



# BACKGROUND

## ASSEMBLY OF STATES PARTIES 16

New York, 4-14 December 2017



# COALITION FOR THE INTERNATIONAL CRIMINAL COURT





The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes 2,500 non-governmental organizations around the world working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both

visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity, and genocide.

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## 1. Introduction

This is an informal background paper to the 16<sup>th</sup> session of the Assembly of States Parties to the Rome Statute (ASP) taking place from 4-14 December 2017 in New York, United States of America.

The background paper is one of several materials prepared by the Coalition for the International Criminal Court (Coalition) to help guide and inform discussions among delegations from States Parties, observer states, international and regional organizations, and civil society attending the 16<sup>th</sup> session.

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

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

As in previous years, civil society participating at the 16<sup>th</sup> ASP session coordinates its activities through the Coalition. The Coalition will assist more than 70 non-governmental organizations from all parts of the world in making their opinions and recommendations known to the ICC governing body during the ASP session.

The annual ASP session is a pivotal forum for the Coalition and its members as an essential opportunity for state and civil society actors to exchange and reflect upon their respective positive contributions to the Rome Statute process in the twelve months prior to the session, and to look ahead to how to further strengthen the international justice system the year to come. The consultative arrangements for NGOs at the 16<sup>th</sup> ASP session will provide States Parties an opportunity to exchange information and forge relationships around shared goals.

Numerous side-events (co-)organized by the Coalition or by members of civil society will take place in the margins of the 16<sup>th</sup> session, providing a platform for enhanced dialogue between the participating NGOs on the one hand, and the Court, states, and international organizations on the other.

In advance of and during the 16<sup>th</sup> ASP session, the Coalition will continue its advocacy for a fair, effective, and independent Court by addressing a number of key issues through advocacy documents, letters, meetings, press briefings, and other events.

At the conclusion of each working day of the annual session, the Coalition will publish an informal daily report – to be featured on the Coalition’s #GlobalJustice News Center on [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org) – of the events that took place.

## 2. Call for the Highest Political Commitment

In preparation for the 20<sup>th</sup> anniversary of the Rome Statute in 2018, the Coalition is encouraging participants at the 16<sup>th</sup> ASP session to use the occasion to make supportive statements on the pressing issues facing the Rome Statute system (RSS) today – throughout the plenary sessions, the General Debate, the many side-events, and in other discussions.

Recognizing the serious threats and challenges confronting the ICC, as well as the unique opportunity afforded by consultations and events bringing together the full range of stakeholders in the Rome Statute system at the ASP, the Coalition believes it crucial that high-level officials representing all of the regions and major legal systems of the States Parties to the Rome Statute affirm that:

- The ICC and engagement in the Rome Statute system are essential means of promoting respect for international humanitarian law and human rights, thus contributing to sustainable peace in accordance with the purposes and principles of the Charter of the United Nations through freedom, security, justice, and the rule of law, as well as through the prevention of armed conflict, the preservation of peace, and the advancement of post-conflict peacebuilding and reconciliation;
- Justice and peace work hand-in-hand and are in fact mutually reinforcing, with the Rome Statute system providing a model framework for inclusive peace processes, incorporating justice and accountability for existing victims of atrocities through fair and effective investigations and proceedings, as well as protection for future victims through the stabilization of conflict situations and reinforced rule of law;
- The Court plays a unique and central role in peace-building processes as the only permanent international criminal court within an evolving system of international criminal justice, not least through the Court’s contribution to guaranteeing lasting respect for, and the enforcement of, international justice.
- Each government has a responsibility to protect its population from genocide, war crimes, and crimes against humanity, recognizing that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that there is an urgent need to both end and deter these most serious crimes of concern to the international community, and eradicate impunity for the perpetrators of these crimes; and,

Reaffirming support for the above points would be in alignment with the principles enshrined in the introductory paragraphs of the annual overall policy resolution on “*Strengthening the International Criminal Court and the Assembly of States Parties*,” (the ‘omnibus resolution’) which the Assembly has renewed and adopted for several years.

### 3. The Assembly of States Parties

The Assembly of States Parties to the Rome Statute (ASP) serves as the management oversight and legislative body of the ICC. The ASP comprises all States Parties to the ICC’s founding treaty, the Rome Statute (RS).

It is important to note that while the ASP performs management oversight and legislative functions for the ICC, it is strictly forbidden from interfering with the judicial or prosecutorial independence of the Court.

#### **ASP Bureau and Presidency**

The ASP has an executive committee – the ASP Bureau – that consists of a president, two vice- presidents, and 18 States Parties, taking into account equitable geographical distribution and adequate representation of the principal legal systems of the world. The ASP president and vice-presidents, as well as the Bureau members, are each elected for three-year terms.

The Bureau helps the ASP comply with its various mandates and meets regularly throughout the year in New York, United States of America and in The Hague, The Netherlands. The Bureau has two working groups: the New York Working Group (NYWG) and The Hague Working Group (HWG) each presided over by one of the ASP vice-presidents.

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

The current ASP Presidency and Bureau were elected by consensus in late 2014 for a three-year term and assumed functions at the beginning of the 13<sup>th</sup> ASP session (December 2014). They will serve until the last day of the 16<sup>th</sup> ASP session. The 18 Bureau members are:

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

#### **Election of ASP Bureau and Presidency**

At the beginning of the 16<sup>th</sup> ASP session, a new ASP Bureau will be elected, including a new ASP President and two Vice-Presidents. They will assume function at the end of the 16<sup>th</sup> session.

On 5 July 2017, the Bureau agreed to recommend that Mr. O-Gon Kwon (Republic of Korea) be elected President of the ASP for the next three years.



**ASP Secretariat**

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

**States Parties**

The ASP is composed of the 123<sup>1</sup> states that have ratified or acceded to the Rome Statute and are thus members of the ICC. While each State Party to the Rome Statute receives one vote (RS Article 112(7)) in the decision-making process of the ASP, both the Rome Statute and the ASP Bureau encourage states to reach prior consensus on matters that require a vote; only when this is impossible, is resort to an actual vote undertaken. All other states that signed the Statute but have not ratified it or signed the Final Act of the Rome Conference may attend the ASP session as observers.

**Observers**

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

**Sessions of the Assembly of States Parties**

The ASP meets collectively in what is known as a ‘plenary’ meeting at least once a year, in either New York or The Hague. The 16<sup>th</sup> plenary meeting, or ASP session, will take place at United Nations Headquarters in New York from 4 to 14 December 2017.

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

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

At every annual session, the ASP tasks subsidiary bodies like the Committee on Budget and Finance, as well as organs of the Court and sometimes independent external actors, to report back on relevant issues the following year, with a view to informing the decision-making process. These reports, and more information about the ASP, are available on the official [ASP website on https://asp.icc-cpi.int](https://asp.icc-cpi.int).

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<sup>1</sup> Burundi’s withdrawal of the Rome Statute came into effect on 27 October 2017.

### **The 16<sup>th</sup> session of the ASP**

While the outcomes of each annual ASP session represent the specific issues discussed in any given year, they usually fall under recurring general themes. At the conclusion of the 16<sup>th</sup> session, one can expect the ASP plenary to have adopted language in stand-alone resolutions – or as part of a catch-all *omnibus* resolution – on issues related to the 2018 ICC budget, cooperation, complementarity, victims and affected communities, universality, and the relationship between the ICC and the United Nations Security Council, among many other topics.

A great number of side events, and largely (co-)organized by civil society, will take place in the margins of the ASP session. Topics on the ASP's agenda, as well as others related to the work and broader impact of the ICC, will be discussed during breakfast meetings, lunch breaks, or evening events. All side-events are listed in the ASP Journal, which provides a daily agenda and overview of the plenary sessions and side-events taking place during the 16<sup>th</sup> ASP session.

The ASP Journal is available on the ASP website and regularly updated throughout the annual session.

## 4. Opening Session

The 16<sup>th</sup> ASP session opens on Monday 4 December 2017 with a plenary session dedicated to preliminary (and administrative) tasks. The opening session also typically features a number of keynote addresses – by the ASP President, the ICC President, and the ICC Prosecutor - and possibly statements by participating Heads of State or government, ministers, and other high-level state or intergovernmental organization representatives.

The Assembly begins by formally adopting the agenda of 16<sup>th</sup> ASP session, followed by the appointment of the Credentials Committee.

