serious crimes of international concern is highly necessary. On a symbolic level it was important to hold the Review Conference in one of the situation countries and I appreciated the opportunity to reach out to victim communities in the margins of the Conference.

While the ICC itself did not take a position on amendments of the Statute,

the fact that the Review Conference came to an agreement on resolutions concerning the addition of new crimes to the ICC's jurisdiction was clearly a major development which also reflects the trust of States Parties in the role that the Court plays.

The process of public pledges and the stocktaking of international criminal justice added important value and breadth to the Review Conference. The Conference created significant potential for progress in the key areas of universality, cooperation and complementarity. Impunity can only be ended if the ICC crimes and Rome Statute issues are mainstreamed in

national justice systems and in rule of law capacity-building and if the ICC receives the cooperation that it needs to carry out its mandate. I urge States and other stakeholders to maintain the momentum reached in Kampala in order to expand and deepen the impact of the Rome Statute system.

Three States have already ratified the Rome Statute since the Review Conference and others have indicated their intention to do so. I will continue my efforts to raise awareness globally about the ICC in order to facilitate an informed decision-making process in countries considering ratification.

**Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court**



Kampala in 2010 was an important moment to take stock and gain encouragement from the renewed affirmation of States Parties to their commitment to the Rome Statute.

The Kampala Declaration upheld the States' determination to continue and strengthen efforts to promote victims' rights under the Statute; enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern pursuant to the principle of complementarity; and – of critical importance – to ensure full cooperation with the Court, in particular, the execution of arrest warrants. We also

welcome States Parties' recognition that justice is a fundamental building block of sustainable peace.

We welcome the resolution on the impact of the Rome Statute system on victims and affected communities. The Office would like to add that for the States and civil societies, assisting victims can already be factored into existing programmes such as development aid, thus there is no need for victims to wait for the end of judicial proceedings to be compensated.

During the complementarity stocktaking exercise, the Office suggested that the positive complementarity is about

States assisting one another, receiving additional support from the Court and/or civil society to meet Rome Statute obligations. The Office would like to emphasize that support in this context should not be limited to the technical capacity but also to encourage political commitment to strive for genuine accountability. The Office will continue to contribute international efforts to combat impunity.

The stocktaking on peace and justice also addressed the fact that amnesty for the most serious crimes is no longer an option, that a new world had come into being.

**Mr. Philippe Kirsch, Former President of the ICC and Chairman of the 1998 Rome Diplomatic Conference**



When the 1998 Rome Conference decided that a review conference should be held seven years after the entry into force of the Statute of Rome of the ICC, it had in mind mainly amendments to the Statute, specifically to the list of crimes falling within the jurisdiction of the Court. The crime of aggression was at the top of that list because the Court could not exercise its jurisdiction over this crime before some fundamental issues left unanswered in Rome had been resolved.

The Review Conference held in Kampala from 31 May to 11 June 2010 was broader in scope. Nevertheless, it will probably be remembered first and foremost for having cut the Gordian knot of the crime of aggression, in spite of the considerable difficulties involved. Few had expected a settlement of the issue in Kampala, let alone a solution that would gain general agreement. Like any negotiated solution it does not of course satisfy everyone; but I for my part see it as a remarkable achievement of

the Conference and its leaders, especially its President, Ambassador Wenaweser, and Ambassador Zeid Ra'ad Al Hussein, coordinator for the crime of aggression, because they managed to avoid both a further postponement of the issue and the real risks of serious divisions between States. Let us hope that the concern of the Conference to take account of the position of States not party to the Rome Statute will lead to more ratifications, and, at the very least, active support for the system from those States able to provide it.

But the Kampala Conference is not limited to the crime of aggression. The adoption of an amendment extending to non-international conflicts the prohibition of certain weapons already applicable to international conflicts, while modest in itself, may revive the process of modernizing international humanitarian law initiated in Rome. The discussions on complementarity, cooperation, the impact of the Court on victims and affected communities, and on the relationship

between peace and justice were timely, touching on elements that were sensitive but critical to the functioning of the system. Similarly, the Kampala Declaration and the formal pledges made by a good many States and the European Union towards the Court represent a new beginning.

The results of Kampala can be measured only in the light of the follow-up, so that the very general texts that were adopted do not remain empty shells. At all events the Review Conference demonstrated a common desire to give new momentum to the historic undertaking which the ICC constitutes. I, too, see a return to – as the Conference President put it shortly after the event – “the spirit of Rome”, to a broad and ambitious vision which the day-to-day routine of the Court can sometimes cause us to lose sight of. It is important that this moment be seized and the momentum maintained.



The First Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda, was a landmark in the history of international criminal justice. The Parties to the Statute decided on amendments and other steps that, taken together, will strengthen the Court and advance its efforts to close the door on an era of impunity and usher in an age of accountability.

I was pleased to join the States Parties as they took stock of the state of international criminal justice and the achievements of the Court, and reflected on strategies for the way ahead. The United Nations and I personally strongly support the Court's mission and want to see it fulfil its great potential. The discussions were enriched by the presence of leading experts in the field, civil society and representatives of

States that are not party to the Statute. The agreement on the definition of the crime of aggression, and on the conditions under which the Court is to exercise its jurisdiction with respect to that crime – the fourth statutory crime of the Rome Statute -- is major progress. I encourage all States Parties to ratify these amendments.

The States Parties also adopted a comprehensive declaration and specific outcome documents on issues ranging from the impact of the Rome Statute system on victims and affected communities to complementarity and cooperation with the Court. I am encouraged by the determination of the States Parties to strengthen international criminal justice and the ICC as its centrepiece.

The ICC faces clear challenges in consolidating itself as a vital and indispensable part of the community of international organizations. It does not yet enjoy universal support. There are misunderstandings about when, where and how it can and should act. Yet these are growing pains. The big picture is equally clear: the Court is our main hope in the quest to end impunity for the worst crimes. If we are serious about combating impunity and developing a culture of accountability, we must build on the achievements of Kampala and support the Court's work. Our generation has an opportunity to significantly advance the cause of justice and, in doing so, to reduce and prevent unspeakable suffering. If we fail to heed Kampala's call, we fail humanity.

Video:  
<http://tinyurl.com/RCICC-UNSG>

**Mr. Ban Ki-moon,  
 Secretary-General of  
 the United Nations**



I was greatly encouraged that Kampala allowed reflections on the impact of ICC's criminal justice system on victims and affected communities; the relationship between peace and justice; the notion and practice of complementarity; and, the role of international cooperation in the Court's work.

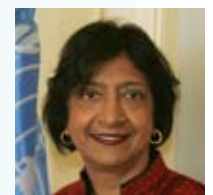
Perhaps, the most significant achievement of Kampala was the adoption of a definition for the crime of aggression, although the jurisdiction will only kick in no earlier than seven years from the date of adoption.

It was particularly encouraging to see States recommit themselves towards the ideal of ending impunity and ensuring accountability. I am happy to have observed in this connection the general agreement that peace and justice are not opposing concepts.

Finally, I commend and welcome the deliberate efforts made in Kampala to refocus attention to victims as occupying the center-stage of the Court's work. Ways must continue to be explored to ensure that their participation in the cases is meaningful, not only for the sake of representation and protection of their interests in full,

but also serious efforts at ensuring the existence of a solid and credible scheme of reparation and restitution for victims of gross violations of human rights law and serious violations of humanitarian law.

**Ms. Navi Pillay,  
 United Nations High  
 Commissioner for  
 Human Rights**



*"From the seven hills of Rome to the seven hills of Kampala"*

From whichever point of view you look at the Review Conference in Kampala, it can only best be described as victorious. The adoption of amendments to the Rome Statute, especially on the crime of aggression in the final minutes of the conference dealt the last blow to impunity, a clear reflection of the hard work of the President of the ASP, the Secretariat and participating States. Victim communities put a face to justice when they met and interacted with delegates, including playing football alongside the Secretary General of the United Nations H.E. Ban Ki-moon and the President of Uganda H.E. Yoweri Museveni. By having dialogue with Court Officials and non-governmental organizations that had in the past only

been a mystery to victims, the ICC ceased being a phantom and appeared real, with the capacity to render justice. States Parties, academicians and legal practitioners were positively challenged to take cooperation with the Court more seriously. It was an excellent opportunity for all involved to look back at how far we have come from Rome, yet how little we appear to have tangibly achieved to the detractors.

Uganda and Africa as a whole changed forever by the gesture of bringing the ICC closer to the most affected on the continent. It was humbling to receive excellent feed back on the experiences of the delegates at the conference, how much they enjoyed the warmth of Ugandan hospitality, the beauty of nature and setting the agenda for

positive complementarity. The Review Conference gave momentum to the evolution of implementing legislation and the Special War Crimes Division of the Ugandan High Court is now fully operational, an example for other States Parties to emulate.

Kampala passed the triumphant torch on to the ASP which is left with no choice but to keep it burning brighter for the benefit of victims.

