



Newsletter

December 2011

ICC-ASP-NL-07/11-En

ASP Special Edition #7



Quo vadis?

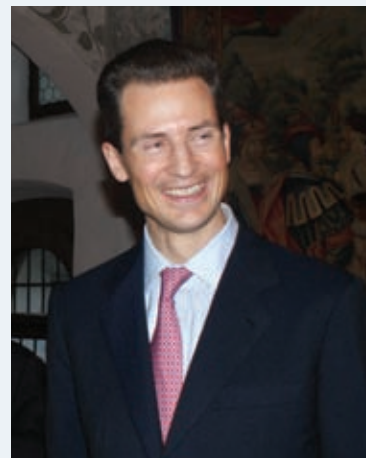
The future of the ICC

As the Rome Statute system shall enter a period of dynamic changes in 2012, with the election of a new Prosecutor and six judges in the midst of the conclusion of the Court's first trials, as well as the election of a new Bureau and Assembly President for the triennium, the Government of Liechtenstein with the support of the Liechtenstein Institute on Self-Determination at Princeton University organized a retreat on the future of the ICC with participation of three dozen senior policy-makers.

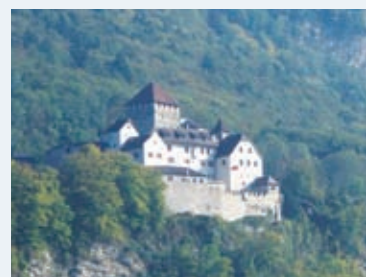
The retreat, which was held in Triesenberg from 16 to 18 October 2011 under Chatham House rules, considered the major political challenges to be faced by the Court and its Assembly of States Parties in the coming years: main challenges for the Assembly; implementation of the Rome Statute and Cooperation with the Court's requests; role of the Court in the international system; and promoting the universality of the Rome Statute.



In his welcoming remarks, H.S.H. Hereditary Prince Alois von und zu Liechtenstein stressed that the Principality's commitment to support the Rome Statute system, evidenced in particular by the key role played by Ambassador Christian Wenaweser over several years, would continue unabated; he further recalled the importance for small States and those without armed forces of relying on the rule of law, of which the Court was a vital component.



H.S.H. Hereditary Prince Alois von und zu Liechtenstein



Vaduz Castle

The retreat Action Points are in
[ICC-ASP/10/INE.3](#)

[Press Release >>](#)

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Continued on page 4

Preparations for the tenth session of the Assembly

The outcome of the Prosecutor Search Committee process

<http://tinyurl.com/ASPSCP>

The Search Committee for the Position of Prosecutor of the International Criminal Court concluded its work on 22 October 2011, completing a nearly nine month long process, in which the Committee's members considered expressions of interest and suggestions from all regional groups. The Committee's aim was to facilitate the election of the next Prosecutor by consensus.

51 candidates had applied, or were suggested to the Search Committee.

Regional demographics		Gender demographics	
African group	25	Male	36
Asia-Pacific group	1	Female	15
Eastern Europe group	1		
GRULAC	6		
WEOG	18		



Center: The Coordinator of the Search Committee, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan);
From left: Ambassador Baso Sangqu (South Africa);
Ambassador Joel Hernández García (Mexico);
Mr. Daniel Bethlehem (United Kingdom)
and Ambassador Miloš Koterec (Slovak Republic)

Following a thorough initial assessment, 11 of these individuals were shortlisted and eight interviewed in New York the week of 10 October. Based on four hour-and-a-half long interviews and consulting voluminous background research prepared by the Secretariat, the Search Committee agreed on a second shortlist of four individuals, whom it considered to be qualified under the Rome Statute for the post of Prosecutor. This second shortlist was submitted for consideration of the Bureau of the Assembly, namely Ms. Fatou Bensouda (Gambia), Mr. Andrew T Cayley (United Kingdom), Mr. Mohamed Chande Othman (United Republic of Tanzania) and Mr. Robert Petit (Canada).



Consultations, led by the President of the Assembly, took place in November to identify a consensus candidate from among the shortlist. The President set a deadline of 23 November to determine whether it will be possible to reach a consensus, in order to allow for either the consensual nomination, or the preparation of a contested election at the tenth session of the Assembly.

Consultations to identify the next Prosecutor

Press Release >>

After the release of the report of the Search Committee the President of the Assembly, with the assistance of five regional focal points began a process of consultations over a four week period which included a series of meetings of the New York Working Group of the Bureau, where the four candidates shortlisted by the Search Committee could present themselves to States Parties, and where States Parties in turn had an opportunity to ask questions and engage in a dialogue with the candidates.

The preliminary findings of this process were:

- A strong desire to see the next Prosecutor elected by consensus, if at all possible;
- A very strong sentiment that the most qualified person should be elected;
- A general acceptance that the next Prosecutor should come from Africa.



Thus the scope of the consultations was narrowed to the two names from Africa. At a 1 December 2011 meeting of the New York Working Group President Wenaweser indicated that an informal agreement had been attained among the States Parties to have a consensus candidate, Ms. Fatou B. Bensouda (The Gambia), nominated for the consideration by the Assembly of States Parties. Ms. Bensouda would be elected at the tenth session of the Assembly on 12 December 2011, and would assume the post on 16 June 2012.

ICC-ASP/10/INF.2, ICC-ASP/10/INF.2/Add.1

Election of six judges

<http://tinyurl.com/ICCASP10-ele>

At its tenth session, in December 2011, the Assembly will elect six judges of the ICC. The nomination submitted by the end of the nomination period may be found at the ASP website (document ICC-ASP/10/18 and Add.1).

The total number of judges at the ICC is 18; the judges are elected for a term of nine years with a three-year election cycle. ICC judicial elections are subject to minimum voting requirements in order to ensure that the composition of the judges is adequately representative in the areas of legal competence and expertise, regional representation and gender.

Minimum voting requirements applicable for the elections at the tenth session

Lists

List A *: 3 List B *: 0 (The remaining three seats can be allocated to list A or list B candidates.)

Regional distribution

African States: 0

Asian States: 1

Eastern European States: 1

Latin American and Caribbean States: 2

Western European and other States: 0 (The remaining two seats can be allocated to any of the five regional groups.)

Gender

Male: 2 Female: 0 (The remaining four seats can be allocated to male or female candidates.)

* List A judges have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings.

List B judges have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

Judges whose terms of office end on 10 March 2012

Mr. Bruno Cotte (France)	
Ms. Fatoumata Dembele Diarra (Mali)	
Mr. Adrian Fulford (United Kingdom)	
Mr. Daniel David Nsereko (Uganda)	
Ms. Elizabeth Odio Benito (Costa Rica)	
Ms. Sylvia Steiner (Brazil)	

Sample Ballot

VOTE FOR A MAXIMUM OF 6 CANDIDATES VOTE FOR AT LEAST 3 LIST A CANDIDATES AND 2 MALE CANDIDATES				
	LIST A		LIST B	
	MALE	FEMALE	MALE	FEMALE
AFRICA	<input type="checkbox"/> Mr. Rosolu John BANKOLE THOMPSON (Sierra Leone) <input type="checkbox"/> Mr. Vinod BOOLELL (Mauritius) <input type="checkbox"/> Mr. Modeste-Martincau BRIA (Central African Republic) <input type="checkbox"/> Mr. Chale EBOE-OSUI (Nigeria) <input type="checkbox"/> Mr. Gberdao Gustave KAM (Benin/Faso) <input type="checkbox"/> Mr. Antoine Kestia-Mbe MINDUA (Democratic Republic of the Congo) <input type="checkbox"/> Mr. Hamani Mounkaila NOUHOU (Niger)			
ASIA-PACIFIC VOTE FOR AT LEAST 1 CANDIDATE	<input type="checkbox"/> Mr. George A. SERGHIDES (Cyprus)			<input type="checkbox"/> Ms. Miriam DEFENSOR-SANTIAGO (Philippines)
EASTERN EUROPE VOTE FOR AT LEAST 1 CANDIDATE	<input type="checkbox"/> Mr. Robert FREMR (Czech Republic)		<input type="checkbox"/> Mr. Wladyslaw CZAPLINSKI (Poland)	
LATIN AMERICA/ CARIBBEAN VOTE FOR AT LEAST 2 CANDIDATES	<input type="checkbox"/> Mr. Anthony Thomas Aquinas CARMONA (Trinidad and Tobago) <input type="checkbox"/> Mr. Eduardo CIFUENTES MUÑOZ (Colombia) <input type="checkbox"/> Mr. Javier LAYNEZ POTISEK (Mexico)	<input type="checkbox"/> Ms. Olga Venecia HERRERA CARBUCCIA (Dominican Republic)	<input type="checkbox"/> Mr. Jorge Antonio URBINA ORTEGA (Costa Rica)	
WESTERN EUROPE AND OTHER	<input type="checkbox"/> Mr. Bruno CATHALA (France) <input type="checkbox"/> Mr. Howard MORRISON (United Kingdom)			

PASP meeting with judges

President Wenaweser held an informal meeting with the judges during his October 2011 visit to seat of the Court, accompanied by the Vice-President Amb. Jorge Lomónaco and the Chair of the Study Group on Governance, Amb. Pieter de Savornin Lohman.