After appealing to states in arrears to satisfy their outstanding financial contribution requirements, the Assembly will hear reports on the activities of the Court, the Board of Directors of the Trust Fund for Victims, and the ASP Bureau, among possible others.

## 5. The General Debate

The General Debate is scheduled to take place during the first two days of the ASP session (4 and 5 December 2017). The General Debate provides an opportunity for participants to address issues related to their work and the wider Rome Statute (RS) system of international justice.

The General Debate portion of the ASP also provides an excellent opportunity for high-level statements of support for the ICC and Rome Statute system. In these statements, States Parties, non- states parties, regional and international organizations, and civil society can reiterate their support for the Court and its progress thus far, as well as identify those areas in which the ICC can continue to improve with an aim to fulfilling its unprecedented mandate.

The General Debate also serves as an opportunity to inform ASP participants of steps taken to ratify or accede to the Rome Statute, as well as to update on progress made regarding domestic implementation of the Statute and ratification of the Agreement on Privileges and Immunities of the Court (APIC). In the same vein, delegations may use the General Debate to highlight specific efforts undertaken to improve cooperation with the Court.

The Coalition has long encouraged states to take full advantage of this opportunity to express support for an end to impunity through the Rome Statute system, in addition to their taking formal positions with respect to a variety of issues up for discussion. At the 16<sup>th</sup> ASP session, some key positions for states to consider during their General Debate statements include:

- High-level political commitment to the ICC and Rome Statute (see Chapter 2 of this Background Paper);
- The need to safeguard the integrity of the Rome Statute, including cornerstone principles on the irrelevance of head-of-state authority;
- Commitment to strengthen the ICC's judicial and prosecutorial independence;

- The need for universality of the Rome Statute, as well as for its full implementation into domestic jurisdictions (see Chapter 18 of this Background Paper);
- Commitment to enhanced cooperation, including thorough efforts to conclude cooperation agreements with the ICC and to ratify the Agreement on Privileges and Immunities of the ICC ahead of the Rome Statute’s 20th anniversary (see Chapter 9 of this Background Paper);
- Financial commitment to the Rome Statute system, including the ICC budget and voluntary funds (see Chapter 12 of this Background Paper);
- The centrality of victims’ participation and reparations in the Rome Statute system (see Chapter 17 of this Background Paper); and
- Recognition of the Rome Statute system’s integral role in conflict prevention and sustainable peacebuilding.

The list of General Debate speakers becomes final in advance of the ASP, with each speaker encouraged to take the floor for a maximum of five minutes. Participants can also contribute to the General Debate by making advance written submissions for publication on the ASP website.

Civil society also takes part in the General Debate, with 10 to 12 individual non-governmental organizations, including the Coalition for the ICC, delivering statements. The points raised by civil society during the General Debate often inform the decision-making process of States Parties throughout the remainder of the ASP session.

For civil society the General Debate also serves as a forum to raise concerns that are not prominently featured – if at all – on the ASP program. Civil society can thus raise awareness about not only its own contributions in these areas, but also its ability to assist or collaborate in such areas with interested States Parties.

## 6. Elections

At the 16<sup>th</sup> ASP session, a number of important positions in the Rome Statute system will be filled, including six judicial vacancies, the ASP president, two ASP vice-presidents, 18 new members of the ASP Bureau, and six members of the Committee on Budget and Finance (CBF). Preparations will also be made for the election of the ICC Registrar in 2018 and the ICC Prosecutor in 2020.

The Coalition monitors all ICC and ASP elections to ensure that they are fair, transparent, and lead to the election of the most qualified candidates. The Coalition itself does not endorse or oppose individual candidates, but advocates for the integrity of the nomination and election processes. The Coalition strongly opposes reciprocal political agreements (“vote-trading”) in ICC and ASP elections.

### **Election of six new ICC Judges**

Over the first days of the 16<sup>th</sup> ASP session, States Parties will elect six new judges out of the 18 that compose the ICC bench. The election follows the Court’s regular judicial elections process, which replaces a third of the 18 judges every three years. The new judges will serve a nine-year term expected to begin in March 2018.

To ensure that the ICC bench represents the principal legal systems of the world; has equitable geographical representation and a fair representation of male and female judges, ICC judicial elections procedures impose minimum voting requirements (MVRs). The MVRs are not a quota system and do not guarantee that each regional group or gender will obtain the number of seats stipulated by the MVRs. Gender and geographic MVRs only apply during the first four rounds of voting, whereas MVRs for Lists A and B apply throughout the voting rounds until all vacancies have been filled. The following MVRs are in place in 2017:

- Five female candidates;
- One candidate from Asia-Pacific;
- One candidate from Africa;
- One candidate from Latin America and the Caribbean;
- One candidate with specific expertise in criminal law and procedure (“List A”); and
- One candidate with specific expertise in international law (“List B”).

Voting occurs during the ASP session by secret ballot. To be elected, candidates must receive a two-thirds majority of the States Parties present and voting.

The following candidates have been nominated for the 2017 ICC judicial elections:

1. Mr. Rosario Salvatore Aitala (Italy)(List A)(M)\*\*
2. Ms. Tomoko Akane (Japan)(List A)(F)\*
3. Ms. Reine Adelaide Sophie Alapini-Gansou (Benin)(List B)(F)\*\*
4. Ms. Solomy Balungi Bossa (Uganda)(List A)(F)\*
5. Mr. Khosbayar Chagdaa (Mongolia)(List A)(M)\*\*
6. Ms. Zlata Đurđević (Croatia)(List B)(F)\*
7. Ms. Luz del Carmen Ibáñez Carranza (Peru)(List A)(F)\*
8. Ms. Nthomeng Justina Majara (Lesotho)(List A)(F)\*\*
9. Ms. Henrietta Joy Abena Nyarko Mensa-Bonsu (Ghana)(List A)(F)\*\*
10. Ms. Ariela Peralta Distéfano (Uruguay)(List B)(F)\*
11. Ms. Kimberly Prost (Canada)(List A)(F)\*
12. Mr. Dragomir Vukoje (Bosnia and Herzegovina)(List A)(M)\*\*

\* Candidate deemed “particularly well qualified” by the Advisory Committee on Nomination of Judges.

\*\* Candidate deemed “formally qualified” by the Advisory Committee on Nomination of Judges.

## **Coalition for the ICC campaign on ICC judicial elections 2017**

### Coalition questionnaire

As part of its campaign on ICC Elections, the Coalition requested that candidates complete a questionnaire, which invites a broad and personal account of the candidate’s background, qualifications, experience, and views relating to her or his candidacy. The questionnaire responses have been circulated among all States Parties and made publicly available on the Coalition’s website on <http://www.coalitionfortheicc.org/fight/icc-elections-2017>.

### Coalition panel discussions with the candidates

On 18 September 2017, the Coalition organized public panel discussions with all 12 candidates in The Hague. The panels served to introduce the judicial candidates to representatives of states, civil society, and the wider public, and provide an opportunity for greater transparency around their qualifications, experience, and expectations for international justice. The three panels were recorded and can be viewed on the Coalition’s website on <http://www.coalitionfortheicc.org/webcast-ICC-judicial-elections-panel-2017>.

### Coalition letter to nominating states

To maximize transparency during the elections process, the Coalition requested that nominating States Parties provide short overviews of the national nomination processes used in the selection of each judicial candidate. The responses received are available on the Coalition’s website on <http://www.coalitionfortheicc.org/fight/icc-elections-2017>.

### Advisory Committee on Nominations of Judges

In 2011, the ASP set up an Advisory Committee on Nominations of Judges (ACN) to facilitate the nomination and election of the highest qualified candidates. The ACN provides objective assessments of the nominated judicial candidates, guided by the applicable provisions of Article 36 of the Rome Statute.

In 2017, the Coalition complemented the work of the ACN through its own campaign initiatives, and strongly urged States Parties to fully support the work of the ACN and to pay due regard to its findings and recommendations, which are available on the ASP website in the final ACN report on [https://asp.icc-cpi.int/en\\_menus/asp/ACN](https://asp.icc-cpi.int/en_menus/asp/ACN).

Based on the candidates' professional experience as well as their respective performances during face-to-face interviews with the ACN, the ACN concluded that candidates were either "Formally Qualified" or "Particularly Well Qualified" for appointment as judge of the ICC (see annotations in list of judicial candidates above).