**Ambassador  
 Mirjam Blaak,  
 Deputy Head of  
 Mission, Uganda  
 Embassy in Brussels**



**Mr. William R. Pace, Coalition for the International Criminal Court**



Several hundred members of the Coalition for the ICC participated in the Review Conference; more than the governments, international organizations, media and others. NGOs played a crucial role in framing and enhancing the “review” of the Rome Statute system. Through a wide range of events, including parliamentary assemblies, debates, roundtables, moot courts and press conferences, NGOs ensured that the voices of civil society and victims were heard. Once again in Kampala, the invaluable role played by the Coalition and civil society was acknowledged in the plenary, in speeches by States and experts. UN Secretaries General Ban Ki-moon and Kofi Annan participated in the

Coalition’s opening event “The Road from Rome to Kampala and Beyond” on the first day.

The Coalition took an active role in both parts of the Conference: amendment negotiations and the institution-building forums on cooperation, complementarity, peace and justice, and victims and their affected communities. Indeed, it was the Coalition and a few key governments who insisted that such a major and historic gathering should address other “stocktaking” issues confronting the ICC system.

Though controversy continues, the multilateral achievement of the adoption of the Crime of aggression

definition and conditions for exercising jurisdiction by consensus is another example of the extraordinary uniqueness of the ICC community. The Coalition will be tracking governments’ and our members’ plans for ratification of the crime of aggression, as well as future amendments.

The Coalition is now concentrating on the follow up at the upcoming Assembly; and on next year’s major elections. It is in these decisions and actions that the true legacy of the Conference will be determined.

**Ms. Joyce Freda Apio, Coordinator UCICC  
Mr. Mohammed Ndifuna, CEO HURINET-U**



Assessing the impact of the Conference on the international justice system is rather early. Uganda has been in the spotlight for failing to execute the arrest warrant of Joseph Kony and States’ cooperation remains an important factor in assessing the success of the ICC. Uganda has enacted the ICC Act, a proposal for a National Reconciliation Bill and the Transitional Justice Bill. It is presumed that unless there are problems with these acts, Uganda is in line with the principle of complementarity.

Special attention is given to victims and affected communities and how they will be catered for once States honor their pledges to contribute to the Trust Fund for Victims.

States Parties’ ratification of the

amendments is required. Uganda should be exemplary and ratify the amendments as it was the host of the Conference.

Civil society wanted to bring the voices of the affected communities to be heard and the situation of the victims of the international crimes was pivotal to discussions at the Conference. Thus, civil society had organized visits to affected communities prior to the Conference.

The side events acted as a ‘one stop information centre’ for the ICC’s work and for international criminal justice. Civil society achieved what they set out to do. The plight of affected communities and victims was sufficiently discussed and key decisions were taken.

The debate on the crime of aggression became much amenable to global politics within the UN system but it resulted in a compromise that leaves much to be discussed. In 1998, efforts were made to define the crime of aggression. However, consensus could not be reached and it had to be deferred until after seven years. The Conference moved a step forward by defining the crime of aggression and setting the conditions for the exercise of jurisdiction.

**Review Conference organization**

The Review Conference in Kampala was organized by the Secretariat of the Assembly with a budget of close to €1.3 million. The substantive servicing was provided by the Secretariat (core staff of nine persons, plus an additional 21 under short-term contracts). The technical servicing was provided by the Secretariat with assistance from the United Nations Office in Nairobi (UNON), which provided translation, interpretation and conference room servicing support, as well as on-site security under the overall supervision of ICC security; this cooperation was based on a MOU under the Relationship Agreement between the ICC and the UN. For its part, the Government of Uganda covered the cost of the rental of the premises of the Conference, the off-site security, the issuance of badges for participants, as well as some of the Secretariat costs related to travel, shipping of equipment and supplies.

Total budget for MP-IV of €1.3 million included: €463,000 for UNON; €72,000 for UN services incurred by the three day resumed eighth session at UNHQ; €20,000 for the travel of the panelists.

Secretariat team with Ms. Elisabeth Rehn, Chair of the Board of Directors of the Trust Fund for Victims, and Mr. Jaka Bizilj, from Cinema for Peace





## Interview with Ambassador Christian Wenaweser President of the Assembly of States Parties



*What is your overall assessment of the Review Conference?*

My personal assessment is very positive: We had a dynamic and constructive conference that achieved all the things that we had set out to do and in respect of aggression probably exceeded the expectations of many. All outcomes were adopted by consensus, and the stocktaking exercise offers us a very solid basis for our future work. Last but not least, it was very important to have this conference take place in Africa, in a country that has first hand experience with the work of the Court – and also in close proximity to victims and affected communities.

*Would most States share that view?*

I have been given a very positive response here in New York, both from UN officials and from States' representative. It is often viewed not just as an important event for the Court, but also as a significant success for multilateral diplomacy. The Review Conference has certainly created a lot of positive energy around the Court, and I hope that we can use this for our future work, both in the Assembly of States Parties and in other fora.

*Can you highlight the most salient outcomes?*

We adopted the Kampala Declaration – a political declaration which reaffirms the political support of States Parties to the ICC – and then several texts in the framework of the stocktaking exercise that will serve as a very good basis for our future work in the framework of the Assembly. The highlight for most was probably the adoption of the resolution on the crime of aggression that deals with the topic in a comprehensive manner, i.e. it covers both the definition and the exercise of jurisdiction – and it does so by consensus. Of course, there was also the first amendment ever to the Rome Statute, on the initiative

of Belgium: an expansion of the category of prohibited weapons under article 8, dealing with war crimes, again agreed to by consensus.

*In what way was the general debate different from the one that takes place annually at sessions of the Assembly?*

We had of course far more high-level participation, and the debate offered a broader and more comprehensive political picture and stronger emphasis on some of the political aspects of the Court's work, in particular the role of the Court in Africa.

*As regards the stocktaking exercise, will there be tangible follow-ups?*

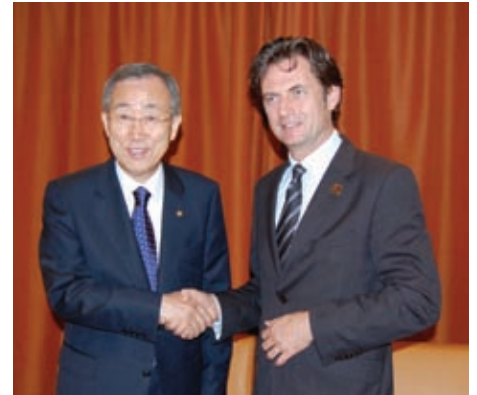
Certainly, follow-up will be essential for ensuring that the stocktaking discussions are value added in the long run. The relevant discussions began pretty much immediately after the Kampala Conference, and have already continued in the form of a retreat on Complementarity, organized by the International Centre for Transnational Justice, which allowed us to delve deeper into the issue of positive complementarity. I hope that we will see further concrete results in December.

*How will the Assembly follow-up on the over 130 pledges formulated during the Conference?*

This has been discussed in the Bureau – States will have further opportunities to make pledges at this and subsequent Assemblies. The focal points for this issue, the Netherlands and Peru, have also indicated that they would contact States who have made pledges to consider the status of their implementation.

*What was the highlight and the low point of the Conference?*

The moment of adoption of the resolution on aggression was the highlight for



me, probably for many others as well. There was no low point for me, while there were of course difficult and very difficult moments.

*What's your assessment of the numerous side events, which in some cases overlapped with each other and resulted in a lower than expected participation by the delegates?*

There was very strong interest, and there was limited time. So there were indeed days when side events were held simultaneously. But the quality on average was very good, and the conveners seemed generally quite happy. Several particularly successful side events involved outreach to victims, and provided an excellent opportunity for delegates to consider the impact of the Court on the ground.

*Can you tell us about some of the challenges posed by holding the Conference in a venue outside New York or The Hague?*

There were a lot of logistical challenges and difficulties, and the host State would be the first one to subscribe to that. Patience and creativity were required to an extent that goes far beyond what is customary,



but in the end, everything worked out for the best. I wish that we could have done a number of things more efficiently, but I am also grateful that the Conference was nevertheless held in a positive atmosphere. There was understanding on the part of delegations, and there was always the will to address difficulties on behalf of the host State. The charm of the location more than made up for some organizational glitches.

*The participation of States, (84 States Parties, 30 Observer States, 1 invited State), was lower than what would have been expected for a Conference of this importance. What factors can you attribute that to?*

The calendar was one reason, I think, the remote location and the budget cuts in many States another. While I think that the advantages of holding the Conference in Kampala far outweigh the downsides, we must nevertheless keep this in mind for the future. We have had all States Parties present in the past, for example for the purpose of elections. No one will argue that those were more important occasions than the Kampala Conference. I wish to thank the States that have contributed to the trust fund for least developed countries and other developing States and enabled delegates from those countries to be present in Kampala.