Liechtenstein retreat: key action points on the future of the ICC

Challenges for the Assembly

Suggested actions for States Parties:

- Devise a strategic budget policy, including a discussion of policy issues (e.g. on legal aid, reparations, outreach), as well as discussion of the costs arising from Security Council referrals;
- Strengthen the support given to the President of the Assembly by the Bureau, by ensuring an active engagement from the Bureau members;
- Make better use of the omnibus resolution as a tool for political support for the Court, including by streamlining and restructuring the text;
- Consider reviewing the cumbersome rules for the recruitment of staff and for secondment of gratis personnel;
- Reconsider the number, length and timing of the sessions of the Assembly, as well as their content;
- Consider procedures to allow for inter-sessional decision making of the Assembly in exceptional and urgent situations.



President Wenawer and Mr. Bruno Stagno, former ASP President

Implementation and Cooperation

Suggested actions for States Parties:

- Establish a peer review mechanism to assess implementing legislation and the general level of cooperation as reported by States Parties themselves;
- Elaborate guidelines on limiting contacts with persons indicted by the ICC;
- Improve and streamline political and diplomatic support for the Court;
- Promote the adoption of implementing legislation on cooperation with the ICC;
- Consider concluding voluntary cooperation agreements with the ICC,
- Improve relations with the African Union, in particular at the political level;
- Consider convening the ICC-specific expert meetings in regional organizations;
- Use the UN General Assembly's 2012 High-level Meeting on the Rule of Law to promote the ICC.



Right: Mr. Valentin Zellweger, former ICC Presidency Chef de Cabinet chairing the panel on implementation and cooperation;
On left: Mr. Richard Dicker, Human Rights Watch

Universality

Suggested actions for the Court, States Parties and civil society:

- Devise a comprehensive strategy for pursuing universality, with a stronger role for the Assembly;
- Clarify the respective role of different actors such as Court officials, the President of the Assembly, regional organizations, and key NGOs; and increase coordination.



Vice-President of the ASP, Amb. Jorge Lomónaco chairing the panel with ICC President, Judge Sang-Hyun Song

The Court in the international system

Suggested actions for States Parties:

- Engage in a discussion on the relationship between the Court and the UN Security Council, with a special focus on referrals by the Council;
- Redouble efforts on promoting capacity-building of domestic judiciaries;
- More strongly involve and sensitize the development community, within and outside the UN system;
- Continue the discussions on the compatibility of peace and justice;

Suggested actions for the Security Council:

- Consider the adoption of general criteria for referrals and deferrals in order to enhance the perception of consistent and predictable decision-making;
- Follow up on referral decisions through appropriate action to promote cooperation with the Court and enforcement of arrest warrants.



UN High Commissioner for Human Rights, Ms. Navi Pillay, and Mr. Nicholas Michel

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic

Human Rights Council Eighteenth session (A/HRC/18/53)

94. The High Commissioner also recommends that the Human Rights Council:

(c) Urge the Security Council to remain seized of and to address, in the strongest terms, the killing of peaceful protestors and other civilians in the Syrian Arab Republic through the use of excessive force and other grave human right violations, to call for an immediate cessation of attacks against the civilian population, and to consider referring the situation in the Syrian Arab Republic to the International Criminal Court.

List of 2012 United Nations Security Council members that are States Parties

- Colombia
- France
- Germany
- Portugal
- South Africa
- United Kingdom of Great Britain and Northern Ireland



New York Working Group



Facilitator on non-cooperation

Non-cooperation ICC-ASP/10/37

Following discussions in the Bureau, the facilitator, Mr. Stefan Barriga (Liechtenstein), held informal consultations to discuss the report on potential Assembly procedures relating to non-cooperation. The report contemplates two specific scenarios of non-cooperation: a) Where the Court has referred the matter to the Assembly, and b) Where it has not yet done so but the matter appears to be urgent in nature and concerns a request for arrest and surrender by the Court. In the first scenario, the Bureau would recommend that a formal procedure be followed by the Bureau and the Assembly. In the latter scenario, an informal response procedure is recommended, via good offices by the President of the Assembly.



GRGB facilitator

Geographical representation and gender balance in the recruitment of ICC staff (GRGB) ICC-ASP/10/35

In accordance with the mandate given by the Assembly at its ninth session, the Bureau has continued to engage with the Court on the issue of equitable geographical representation and gender balance in the recruitment of ICC staff. The facilitator, Ms. Glenna Cabello de Daboin (Venezuela, Bolivarian Rep. of) held informal consultations, where the Court's report on this issue was discussed. The report of the Bureau notes that the Court has achieved progress as regards gender balance, while the overall figures for underrepresented regions remained similar those presented in April 2011. It recommends that vacancy announcements be widely circulated in underrepresented States and requests the Court to submit a comprehensive report on human resources to the eleventh session of the Assembly.



ACN facilitator

Advisory Committee on nominations (ACN) ICC-ASP/10/36

At its ninth session, the Assembly requested the Bureau to consider the potential implementation of article 36, paragraph 4(c), of the Rome Statute, and report to the tenth session of the Assembly thereon. Ms. Francisca M. Pedrós-Carretero (Spain) held informal consultations to discuss the mandate, composition and working methods of the Advisory Committee on nominations referred to in article 36, paragraph 4 (c), of the Rome Statute as well as the draft terms of reference for the Committee. This proposal contained in the report of the Bureau aims at having the Advisory Committee established and operational in advance of the judicial elections foreseen for 2014.



POA facilitator

Plan of action ICC-ASP/10/25

The Bureau continued to monitor implementation of the Plan of action. The facilitator, Ms. Oana Florescu (Romania), held informal consultations with States Parties and non-States Parties as well as other stakeholders contributing to the achievement of the Plan of action objectives: universality and full implementation of the Rome Statute. The report of the Bureau recommends the inclusion of a reference to the importance of ratifying the Agreement on Privileges and Immunities of the Court in the Plan of action. In 2011, 13 States Parties and two regional organizations have provided updated information relevant to the universality and full implementation of the Rome Statute. All replies are available on the Court's website.



Facilitator on arrears

Arrears ICC-ASP/10/34

The facilitator on the issue of arrears, Mr. Yukihiro Wada (Japan), held informal consultations to discuss the issue of outstanding assessed contributions with a view to address it more effectively. It was suggested to strengthen the communication with the nine States Parties in arrears as at 10 November, so as to avoid inducing the application of article 112 of the Rome Statute, whereby such States lose their right to vote.



WGA Coordinator

Working Group on Amendments ICC-ASP/10/32

Ambassador Paul Seger (Switzerland) chaired the consultations of the Working Group on Amendments, which is a subsidiary body of the Assembly. The WGA considered some of the proposals for amendment of the Statute submitted by States Parties before the Kampala Review Conference, as well as draft procedural guidelines, and the proposal put forward by the Study Group on Governance to amend rule 4 of the Rules of Procedure and Evidence. The Working Group decided to continue the consideration of both substantive amendment proposals and the procedural rules or guidelines after the tenth session of the Assembly.

The Hague Working Group

Cooperation ICC-ASP/10/28



The facilitator, Ambassador Mary Whelan (Ireland), whose two year term ends in 2011, held consultations on a number of issues relating to cooperation, including the need for a comprehensive national legal framework, interim release, sentence enforcement, witness relocation agreements and witness relocation in emergency situations. As requested by the Assembly at its ninth session, the Court presented an updated report on cooperation, which was first discussed in the context of The Hague Working Group. The report of the Bureau on cooperation, inter alia, recommends that the Assembly remains seized of the issue and includes a specific item on cooperation on the agenda of its eleventh session.

Complementarity ICC-ASP/10/24



The facilitators, Ms. Yolande Dwarika (South Africa) and Mr. Christian Nygård Nissen (Denmark), held informal consultations on various aspects of the complementarity regime, i.e. the legal framework as set out in the Rome Statute, in particular articles 17 and 19; the activities undertaken by major complementarity actors; the role and activities of the Secretariat of the Assembly; and the role of the Court. The Working Group noted, inter alia, that the Court, in the course of its core activities, already carried out activities which had a positive impact on strengthening national jurisdictions; that some complementarity actors were mainstreaming justice initiatives into their development cooperation activities; and that the Secretariat had facilitated the exchange of information between some States and complementarity actors.