## **Election of six members of the Committee on Budget and Finance**

At the upcoming ASP session, states will hold an election to fill six soon-to-be vacant seats on the Committee on Budget and Finance (CBF), which consists of 12 members, nominated and selected by the ASP based on equitable geographic representation.

The CBF is a technical expert body tasked with examining financial, budgetary, and administrative documents submitted by the ICC to the ASP as part of the Court's complicated annual budget review. The recommendations of the CBF are a key tool relied on by states to inform their decisions on the Court's annual budget. These decisions in turn affect the activities of the Court, including in terms of the investigations and cases it can pursue. The ASP resolution establishing the CBF (Resolution ICC-ASP/1/Res.4) dictates that the CBF members "*shall be experts of recognized standing and experience in financial matters at the international level from States Parties.*" At this year's CBF elections, States Parties will need to take the following distribution of seats into account to ensure equitable geographical representation on the CBF:

- Two candidates from Asia-Pacific;
- One candidate from Africa;
- One candidate from Latin America and the Caribbean;
- One candidate from Eastern Europe; and
- One candidate from Western Europe and other States.

At the close of the nomination period on 8 October 2017, States Parties had nominated the following candidates for election to the CBF:

1. Ms. Janet Braganza Abuel (Philippines);
2. Mr. Fawzi A. Gharaibeh (Jordan) *incumbent CBF member* ;
3. Mr. Hitoshi Kozaki (Japan) *incumbent CBF member* ;
4. Ms. Margaret Wambui Ngugi Shava (Kenya);
5. Ms. Mónica Sánchez Izquierdo (Ecuador) *incumbent CBF member* ;
6. Ms. Elena Sopková (Slovakia) *incumbent CBF member* ;
7. Ms. Neelu Shanker (Canada);
8. Ms. Ingrid Eiken Holmgren (Sweden).

As part of its campaign on ASP and ICC Elections in 2017, the Coalition urged States Parties to nominate only the most highly qualified candidates for the CBF. The campaign further called upon States Parties to promote competitive elections, including by avoiding 'clean-slate' appointments, which guarantee some candidates election and effectively discourage other States Parties from fielding their own candidates. While the ASP resolutions governing the elections of the CBF encourage consensus candidates, the Coalition has warned against applying this practice at the expense of a competitive field of nominees, as well as against other questionable practices like vote-trading.

By encouraging competitive elections, States Parties would enable fresh insight and expertise to enter the Court's critical budget review process.

### **Election of the ASP President and Vice-Presidents**

The mandate of the current ASP President Sadiki Kaba will end on the last day of the 16<sup>th</sup> ASP session. On 5 July 2017, after consultation within the Asia-Pacific group of States Parties - slated to put forward the next ASP President based on geographical grouping rotation - the ASP Bureau agreed to recommend Judge O-Gon Kwon (Republic of Korea) for election as the next President of the ASP. Kwon will take office as President at the closing of the 16<sup>th</sup> ASP session and shall serve a three-year mandate covering the 2018, 2019, and 2020 ASP sessions.

The appointment (election by acclamation following prior identification) of the two ASP Vice-Presidents (one in New York and one in The Hague) will take place at the same time.

### **Election of the ASP Bureau**

The three-year term of the 18 incoming Bureau members begins on 15 December 2017, similar to that of the ASP President and Vice-Presidents. The geographical regions within the 123 States Parties will identify Bureau members from within their groups to be appointed by consensus at the start of the ASP session.

### **Preparation for the election of the ICC Registrar**

The ICC Registrar will be elected by the plenary of ICC judges soon after the swearing-in of the six new judges in March 2018. The ASP will make its own recommendations on the Registrar's election at the 16<sup>th</sup> ASP session.

The Registrar heads the ICC Registry and is thus responsible for its effective functioning. The Registry, which operates under the authority of the ICC President, is indispensable to the operations of other organs of the Court including the Presidency, Chambers, and the Office of the Prosecutor. Some of the main areas of administration and services overseen by the Registry are:

1. Judicial and courtroom logistical support, such as translation and interpretation, management of court records, legal aid, victims' and witness support, detention center management, among others;
2. External affairs, such as public outreach, field office support, and external relations; and
3. Management, such as the Court's budget, human resources, security, and other administrative services.



Each Registrar is elected for a five-year term and is eligible for one re-election at the end of her or his term. Mr. Herman von Hebel, from The Netherlands, is the current ICC Registrar following his election on 8 March 2013. The current Registrar's term will expire on 16 April 2018.

The procedures for the election of the Registrar are outlined in Article 43 of the Rome Statute and Rule 12 of the ICC's Rules of Procedure and Evidence.

At the close of the application period on 28 June 2017, the ICC President announced the following short-list of candidates – prepared by the Presidency:

1. Mr. Lilian Apostol (Republic Of Moldova);
2. Mr. Marc Dubuisson (Belgium);
3. Ms. Chipo Gaobotwe (Botswana);
4. Ms. Indhrambal Goberdan (South Africa);
5. Mr. John Hocking (Australia);
6. Ms. Dorothy Kingsley-Nyinah (Ghana);
7. Mr. Peter Lewis (UK);
8. Mr. Mbacké Lo (Senegal);
9. Ms. Kate Mackintosh (UK);
10. Ms. Fatmata Binta Mansaray (Sierra Leone);
11. Mr. Esteban Peralta Losilla (Spain);
12. Mr. Daniel Didier Preira (Senegal);
13. Ms. Marie Inger Tuma (Sweden); And
14. Mr. Herman von Hebel (The Netherlands)

### **Coalition for the ICC campaign ahead of Registrar's election 2018**

#### Coalition questionnaire to the candidates

As part of its campaign on ICC and ASP election, the Coalition has requested all short-listed candidates for the Registrar's election to respond to a questionnaire which invites a broad range of information regarding the candidate's background, qualifications, experience, and views relating to her or his candidacy. The responses to the questionnaire will be posted on the Coalition's website on <http://www.coalitionfortheicc.org/fight/icc-elections-2017>.

#### Role of the ASP in the Registrar's Election

The ASP is invited to make recommendations to the judges for them to take into account when electing the Registrar. The States Parties discussed their recommendations under the leadership of ASP Vice-President Ugalde in the HWG.

The recommendations include a number of elements such as high standards of efficiency and integrity, as well as to consider similar criteria set forth in Article 36 of the Rome Statute, which pertains to the

election of judges, such as equitable geographical and gender representation, and legal expertise on specific issues such as violence against women. The report with the ASP's recommendations of the upcoming Registrar elections will be adopted during the 16<sup>th</sup> ASP session and made available on the ASP website.

## **Preparation for the election of the ICC Prosecutor**

ICC Prosecutors are elected for nine-year terms by the Assembly of States Parties and cannot be re-elected. Ms. Fatou Bensouda took office on 15 June 2012 as the second ICC Prosecutor, after being elected by consensus during the 10<sup>th</sup> session of the Assembly of States Parties in December 2011. Her term will run until 15 June 2020.

The election of the ICC Prosecutor is a crucial decision, impacting almost every aspect of the Court.

In part due to Coalition advocacy, the ASP Bureau established a *Search Committee for the position of the Prosecutor of the ICC* in 2010. This body, comprised of one representative per regional group, was given a mandate to “*facilitate the nomination and election, by consensus, of the next Prosecutor.*” In fulfilling this function, it is to produce a shortlist of at least three suitable candidates where possible for consideration by the Bureau.

Following the Committee's first time in operation ahead of the 2011 elections, the Committee itself, the ASP Bureau co-facilitators, and the Secretariat of the ASP issued separate reports evaluating the process to identify and achieve consensus on the election of the ICC Prosecutor.

Ahead of the 16<sup>th</sup> ASP session, the Coalition is calling on states to revisit the recommendations contained in the aforementioned reports and to undertake a thorough review in light of the potential for the Search Committee process to be a suitable model for the future ICC and other international elections processes.

## **7. 20<sup>th</sup> Anniversary of the Rome Statute**

The Rome Statute was adopted on 17 July 1998, making 2018 a year of celebrations.

To begin the year commemorating the Rome Statute's 20<sup>th</sup> anniversary, a special plenary session will be held during ASP16 for the international community to take stock of achievements to-date, and to consider how to enhance efforts to tackle challenges for the Court going forward.