*At an early stage the Assembly decided that only those proposals of amendments to the Rome Statute that appeared to have a high probability of attaining consensus would be discussed in Kampala. This allowed a focused discussion that resulted in the adoption of two important amendments. How will the Assembly deal with the other proposals for amendments of the Rome Statute that are on the agenda for the December 2010 session, which are*



*more numerous and do not necessarily seem to have the level of support that would meet the threshold applied in the run-up to Kampala?*

We have established a working group on those amendments and that group will discuss how to proceed with these proposals. My personal hope is that they will remain on the backburner for a number of years and that the Assembly will give priority to other issues on the agenda.

*What are the key objectives and challenges for the following year, which would be the third of your mandate as President?*

We are entering a new phase after Kampala. We have positive momentum, and we have a comprehensive solution on the crime of aggression. This gives us the political space to focus on other issues: the political strengthening of the Court, including through enhanced cooperation; strengthening the understanding that the ICC is at the core of the fight against impunity, but not the only

tool to carry out this effort; and addressing institutional and governance issues. Furthermore, we have ahead of us a number of very important elections for judges and senior officials, including the Prosecutor, for which we must prepare very thoroughly. I also hope that we can use the momentum from Kampala to make further steps towards universality.

#### Review Conference Statistics

##### Participation

- 84 States Parties
- 30 Observer States
- 1 Invited State
- 1 Entity
- 17 International Organizations
- 53 NGOs

**2828 Registered Participants**

#### Review Conference figures

Seating capacity of the main conference room: 670\*  
 Seats allocated per State Party: 4  
 Seats allocated per Observer State: 2  
 Number of side events: 72

Average number of meals served each evening: 475  
 Best selling dish: Nile perch  
 Best selling drink: Nile beer  
 Most popular side trip: two hour ride to visit the source of the Nile

\* Video links were set up to nearby conference rooms in order to accommodate the large numbers of attendees that could not be seated in the main conference room during the opening session

#### Review Conference statistics - Documentation

Number of documents	Number of pages	Pages per language						Total of printed pages
		ENG	FRA	SPA	ARA	CHN	RUS	
89	876	844	513	452	347	255	255	
x Copies per language		400	130	70	40	10	10	
<b>= Printed pages per language</b>		<b>337,600</b>	<b>66,690</b>	<b>31,640</b>	<b>13,880</b>	<b>2,550</b>	<b>2,550</b>	<b>454,910</b>

#### President of the Assembly visit to The Hague

During his October visit to The Hague President Wenaweser held a retreat with the heads of the three organs of the Court, met with 17 of the judges, as well as with representatives of States. He also delivered a lecture at the Asser Institute on the Review Conference outcome.





## Interview with Ms. Bianca Jagger



*Why did you decide to attend the ICC Review Conference in Kampala?*

I came to Kampala because I hoped that the first ICC Review Conference would incorporate the crime of aggression into the Rome Statute and that it would focus our attention on the prohibition of war. At the Nuremberg trial the judges regarded war as the Supreme Crime. I hoped that the Review Conference would establish the conditions of the ICC's jurisdiction over such crimes and would be a milestone event for justice and human rights.

One of the reasons I attended the Conference in Kampala was to advocate for the ICC to extend its jurisdiction to cover Crimes against Present and Future Generations (beyond those already proscribed by the ICC's Rome Statute as Crimes Against Humanity, War Crimes, or Crimes of Genocide).

The Foundation I founded in 2006 and currently chair, the Bianca Jagger Human Rights Foundation has been working with Professor Otto Triffterer, Former Dean of the Law Faculty of the University of Salzburg, Editor of the Commentary of the Rome Statute of the International Criminal Court, and legal experts, academics and NGOs to develop a legal framework that will hold accountable CEOs and managements of companies committing grave human rights abuses and environmental destruction. We are developing a legal definition of Crimes Against Present and Future Generations, and are advocating the establishment and reinforcement of new and existing binding treaties and mechanisms in national and international law, in order to protect communities and the environment.

Such crimes are acts or conduct committed with the knowledge of their severe consequences to the health, safety, or means of survival of present and future generations of humans, and also to the survival of entire species or ecosystems.

For the past three decades of my life I have campaigned for human rights, civil liberties, peace, social justice and environmental protection throughout the world. Throughout my life I have been concerned about the issue of accountability, as I grew up in Nicaragua, where I saw first hand the effects of oppression and impunity.

As a teenager, I participated in student demonstrations against the terrors inflicted by President Anastasio Somoza's National Guard. This inspired me to pursue my interest in politics. I was awarded a scholarship to study political science in France at the Paris Institute of Political Science. It was there that I discovered the value of freedom and democracy, the rule of law, judicial review, habeas corpus, justice and respect for human rights - concepts I had only dreamt about in Nicaragua.

These principles are enshrined in the ICC - the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes.

In 1998 I attended for a few days the Rome Conference; I was filled with hope at the prospect of the establishment of a permanent International Criminal Court.

*In connection with these less known facets of your life, could one say that there are two different Biancas - one during your marriage and one afterwards?*

It is absurd to consider that an individual of sound mind can be two different people. As I mentioned earlier, I grew up in Nicaragua, not in London, New York or Paris, I was born, and grew up under a dictatorship - of course this experience shaped my views on the world.

During the first ten years of my life, I enjoyed a privileged upbringing. After my parents divorced my mother found herself single, without a profession and with three small children to care for. Witnessing the discrimination of a patriarchal Nicaraguan society against a single working woman inspired me to become an instrument of change in the world. I was determined never to be regarded as a second-class citizen because of my gender.

The fact that I married someone famous does not mean that I changed my core values. My marriage was simply a parenthesis in my life. My divorce coincided with the fall of the Somoza dictatorship. After it, I continued doing what I had set out to do all along.

*What is the reason behind your frequent travels to post-conflict and sometimes conflict areas?*

In 1981, I was invited to be part of a US Congressional fact-finding mission to La Virtud, a UN refugee camp in Honduran territory 20km from the border with El Salvador. Soon after we arrived, an armed death squad from El Salvador crossed the border, entered the camp and rounded up about 40 refugees. The refugees' thumbs were tied behind their backs; the death squad intended to take the hostages across the border to El Salvador, with the Honduran army's blessing. The delegation, the relief workers and I decided to follow the death squads. The families of the hostages joined us and together we ran along a dry river bed for about half an hour, armed only with cameras. During the chase, some of us were taking photographs.

We feared that the death squads were going to kill the hostages once they arrived in Salvadorian territory. Finally, we came within earshot of the death squads and the hostages. The death squad turned around brandishing their M-16's. Fearing for our lives, we began to shout, "You will have to kill us all," and, "We will denounce your crime to the world." There was a long pause. The death squads talked among themselves and, without explanation, left, leaving their hostages free - unharmed. This experience was a turning point in my life. I realised the importance of bearing witness when innocent people's lives are at stake, how a small act of courage can make a difference and sometimes even save lives.

Throughout the last thirty years, I have worked in war torn areas denouncing genocide, war crimes and human rights violations. I have also worked on peace and reconciliation processes in countries throughout Latin America including Nicaragua, El Salvador, Honduras and Guatemala, and in Bosnia, Iraq, Afghanistan, and the occupied Palestinian Territories, among others.

I have committed myself to speaking for those who have no voice. I believe I have a duty to speak for those who have no means to combat the injustice inflicted upon them, no mechanisms at their disposal to enforce their rights and who have no access to the media - this fundamental duty is at the heart of my work.

*Were you able to do this at the Review Conference?*

I travelled to Lira in Northern Uganda with the headmaster of the Rachele Comprehensive Secondary School. I wanted to see for myself how young people affected

by war have been reintegrated into society.

The school provides rehabilitation and education to 345 youths. 157 were abducted by Joseph Kony's Lord's Resistance Army (LRA). In addition to general subjects the school teaches vocational courses, including agriculture, forestry, metal works, carpentry, business, sewing, and computers.

I talked to some of the boys who were abducted and forced to become child soldiers, and some of the girls who were forced to become sex slaves. It was important for me to listen to their stories, their concerns, their aspirations and hopes for the future. They asked pertinent questions about the role of the ICC – questions that require answers:

- (a) Does the ICC have an army to arrest the indicted individuals?
- (b) What is the ICC doing for the victims?
- (c) Should the ICC negotiate a settlement with the indicted individuals?
- (d) Why has no one yet been able to arrest Joseph Kony?
- (e) Why does the ICC allow children in countries, other than Uganda, to continue to be abducted by Kony?

They talked about their childhood being lost and their difficulties re-entering society. Many of them expressed concern for their futures. They asked if a Head of State could be held accountable and brought to justice.

This school is a symbol of hope. It provides support and rehabilitation to children whose lives have been devastated by war, and helps them to reintegrate into society. I tried to answer their questions and explain to them what the ICC could do and could not do.

I was very moved by the students, and I was impressed by the efforts of the school staff, to help them rebuild their lives. I hope the school receives the funding it desperately needs to continue its outstanding work.



*How do you assess the segments of the Conference and the side-events which focused on victims and what do you think can be done to assist them more?*

I am concerned that there was not enough focus on strengthening national trials, in addition to ICC trials in The Hague. I would like to see more attention focused on how States can bolster accountability at home. States Parties need to assume responsibility – unless governments make arrests, the ICC cannot deliver justice to victims of mass atrocities.