Report of the Secretariat ICC-ASP/10/2
Report of the Court ICC-ASP/10/23

Meetings of the Bureau, NYWG, HWG and the OC as at 9 December 2011 (includes informal consultations)

	2010	2011
Bureau	21	19
The Hague Working Group	46	88
New York Working Group	17	28
Oversight Committee	32	23

Complementarity Extranet

At the Review Conference and at the ninth session of the Assembly, the Secretariat was mandated 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 aim of “positive complementarity”, which is a State-driven process, is to enhance the national capacity of States to effectively implement their obligations to investigate and prosecute Rome Statute crimes.

The Secretariat has adopted a two-track approach to implementing its mandate by establishing a matrix of a wide range of key actors engaged in complementarity activities, and by consulting with many of them with a view to having a first-hand view of these activities in order to ensure practical implementation. As a result, the Secretariat seeks to facilitate the exchange of information between some States Parties and complementarity actors regarding the need for capacity building, e.g. implementing legislation; the training of judges, prosecutors, and investigators; extradition and surrender.

The Secretariat has also established an Extranet on complementarity which will provide an information base on events relating to complementarity, identify the main actors and their activities, and facilitate contacts between donors, organizations, civil society and recipients, in order to advance the goal of strengthening national capacity. Designated actors would have the ability to post relevant information on the Extranet in order to share information.

Ms. Gaile Ramoutar, Legal Officer, is the Secretariat focal point for complementarity. Communications regarding complementarity issues should be emailed to aspcomplementarity@icc-cpi.int.

Website:
<https://extranet.icc-cpi.int/icc/complementarity/>

Visitor UserID:
icc-cpi\Comp_visitor

Visitor Password:
RCstocktaking2010



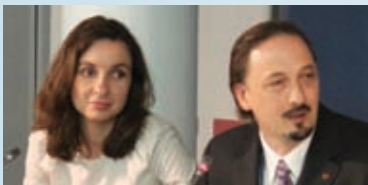
The Hague Working Group

Independent Oversight Mechanism (IOM) ICC-ASP/10/27

The informal consultations on the Independent Oversight Mechanism (IOM) focused on two issues: 1) investigation function of the IOM; and 2) inspection and evaluation functions of the IOM.

With regard to the investigation function discussions were held on the draft Manual of Procedures and draft amendments to the relevant rule of the Rules of Procedure and Evidence. No consensus was reached regarding the interpretation of the definition of investigations started by the IOM on its own motion. Further there was general agreement that a comprehensive approach needs to be followed when deciding on full operationalization of all three mentioned functions.

In its report the Bureau recommends that discussion on the investigation, inspection and evaluation functions of an oversight mechanism continue in 2012, with a view to reaching a comprehensive solution, and that the IOM, working in close consultation with the Court, including Staff Union Council representatives, and States Parties, develop an anti-retaliation/whistleblower protection policy, with a view to its adoption by the Court at the earliest possible time.



IOM facilitators
Ms. Nataša Šebenik (Slovenia) and
Mr. Cyril Borlé (Canada)



On 21 November 2011 Ms. Kristina Carey assumed her post as the Temporary Head of the IOM for a six month period.

"...Other corner stones of the global order – the European Commission, the International Criminal Court, the International Monetary Fund – are heavily regulated, with the actions of each subject to scrutiny by member nations. Fifa's statutes, by contrast, forbid "government interference","

Financial Times, 14 May 2011,
"Trophies and trinkets", page 9

Victims and affected communities and Secretariat of the Trust Fund for Victims ICC-ASP/10/31

The facilitator, Ms. Miia Aro-Sánchez (Finland), held informal consultations to discuss, inter alia, the Court's revised strategy in relation to victims, which covers the areas of communication, protection and support, victim participation and representation; and reparations and assistance. Furthermore, the Working Group considered the issue of reparations, in particular the meaning of article 75, paragraph 1, of the Rome Statute, as well as the procedure for the establishment by the Court of principles relating to reparations. It also considered the preparations by the Trust Fund for Victims for the reparations phase of proceedings, and noted the importance of cooperation with the Court in the areas of identification and freezing of assets.



Strategic planning ICC-ASP/10/29

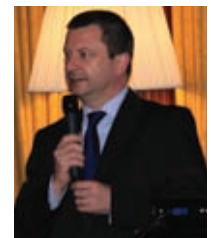
The facilitator, Ambassador Jean-Marc Hoscheit (Luxembourg), led informal consultations which included discussions on, the celebration of 17 July, Day of International Criminal Justice and the 2012 celebration of the tenth anniversary of the entry into force of the Rome Statute. Furthermore, it considered the draft guidelines governing the relations between the Court and intermediaries; reiterated the crucial nature of the interface between the Strategic Plan and the annual budgetary process and the need for the strengthening thereof; considered future work on the new issues of risk management and field operations; and expressed interest in contributing early to the informal process leading up to the 2012 review of the Strategic Plan.



Study Group on Governance seminar

On 20 October 2011 the Embassy of the United Kingdom to the Netherlands hosted a seminar of the Study Group on Governance entitled "Dialogue on institutional review of the governance framework of the Assembly of States Parties".

ICC-ASP/10/INF.4



Amb. Christian Wenaweser, President of the Assembly; Amb. Pieter de Savornin Lohman, Chair of the Study Group and Amb. Jorge Lomónaco, Vicepresident of the Assembly and Coordinator of The Hague Working Group; H.E. Paul Arkwright Ambassador of the United Kingdom

CARICOM - regional seminar on the Rome Statute

[Photo gallery >>](#)

[Press Release >>](#)

On 16 and 17 May 2011 a CARICOM regional seminar on the ICC was held in Port of Spain. The seminar was organized by the Government of Trinidad and Tobago, as part of its Review Conference pledge to promote the universality of the Rome Statute, with the support of the Commonwealth Secretariat and the assistance of the Secretariat of the Assembly of States Parties.

The seminar provided a forum for regional actors to provide their input on, inter alia, the importance of striving to attain universality of the Rome Statute; the outcome of the Review Conference, including amendments on the crime of aggression; consideration of other amendments to the Statute, in particular the proposal to expand the Court's jurisdiction by including the crime of international drug trafficking which has been of a particular concern to CARICOM States for a long time; the challenges faced in becoming a State Party to the Rome Statute and in implementing domestic legislation to ensure that States can investigate and prosecute the crimes themselves.

President Wenaweser also met Mr. Arthur N.R. Robinson, former President of Trinidad and Tobago and former member of the ICC Board of the Directors of the Trust Fund for Victims, who through his 1989 statement in the UN General Assembly placed the establishment of a permanent international criminal court on the agenda of the world body.



Left: The President of the Assembly of States Parties, Amb. Christian Wenaweser; center: ICC President Judge Sang-Hyun Song, and the Director of the Legal Affairs Division of the Commonwealth Secretariat, Mr. Akbar Kahn; right: The Minister of Foreign Affairs of Trinidad and Tobago, the Honourable Surujrattan Rambachan



Botswana visit

[Press Release >>](#)

The President of the Assembly, Amb. Wenaweser, visited Botswana from 6 to 8 July 2011 where he met the President of Botswana, H.E. Mr. Ian Khama, and other government officials, as well as a made a presentation to a media conference on the relationship between the ICC and the African Union and the role of the States Parties.



Left: President of Botswana, H.E. Mr. Ian Khama

Commonwealth Law Ministers' meeting and updated ICC Model Law



ICC President Judge Sang-Hyun Song and Commonwealth Secretary-General Kamalesh Sharma at the 13 July 2011 Commonwealth Law Ministers' Meeting in Sydney, Australia. The 54-member Commonwealth adopted an updated ICC model law which would facilitate both the ratification and implementation of the Rome Statute.

[Plan of action >>](#)

[2011 Commonwealth Model Law >>](#)

Asser Institute seminar

[Photo gallery >>](#)

During his October 2011 visit to The Hague President Wenaweser delivered a lecture with his reflections on the role of the President of the Assembly of States Parties.



Moot court (Spanish round final)

[Photo gallery >>](#) [Press Release >>](#)

On 10 June 2011, the Universidad del Rosario (Colombia) won the ICC Moot Court Competition. The Universidad Carlos III (Spain) and Universidad Sergio Arboleda (Colombia) won the second and third places, respectively.

The teams competed before the ICC Judges on a fictitious case, presenting oral arguments in the roles of Prosecution, representation of a State, and Legal representation of victims.

The winner of the Best Coach award was offered a six-month position in the visiting professional programme at Utrecht university.



ICC Judges Sylvia Steiner, Silvia Fernandez de Gurmendi and Elizabeth Odio Benito with the winning team

Interview with Ambassador Tiina Intelmann, President for the period 2011-2013



Your post as President of the Assembly will be a full-time post – the first of its character. What will be the key objectives and main challenges during your time as the President?