The Coalition for the ICC encourages all stakeholders to take the opportunity of the Rome Statute's 20<sup>th</sup> anniversary to take concrete steps on a number of issues, such as increasing cooperation through the conclusion of agreements with the Court, the adoption of national implementing legislation, and the ratification of APIC, and working towards universality of the Rome Statute.

The Coalition will launch its own commemoration of the 20<sup>th</sup> anniversary on 15 February 2018 in The Hague to celebrate and honor the state and international organization leaders, as well as the Coalition members, who helped achieve the historic victory for peace and justice that is the Rome Statute system.

The Coalition expects the launch ceremony to serve as just one of many events and formats available over the course of 2018 in which State Parties, as well as countries that have yet to join the Rome Statute, will get the chance to demonstrate their political commitment to a system that has fought for two decades for an end to impunity for the worst crimes.

In reprising its historic convening role for NGOs involved in the ICC process, the Coalition hopes for the launch to act just as much as a renewed call for civil society commitment—during a time when the ICC system finds itself facing a host of new challenges—to bring that system ever closer to the goals it set out to achieve when the Rome Statute was adopted in 1998.

Throughout 2018, stakeholders should also look to create awareness-raising and knowledge-sharing opportunities to foster new like-minded partnerships with not only governments and intergovernmental organizations, but also within the diverse field of civil society working on matters related to international justice, rule of law, and sustainable peacebuilding, among others.

## 8. The Crime of Aggression

Article 1 of the Charter of the United Nations (UN) cites the “*suppression of acts of aggression*” as a primary purpose of the UN. When adopted in 1998, the Rome Statute, which provides for individual accountability as opposed to States’ or governments’ responsibility, listed – although did not then define – “the crime of aggression” as the fourth crime falling under the jurisdiction of the International Criminal Court (RS Article 5).

Following the 2010 amendments defining the crime and the modalities for ICC jurisdiction, a decision by the States Parties on activation is scheduled to occur at the 16<sup>th</sup> ASP session.

From May-June 2010, the first Review Conference of the Rome Statute of the ICC took place in Kampala, Uganda. States Parties and non-states parties gathered to review the implementation of the treaty since its entry into force in July 2002. Several amendments to the Statute were also considered at this time, including a proposed definition and conditions of activation and jurisdiction for the crime of aggression. After much discussion, an agreement was reached resulting in the adoption of the so- called Kampala Amendments, the crime of aggression included, on 10-11 June 2010.

### Crime of Aggression amendments

**Article 8 bis (1)** provides a definition of the crime of aggression for the purpose of the Rome Statute: “*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.*”

**Articles 15 bis and ter** outline the process for activating the Court’s exercise of jurisdiction as well as the modalities regarding State Party referral, the ICC Prosecutor’s *proprio motu* authority, and referral by the UN Security Council (UNSC).

Rome Statute amendments enter into force *for a State* one year after ratification or acceptance *by that State*. However, entry into force of the crime of aggression amendments is not sufficient to enable the Court to exercise jurisdiction; two further conditions must be met.

### Conditions for the exercise of jurisdiction

1. The amendments must have been ratified or accepted by at least 30 RS States Parties, after which 1 year must pass before the Court could exercise its jurisdiction; and,
2. The ASP must take a decision after 1 January 2017, by consensus or at least 2/3 majority, to allow the Court to begin exercising its jurisdiction.

*As of 1 October, 2017, 34 RS States Parties have ratified the crime of aggression amendments, thereby fulfilling the first condition.*

Once both of these conditions are met, the Court may exercise jurisdiction over the crime of aggression, but further requirements must be observed, depending on the situation.

## Situations that would allow for the ICC to exercise its jurisdiction

### 1. State referrals and Prosecutor’s *proprio motu* investigations (Article 15 bis)

In the case of a RS State Party referral, the Court will only be allowed to exercise jurisdiction if the amendments have entered into force for at least one of the States Parties – victim or aggressor – involved. The Prosecutor must then determine there to be a reasonable basis to proceed with an investigation. If this occurs, the Prosecutor must notify the UNSG of the situation.

The UNSC itself has the authority to determine whether an *act of aggression* has been committed (an authority accorded to the UNSC by Article 39 of the UN Charter). The Prosecutor must allow the UNSC six months to make a determination. Where the UNSC has made a determination that an act of aggression has been committed, the Prosecutor may proceed with the investigation.

If such a determination is not made within six months, the Prosecutor may still proceed with an investigation but only with authorization of the Pre-Trial Division.

The same conditions apply in the case of an investigation initiated by the Prosecutor (*proprio motu*).

### 2. UN Security Council referrals (Article 15 ter)<sup>2</sup>

If the UNSC refers a situation to the ICC under Chapter VII of the UN Charter powers that extend to the entire international community, the Prosecutor has the authority to investigate any of the four core crimes under RS Article 5, including the crime of aggression, committed in any territory by any state’s national.

*Note: In this situation, the Court is able to exercise jurisdiction over crimes of aggression involving States Parties, regardless of their individual ratification status or “opt-out” status, and non-states parties alike.*

### **Opt-outs and exclusions from the ICC’s jurisdiction**

States Parties have the option to “opt-out” of the Court’s jurisdiction over the crime of aggression when exercised via state referral or *proprio motu* powers, by submitting a declaration with the Registrar of the Court. The declaration must be submitted *before* the act of aggression is committed.

Nationals of non-states parties to the Rome Statute are excluded from the Court’s jurisdiction over the crime of aggression when exercised by way of state referral or *proprio motu* powers, even if the victim state has accepted the jurisdiction.

However, where UNSC referrals are concerned, the Court is able to exercise jurisdiction over crimes of aggression committed on the territories or by nationals of States Parties and non-states parties alike.

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<sup>2</sup> Some observers have expressed the concern that this augmented role of the UNSC in determining whether criminal acts have taken place risks supplanting the independent investigations and role of the Prosecutor as well as the apolitical vision of the judicial process. Others have noted, however, that both Articles 15 *bis* and 15 *ter* include a paragraph explicitly stating that the determination of an act of aggression by an organ outside the ICC is without prejudice to the Court’s own findings under the Rome Statute (‘non-prejudiciality’ provision, Articles 15 *bis* (9) and 15 *ter* (4)).

**Table of jurisdictional regime of the Crime of Aggression applicable to Rome Statute States Parties**

(RS Article 15 *bis*: State referrals & *proprio motu*)

	Victim state has ratified the amendments	Victim state has NOT ratified the amendments
Aggressor State has ratified and NOT opted out	Jurisdiction: YES	Jurisdiction: YES
Aggressor State has NOT ratified and NOT opted out	Jurisdiction: YES/NO*	Jurisdiction: NO
Aggressor State has ratified and opted out	Jurisdiction: NO	Jurisdiction: NO
Aggressor State has NOT ratified and opted out	Jurisdiction: NO	Jurisdiction: NO

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\* One area of divergent interpretation surrounding these amendments to the Rome Statute relates to the exercise of jurisdiction under Article 15 *bis* where an aggressor state (from which nationals have committed an alleged crime of aggression) has not ratified the Kampala amendments and has not opted out of the Court’s exercise of jurisdiction.

**Application of jurisdiction to Rome Statute States Parties**

The reported view held by the majority of States Parties is that once the two conditions (ratification by at least 30 States Parties and the decision by the ASP) are met, the Court’s jurisdiction over the crime of aggression applies to all States Parties (unless an opt-out declaration has been submitted), regardless of their individual ratification status of the crime of aggression amendments.

An alternate view holds that the Court’s exercise of jurisdiction over the crime of aggression under Article 15 *bis* only applies to the States Parties which have ratified the amendments, recalling RS Article 121 (5).

**What’s next?**

As of 1 November 2017, 34 RS States Parties have ratified the crime of aggression amendments. In November 2016, the ASP decided to establish a facilitation, based in New York and open only to RS States Parties, to discuss activation of the Court’s exercise of jurisdiction over the crime of aggression. The goal of this facilitation is to reach consensus on outstanding jurisdictional questions prior to an activation decision.

The decision by the States Parties is expected to occur at the 16<sup>th</sup> session of the ASP.

## 9. Cooperation

Cooperation is an absolutely vital part of the international justice system set up by the Rome Statute. Cooperation must be multi-faceted to enable the effective execution of various ICC functions collectively geared at bringing those most responsible for core international crimes to justice. With no enforcement mechanism of its own, the ICC is largely dependent on the cooperation it receives from states, the United Nations, regional and other international organizations, and other relevant actors.