I agree with the ICC Prosecutor, Mr. Luis Moreno-Ocampo, on the immediate compensation of victims. Victims should not have to wait for convictions before they receive assistance.

*Some might say that you are more of a celebrity than an activist.*

I think that my body of work speaks for itself.

For the past thirty years of my life I have campaigned for human rights, civil liberties, peace, social justice and environmental protection throughout the world. I have given speeches and written articles in support of the rights of children, women, prisoners on death row, and indigenous and tribal people; also on the issues of conflicts in Central America, the former Yugoslavia, Iraq and Afghanistan, genocide, war crimes, Crimes against Present and Future Generations, climate change, the rainforest, and corporate social responsibility.

I have worked closely with the UN, Amnesty International, Human Rights Watch, Action Aid, Save the Children and Christian Aid.

*What do you see as the significance of the Review Conference?*

I believe that despite its setbacks, the historical significance of the Review Conference should not be underestimated.

We are reaching another plateau in the development of International Law, and it is my hope that one day we will see the operationalization of the provisions on the crime of aggression.

The most important issue in Kampala was not to undermine the integrity of the Rome Statute, but rather to strengthen the system of international justice, to avoid politicization of the ICC and to safeguard its independence.

Although the amendment on the crime of aggression is certainly not what I hoped to see - I was very disappointed by the seven year delay - it was very important for all of us to be in Kampala for various reasons.

The stocktaking exercise underlined the most important principles on which the ICC is based. The first one is complementarity, without which the ICC cannot work successfully. The ICC acknowledges the importance and primacy of domestic jurisdictions. Furthermore, the existence of the ICC has prompted some governments to establish local mechanisms that complement the ICC.

The second important principle is cooperation. States Parties must understand that they have an obligation to cooperate; that they have to execute the warrants of arrests and help with the investigations – otherwise, the ICC cannot be effective. When I visited the school in Northern Uganda, the kids asked me if the ICC had an army to arrest the indictees. I told them no; that the ICC needs the States to fulfil their obligations and arrest them.

Another important achievement of Kampala was the acknowledgement that peace and justice are not exclusive concepts, but that they go hand in hand. There cannot be peace without justice. This was a very clear message that came out of this conference.

The most important message that Kampala sent to the world is that the ICC, with the help of the countries and the international community, will put an end to impunity for perpetrators of the most heinous crimes, the most egregious of which are the crimes of aggression.

### Personal favorites

#### Preferred newspaper/magazine:

The Guardian, The Financial Times, The Herald Tribune/The New Yorker, The New York Review of Books, The London Review of Books

#### Recent book/movie to recommend:

*Prosperity without Growth* by Tim Jackson / *Miral* – directed by Julian Schnabel, based on the book by Rula Jebreal

#### Most admired persons:

Mahatma Gandhi and Eleanor Roosevelt

#### Favorite meal:

I am a vegetarian, who eats fish. I love vegetable soup and mashed potatoes. One time a year I like to eat turkey at a traditional Thanksgiving dinner

#### Places still yearning to visit:

The Pyramids of Giza in Egypt, Prague, Bhutan

#### Pets:

I like dogs and horses, but unfortunately I don't have either at the moment



## Plan of Action: Visit to Guatemala

At the invitation of the Government of Guatemala, the President of the Assembly, Amb. Christian Wenaweser, and the Prosecutor of the Court, Mr. Luis Moreno-Ocampo, visited Guatemala on 19 and 20 August 2010. They provided information to various institutions of State and other sectors of Guatemalan society on the ICC activities and the conditions under which the Court exercises jurisdiction.

Press articles: <http://tinyurl.com/PASP-GTM>

Photo gallery: <http://gallery.me.com/asp.icc/100102>

*Right:* President Alvaro Colom with Mr. Moreno-Ocampo and President Wenaweser  
*Below:* meeting with the Institute for the Public Defense



## Plan of Action: Commonwealth meeting on the ICC

From 5-7 October 2010, the Legal and Constitutional Affairs Division (LCAD) of the Commonwealth Secretariat organized a meeting on the ICC at Marlborough House in London. ICC President Sang-Hyun Song delivered the keynote speech at the gathering of legal advisers and experts from numerous Commonwealth States.

Video:  
<http://bcove.me/pviajfyf>

The topics discussed included, the work of the Commonwealth Secretariat on ICC related issues; the challenges faced in ratifying the Rome Statute and in the adoption of implementing legislation; the promotion of the Rome Statute within the Commonwealth; an overview of the outcome of the Kampala Review Conference; including the issue of complementarity and building national capacity to prosecute serious crimes.

Photo gallery:  
<http://gallery.me.com/asp.icc/100131>

One of the conclusions of the meeting was to revise the Commonwealth ICC Model Law. Two follow-up meetings on the issue are tentatively scheduled for 23-25 February and 23-25 March 2011.



## ASP Publication \*

Seminar on the Rome Statute Review Conference:  
 Key Challenges for International Criminal Justice



\* Arabic, English, French and Spanish

## The 114 States Parties to the Rome Statute



## Interview with Mr. Julián Guerrero, Coordinator of the Group of Friends of the International Criminal Court in The Hague



### Minister and Deputy Chief of Mission at the Embassy of Colombia

*Having been posted in The Hague for most of the period since 2004, how have you viewed the Court's institutional development since then?*

The establishment of the ICC as a new permanent international judicial institution has demanded an enormous effort and the dedicated commitment and collaboration of the Court's organs, States Parties, non-States Parties and civil society. All these stakeholders have united efforts to ensure an adequate institutional framework that will allow the Court to carry out its judicial mandate, with independence and impartiality, in a not always easy international political context.

In its seven years of operations, the Court has consolidated its organizational structure, has established adequate mechanisms to support victims and witnesses, and has strengthened its outreach and public information strategies. Despite not having yet completed a full judicial cycle, it has taken important decisions on issues such as victims, admissibility and evidence, to name a few. All this work has increased the trust of the international community in the Court, as a key actor in the fight against impunity for serious crimes.

Despite all the progress there are still important institutional challenges mainly on the issues of cooperation and complementarity.

*How do you think the outcome of the Review Conference can contribute to that process of institutional development?*

The Review Conference in Kampala completed the legal development of the crime of aggression, which was an outstanding

issue since the 1998 adoption of the Rome Statute. Even if the beginning of the exercise of jurisdiction over this crime by the Court has been delayed, the fact of having the definition, the elements of the crime and the procedures in place, is a good sign of the political will States have to not leave this crime unpunished. The amendment adopted in Kampala also reaffirmed the growing support and trust in the Court's work. The ICC will now have the challenge of adjusting its institutional framework to deal with the crime of aggression without affecting its work in relation to the other crimes under the Statute.

On the other hand, the stocktaking exercise touched upon crucial challenges related with the issues of justice and peace, cooperation, complementarity, and the impact of the Rome Statute on victims and affected communities. These discussions showed the importance of not making this a one-off exercise. On the contrary, there was general agreement about the need to continue addressing these topics. The Group of Friends is already contributing to this purpose, which it considers crucial to the institutional development of the Court.

*How long is your mandate as Coordinator of the Friends in The Hague and what are the plans for the future?*

The informal nature of the Group means that there is no specific term for its Coordinator. My predecessors undertook this position for the period they were posted in The Hague. However, I believe it is important not to remain as Coordinator for too long in order to allow others to bring innovative ideas that are essential for the benefit of the Group.

As regards plans for the future, I have been in close contact with the members of the Group and other stakeholders in an effort to define where best to concentrate the Group's efforts. I am also looking into the comparative advantage of being in The Hague and hence close to the Court. Therefore, in addition to the role of the Group as a forum for sharing information, we have identified some areas where we want to place special attention, such as the jurisprudence of the Court and practice of international tribunals. However the Group is open to discuss any topic.

*Who assists you in your endeavours?*

The Group of Friends, besides the Coordinator, has focal points for specific issues. Since my appointment as Coordinator,

I have reviewed, in collaboration with its members, the relevance of maintaining existing focal points and of creating new ones, with the aim of addressing current areas of interest. They are key actors of the Group and, to a great extent, assist me in my endeavours. I also count with the valuable support and advice of NGOs.

*How will the Friends avoid an overlap with The Hague Working Group, which is a very active subsidiary body of the Assembly's Bureau and which has facilitators on different issues?*

The Group of Friends is not in competition with The Hague Working Group; they rather complement each other. The Friends does so mainly in two ways. First, by filling the gaps that might exist where there are issues that do not fall under the specific mandate of the Working Group. Second, by discussing related topics in an informal setting, with additional stakeholders, thereby contributing to find solutions to current challenges faced by the Assembly.