As the fourth President of the Assembly I will continue the work of my three extremely committed predecessors who have established the role of the president as an active and dynamic actor. There is still long way to go before we fully achieve the goal of ending impunity for the Rome Statute crimes but we can firmly say that by now the Court has an established reputation. The number of States Parties is also steadily growing, reaching 119 at the moment. The hope and the goal is to continue work towards universal acceptance of the Rome Statute and while this may take some time we should try to foster at least some degree of support and acknowledgement of the crucial role of the ICC among the States that for the time being are not able to sign and ratify the Statute.

It is equally important to find better ways for States Parties to cooperate with the Court and also to deal consistently with cases of non-cooperation. The success of the Court depends on continued and vigorous support of States Parties. There is also a role for the President of the Assembly to play in it, including dealing with unfortunate misperceptions that sometimes emerge.

While strengthening the Court we must not forget that the ICC is the court of last resort and that States Parties have resolved to cooperate in developing and strengthening national jurisdictions to conduct effective investigations and trials of Rome Statute crimes. This work will continue during my mandate in close cooperation with prominent development actors.

We need to further develop cooperation with regional organizations and to deepen Court's

interaction with the United Nations system. The role of the civil society has been crucial both in establishing and in supporting the development of the ICC. I intend to continue the well established dialogue with interested civil society representatives during my mandate.

With the first judgment pending, the Court also faces day-to-day governance challenges that need to be addressed in dialogue with States Parties without, of course, affecting the independence of the Court.

What inspired you to pursue the post as President of the Assembly on a full-time basis?

First and foremost, it is an expression of the long-standing support of my government to the ICC.

At the tenth session of the Assembly, a new Prosecutor and six new judges will be elected. What kind of impact will these significant changes in elected officials have on the work of the ICC?

First and foremost, the Assembly and the States Parties bear a heavy responsibility to identify and elect the most competent and experienced candidates. While civil society can assist and the Search Committee can interview possible candidates for the post of the Prosecutor, it is up to the Assembly to take the final decision. I really hope the new officials will take over their tasks smoothly and that there will be no major change of course, we should not forget that we are talking about a criminal court with its own independent and well established proceedings.

Bearing in mind that you were the Head of the Estonian delegation at the Review Conference in Kampala, what is your view on the outcome of the Conference?

The Review Conference was a major success, especially the fact that the participants were able to agree, by consensus, on the amendment to the Rome Statute defining the crime of aggression and conditions under which the Court would be able to exercise its jurisdiction over this crime. It was the result



of many years of hard work...and a diplomatic miracle.

Do you have an anecdote from Kampala that you could share with us?

The stories delegates share are many, listening to them makes one doubt if we have all been at the same place. Should I confess... I accidentally overslept and it almost happened twice. On a more serious note I think that it was extremely good that the Review Conference took place in a country where the Court has immediate relevance, we are all grateful to the government of Uganda for hosting the conference.

Personal favorites

Hobbies/pastimes:

Nothing spectacular really. I like to do yoga – no pain, no gain but also good for peace of mind

Preferred newspaper/magazine:

Depending on where I stay I always try to read local newspapers, lately Haaretz and The Jerusalem Post. The New York Times has been a long-time favorite

Most admired person:

I quietly admire people who pursue their goals with dignity and who have respect for others. Fortunately there are many of them

Favorite coffee:

Espresso macchiato

Favorite author/book:

One book comes to mind reading this question – Giuseppe Tomasi di Lampedusa's *Il Gattopardo, The Leopard*. It is an old-fashioned story about painful but necessary decisions and about old times that are vanishing

Favorite website:

What is the website most visited by an Estonian diplomat? <http://www.vm.ee>, of course! It is the website of the Estonian Ministry of Foreign Affairs. We use it for our internal communication and decision-making (E-Estonia, Estonia is run without paper as we proudly say) but there is a lot of interesting and valuable information on that website available for all visitors, Estonian or non-Estonian

Preferred vacation spot:

A fishermen's village in the Mediterranean away from all worries where life proceeds at its own pace. The sun seems to be shining even on a rainy day. No one is ever in a hurry but everything gets done

Court and CBF proposed programme budget for 2012



Amb. Klaus Korhonen (Finland),
facilitator for the budget discussions

CBF17 report on cost drivers

“The Committee identified a number of significant cost drivers and other areas of Court activity where the Assembly could provide guidance as to the level of expected activity, relative prioritization, the possibility of reform, and alternative methods of service delivery and financing to help contain and control increases in the regular budget over the coming years. (para. 14)”

ICC-ASP/10/10 and Add.2



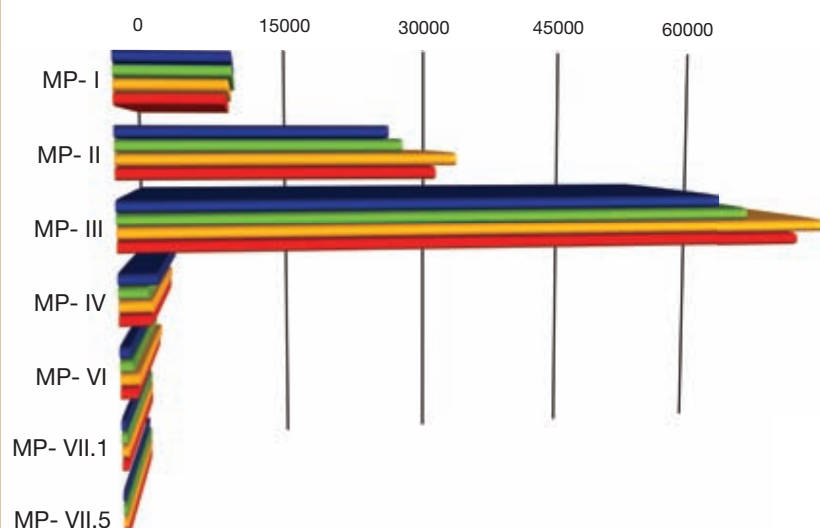
Major Programmes	Expenditure 2010	ASP Approved 2011	ICC Proposed 2012	CBF Proposed 2012
MP- I - Judiciary	€ 10,620.9	€ 10,669.8	€ 10,308.8	€ 9,992.9
MP- II - Office of the Prosecutor	€ 25,259.2	€ 26,598.0	€ 31,802.7	€ 29,802.2
MP- III - Registry	€ 58,502.3	€ 61,611.4	€ 69,916.1	€ 67,064.1
MP- IV - Secretariat of the ASP	€ 3,589.3	€ 2,728.2	€ 3,082.9	€ 2,957.1
MP- VI - Secretariat of the TFV	€ 943.9	€ 1,205.2	€ 1,755.8	€ 1,533.1
MP- VII.1 - PO Permanent Premises	€ 395.4	€ 492.2	€ 546.4	€ 519.0
MP- VII.5 - IOM	€ 107.2	€ 303.1	€ 320.8	€ 260.0
TOTAL	€ 99,418.2	€ 103,607.9	€ 117,733.5	€ 112,128.4

(Unit = 1,000 euro)

Note : This table does not include:

- Working capital fund (€ 7,406.0)

Budget by Major Programme

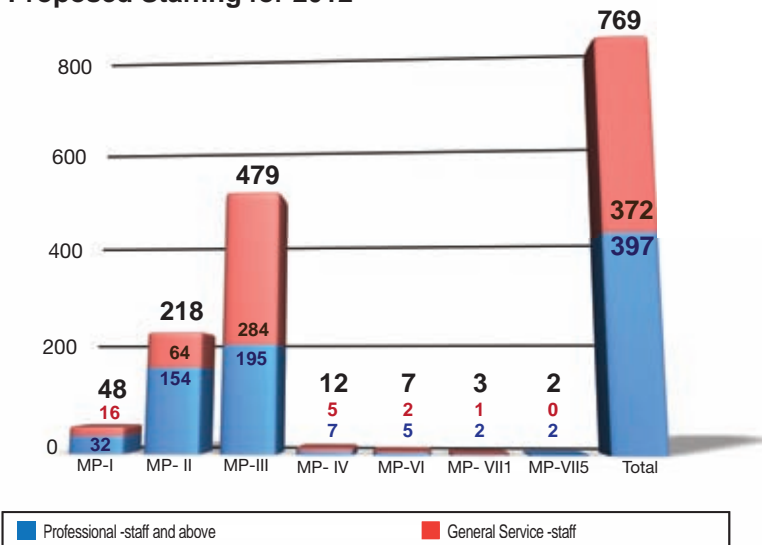


Total Programme budget

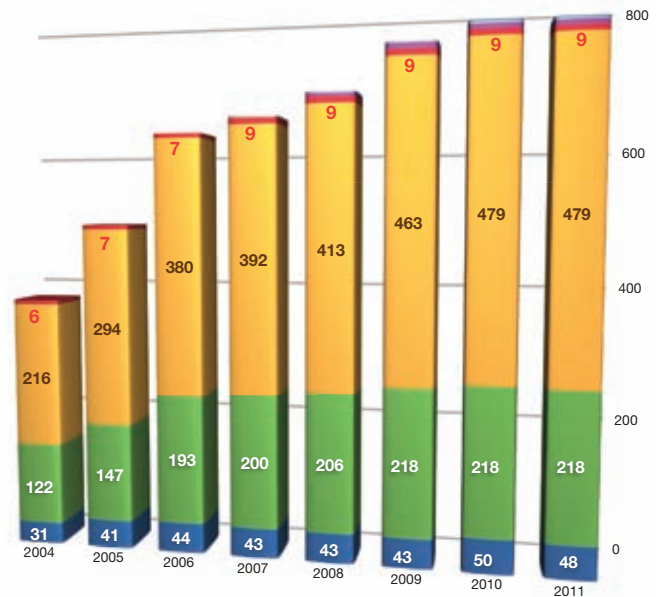


■ ICC Expenditure 2010
■ ASP Approved budget 2011
■ ICC Proposed budget 2012
■ CBF Proposed budget 2012