Part IX of the Rome Statute lays out the various ways in which states are to cooperate with the ICC. Without this support international justice simply cannot work, which is why the Coalition closely monitors developments and initiatives of the Bureau and the ICC alike in areas of cooperation throughout the year leading up to the annual ASP session.

In 2017, a combination of The Hague Working Group (HWG) facilitations and technical and political seminars established the focus areas for ASP discussions on cooperation during the annual session.

### **Hague Working Group: Facilitation on cooperation in 2017**

Over the course of 2017 discussion in The Hague Working Group on cooperation were facilitated by Ambassador Philippe André Lalliot (France) and Ambassador Momar Diop (Senegal). The facilitation discussed voluntary cooperation agreements; the feasibility of establishing a coordinating mechanism for national authorities dealing with cooperation; the *66 recommendations* on cooperation; arrest strategies, seminars on cooperation that took place over the course of 2017; and the issue of financial assets recovery with high-level political discussions in Paris, France on 20 October 2017.

### Cooperation around financial investigations

In 2007, the Assembly adopted *66 Recommendations on cooperation*, an extensive list of key challenges and priorities for cooperation. In the years since, the ASP has narrowed the list to seven priority recommendations as most relevant to the Court's current cooperation demands. Cooperation in the recovery of financial assets is one of these seven priorities.

While technical seminars in 2017 dealt with the practicalities and legalities of state cooperation with the ICC under Part IX of the Rome Statute in the identification, tracing, and freezing or seizure of proceeds, property, and assets, the HWG cooperation co-facilitators steered discussions on the draft "*Paris Declaration on Cooperation in Asset Recovery*" to their culmination at the 20 October 2017 Paris Conference.

Intended to lead to a model framework for politically-committed States Parties, consultations in 2017 around cooperation in financial assets' recovery will reach their conclusion during the 16<sup>th</sup> ASP session, where the plenary may approve a set of non-binding recommendations and actions for both States Parties and the ICC. Throughout the HWG consultations, States Parties were encouraged by Court officials and the co-facilitators to consider adopting legislation favoring increased cooperation with the Court and to conduct national investigations of related financial crimes, particularly in view of the Court's legal aid burdens associated with indigent defendants.

### Voluntary cooperation

The Court routinely calls upon States Parties to supplement their explicit Rome Statute obligations with forms of voluntary cooperation, which prove crucial to the ICC's functioning as a fair and effective legal institution that gives effect not only to the rights of victims and witnesses, but also to those of the accused. The Court issued this call again in 2017.

The Court has prepared model framework agreements to facilitate States Parties' capacities to accommodate ICC requests, when necessary, in relation to witness relocation and protection, hosting released persons (defendants), and enforcing ICC sentences. In 2017, the ICC Registry published an updated handbook<sup>3</sup> outlining the framework agreements currently available and clarifying misconceptions about any obligations they may create for States Parties. In recalling the low number of concluded framework agreements thus far, ICC officials have highlighted that such agreements reduce burdens on not only the Court's activities, but also on its budget. The Court has also noted the value of Memoranda of Understanding between the ICC and international organizations, such as the UNODC, with respect to capacity-building to facilitate the envisioned forms of cooperation.

With framework agreements, states agree to engage with the Court to develop cooperative arrangements amenable to the requirements of both parties—before any specific ICC request for cooperation arrives. Such engagement also provides an opportunity for gradual domestic capacity-building, thus satisfying international human rights norms while leaving states the option to decline formal requests.

To supplement the Court's awareness-raising work, in 2017 the HWG heard states like Sweden present on their positive experiences in negotiating and concluding such agreements. For Sweden, this has involved incorporating the framework for the relocation of ICC witnesses into both its resettlement program and its Aliens Act.

### **Total number of cooperation agreements concluded as of September 2017**

- 10 framework enforcement of sentence agreements;
- two *ad hoc* enforcement of sentence agreements, with the Democratic Republic of the Congo in relation to sentences of Thomas Lubanga and Germain Katanga;
- 18 relocation of witness agreements;
- one interim release agreement, with Belgium; and
- no agreements on hosting persons in the event of final release.

### Coordinating mechanism of national authorities

In line with previous years' discussions, the HWG facilitation on cooperation in 2017 continued to consider the feasibility of establishing a coordinating mechanism of national authorities – an initiative aimed at cooperation among states in the successful investigation and prosecution of crimes within and related to the subject matter jurisdiction of the ICC. As envisioned by members of the HWG, the proposed mechanism would be open to States Parties and non-states parties alike; it would be voluntary; issues of non-cooperation would remain outside its ambit; and any exchange of information through the mechanism would occur without prejudicing confidentiality interests. The majority of the

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<sup>3</sup> <http://www.coalitionfortheicc.org/document/icc-cooperation-agreements>



mechanism's State Party proponents agree that the proposed mechanism would be autonomous from the ICC and ASP, including with respect to its budget.

In a related initiative, officials and focal points from States Parties with situations currently under investigation by the ICC met in The Hague in September 2017 to exchange experiences and best practices in areas of cooperation. The seminar was also attended by non-situation country representatives. During the seminar, discussions between the Court and focal points nominated by States Parties to direct communications with national authorities saw participants highlight the importance of inter-state cooperation in closing the impunity gap for grave international crimes.

### **16<sup>th</sup> ASP session: Special plenary on cooperation in financial asset recovery**

On Monday 11 December 2017 the 16<sup>th</sup> ASP session will feature a special plenary meeting dedicated to the topic of cooperation. Panel presentations are expected by key stakeholders and proponents of the ICC-ASP initiative on financial asset recovery.

### **The Agreement on Privileges and Immunities of the ICC (APIC)**

The Agreement on Privileges and Immunities of the International Criminal Court (APIC), an international treaty designed to facilitate ICC and RS State Parties' personnel in their related work, is an essential part of the legal framework envisioned to guarantee the ICC the state cooperation it needs to operate as a fully independent and effective judicial institution.

Universal ratification and implementation of the APIC is key to the effective functioning of the Court and the international justice system as a whole, giving the ICC the access and cooperation it needs to work toward justice for victims of genocide, crimes against humanity, and war crimes.

The APIC elaborates on the cooperation provisions in Article 48 of the Rome Statute, covering not only privileges and immunities that states should extend to Court officials, materials, transactions, and communications within the scope of official ICC work, but also the privileges and immunities that defense teams, witnesses, victims, experts, and a range of other participants in ICC proceedings should enjoy. These include states' representatives.

At the initiative of the Belgian government, states organized an APIC ratification pledging ceremony at the ASP session in November 2016 for states to make official pledges to ratify the APIC by the 20<sup>th</sup> anniversary of the Rome Statute in 2018. During the ceremony, Australia, El Salvador, and Peru made official pledges to do so. In August 2017, the Coalition renewed its annual campaign to promote ratification of the APIC by all states, calling on governments to follow the example of Peru, which joined the treaty in January 2017, and the Republic of Moldova, which followed in May, and ratify the APIC as soon as possible.<sup>4</sup>

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<sup>4</sup> <http://www.coalitionfortheicc.org/news/20170801/states-join-icc-cooperation-treaty-apic>

## 10. Non-cooperation

The lack of cooperation from states is one of the great challenges the Court faces in its work. In an effort to address this challenge, the ASP Bureau was tasked in 2017 with appointing five non-cooperation focal points, one for each regional group, in accordance with the Assembly procedures on non-cooperation. Australia, the Czech Republic, Japan, Peru, and Senegal make up the five current regional focal points.

The non-cooperation focal points actively engage with relevant stakeholders, including civil society, on issues related to non-cooperation, such as travel by persons subject to an ICC arrest warrant, as well as diplomatic actions taken by States Parties with respect to such travel. In 2016, the focal points had developed a toolkit (*Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation*) as a resource for States Parties to utilize when responding to potential instances of non-cooperation.<sup>1</sup>

### **Non-cooperation in the Darfur, Sudan investigation**

Over the past several years, the situation in Darfur, Sudan has been particularly characterized by instances of non-cooperation. ICC judges have made several findings of non-cooperation in the case against Sudanese President Omar al-Bashir, in each instance related to the non-arrest of al-Bashir.

Discussions and activities on non-cooperation in 2017 once again revolved around failures to execute the ICC's 2009/2010 ICC arrest warrants against al-Bashir, following judicial findings in July 2016 of non-cooperation by Djibouti and Uganda in the same regard. ICC judges referred both the Djibouti and Uganda matters to the ASP at that time.