*How much importance could one say that the ICC has for Embassies in the Netherlands, given that they must deal with bilateral issues in addition to the other multilateral organizations based in The Hague?*

Although the importance of the ICC varies from Embassy to Embassy, I consider that most missions in The Hague have the Court on their list of priorities. The Court is relevant not only for States Parties but also for States not Parties to the Rome Statute. Developments in international criminal justice are increasingly having an impact in how States deal with issues such as human rights, impunity and peace and, therefore, the ICC requires a high level of attention by diplomatic missions.





What percentage of your working hours do you devote to ICC matters?

As Deputy Chief of Mission of the Colombian Embassy one of my main responsibilities is following all ICC related issues, which I have been doing for almost six years. For Colombia, a country that is committed to the Court and that is undertaking a successful transitional justice process, the developments of this institution are of great importance. I devote around 40% of my time to ICC matters.

**Personal favorites**

*Pastimes:*  
Sailing and photography

*Book currently reading:*  
*Three Novels of Ancient Egypt* by Naguib Mahfuz

*Favorite movies:*  
Double Indemnity (Billy Wilder), The Trial (Orson Wells), Lunacy (Jan Svankmajer), Life Aquatic (Wes Anderson)

*Favorite singer:*  
Jorge Drexler

*Machhead or PC diehard:*  
Machhead

*Most visited websites:*  
www.earth-touch.com,  
www.arkive.org,  
www.wired.com

*Preferred meal:*  
Spaghetti aglio, olio e peperoncino

*Ideal vacation spot:*  
My farm in the Andean countryside of Colombia surrounded by nature and animals

**Bureau of the Assembly**

The Bureau of the Assembly has been preparing for the ninth session and beyond by considering, inter alia, the following topics:

- The follow-up to the Review Conference
- The reports of its Working Groups in The Hague and New York, as well as the Oversight Committee on permanent premises
- The election of the Prosecutor for the period starting in 2012, via the establishment of a Search Committee



Bureau members at the 28 October briefing by the Prosecutor on the activities of his office

**Meetings of the Bureau, NYWG, HWG and the OC in 2010**  
(includes informal consultations)

<b>Bureau</b>	21
<b>The Hague Working Group</b>	46
<b>New York Working Group</b>	17
<b>Oversight Committee</b>	32

**The New York Working Group** was mandated to cover the topics of arrears, geographical representation and gender balance in the recruitment of staff, as well as the Plan of Action for achieving universality of the Rome Statute. As part of the preparations for the ninth session, it has also held meetings on the amendments to the Statute and on the omnibus resolution.



Amb. Paul Seger (Switzerland) convened informal consultations to discuss how to proceed with the proposals for amendment of the Rome Statute that had not been conveyed for consideration by the Review Conference.

**The Hague Working Group** was entrusted with the follow up to the Review Conference issues of complementarity, cooperation and the impact of the Rome Statute on victims and affected communities. The group has also been dealing, inter alia, with the independent oversight mechanism, strategic planning, setting up a study group on governance and the 2011 budget proposal.



Vice President Jorge Lomónaco (Mexico), Coordinator of the HWG

## Budget proposal for 2011

Amb. Lydia Morton (Australia) has held seven informal consultations as part of the preparations for the discussions on the budget at the ninth session. These consultations have been based on the budget proposal submitted by the Court and on the recommendations of the Committee on Budget and Finance.



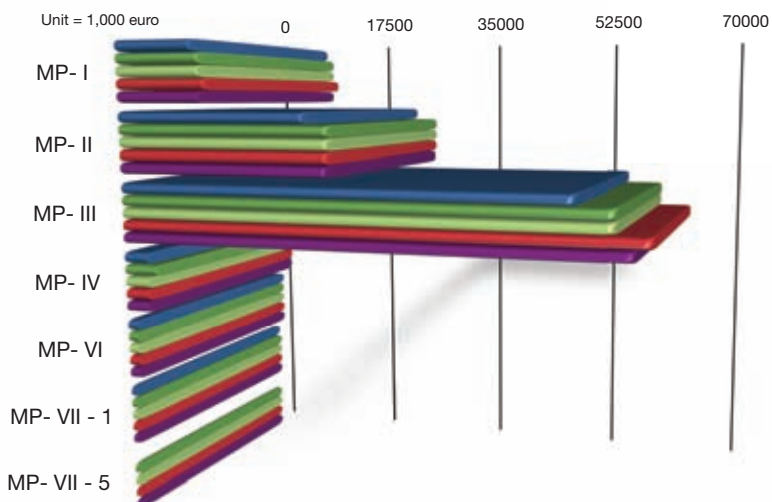
Major Programmes	Expenditure 2009	ASP Approved 2010	ASP 2010 excl. RC	ICC Proposed 2011	CBF proposed
MP- I - Judiciary	€ 9,794.7	€ 10,743.7	€ 10,719.2	€ 11,462.4	€ 10,676.5
MP- II - Office of the Prosecutor	€ 23,909.2	€ 26,828.3	€ 26,828.3	€ 26,778.0	€ 26,614.6
MP- III - Registry	€ 55,115.2	€ 59,631.1	€ 59,541.2	€ 63,536.5	€ 61,649.9
MP- IV - Secretariat of the ASP	€ 3,091.7	€ 4,272.8	€ 3,021.8	€ 3,095.6	€ 2,978.2
MP- VI - Secretariat of the TFV	€ 1,264.0	€ 1,221.6	€ 1,217.6	€ 1,261.1	€ 1,205.2
MP- VII-1 - Permanent Premises	€ 317.4	€ 584.2	€ 584.2	€ 547.4	€ 492.2
MP- VII-5 - Ind. Oversight Mechanism	€	€ 341.6	€ 341.6	€ 306.1	€ 303.1
<b>TOTAL</b>	€ 93,492.2	€ 103,623.3	€ 102,253.9	€ 106,987.1	€ 103,919.7

(Unit = 1,000 euro)

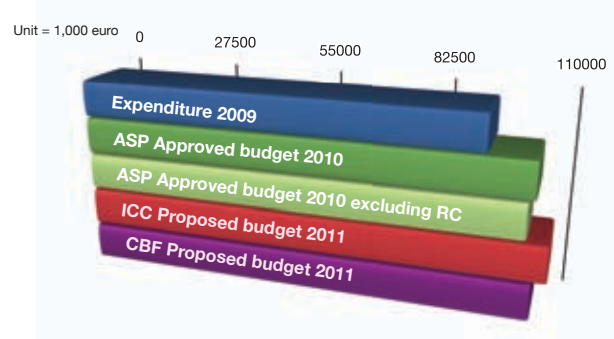
Note : This table does not include:

- Working capital fund (€ 7,406.0)

### Major Programme budget



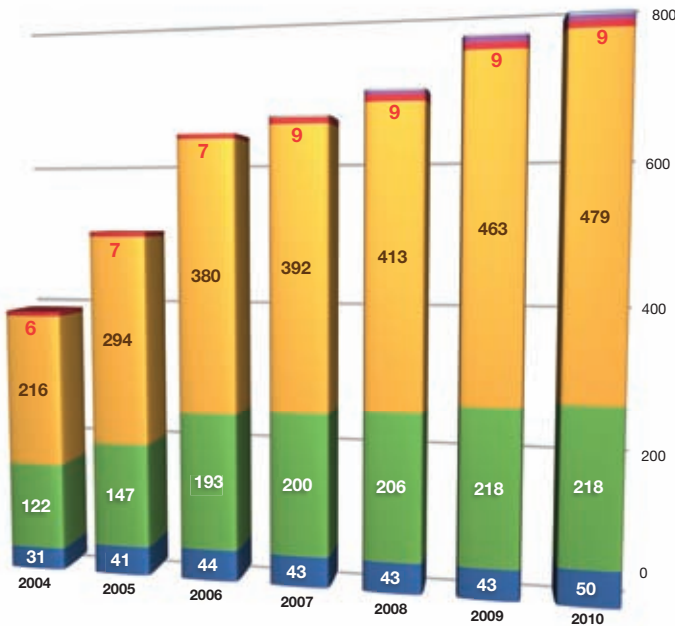
### Total Programme budget



■	Expenditure 2009
■	ASP Approved budget 2010
■	ASP Approved budget 2010 excluding Review Conference budget
■	ICC Proposed budget 2011
■	CBF Proposed budget 2011