Proposed Staffing for 2012



Approved Staffing Table 2004 – 2011

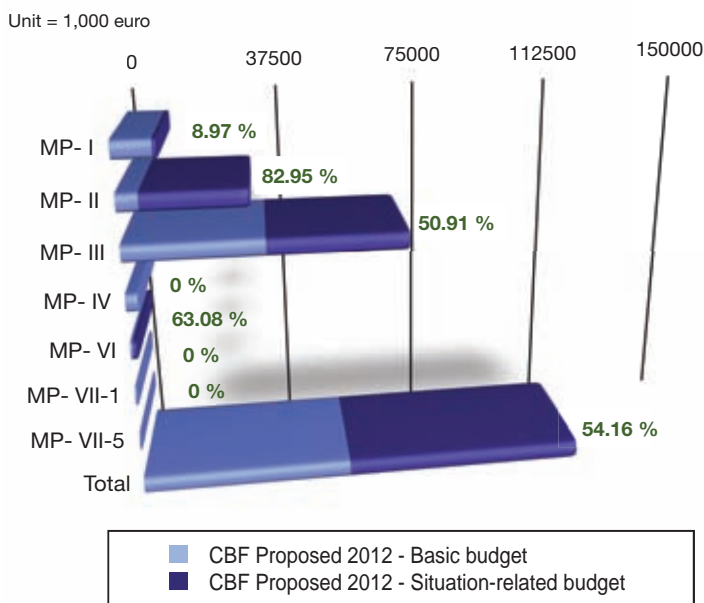


Potential additional expenditures in 2012

Description	Amount in Euros
2012 proposed programme budget	117,730,000
African Union Liaison Office	432,400
2012 proposed budget: permanent premises (2gv)	904,100
Contingency Fund replenishment	6,296,000
Total	125,362,500
Situation in Côte d'Ivoire	4,428,000
Cost of one full-time judge per month	from 18,000 to 19,500

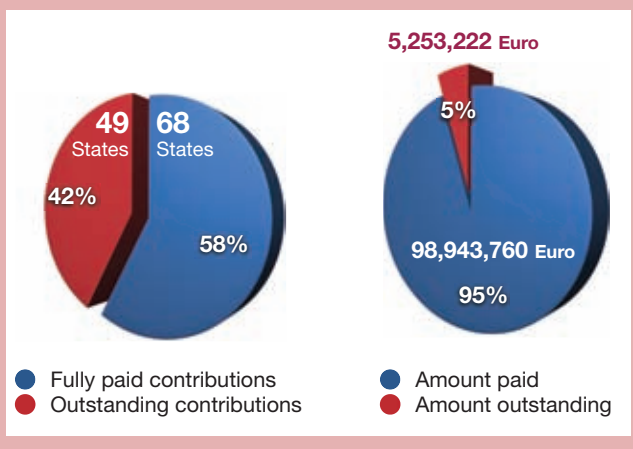
- Independent Oversight Mechanism
- Permanent Premises Project Office
- Secretariat of the Trust Fund for Victims
- Secretariat of the Assembly of States Parties
- Registry
- Office of the Prosecutor
- Judiciary

Basic/Situation-related budget - CBF proposed 2012



Factsheet 2011:

Contributions to budget by States Parties as at 14 November 2011



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



Is there any particular difference from the Committee's seventeenth session and previous ones?

This session has been a particularly challenging due to the consideration of a budget proposal representing an increase of more than 13 per cent, the highest yearly increase request. This is mostly due to the UN Security Council referral of the situation in Libya which represents the major cost driver and amounts to €7 million.

The CBF took a prudent approach and requested the Court and particularly the Office of the Prosecutor to revise its estimates of a date closer to the Assembly's session. This approach has proven to be right, since assumptions changed significantly since the end of August. The Committee expects to receive in early December the revised estimates. The CBF has also identified other potential expenditures, which the Assembly has to take into careful consideration, such as the supplementary budget for permanent premises and the Côte d'Ivoire situation, replenishment of the Contingency Fund, the cost of calling additional full-time judges, among others.

Could you tell us about the strategic considerations/cost drivers that the CBF has highlighted in its recent session?

The CBF has already in the past provided strategic guidance to the Assembly and the Court on several issues, which have represented significant savings over the years. This year, we decided to clearly identify these items in the report, as to facilitate follow up by States Parties.

For example, after the experience gained over these years, we have recommended a review

of the legal aid framework. At the time of its approval, the Court informed it would keep it under review, so we believe it is time to benefit from the available data and experience in order to make any necessary adjustments.

Another important and new issue, which constitutes a positive step for the Court as a unique international institution, is the UN Security Council referral; since the referral has important financial consequences for the Court's budget, the Assembly should therefore reflect on how to deal with this in the future, given its limited absorption capacity.

The subject of reparations is a unique important feature of the Rome Statute. States Parties should reflect on how to address it in term of its financial implications, as decisions on reparations seem to be in the offing.

Other items brought to the attention of the Assembly for strategic review refer to the budgetary process where the Assembly was encouraged to consider mechanisms to address the medium term costs such as capital replacements, premises and staff costs; outreach, where the Court requires guidance from the Assembly as to the level and type of outreach that is appropriate within the regular budget for this stage of the Court's development; and the Assembly may wish to consider whether alternative mechanisms both for financing and for delivering certain services may also be an avenue to accommodate increased desirable activity as recommended by the CBF for the Trust Fund for Victims.

What was the total implication of the Committee's recommendations? Do you think there is a room for more adjustments without affecting the Court's core activities?

The CBF has, after very careful review of every budgetary line, programme and sub-programme, identified potential savings representing €5.6 million in the 2012 proposed programme budget. We can justify this recommendation on a technical basis. Of course States Parties can decide otherwise, but we believe that going beyond that figure would be a political decision that could affect the Court's capacity to perform. I have said before that it is always possible to achieve greater efficiencies, but in order to identify them we would need a more permanent support to oversee different items closely.

Could you brief us about the UN common system which is an important cost driver?

The CBF has highlighted to the

Assembly over the years, particularly through its April session reports dealing with human resources, the financial impact of the Assembly 2002 decision to follow the UN common system. The April session reports, which contain important recommendations on this matter too are somehow forgotten because the August session dealing with the budget gets most of the attention.

For example in the past the Committee has been very strict on the issue of reclassifications and the Assembly did not really seem to understand our logic, but this is also part of the financial implications of the common system application.

Only this year, the common system represents more than a €1 million increment. We have already indicated the Court that a consultation process with the International Civil Service Commission should be started in order to find a fair solution for staff and to maintain the budget at reasonable levels. There are still some areas that need to be considered further, such as if the Court is legally bound to the common system in its entirety or if it is possible to have a different approach.

As a founding CBF member since 2002, how have you seen its work evolve over the years?

The work of the Committee has increased tremendously, due to its mandate which is wide, but also to the increasing demands of the Assembly and the relevant working groups for its opinion or guidance on different items, such as the Independent Oversight Mechanism, the Oversight Committee on permanent premises, detention facilities; furthermore the CBF has addressed specific issues with important financial consequences, such as the pension of judges, investments, procurement practices, need of coherent rules and regulations for staff including assessment system, benefits, etc. The CBF also conducts ad-hoc inspection work. In addition, CBF recommendations have saved States Parties around €35 million over the years, but most importantly without affecting the capacity of the Court to perform its mandate, and I believe this is essential.

The CBF can play a more strategic role in advising the Assembly and we have been discussing different options to ensure that the CBF has the requisite support capacity to carry out its mandate in the most efficient manner.

What are some of the key legacies of the CBF to the Rome Statute system?