Meanwhile, the case of South Africa's failure to arrest al-Bashir—when he visited the country in June 2015 to attend an African Union summit—came before ICC judges in April 2017. The public hearing in The Hague followed two years of domestic litigation, petitioned by the Southern Africa Litigation Centre (SALC), after which both the Pretoria High Court and South Africa's Supreme Court of Appeal found the government's conduct unlawful due to its Rome Statute membership, its national ICC Act, and the Statute's cornerstone provision on the irrelevance of official capacity. During those same two years, both ICC judges and the ASP Bureau separately considered South Africa's submissions that it had not been properly consulted according to Rome Statute Article 97 when the arrest and surrender cooperation request had been made.

In July 2017, ICC judges confirmed that the government of South Africa had failed to comply with its obligations as a Rome Statute State Party. Diverging from the precedent set by prior non-cooperation findings, judges did not consider a referral of the matter to the ASP useful in obtaining cooperation from South Africa. Furthermore, the judges decided against a referral to the UN Security Council, citing concerns over the lack of any effective follow-up in numerous past instances where the Court had referred matters of non-compliance to the Security Council.

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<sup>1</sup> [https://asp.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx)

In January 2017, the ICC Registry became aware of an invitation by the Hashemite Kingdom of Jordan for al-Bashir to attend the 28<sup>th</sup> Arab League Summit in March. The Registry sent a *note verbale* to Rome Statute State Party Jordan renewing the request to cooperate with the arrest and surrender of al- Bashir should he enter Jordanian territory. In response, in late March Jordan transmitted two *note verbales* testifying of the government’s adherence to its international obligations; confirming al- Bashir’s attendance at the upcoming summit; and initiating Article 97 consultations with the Court with respect to the cooperation request. Following al-Bashir’s subsequent travel to Jordan, and non- arrest, ICC Pre-Trial Chamber II decided that the visit warranted a determination on the appropriateness of making a formal finding of non-compliance, inviting Jordan to provide further submissions on the matter.

The Court has since requested follow-up submissions from the government of Jordan, including with respect to applicable sources of law that the government has cited in defense of its non-arrest of al-Bashir. Such sources include the *1953 Convention on the Privileges and Immunities of the Arab League*, to which Jordan acceded on 12 December 1953.

## **Bureau discussions on Rome Statute Article 97**

Rome Statute Article 97 obliges States Parties to consult with the Court if a problem is identified that could potentially impede or prevent the execution of an ICC request, such as a request to arrest and surrender an ICC suspect.

As set out in the paragraph above, President al-Bashir attended an AU summit hosted by South Africa in Johannesburg in 2015. Despite ICC requests, as well as domestic court orders to execute the ICC arrest warrant against al-Bashir, petitioned by local civil society, South African authorities allowed him to leave the country without arrest.

During the domestic proceedings on the failure to arrest al-Bashir during the AU summit, the South African government claimed head-of-state immunity under customary international law is in conflict with its Rome Statute obligations. It has also argued that it was not properly consulted at the time of the ICC requests to arrest and surrender al-Bashir.

The 14<sup>th</sup> ASP session in 2015 featured, at South Africa’s request, a special plenary session to discuss the process by which States Parties consult with the Court under Article 97 of the Rome Statute. The Article 97 discussions were conducted in the context of Article 98 of the Rome Statute (“*Cooperation with respect to waiver of immunity and consent to surrender*”) and the fundamental Rome Statute prohibition against head-of-state or official immunity (Article 27).

RS Article 97 states, “*Where a State Party receives a request under [Part IX of the Rome Statute] in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter.*”

The ASP heard South Africa’s concerns at its annual session in 2015 and mandated the Bureau to establish a working group to further discuss and examine the application of Article 97 of the Rome Statute, in close consultation with the Court.

After three meetings in 2016, States Parties agreed that further discussion on the issue was warranted, including consideration of the South African proposal to adopt new rules on the implementation of Article 97 consultations.

The discussions in 2017 in the Working Group on the implementation of Article 97 continued to be led by Ambassador María Teresa Infante Caffi (Chile) in The Hague. A drafting group was established to elaborate a text on the implementation of Article 97, with Ambassador Sabine Nölke (Canada) as its Chairperson.

The result of the drafting group's work and further negotiations within the Working Group on the implementation of Article 97 resulted in an "*Understanding with respect to article 97(c) consultations*" that will be adopted at the 16<sup>th</sup> ASP session.

## 11. Complementarity

Under the principle of complementarity, States Parties have a duty to investigate and prosecute all Rome Statute crimes that occur within their respective jurisdictions and should thus assume the primary role in the enforcement of the Rome Statute at the national level. In the event that a State Party is unable or unwilling to hold perpetrators of international crimes to account, the ICC will decide whether to investigate and prosecute—and thereby fill the impunity gap.

The ICC recognizes that a lack of either capacity or political will may be responsible for a failure to investigate and prosecute international crimes in national courts. Even then, the ICC only assumes responsibility for the prosecution of those most responsible, leaving national jurisdictions an important role to play in addressing additional, including lower level, offenders.

Stronger domestic jurisdictions will contribute to the fight against impunity. As such, the Assembly of States Parties decided during the 15<sup>th</sup> Assembly of States Parties in 2016 that it would, over the course of 2017, “continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard, and also including to assist on issues such as witness protection and sexual and gender-based crimes”.

Australia and Romania were appointed ad country co-focal points on complementarity for 2017, to facilitate the discussions in The Hague, New York, and elsewhere.

### **Discussions on complementarity in 2017**

Consultations on complementarity in the HWG in 2017 included discussions on how to facilitate discussions on strengthening, effective domestic implementation of the Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern. Further, the Coalition also recalls the following understanding:

“It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed at enabling domestic jurisdictions to address war crimes, crimes against humanity and genocide, may contribute to the fight against impunity for such crimes. Such cooperation has been described as “positive complementarity” or complementarity activities. National ownership is essential and a requirement to engage in, and ensure the success of, such activities.”

While the principle of complementarity, as enshrined in the Rome Statute, deals with the ICC role as a Court-of-last-resort after national jurisdictions prove unable or unwilling to investigate and prosecute core international crimes, “positive complementarity” more specifically refers to domestic capacity-building in regards to such investigations and prosecutions.

Consultations between States Parties, the Court, civil society, and other actors regarding complementarity have highlighted differences in understanding of what complementarity means in practice for the Court, the ASP, and national systems - considering mandate limitations as well as challenges with funding, coordination, and political will.

The ad country co-focal points noted that the ASP's role in this regard is to facilitate dialogue between the Court and national systems.

Regular technical seminars and information exchange with national jurisdictions handling international crimes, as well as work with stakeholders to identify and respond to requests for assistance, have all been raised as potential initiatives for the Court.

A 27 June seminar in Brussels, hosted by the ad-country-focal points and intended for the benefit of States Parties without delegations in the HWG, sought to raise awareness of the issue of complementarity and related initiatives.

Several high-level conferences were organized in 2017 by ASP President Sidiki Kaba in Dakar, Senegal to strengthen the ICC-Africa relationship, including within the context of building the capacity of African judicial systems.

A 23 May 2017 seminar was attended by over 15 African ministers of justice, where OTP officials noted efforts to follow closely national proceedings and to train national officials on ICC practices. The seminar also highlighted a number of needs: a better understanding of the ICC and its role; an exchange of lessons-learned; wider networks of relevant national authorities; and follow-up to ratification with adequate resources for implementation of the Rome Statute. One related development in 2017 for the last of these recommendations was Botswana's domestication of the Rome Statute, which will now have direct effect under national laws.

### **NGO Efforts on complementarity in 2017**

A great number of NGOs organized activities relevant to complementarity and capacity-building for fighting impunity, a handful of which are listed in the Draft ASP Bureau report on complementarity.

### **16th ASP session: Complementarity-related consultations**

While no plenary sessions will be dedicated to the topic of complementarity in 2017, the draft Bureau report, outlining discussions and events on complementarity throughout 2017, will be considered for adoption by the ASP during the 16th session.

At that time, the ASP will also decide upon language on complementarity to include in its catch-all omnibus resolution. Both documents will be made available on the Court's ASP16 website.