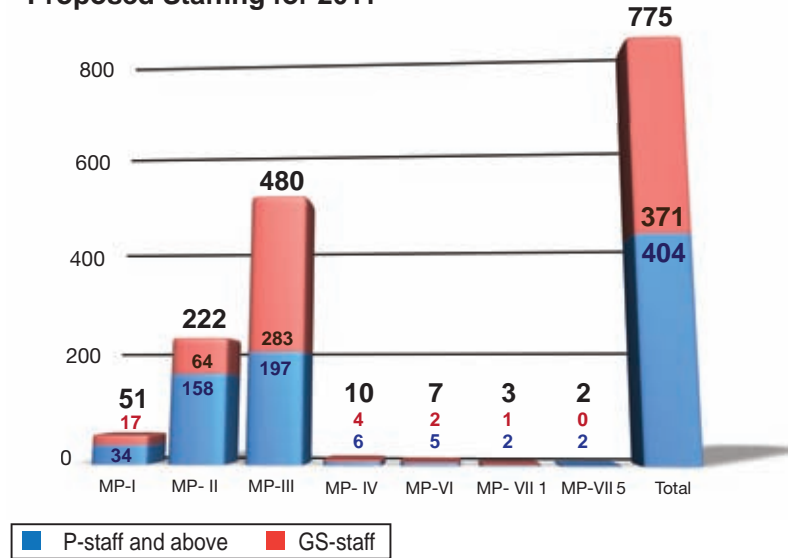


### Approved Staffing Table 2004 - 2010



- Independent Oversight Mechanism
- Permanent Premises Project Office
- Secretariat of the Trust Fund for Victims
- Secretariat of the Assembly of States Parties
- Registry
- Office of the Prosecutor
- Judiciary

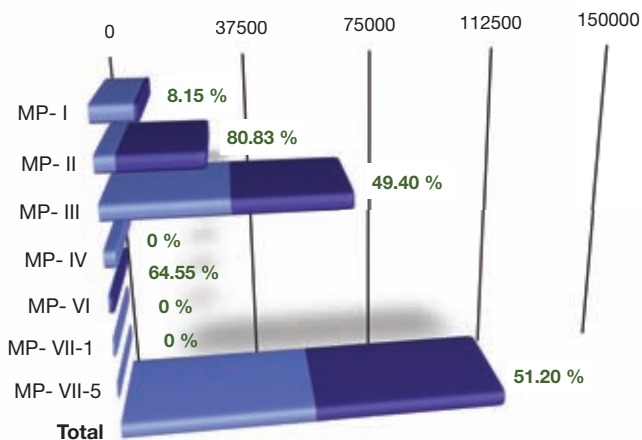
### Proposed Staffing for 2011



Major Programme	P -staff and above	GS -staff	Total
MP- I - Judiciary	34	17	51
MP- II - Office of the Prosecutor	158	64	222
MP- III - Registry	197	283	480
MP- IV - Secretariat of the ASP	6	4	10
MP- VI - Secretariat of the TFV	5	2	7
MP- VII-1 - Permanent Premises	2	1	3
MP- VII-5 - Ind. Oversight Mechanism	2	0	2
<b>TOTAL</b>	<b>404</b>	<b>371</b>	<b>775</b>

### Basic/Situation-related proposed budget 2011

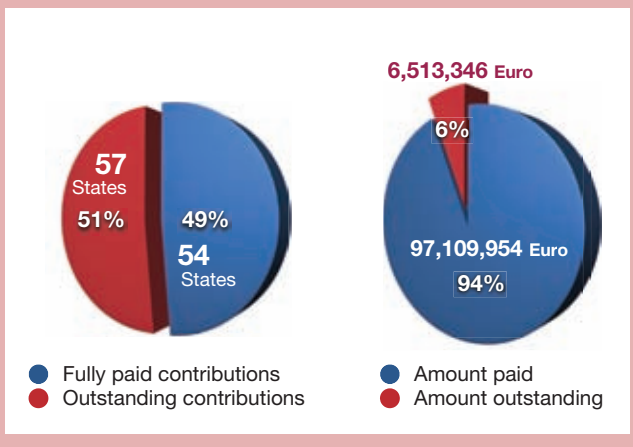
Unit = 1,000 euro



- CBF Proposed 2011 - Basic budget
- CBF Proposed 2011 - Situation-related budget

### Factsheet 2010:

#### Contributions to budget by States Parties as at 1 December 2010



## Interview with Mr. Santiago Wins Chair of the Committee on Budget and Finance



*How does the Committee on Budget and Finance (CBF), as a subsidiary organ of the Assembly of States Parties, ensure its technical independence when making recommendations?*

The CBF is a subsidiary organ of the Assembly of States Parties composed of 12 experts who have recognized experience in the budgets of international organizations, in administrative and financial affairs and in auditing. The members are elected by States Parties. The Rules of Procedure of the CBF stipulate that its members shall act in a personal capacity and may not receive instructions from any State in the performance of their functions. This condition is the States' guarantee that the Committee's recommendations are independent, as well as technically sound. In short, the Committee makes its recommendations in strict accordance with the provisions of its mandate. The Court is obliged to provide the members of the Committee with all the necessary information, and while we consult with Assembly representatives when appropriate, we conduct our discussions and make our recommendations internally, with the various CBF members contributing their suggestions, and we reach a decision as a Committee. That decision is then submitted to the Assembly for its consideration, and of course the Assembly is sovereign and can decide as it deems best.

*Currently there are a number of different bodies responsible for oversight issues: the Committee on Budget and Finance, the External Auditor, the Internal Audit Committee, the Office of Internal Audit (OIA), and the embryonic Independent Oversight Mechanism (IOM). How will it be possible to avoid the risks of duplication in the substantive work and complications with the reporting lines to higher bodies?*

The key is for each body or office to adhere to its mandate, as laid down in its

constituent instrument. Before a new body or office is established, it is essential to give due consideration to what it is expected to do and to establish its line of authority and/or oversight. Some bodies are, for example, part of the internal structure of the Court – the OIA, and the Audit Committee, which also has external members, but whose line of authority is the Court – or the Committee on Budget and Finance, which makes recommendations to the Assembly.

Others are appointed by the Assembly (External Auditor/CBF/IOM). Each must act within its own field and there should be consultations where necessary to avoid duplication.

*How do you assess the functioning of the Court's internal audit committee and the audit function in general?*

The Court's internal audit committee can be a useful management tool for the Court; it took several years to establish it with a majority of external members, and what it can contribute remains to be seen. It held a couple of meetings in 2010, and we are in discussions with it to see whether, in addition to advising the Court, their meetings could also facilitate the work of the CBF, which also considers the audit reports in accordance with the Assembly's mandate.

Regarding the role of auditing in general, it seems to me that the contribution made by the External Auditor has provided vital support during this eight-year period in which the Court has consolidated itself and has recently been contributing to the operations of the Court with recommendations aimed at improving efficiency and the administrative and financial controls.

The OIA has undergone changes in management. It was without a director for over a year (2008-2009), but now it is acting as an internal instrument supporting the organs of

the Court. From the Committee's perspective, we hope that its reports will reflect the essential function of the Office, i.e. they should be independent and critical when reviewing the management practices of all three organs of the Court.

*Some of the Committee's recommendations appear to go beyond its mandate: the suggestions concerning the election of the President of the Court and the Registrar by the Assembly, and the inclusion of the budget of the African Union liaison office or the budget allocations for family visits for indigent detainees in an annex, etc. Could you explain these briefly?*

The reviews and recommendations of the CBF adhere to the mandate given to it by the Assembly in the constitutive resolution according to which the Committee is responsible for "the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties."

Under this mandate, we have an obligation to comment on any matter that may impact the budget in the medium and long term. The States have decided to concentrate on the issue of the governance of the Court and have requested the Committee to give its views on specific aspects. The Committee has been extremely careful to avoid making any recommendations that could have political overtones, given that our role is emphatically a technical one.

In the case of the President of the Court, it seemed to us that this eminently important function should be strengthened, and that this could perhaps best be achieved by means of direct election by the Assembly; currently the President is elected by his fellow judges. The Registrar of the Court, in turn, is elected by the judges, without the recommendations of the Assembly necessarily being taken into account.





The Committee felt that the Assembly should begin to explore these options, by way of suggestions, in the debate on governance.

With regard to the inclusion of draft budgets in the annex to a document, that is a purely technical procedure from a budgetary point of view, since the political decision on whether to approve this budget is in the hands of the Assembly; what we have said is that the budgets that require political endorsement should be reflected separately. If at its annual session the Assembly decides to incorporate a budget from the annex, then it is simply a matter of adding the figure concerned to the approved budget in the respective resolution, as has been the practice in the past.

In the case of the Addis Ababa Liaison Office, I would stress that this cannot be construed as the abolition of this budget item; simply that in light of events, we believe that it is the Assembly which should decide how much it wishes to allocate to supporting the establishment of the Liaison Office in 2011. On the basis of what the Court has suggested, the Assembly could decide on a specific allocation or it could request the Court to fund these activities from existing resources. What is clear is that the €420,000 budget request made by the Court has no basis given that the Office cannot be established in the present circumstances.

*How do you explain the recommendations relating to the judges: the ad litem judges, the presence of judges in The Hague, the number of judges who would deal with the reparations phase, training modules for new judges?*

The Court being a new institution, the architects of the Statute could not have foreseen all the different challenges it would face. There are several factors that will have a significant financial impact in the medium term and we consider it our duty to alert the Assembly to them, because otherwise the budget could be seriously affected in the years ahead. One of these factors is the number of judges, both for continuing trials when the term of a judge has expired and for the reparations phase. The suggestion to examine the pros and cons of ad litem judges is based on the experience of other courts. The suggestion that the Assembly consider a possible amendment to the Rules of Procedure and Evidence with respect to the issue of the reparations phase is made so that the Assembly can decide in full knowledge of the budgetary impact of its decision, which would not necessarily be the case if the matter remained at the discretion of the various chambers of judges; it is even conceivable that the various chambers could take divergent decisions.