Although the CBF is only an advisory organ of the Assembly, its mandate is wide and important; on the CBF does not deal with the core mandate of the Court, but it does provide recommendations to ensure that the Court has the means to perform. So it is not possible for the CBF to say that it leaves a legacy to the Rome Statute system. Nonetheless, we can say that we have contributed from a financial and administrative perspective to the establishment phase of the Court and also to assist in the endeavor to make it a model of international public administration. Our recommendations over the years, while representing €35 million in savings, have not impeded the Court from conducting its core work and I consider that a great outcome, bearing in mind that the budget process is based on assumptions. In the past, we put forward some ideas for consideration by the Assembly which may probably contribute to the Rome Statute system, such as the possibility

of having ad litem judges, strengthening the role of the President of the Court or electing a Registrar with managerial skills rather than a legal background. We are heartened that these options are being discussed by States Parties because this can contribute to the future of the Court.

What has been the most challenging aspect of being the Chair of the CBF?

Let me say that it has been a real honor for me to serve in the CBF for almost 10 years and to contribute to the establishment of the Court, which I believe, is an exceptional institution representing the highest ideals of justice. Being a financial expert, I have had the chance to see the reality on the field and to spend more time with the victims and these experiences can convince you of the importance of the Court as a permanent international institution.

When my colleagues proposed me to chair the Committee I felt very honored and thankful to them, particularly taking into account that I was probably the youngest member in the CBF at that time. Chairing the Committee is not just about knowing the substance, leadership and facilitation capacity is required. The Committee is composed of veritable experts in different areas, so we all learn from each other; we also come from different cultural backgrounds so I would say the interesting challenge was to guide discussions in order that everyone agrees on a recommendation. We have had intense discussions over the sessions and, as you can imagine, negotiations about funds is not an easy one, but we have always managed to make recommendations on the basis of consensus and we have never voted to make a decision. The Chairperson also has to be in contact with the heads of organs, reply to e-communications, offer advice on different issues, all of which takes time and represents an additional responsibility to his/her regular work, but that's the commitment you assume to the Assembly and your colleagues. In conclusion I would like to convey my sincere thanks to my dear colleagues for their engagement and support throughout these years. I would like also to thank all members of the Secretariat of the Assembly who have supported me and all the CBF members in our work.



Oxford symposium

On 12 and 13 May 2011, a symposium was held at St. Anne's College, Oxford, to examine ongoing debates regarding the crime of aggression and the future of the ICC, as well as marking the launch of The Global Institute for the Prevention of Aggression.

[Photo gallery >>](#)

[Podcast link >](#)



Committee on Budget and Finance concludes its seventeenth session (August 2011)

Key CBF recommendations

Budgetary impact proposals:

- A single new case can trigger a need for €7 million more in a single year;
- ASP may have to consider how much additional activity it can support through the regular budget. The CBF suggests tying the availability of some funds to the assessment of the Prosecutor of events on the ground (a “trigger” approach);
- Greater consideration is required on “exit strategies”, ie, how the Court will complete its activities in a situation country and what will be required to leave;
- UN Security Council referrals: it is unclear why the Assembly should alone bear the full costs. This issue could be looked at by the Bureau or one of the working groups to consider options for addressing the issue with the UN for future referrals;
- Reparations: strategic guidance from the ASP on reparations would be important given the lack of an overall strategy by the Court;
- Court to produce a medium term (i.e. at least up to 2015) expenditure forecast, including its capital investment and replacement requirements and plan, as an annex to the 2012 proposed budget and for each annual budget thereafter. CBF encouraged the Assembly to consider mechanisms to address such costs;
- Outreach: given fragmentation across organs and programmes, Court requires guidance as to the level and type of outreach that is appropriate within the regular budget;
- Court to develop an anti-fraud policy, including whistle-blowing provisions, as a matter of priority;
- Court to undertake a thorough review of its organizational structure;
- Court to include in the annual proposed budget a table with a full budgetary impact for the following year that would comprise the potential additional expenses contained in the annexes to the proposed budget, as well as other expenses, which States Parties may be assessed for;

2012 budget

- Majority of the increase was due to increments of salaries and a portion was attributed to the decision to enhance the conditions of the services for professional staff serving in the field that was not submitted to the Assembly for its approval;
- CBF recommended that the increases for staff salary and enhanced conditions of service in the field be absorbed within each major programme, except as indicated in Section F of its report; this recommendation would also apply to GTA staff, especially since there are no clear guidelines for the use of GTA;
- CBF recommended that the Prosecutor re-evaluate the needs of the OTP (the Registrar would, by consequence, re-evaluate Registry requirements) prior to the tenth ASP;



Contingency Fund

2011 notifications (as at 23 September 2011) (in millions)

Six notifications	€ 8.54
i) Transfer of four detained witnesses from the DRC to The Hague	€ 0.23
ii) Legal aid for Mr. Mbarushimana	€ 0.40
iii) Libya situation	€ 4.07
iv) Kenya situation	€ 2.62
v) Trial activities in the second half of the year	€ 1.10
vi) Cote d'Ivoire Situation	€ 0.13

Amount available in Contingency Fund as at 31 December 2010	€ 8.76
Court's initial estimate of total access	€ 5.20
Tentative balance at 2011 year end	€ 3.56
Threshold for replenishment	€ 7.00
Tentative Contingency Fund replenishment	€ 3.44

Legal aid costs for defence and for victims in million of euros (as at 23 August 2011)

Cases	defence	victims	total
Lubanga	2.8	1.3	4.1
Katanga and Ngudjolo	3.5	1.0	4.5

Court 2012 legal aid budget request for all cases: 7.5 millions

Legal aid: Under the current system, these costs will continue to grow. The Committee is of the view that a review of the legal aid system is now urgently warranted. A decision will ultimately be required as to the sustainability of the financial costs of this legal aid system and whether there are alternatives or changes that can help contain costs while still ensuring a fair trial for the accused and adequate representation and participation of victims. (para. 15)

Interview with Ms. Alice Revell, Coordinator of the Group of Friends of the ICC in New York



Legal Adviser and Second Secretary at the New Zealand Permanent Mission to the United Nations

What motivated you to take up the position of the Coordinator of the ICC Friends in New York and how long is your mandate?

The establishment of the ICC is one of the greatest achievements in international law in the past decade. New Zealand has been a strong supporter of the Court from the outset, and it is very pleasing to see that the number of States Parties continues to grow every year. The Friends of the ICC group in New York provides an informal network for States and civil society to support the work of the Court by exchanging information and discussing issues related to international criminal justice. I was interested in helping to advance this work. Since the Friends of the ICC is an informal group, there is no set term, and previous coordinators have usually held the role for 1-2 years.

What kind of activities do you envisage organizing?

One thing that the Friends have traditionally found valuable is the chance

to meet with senior Court representatives when they are visiting New York. I have continued this practice of informal meetings, which can complement the more formal mechanisms established under the Rome Statute. Another important function of the Friends is to provide a forum where States and civil society can work together to support the work of the Court. I also plan to organize panel discussions on topics of interest related to international criminal justice and the Court's role, in conjunction with the three focal points of the Friends group. And above all, I welcome suggestions from all the Friends about activities they would like to see happen.

How many "Friends" are there and who can join?

All States Parties can join the Friends group. Other interested States can also ask to join. In addition, many non-States Parties and civil society groups receive information via our e-mail list and can attend open meetings of the Friends.

Is there any specific area related to the Court's work that you feel NY can make a particular contribution to?

Given that we work with the UN on a daily basis, the New York Friends can contribute a wider perspective on the relationship between the Court and the UN's contribution to justice and the rule of law, and in fact many members of the Friends have significant expertise in these fields. We also have representation from almost all of the 193 UN Member States here in New York, so it is an important place for discussions on advancing the Court's universality.

How do you gauge New York delegations interest on ICC issues, given the multiple topics delegates have to deal with?

One of the challenges of for those of us posted in New York is the sheer breadth and volume of work for most Missions. Delegates who cover ICC issues usually also cover a wide range of other legal and non-legal issues. The Friends Group, through its e-mail distribution list and informal meetings, provides a useful way for smaller Missions in particular to keep up to date with what is happening at the Court and in international criminal justice more broadly.

Women are now chairing both groups of Friends, in New York and The Hague, there is a majority of female judges and as of December the Assembly will have its first female President. Do you see this as a sign of changing times or just a transitory circumstance without any particular impact?

It is great to see more women playing a prominent role in public life, including in senior ICC roles and in the Friends groups, and I hope it is a sign of increasing gender equality.

Personal favorites

Recommended book:

The Handmaid's Tale, by Margaret Atwood, my favorite

New York experience:

Walking on the Highline followed by coffee at 9th Street Espresso

Rugby team fan:

The All Blacks, of course!

Oversight Committee on permanent premises

ICC-ASP/10/22

The Final Design stage of the permanent premises project was completed on 1 November 2011. The tender procedure and request for expressions of interest for the general contract will take place between December 2011 and August 2012, with construction commencing in September 2012. The construction would be completed in September 2015, in order for the Court to move into its permanent premises in December 2015.