## 12. The Court's 2018 Budget

To fund most of the Court's activities and major programs, States Parties to the Rome Statute must each pay a yearly contribution proportionate to their gross national incomes.

The ICC Registrar coordinates the drafting of the Court's overall budget request during the year leading up to the autumn session of the ASP's Committee on Budget and Finance (CBF), which then makes recommendations on the proposed budget for the ASP to consider during its annual session.

During 2017, States Parties considered budgetary matters within the ASP Bureau's Working Group on the Budget, facilitated by Ambassador Per Holmström (Sweden). A sub-facilitation on budget management and oversight was led by Ambassador Eduardo Rodríguez (Bolivia) while Ambassador Willys Delvalle (Panama) led discussions on the ICC premises.

While the Coalition does not take a position on the specific amount of resources to allocate to the ICC in any given year, it urges states to treat the CBF review and recommendations as the bare minimum approach in their 2018 budget discussions during ASP16.

States Parties should oppose arbitrarily limiting the Court's 2018 budget, which would undermine the ability of the ICC to deliver fair, effective, and even efficient justice. A lack of resources is a severe impediment to the optimal functioning of the Court.

### 2018 Court Budget Proposal

The ASP will consider the following figures at their annual session this year:

Proposed 2018 ICC budget: €147.89 million

*[Proposed increase to approved 2017 ICC budget: €6.29 million (4.4%)]*

Host State loan 2018 interest and installments: €3.56 million

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Total budget requested: €151.48 million

### 2018 Committee on Budget and Finance recommendations

To prepare its final recommendations to the ASP, the CBF—a technical expert body of the ASP tasked with evaluating and making recommendations on the unique budgetary needs of the ICC—considers various prosecutorial, judicial, and organizational requirements, as well as the Court's obligations to defendants and victims, during its bi-annual meetings. After assessing the Court's 2018 budget proposal, the CBF recommended the following figures for the ASP to consider at their 16<sup>th</sup> session:

CBF recommended 2018 ICC budget: **€144.43 million**

*Recommended reduction to Court's 2018 budget request: €3.46 million*

*Recommended increase to approved 2017 ICC budget: €2.83 million (2%)*

In its report, the CBF noted difficulty in verifying that an increasing workload for the Court is a necessary cost-driver of the Court's budget. In other recommendations, the CBF shared States Parties' concerns of over-representation of non-states parties within the ICC staff, and of a significant gender disparity favoring males at the upper echelons of professional positions at the Court.

In its final report, the CBF noted that its reductions did not consider the requested increase in remuneration of judges, which it would leave to the ASP to decide on during the 16<sup>th</sup> session. The overall requested increase intended to align ICC judges' salaries with those of other judges in The Hague-based courts and tribunals amounted to €732,900.

### **States Parties in arrears**

When States Parties are in arrears, or have not yet paid their assessed contributions, the Court cannot access the entirety of the budget allocated to it by the ASP. The ASP discusses this issue in a dedicated New York Working Group facilitation, currently led by Mr. Slavomir Kantor (Slovakia).

According to the CBF, €19,706,750 of assessed contributions in 2017 (13.92%) remained outstanding as of 15 September. The CBF further noted that still outstanding contributions from previous years stood at €13,435,300.

According to RS Article 112(8), *“a State Party which is in arrears in the payment of its financial contributions toward the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.”* According to the CBF, as of 15 September 2017, 13 States Parties were in arrears and therefore ineligible to vote at ASP 16.



## 13. UN Security Council - ICC Relationship

The UN Security Council has the power to refer situations that represent a threat to international peace and security to the ICC prosecutor for investigation and possibly prosecution, irrespective of if the state in question is party to the Rome Statute. To date, the UNSC has referred the situations in Darfur, Sudan (2005) and Libya (2011) to the Court. In order to keep the UNSC abreast of the situations it refers, the Prosecutor briefs the Council on the status of both referral cases periodically throughout the year.

The Council also has the power to defer ICC investigations for one year at a time if it believes it is in the interest of international peace and security.

To the detriment of international justice, the UNSC has consistently failed to provide the requisite cooperation or financial support to ensure effective ICC investigations and prosecutions arising from its referrals. Certain provisions in UNSC referrals have undermined the ICC's ability to serve impartial justice, such as the explicit exclusion of nationals of non-states parties from the Court's jurisdiction.

The ICC cannot investigate in the absence of a UNSC referral of suspected atrocity crimes situations involving non-states parties. This is an increasingly pressing issue given well-documented mass human rights violations in many places around the world where the ICC does not have jurisdiction. The five permanent members of the UNSC—China, France, Russia, the United Kingdom, and the United States—may each veto any resolution that comes before them. In May 2014, despite the support of over 60 UN Member States and hundreds of civil society groups, Russia and China vetoed a resolution to refer widespread atrocities in Syria to the ICC—the first time a referral resolution had failed. This political selectivity towards accountability on the part of UNSC members results in uneven access to justice for victims of grave crimes worldwide, and undermines the credibility of both the Council and ICC.

To address this incoherence, two separate initiatives have been proposed aiming to restrain UNSC members' use of the veto when dealing with situations of genocide, war crimes, or crimes against humanity.

While the Coalition as a whole does not take positions on the referral of specific situations to the Court, it calls on the five permanent members of the UNSC to refrain from using the veto when dealing with mass atrocities and to:

- Back up ICC referrals with effective cooperation, such as by arresting suspects;
- Encourage funding of ICC referrals through the UN system;
- Do not exclude any (group of ) nationals of non-states parties from the Court's jurisdiction in referrals;
- Engage in constructive dialogue with the Court.

In its capacity as focal point for the States Parties to the Rome Statute in the Security Council for 2017, Italy indicated that it is leading an initiative for the extension of the Working Group on International Crimes in order to highlight the importance of justice and cooperation within the Council.

Furthermore, Italy announced the unanimous adoption on 21 September by the UNSC of Resolution 2379 on the fight against impunity for crimes committed by Daesh/ISIL in Iraq. Although the resolution contains no reference to the International Criminal Court, it sends a strong message on the importance of the fight against impunity and offers the possibility for Iraq to resort to an international tribunal where appropriate.

### **Cost of United Nations Security Council referrals**

At the 14<sup>th</sup> ASP session in 2015, States Parties requested the ICC Registry to report on the approximate costs allocated to activities in the situations referred by the UN Security Council (Darfur and Libya). RS Article 115 provides that the expenses of the Court and the ASP are to be covered by contributions from States Parties, but can also be borne by the United Nations in relation to situations referred to the ICC by the Security Council.

In November 2016, the Registry reported<sup>7</sup> that costs in relation to UNSC referrals have to date been borne exclusively by States Parties and total €55 million. The Registry has noted this as a point of concern and has urged States Parties to begin discussions on potential solutions to the issue.

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<sup>7</sup>[https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP15/ICC-ASP-15-30-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ICC-ASP-15-30-ENG.pdf)

## 14. Amendments

The ICC's legal texts, such as the Rome Statute, the Rules of Procedures and Evidence, and the Regulations of the Court, may be subject to amendments. Amendments are a vital part of the Rome Statute and legal codes and rules more generally, allowing documents to remain relevant in changing times and contexts.

### Rome Statute Amendments in 2017

For the Rome Statute, any State Party may propose an amendment. The proposed amendment can be adopted by a two-thirds majority vote in either a session of the Assembly of States Parties or at a review conference. An amendment comes into force for all States Parties one year after it is ratified by seven-eighths of the States Parties. A different procedure is in place for amendments to the articles dealing with the core crimes of the Rome Statute.

Throughout 2017, States Parties addressed several issues within the ASP's Working Group on Amendments (WGA). The WGA, chaired this year by Ambassador May-Elin Stener (Norway) and meeting in New York, aims to achieve greater clarity on both the substantive views of the amendment proposals at hand and on the procedure to be followed in dealing with amendment proposals. It also prepares to inform the ASP in considering the amendments during its annual session.

This year, amendments were considered in two separate States Parties fora: the WGA and a New York-based facilitation established at the 15<sup>th</sup> session of the ASP to discuss the activation of the Court's jurisdiction over the crime of aggression.

### **Amendment Proposals to Article 8 of the Rome Statute**

The first amendment to the Rome Statute – proposed by Belgium and adopted at the conclusion of the First Review Conference in June 2010 – criminalizes the use of certain kinds of weapons in non-international conflicts, whose use was already forbidden in international conflicts. As stipulated by the amendment itself, the Court will only be able to exercise its jurisdiction over this new crime if the relevant state under review by the Court has ratified the amendment.