The CBF decided to ask about the presence of judges in The Hague to ascertain whether their absence could have an adverse effect

## Key CBF recommendations on 2011 budget

- Court proposed budget for 2011: €107,022,700
- CBF proposed budget: €103,919,600
- The impact of CBF recommendations would total a downward adjustment of €3.1 million which can be summarized as follows:

- (a) Freezing the number of permanent posts at 2010 approved level until a comprehensive re-justification of all posts is conducted.

For all major programmes

- (b) Staffing costs including GTA: reduction of €2.23 million, this includes the €700,000 reduction for second courtroom team.
  - Parallel trials- resources for MPIII reduced by about one third, i.e. by €700,000 (included in the figure of €2.23 million referred to above. The Court had requested six months of GTA for the second courtroom team.
- (c) Total travel budget reduction of €537,800. Breakdown: for each major programme a 10 per cent decrease, except for MPPII and MPIII, where the reductions amount to 5.3 and 8.3 per cent, respectively; MPIV reduction by €109,100;
- (d) General operating expenses decreased by 2.5 per cent: total reduction of €69,300;
- (e) Material and supplies decreased by five per cent: total reduction of €72,500;
- (f) Others adjustments (hospitality, contractual services, training, and furniture and equipment): total reduction of €99,400;
- (g) Reclassifications: of the 18 posts submitted by the Court, the CBF recommended the approval of 7 (including one contingent upon the abolishment of the post of Deputy Prosecutor).

on the rate of progress of the hearings. For while it is true that certain types of work can be performed remotely, in a number of cases the presence of judges is required to carry the hearings forward. The training modules are suggested in order that judges who come from national jurisdictions or have a more diplomatic or academic background have an opportunity to update their knowledge with other colleagues; regular refresher courses for lawyers are a common practice in various countries and we believe they could be useful for the Court.

*What is the position of the CBF with regard to the substantive independence and administrative responsibility of the organs of the Court, in particular the judges and the Office of the Prosecutor, when there is a concomitant and indisputable need for independence in the exercise of their functions?*

There are provisions in the Statute which, on the one hand, guarantee the independence of the judges and the Office of the Prosecutor, which is a sine qua non for a court. However, the Statute also provides for an oversight role for the Assembly, a mandate that it exercises either directly or through subsidiary bodies, as it deems appropriate. All officers elected by the Assembly must be accountable at the administrative level for the way they manage the human and material resources made available to them by the Assembly for

the performance of their duties. This is found in national systems too, where there is a body, the Office of the Comptroller, which may launch inquiries and investigations into cases, as it deems necessary. Clearly, only the Assembly can determine what constitutes its powers regarding the administrative responsibility of the Court, in this case at the highest level.

### Cost drivers in the medium term

*There are a number of budget items in the medium term which would lead to a significant increase in the Court's budget and which are not linked to the number of investigations or trials: investment in capital goods for the purchase of equipment and vehicles; extension of the terms of some judges; rent of interim premises, etc. How can the impact of these costs be reduced in the current climate of fiscal austerity without affecting the basic operations of the Court?*

The Committee has drawn the attention of the Assembly to items which, including in 2012 and thereafter, would have a significant impact on the budget; in some cases, such as extension of the terms of judges, it has proposed options for reducing that impact. As regards capital goods, there are some that could perhaps be deferred for a while, such as not replacing vehicles for a few more years; others however, such as the replacement of computer



From left:  
CBF Rapporteur, Mr. Masud Husain, the President of the ICC, Judge Sang-Hyun Song, the Chair of the Committee on Budget and Finance, Mr. Santiago Wins and Mr. Renan Villacis, Director of the Secretariat

equipment, may be essential to maintaining the Court's operations.

The question of the rent for the interim premises, which will amount to €3 million in 2012 and at least €6 million from 2013, requires that important discussions be held with the host State. The Court, for its part, should prioritize its expenditures and come up with innovative ideas for increasing the efficiency of its operations and enhancing productivity.

### Contingency Fund

*What is the procedure for Contingency Fund notification by the Registry and why the suggestion to improve this procedure?*

Currently, the Registrar sends a letter to the CBF Chair advising him that the Court considers it necessary to draw on the Contingency Fund in a specified amount owing to unforeseen circumstances, but does not go into more detail. The Chair of the Committee forwards this letter to the members of the Committee and then replies to the Registrar within a period of 14 days giving the Committee's comments. This reply is not an authorization to draw on the Contingency Fund; it usually contains a number of suggestions or reflects the Committee's view that the Court should make every possible effort to find savings to absorb the additional costs and make minimum use of the resources of the Contingency Fund. It should be noted

that, on the basis of the limited information provided by the Court in these notifications, whenever the Committee felt able to make a contribution, it has done so in writing. In the last year alone the Registrar sent four notifications; and the Committee sent four replies, with corresponding comments.

Now the problem arises as a result of information received at the last session concerning the purpose for which the Contingency Fund resources were used, which the Committee did not consider to be strictly in keeping with the purposes for which the Fund is intended, given that some of the items that the Court indicated as requiring Contingency Fund resources are not operational in nature, but rather strategic or just desirable. In such circumstances, the Court should submit a detailed justification of its request to draw on the Contingency Fund, justifying the purpose for which the resources are required.

### Human resources

*With regard to human resources, the Committee is recommending approval of some post reclassifications, but not of others. What criteria are applied in making these recommendations?*

The Committee prefers to examine these recommendations at its annual April meeting, when we have more time, the August session being primarily devoted to consideration of the budget.

The review conducted by the CBF focuses on the detailed information which has to be provided by the Court in good time. This information has been prepared by an outside consultant to the Court.

We have observed that the Court makes a large number of requests each year for

### Other key CBF recommendations

- a) Contingency Fund: modify the relevant provisions so that the Court submits a "detailed" notification when informing about a possible access to the Fund;
- b) IPSAS: authorize ICC to commence implementation of this new accounting system; budget increase of € 332,600;
- c) Limit term of External Auditor to a total of eight years;
- d) Have Court proposed budgets for items requiring Assembly approval in annexes to the budget, until the Assembly decides otherwise;



From left: CBF members - Mr. Shinichi Iida, Mr. Fawzi Gharaibeh, Mr. Gilles Finkelstein, Ms. Carolina María Fernández Opazo and Mr. David Banyanka



From right: CBF members - Ms. Elena Sopková, Mr. Ugo Sessi, Mr. Gerd Saupe, Ms. Rossette Nyirinkindi Katungye, Mr. Juhani Lemmik and Mr. Fakhri Dajani (Secretariat)



reclassifications. During the period 2007 to 2009, they have added up to a total of 101 approved reclassifications, with a significant impact on the budget. We believe that reclassifications should be the exception. The process for their submission and consideration therefore needs to be improved. The problem is that where human resources are concerned the Court has no detailed administrative directive. We hope to receive a strategic document on the subject at the next April session.

In summary, the Committee receives information from the Court about the job description, justification for the change of the functions and the consultant's classification. On the basis of these documents the CBF puts questions to the Court, which must convince the Committee that its request is justified. If the CBF is fully convinced by that justification, it recommends reclassification of the post. It should be made clear that the reclassification refers to the post and not to the person occupying it. In theory, a reclassification should be followed by a transparent selection process, to avoid reclassifications being used as a means of career advancement.

*The Committee has made a number of additional recommendations relating to human resources, for example it has proposed abolishing positions that have been vacant for a while, freezing the number of posts, etc. What is the point of such measures?*

We believe that the phase of establishing the Court has been successfully concluded. The Court has sufficient staff to carry out its work. In the establishment stage, positions were requested which were necessary at that stage, but it may be that they are no longer necessary today. We therefore recommend that all posts be reviewed along with their justifications, which is why we are proposing a freeze on the number of posts. Moreover, the CBF is requesting, that the Court prioritize to filling the posts that are indispensable to the core functions of the Court and propose to abolish posts that are not necessary. We feel that a post that has

remained vacant for two years or more cannot be indispensable. All this does not preclude the Court from requesting money for temporary positions that may well be needed as a result of new investigations, trials or increases in the workload.

*The field staff are in a special situation because of their particular conditions of service. What were your impressions when you visited some of these offices, in Kampala and Bunia?*

The field staff perform a fundamental operational task in the context of resource constraints imposed by circumstances. The Committee received a detailed report on the status of these offices, including a number of observations and identified risks. I should like to emphasize that some Committee members had the opportunity to visit two such offices, in Kampala, and in Bunia, in the Democratic Republic of the Congo. We met all the staff, took a look at the facilities, checked their inventories and held informal talks. Each office has its own particular character in its own particular situation and, therefore, on the basis of a general structure, we have to take different factors into account when justifying the resources requested. In summary, we found no problems at the administrative level, the offices are well organized and we would emphasize that the cooperation among staff members in both offices was excellent.