The overall construction budget remains within the maximum figure of €190 million at 2014 prices. Although additional costs (the so called "Box 4 costs") had been identified in March 2011, the Oversight Committee decided to absorb part of these costs within the construction budget, and to submit the remaining additional costs to the Assembly

via the regular annual budget for the duration of the project. As a result, in early December the Court presented a supplementary budget for permanent premises of € 904,100 for 2012.



Mr. Roberto Bellelli (Italy), Chair of the Oversight Committee

Interview with Ms. Yolande Dwarika, Coordinator of the Group of Friends of the ICC in The Hague



Legal Counsellor at the South African Embassy to the Netherlands

What key developments would you highlight for the Rome Statute system and what are the main challenges for coming years?

The Rome Statute system has created a new legal order, where those responsible for the gravest crimes of concern to humanity will be punished either at the national level or face justice at the International Criminal Court. Over the last ten years the world's first permanent international criminal court has established itself and has become fully operational. We have witnessed the closing of the first trial and while the first decision of the Court is still awaited, there have been many decisions which are important for the jurisprudential developments of the Court. I am of the view that the increase in completed cases will in itself promote the objectives of the Court and emphasize the important role that the Court plays in the fight against impunity and in promoting accountability.

The complementary way in which the Rome Statute functions is an area where there have been significant developments, in recent times. This is an important area for States and other actors to remain focused on, as strengthening the capacity of national jurisdictions to investigate and prosecute serious crimes will enhance the functioning of the Rome Statute as a whole and will take the fight against impunity to the grass roots level.

Increased membership to the ICC has been achieved with as many as 119 States now party to the Rome Statute; however there is still room for more progress in this area. Increased membership will ensure that the end to impunity becomes a universal attainment and that justice is seen to be metered out equally and impartially. I still

have the hope that one day the ICC will have universal application and would be of benefit to victims all over the world.

I think one of the main challenges in the years to come is to ensure that the Court's mandate and goals are better synchronized within in the international peace and security landscape. This is the first time that a permanent international court has become involved in ongoing conflict situations and we must continue to find ways to ensure that the goals of lasting peace and security can be met while pursuing justice.

How do you see the role of the Friends of the ICC in The Hague?

The Friends of the ICC is an informal forum where States Parties and non States Parties alike can freely share their views about topics relating to the ICC and international criminal justice in general.

Due to the fact that meetings are conducted under Chatham House rules, participants feel more relaxed about sharing views and exchanging ideas in a less formal setting.

While the Friends Group started as a group to promote the early adoption of the Rome Statute, the group now supports the goals of the Rome Statute system by discussing pertinent questions and topics that impact the functioning of the court.

It is an important way for non-States Parties to engage with the Court and also contribute to discussions and this was one area that I strove to focus on as Coordinator.

What are the key objectives you seek to achieve as coordinator?

I sought to ensure that the membership of the Group was enlarged during the time that I served as coordinator. I am proud to say that I have achieved that goal and many non States Parties have become increasingly active in the work of the Group.

Another of my key objectives was to capitalize on the advantage of being at the seat of the Court so the focus of the Group's discussion was on areas such as the jurisprudential developments and cases before the Court. I also focused on the opportunity to engage with the Principals of the Court and promote direct exchange between the different organs and the Group.

We are also fortunate to have the other tribunals present in The Hague, including the International Criminal Tribunal for the former Yugoslavia, Special Court for Sierra Leone and Special Tribunal for Lebanon; I was therefore pleased to bring together experts from all the Tribunals so that we could share ideas and lessons learnt from the experiences of the various tribunals. So often we are faced with questions or issues that have been addressed before and the Friends Group has the possibility to break through silos and engage with eminent international jurists from all the tribunals and courts in The Hague.

I was also mindful that many of the issues that we engage with, in the Bureau and Working Groups do not always touch on the judicial developments and I have tried to complement the work that we undertake in the Working Groups so that States have an



Friends meeting at the Embassy of South Africa



President Wenaweser and Ms. Dwarika at Friends meeting

opportunity to be updated on all areas of the Court's work.

Is there any area related to the Court's work that you are particularly interested in?

I am currently the co-facilitator for the topic of complementarity and I am enormously passionate about improving the complementarity system in which the Rome Statute system operates.

I truly believe that in order for us to give effect to the noble goal of fighting impunity our efforts must begin at the national level. South Africa and Denmark were the Focal Points for this topic at the Kampala Review Conference and one of the outcomes was that there was a commitment for further work to be done in this area. It is therefore satisfying to see how the complementarity discussions have created interest within the Rome Statute system but also with other actors. It is my hope that this issue will continue to receive the focus it deserves.

When we begin to capacitate national jurisdiction to genuinely investigate and prosecute crimes, we are ensuring that no impunity gap exists between the prosecution of what has become known as, "the most responsible for the most serious crimes" and the rest of the perpetrators. It is important that justice is not only done but that it is also seen to be done and I am of the view that we can have an even greater impact when affected communities can see justice taking its course at the very place where these grave atrocities were committed. Coming from South Africa, I am conscious that whatever form of justice is embarked upon, the inclusion of affected communities at the national level contributes to a healing process that societies coming out of conflict situations so desire.

What were the most memorable and the most challenging moments in the four years as a delegate in The Hague?

Serving as Legal Counsellor for my country, South Africa, has been one of the most rewarding and humbling experiences in my professional career. When I started my posting in The Hague there were just two situations before the ICC: the DRC and Uganda.

I have watched the Court's work load increase to seven situations during my time here and I have had the enormous pleasure of witnessing the opening and closing of the Lubanga trial, the Court's first ever trial.

I have navigated through some challenging times, including when the Court's focus was questioned and there were differing perceptions about the role of the ICC within the international community. More recent challenges include how to ensure that the ICC fulfils its mandate in times of extreme budgetary constraints.

One of the most rewarding experiences was being in the courtroom when the first child soldier gave evidence in the first case of the ICC, in that moment I understood more than ever the impact of our work and of the ICC. Another rewarding experience was to have the opportunity to participate in the Review Conference. While many delegates will remember the excitement when agreement was reached on the crime of aggression, my memorable moment was definitely during the complementarity panel discussion and later the adoption of the complementarity resolution. This was a proud moment for

me personally and it was a culmination of many months of hard work by my colleague from Denmark and I. Meeting the victims in Northern Uganda and listening to their perspectives on the ICC and their experiences has had an enormous impact on me personally and I will carry those moments with me.

I have enjoyed my posting in The Hague and have had the privilege to meet and work with wonderful delegates and colleagues whom I can now call friends.

Personal favorites

Hobbies:

Travel, reading, spending time in nature, an unashamed shopaholic!

Bedtime book:

The Art of Happiness by Dalai Lama and *Young Mandela* by David Smith

Newspaper/magazine:

Foreign Affairs and the New York Times

Movies:

Blood diamond and Invictus

Singer:

Contemporary: Adele and Alecia Keyes
Classics: Frank Sinatra and Ella Fitzgerald

Most visited websites:

youtube and the ICC

Preferred Hague restaurant/Dutch meal:

Broodje (Dutch sandwiches) picnics in the tulip fields or traditional Dutch pancakes best served at the little Pannekoekenhuis at the Meydenal nature reserve

Ideal vacation spot:

Soaking up the African sun in magnificent Cape Town

Most admired person:

Nelson Mandela



Amb. Peter Goosen, Ambassador of South Africa to the Netherlands and Ms. Dwarika at a Bureau meeting held in October in The Hague

Interview with Mr. Ariel Dorfman*



Can one still feel justice is served if a trial a) takes place within a very short time after the alleged crimes took place or b) starts two or three decades after the alleged crimes?

Justice is served by every trial, no matter how quickly (or slowly) it occurs after the alleged crimes have been committed. For the victims, of course, an immediate accounting is better, as it does not leave them to brood for decades about how they have been forgotten, how those men (generally, alas, they are men) are free to roam the streets without having been held responsible for what they did. To organize such judgments swiftly also sends a warning to dictators and perpetrators that they will not have impunity. But there may be cases where it is inevitable for time to pass (the perpetrator is hiding, the conditions for arresting him do not exist, he is protected by international/multinational interests), in which case at least an indictment gives victims the sense that justice may, someday, be served, that their plight and tragedy is being acknowledged, and even though this is insufficient, it is a beginning, a road to healing which, for me is what these trials are ultimately about. Healing the victims, healing humanity, healing the future so we can truly whisper: *Nunca más*. Never again. That's why the existence of the ICC is so monumentally crucial.

What are victims deprived of when an accused cannot face a trial either because he is considered senile, commits suicide or is executed before the trial can begin?