### Adjustments

*The Court has indicated that it anticipates the need to have sufficient resources to operate two court rooms with their corresponding teams in 2011, and that it expects to conduct two or even three simultaneous trials. How do you justify the Committee's recommendation to cut by €700,000 the six months for the team that will cover the second court room? Does that not jeopardize the holding of the trials?*

The Committee's recommendation was based on the pattern of use of the two

court rooms in 2009 and its projected use in 2010. Data provided by the Court showed that expectations for the use of court rooms were never realized and that their actual use was substantially below the assumptions on which the Court had based its budget. The Committee considered that a € 700,000 reduction in allocations was realistic and would not prevent the Court from conducting hearings in two court rooms simultaneously, provided there is better preparation and coordination in the scheduling of their use. We have left the Court with flexibility to decide where spending cuts should be applied and which expenditures should be prioritized.

It should be remembered that in all these years the Court has never been unable to conduct investigations or prosecutions for lack of resources, on the contrary. For this reason, we are seeking more information on access to the Contingency Fund, i.e. to ensure that, should the need arise, resources would be available for the purpose for which they were approved.

*What were the changes regarding legal aid for victims and legal aid for the defence?*

Our recommendation was based on the use of such allocations in 2009 and their projected use up to the end of 2010. The adjustments were minor: a total reduction of €5,400 and €1,600 for legal aid for victims and legal aid for the defence, respectively.

*We know that work commitments will prevent you from attending the Assembly in New York. How is it possible to keep track of the many issues before the Committee throughout the year and reconcile those with your professional activities? Who will attend the Assembly for the Committee?*

Unfortunately I am unable to be present in New York. Work commitments require me to be in Montevideo, but I have asked our distinguished Vice-Chair, Ambassador Rossette Nyirinkindi, to represent the Committee. She will be accompanied by our Rapporteur, Mr. Masud Husain, and by Ms. Carolina Fernández, who should be in New York on those dates and has offered to help out as well. I am certain that they will do an excellent job, since excellence and devotion to duty are the hallmarks of all the members of the Committee. It is truly an honour to be elected Chair of such a distinguished group of experts.



Mr. Wins briefing The Hague Working Group on the CBF's August session

## Complementarity after Kampala

The International Center for Transitional Justice (ICTJ), with the sponsorship of the UN Rule of Law Unit, organized a retreat at the Greentree Estate in Manhasset, New York on 28 and 29 October 2010 to explore how to implement the concept of complementarity.

Over 60 high-level actors in international justice, rule of law assistance and the development sector, Rome Statute States Parties, non-States Parties, development agencies and NGOs discussed inter alia, the following:



- how the pursuit of criminal justice for serious crimes can enhance the development of the rule of law;
- the lessons drawn from existing practices, especially from the relationship between international and domestic courts;
- the importance of conducting a needs assessment directed to the demands posed by the investigation and prosecution of serious crimes;
- the relationship in some circumstances, between unwillingness and inability of States to investigate such crimes;
- the challenges to engaging the broader development community in complementarity efforts.

As regards the ICC, although noting that efforts had been made by the various organs to strengthen judicial capacity in some countries and that there may be a role for the Court to catalyze support and action in certain circumstances, some concerns were expressed about the ICC's ability to advance the issue of complementarity, since concentrating efforts thereon could detract from the core functions of the Court. Although a possible role was envisioned for the Assembly of States Parties, it was also noted that the lack of human and financial resources would imply a limited role.

The retreat, held under Chatham House Rules, was considered a first step among the various stakeholders on advancing complementarity; further discussion was deemed essential about the need to develop the relationship between the justice sector and rule of law actors, both within national governments, the UN system and development agencies.

Related papers: <http://tinyurl.com/ICTJ-ICCdoc>  
 Photo gallery: <http://gallery.me.com/asp.icc/100117>

## Events

As part of the Assembly's Plan of Action, on 27 October the Permanent of Mission of Slovakia and New York University organized a panel entitled "Challenges and Future of International Justice"



From left: Ms. Jennifer Trahan, NYU professor, Ms. Phani Daskalopoulou-Livada, Ministry of Foreign Affairs Legal Adviser (Greece), Mr. Harold Hongju Koh, US State Department Legal Adviser, Judge Peter Tomka, Vice-President of the International Court of Justice, and Judge Sang-Hyun Song, President of the ICC

## Commonwealth Secretariat ICC meeting



From left: Ms. Yolande Dwarika (South Africa) speaking on complementarity at the October meeting on the ICC held in London, along with Ms. Evelyn Ankumah, representing Africa Legal Aid, and Mr. Akbar Khan, Director of the Commonwealth Legal and Constitutional Affairs Division of the Commonwealth Secretariat.

Representatives of the NGO community attending the October briefing by the Secretariat of the Assembly





## Interview with Mr. Hans Heemrood Project Director for the Permanent Premises \*

\* The Court occupies interim premises provided by the Government of the Netherlands.



*How long have you been involved with the project and what was your main motivation to embark upon it?*

At the moment of my resignation on 1 March 2011, I will have been Project Director for the permanent premises for 29 months. My main reason for embarking on such an exciting job was the fact that it was a complex project of €190 million where I had the opportunity to work with committed fellow professionals.

*What phase of the project are we at and what are the key moments in the medium run?*

The preliminary design (mainly the functional and the spatial lay out) is finalized now. Next is the final design; elaborating on the preliminary design in (technical) details. Tendering for the general contractor will take place at the end of 2011/beginning of 2012. The commencement of the construction is scheduled for July 2012.

*What are the main modifications and/or refinements made in the preliminary design phase?*

When selecting the architect it was very much appreciated that the building was iconic and transparent. The design is very



efficient, which means offering a good quality at a reasonable price. An important element in the preliminary design has been the further development of the courtroom tower: three courtrooms on top of each other, with an option for a fourth courtroom in the future. The office space is flexible and offers a good working environment. The security solutions are intelligently integrated within the design. The logistics and the installation concept are elegant solutions.

*Is the project within the budget foreseen by the Assembly?*

It is within the budget and offers a good quality.

*What are the memorable experiences you have drawn from working in the Court's permanent premises project?*

It was fascinating to work in the international environment with a lot of

committed colleagues and team members. I enjoyed the contacts with the team of the Capital Master Plan of the UN Headquarters in New York; a good example of how a project should be organized. The selection of the architect was one of the highlights; to choose the right architect and building concept is essential for the success of the project.

*What goal would you hope to have attained when you leave the Court?*

I have different goals; to have a well-organized construction project, an approved preliminary design within the budget and providing good quality, the beginning of the final design, and a decision on how to do the tendering of the general contractor.



All Photos :  
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lassen architects



## Departures

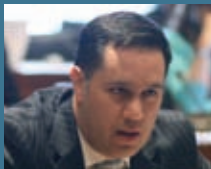


Amb. Zachary Muburi-Muita

### New York

Vice President Zachary Muburi-Muita (Kenya) assumed the post of Head of the United Nations Office to the African Union in Addis Ababa.

Mr. Alejandro Alday (Mexico) and Ms. Minna Lind (Estonia) returned to their capitals, while Mr. Emmanuel Bichet (Switzerland) was posted to Geneva.



Mr. Alejandro Alday

### The Hague

Amb. Hans Magnusson (Sweden), Ms. Elena Bornand (Chile) and Mr. Andrzej Ryng (Poland) returned to their capitals. Amb. Kirsten Biering (Denmark) assumed her new functions in Stockholm.



Amb. Kirsten Biering



Amb. Hans Magnusson



Mr. Emmanuel Bichet



Ms. Elena Bornand



Ms. Minna Lind

## Bangladesh welcoming ceremony

The Ambassador of Bangladesh, Mr. Muhammad Ali Sorcar, Vice-President Jorge Lomónaco and President Sang-Hyun Song during the ceremony held at the Court welcoming Bangladesh as a new State Party.



## Ratification by St. Lucia



Amb. Donatus Keith St. Aimee, handing over the instrument of ratification of the Rome Statute to Ms. Gabriele Goettsche-Wanli, Head of the UN Treaty Section.

Photo: © UN

## List of 2011 United Nations Security Council members that are States Parties

- Bosnia and Herzegovina
- Brazil
- Colombia
- France
- Gabon
- Germany
- Nigeria
- Portugal
- South Africa
- United Kingdom of Great Britain and Northern Ireland

## Colophon

Secretariat of the Assembly of States Parties  
International Criminal Court

## ASP Calendar

### 2011

**Committee on Budget and Finance**  
Sixteenth session  
The Hague  
11 - 15 April

**Seventeenth session**  
The Hague  
22 - 30 August

**Assembly of States Parties**  
Tenth session  
New York  
12 - 21 December  
- Elections of six judges, six CBF members and the Prosecutor

## The 64 States Parties to the APIC



## Departures



Ms. Esther Halm, a Secretariat staff member since 2006, joined the Immediate Office of the Registrar of the ICTY.

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