I have always said that the major punishment I wish upon those who have damaged so many is to have to face their

victims, one by one, in a court of law or in the afterlife (a confrontation I have recently staged in one of my latest plays, *Purgatorio*). One cannot stop the accused from committing suicide, but we can do everything possible to ensure that he or she is not executed extrajudicially. When you kill the accused, you are becoming like him, and are depriving the victims of the chance to overcome their fear and their worst memories. So, those who executed Ghaddafi, for instance, have acted with enormous selfishness (besides savagery, though why we should blame the savages, I don't know): they thought only of themselves and their joy in an eye for an eye, tit for tat, and not about all those who will never look on the dictator live and tell him, personally, the pain he has caused. Also he was not given the opportunity to meditate on what he did and perhaps, who knows, repent.

Some say that given the heinous and large scale nature of the crimes allegedly committed by the accused, the trial should be expeditious and not provide him a chance to live in a detention cell with many comforts denied to the victims. Would this argument resonate with victims?

It probably would resonate with victims, but in this case, at least, victims would be wrong. We should afford those accused all the guarantees and benefits that they (if they are indeed guilty) did not give the men and women they sought to destroy. It is true that most perpetrators see these comforts as a sign of weakness on the part of those who have detained them, and many of them make a mockery of the trial itself, but we should not let ourselves be governed by their vision. Maybe they can't understand that what is being sought is justice and not revenge (because they never believed in justice), but the tribunal represents the law and, as such, must not become, in any way, like those it is accusing. And the accused are innocent until the contrary has been proven – all the more reason to treat them with respect, to use these trials as an example for how every trial should always be (though this is, alas, seldom the case).

Do you think most victims would prefer a trial in the country where the alleged crimes occurred or in The Hague?

Most probably they would prefer their own country, because it would be a way of being readmitted into the community from which, all too often, suffering and shame

has excluded them. But at times there are no conditions for judging human rights violations in the country where they occurred, and in these cases I have no doubt that the victims welcome the chance to have the perpetrators subjected to international jurisdiction.

What thoughts go through a victim's mind when facing the accused in a trial?

As to thoughts, one cannot really know, of course (we only know what victims tell us, but their oral or written testimony at times is different from their innermost feelings). This is perhaps, however, the most interesting question for me, as it is the job of writers to imagine what is hidden, what has not been expressed, what stumbles towards the truth. I've spent my life burrowing inside the hearts and minds of victims, and also perpetrators, trying to understand, trying to find words. I can never be sure that those words are indeed what might be in someone's mind, but the reactions to my poems and to *Death and the Maiden* and some stories indicate that I may, at times, have been successful. At any rate, in this space it is impossible to summarize what a narrative or a poem or a monologue finally are able, one would hope, to articulate.

Would some closure be achieved best via a lengthy prison sentence or via the death penalty?

The death penalty does not close anything. It's an illusion to think there can really be closure. What there can be is the satisfaction that justice has been done. The dead cannot be brought back, the body can never entirely be repaired, the memory of terror cannot be banished completely. What we can do is create conditions for a world where such aberrations will not be repeated.

Perhaps not from a legal perspective, but would a person who is exiled be a victim?

Even from a legal perspective, to forcibly remove someone from their homeland and deprive that man, that woman, that child, of the wonders (and perhaps even the miseries) of everyday life back home. Exile – being sent away from all one considers dear and meaningful, to lose one's language and library and friends – makes us defenseless, twists our existence. Nevertheless, as I have tried to establish in my latest memoir, *Feeding on Dreams*, the challenge is to find a way to not think of oneself as a victim, to discover how

* Chilean-American novelist and playwright, born in Argentina. He holds the Walter Hines Page Chair at Duke University. His books have been published in over 40 languages and his plays staged in more than one hundred countries. His play, *Death and the Maiden*, deals with the aftermath of terror and torture, with memories that

won't go away; it won the Laurence Olivier Theatre Award in 1992 for BBC Award for Best Play and is being performed again in London until January 2012. His latest book is *Feeding on Dreams: Confession of an Unrepentant Exile* (<http://www.adorfman.duke.edu>)

that experience can allow us to grow. After all, the exile is not only losing a country but also, in spite of the pain, gaining (at least in some cases, at least potentially) a world. This cannot be said about other human rights violations. Nothing positive can come from torture, execution, genocide.

Your writing also addresses the person who is victimized because he/she survives while his family and friends were tortured or killed. How have you managed or tried to overcome that?

I have spent my (almost forty) years of exile dealing with this issue. My writing is filled with survivors, with all the guilt that this entails, but also the responsibility towards the pain of others, towards the dead, towards

whatever gifts one has been offered. I often berated myself for being alive, but I slowly came to terms with that sorrow and realized that I had to use that life that was given to me, the voice I discovered as I wandered, to tell the

"It is a story that our species has listened to with mounting revulsion, a horror that has led almost every nation to sign treaties over the past decades declaring these abominations as crimes against humanity, transgressions interdicted all across the earth. That is the wisdom, national and international, that has taken us thousands of years of tribulation and shame to achieve."

Ariel Dorfman, *Washington Post*, 24 September 2006
Are we really so fearful (On torture)

story that was being suppressed back home or that so many did not want to hear abroad. There is nothing heroic in this story-telling. I could not have lived with myself if I had not ended up using words to tame the darkness and try to overcome death. As Archbishop Tutu says (in one of my plays, *Speak Truth to Power*): Anything else would have tasted like ashes.

New York University-International Center for Transitional Justice panel discussion

On 29 November 2011, the Global Affairs Program at NYU and the ICTJ organized a panel dealing with the impact of the Yugoslav and Rwanda tribunals and the lessons for the ICC.

From left: Ms. Jennifer Trahan, NYU, Mr. Richard Goldstone, former chief prosecutor, ICTY and ICTR; Ms. Diane Orentlicher, American University; Mr. Hassan Jallow, Prosecutor, ICTR; and Mr. David Tolbert, ICTJ and former deputy prosecutor ICTY



UN Security Council meeting on protection of civilians in armed conflict

Amb. Wenaweser speaking in his national capacity at the 11 November 2011 meeting.



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Eskinder Debebe

PASP open meeting with staff

During his October visit, the Staff Council organized a town-hall meeting for staff with President Wenaweser.



From left: President Wenaweser and Ms. Jennyffer Urrutia, President of the Staff Council.

17 JULY 2011

Day of International Criminal Justice



Pursuant to the Review Conference decision, the first commemoration of the day was marked at the seat of the Court by a symbolic flag-raising ceremony, during which the ICC flag and an International Criminal Justice Day banner were raised. Similar banners were displayed throughout The Hague, as well as in the capital of many countries and numerous events took place to mark the occasion so as to raise awareness of the need to fight against impunity.

Departures - New York

Ms. Oana Florescu (Romania) ended her posting at the Romanian Mission to the UN and returned to Bucarest.



Departures - The Hague

Mr. Martin Strub concluded his posting and assumed new functions at the Swiss Embassy in New Delhi; Ms. Yolande Dwarika (South Africa) and Ms. Nataša Šebenik (Slovenia) assume their new functions in Pretoria and Brussels, respectively, in 2012.



United Nations 2011 Treaty Event : San Marino - ratification of the article 8



On 26 September 2011, San Marino became the first State to ratify the amendment to article 8 of the Rome Statute which had been agreed to at the 2010 Review Conference.



Press Release >>

Left: H. E. Ms. Antonella Mularoni Minister for Foreign and Political Affairs, Telecommunications and Transportations of the Republic of San Marino

ASP Calendar

2012

The Hague

Six new Judges - solemn undertaking
9 March

New Prosecutor - solemn undertaking
16 June

Tenth anniversary - entry into force of Rome Statute
1 July

Committee on Budget and Finance Eighteenth session
23 - 27 April

Nineteenth session
24 September - 3 October

Assembly of States Parties Eleventh session
14 - 22 November (tentative)

Welcoming ceremony - Tunisia and Philippines



H.E. Mr. Mohamed Karim Ben Becher, Ambassador of Tunisia to the Netherlands



H.E. Ms. Lourdes G. Morales, Ambassador of the Philippines to the Netherlands, ASP Vice-President Jorge Lomónaco, and ICC President Sang-Hyun Song

The 120 States Parties to the Rome Statute



Six new states, Cape Verde, Grenada, Maldives, Philippines, Tunisia and Vanuatu have joined the States Parties of the ICC.

The 69 States Parties to the APIC



Three new states, Chile, Malta and Tunisia, have ratified the Agreement on the Privileges and Immunities of the ICC.

Publication

The Travaux Préparatoires of the Crime of Aggression



This publication contains a complete documentation of the fifteen years of negotiations which lead up to the historic adoption of the amendments to the Rome Statute at the 2010 Review Conference in Kampala.

Edited by Stefan Barriga and Claus Kress

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Colophon

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