In 2009, Belgium, along with a number of other states, submitted two other amendments proposals for the ASP's consideration, one of which is currently under consideration by the ASP. The amendment proposes adding four new crimes to the list contained in Article 8 (war crimes) of the Rome Statute:

1. biological or toxin weapons;
2. antipersonnel mines;
3. weapons causing injuries by fragments which in the human body escape detection by X-rays;
- and
4. weapons causing permanent blindness.

Elements explaining each of the four proposed war crimes – in the context of both international armed conflict (IAC) and non-international armed conflict (NIAC) – are included in the proposal. The use of these weapons has already been defined and prohibited by the Chemical Weapons Convention, the Biological Weapons Convention, the Landmine-Ban Treaty (second amendment proposal), and the Convention on Certain Conventional Weapons (third amendment proposal) in both IAC and NIAC.

Since Belgium and other states tabled these proposals in 2009, they have been subject of discussion within the Working Group on Amendments. Over the course of 2017, it emerged that States Parties could not reach an agreement on submitting these amendment proposals to the 16<sup>th</sup> ASP session for adoption. The two main arguments against the submission of the proposed amendments relate to timing and substance. As a result, on 20 July 2017, Belgium, in its national capacity, submitted the amendments proposal to the UN Secretary General as the depositary of the Rome Statute and therefore the entity to receive notifications of amendment proposals. Discussions since continue in the WGA in the hope to reach consensus on the proposals before the upcoming ASP.

### **Amendments to the Rule of Procedure and Evidence in 2017**

Subject to Article 51 of the Rome Statute, amendments to the Rules of Procedure and Evidence (RPE) can be proposed by any State Party and shall enter into force if adopted by a two-thirds majority of the members of the Assembly of States Parties. Any amendments to the RPE must be consistent with the Rome Statute. In the event of a conflict between the Rome Statute and the RPE, the Rome Statute shall prevail.

#### Rule 165 of Rules of Procedure and Evidence

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

The judges ruled to urgently adopt this provisional amendment due to resource constraints, such as the judges' workload, so that more resources could be allocated to core crimes trials at the ICC. According to the Rome Statute, such provisional rule amendments by judges are to be applied until adopted, amended, or rejected by the ASP at its annual session.

While a majority of States Parties favored the amendment and related efficiency gains, a few delegations expressed concerns about risks to fair trial standards. Since 2016, due to this lack of consensus among States Parties, the WGA has not been in a position to send the amendment proposal to the ASP plenary for adoption.

Discussion also ensued on the applicability of the amended Rule 165. The judges of the Court, who amended the rule, deem the amended rule applicable. However, a number of delegations asked the Court not to apply the provisional rule while the matter is still under consideration by the WGA, while other delegations agreed with the Judges that the provisional amendments remained applicable, pending a decision by the Assembly on whether to adopt, amend, or reject the amendments. At present a lack of agreement prevents the WGA from making a recommendation to adopt the provisional rule at the upcoming 16<sup>th</sup> session of the ASP.

## 15. Efficiency and Effectiveness of Proceedings

Lengthy courtroom proceedings have long dogged international criminal tribunals, and the ICC is no exception. A measure of feet finding could be expected for the Court’s first trials—but with growing demands on international justice, increased allegations of offenses against the administration of justice, and restrictive policies on funding international institutions, significantly improving efficiency of proceedings has emerged as an urgent priority for the ICC.

However, any efficiency-minded efforts must simultaneously maintain the effectiveness of proceedings as the ICC looks to ensure timely justice for victims, uphold international standards for the accused, and bolster confidence in the Rome Statute system. , and

In the Study Group on Governance (SGG) - an ASP Bureau working group hosted throughout the year in The Hague, to enable a structured dialogue between the Court and States Parties - states have as their key focus the strengthening of the institutional framework of the Rome Statute system. This focus includes not only the Court’s independent initiatives with respect to improving the efficiency and effectiveness of its judicial activities, but also initiatives with similar aims but within the competence of States Parties. For its part, the Coalition has for years pressed for comprehensive, institution-wide reviews of the ICC’s judicial processes.

The Coalition believes civil society to be uniquely placed to promote dialogue between all the stakeholders in the aim of ensuring a more efficient and effective Court. Among others, the Coalition has advocated for the reform of unsustainable appeals practices as well as consideration for victims’ rights when discussing efficient practices. The Coalition supports initiatives that coordinate efforts between States Parties, Court officials, civil society, and *ad hoc* and special tribunals’ experts.

### **Study Group on Governance: Discussions in 2017**

In 2017, the SGG was co-chaired by Ambassadors Masaru Tsuji (Japan) and María Teresa Infante Caffi (Chile). The SGG is composed of ‘clusters,’ each with its own specific focus. During its 16<sup>th</sup> session, the ASP will adopt a report prepared by the SGG co-chairs, with contributions from each cluster, alongside language to include in the ASP’s *omnibus* resolution.

The ASP will also consider the Court’s third report on the development of performance indicators during its 16<sup>th</sup> annual session, the preparation of which informed much of the Cluster II discussions in 2017.

### SGG Cluster I: Increasing efficiency of the criminal process

SGG Cluster I addresses “*Increasing the Efficiency of the Criminal Process*,” with Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom) serving as co-focal points in 2017.

In 2017 Cluster I received updates from the ICC Presidency on the judges’ work on expediting the criminal process. Much of these efforts by the judges involve initiatives within the Working Group on Lessons Learnt (WLL).

The WGLL, chaired by current ICC President Silvia Fernández de Gurmendi, is a focus group composed of ICC Judges that arose out of a 2012 exercise by the judiciary to identify provisions in the ICC’s Rules of Procedure and Evidence (RPE) that might be amended to address inefficiencies in the Court’s earlier years.

The WGLL’s 2012 report had stressed the need to simultaneously standardize best practices—an avenue that does not require voting at the ASP. In related ongoing initiatives, following retreats on the pre-trial and trial phases in Nuremberg, Germany in 2015 and in Limburg, Netherlands in 2016, from 22 to 24 June 2017 in Krakow, Poland, the ICC judges participated in their third working retreat on the efficiency and effectiveness of Court proceedings. There the judges focused on appeals phase, taking into consideration the assignment of *ad hoc* appeals’ judges and the ICC Registrar election procedure, among other issues. The ICC judges will elect the Registrar in 2018.

A month before the Krakow retreat, ICC judges issued the third edition of the *Chambers Practice Manual*, a non-binding, live document that contains best practices based on the experience of judges in the ICC Chambers. The third edition, reflecting discussions in Limburg in 2016, adds a new section related to issues encountered while preparing trials.

In October 2017, the Cluster I co-focal points organized a question and answer event for states and members of civil society with the outgoing ICC President, to reflect on the President’s experiences spearheading and supporting Court initiatives around enhanced efficiency and effectiveness of ICC proceedings.

President Fernández has suggested a growing acceptance among judges and ICC Chambers staff that the identification and application of best practices, rather than amendments to legal texts, may be the most effective way to improve efficiency of the Court’s processes.

#### SGG Cluster II: Governance and budgetary process

SGG Cluster II addresses “*Governance and Budgetary Process*.” The co-focal points of Cluster II in 2017 were Mr. Reinhard Hassenpflug (Germany) and Ms. Lourdes Suinaga (Mexico), who was replaced by Mr. Alfredo Alvarez Cardenas (Mexico) on 27 July 2017.

Discussions in Cluster II, which more directly involves the ASP’s oversight role in initiatives to enhance efficiency and effectiveness of Court activities, revolved around the development of performance indicators at the ICC. The exercise is part of an ongoing ICC effort, at the request of the ASP in 2014, to “*intensify its efforts to develop qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court’s performance in a more strategic manner.*”<sup>10</sup> This SGG mandate was extended during the 15<sup>th</sup> ASP session.

In 2015, the Court set out to identify key objectives of the Court’s performance to focus on as part of the exercise, deciding on:

- (1) expeditious, fair, and transparent ICC proceedings at every stage;
- (2) effective ICC leadership and management;
- (3) adequate security for ICC work, including protection for those at risk from involvement with the Court; and

(4) victims' access to the Court.

In 2016 the Court conducted consultations with various stakeholders, including civil society, on the development of relevant and meaningful performance indicators. At the end of both 2015 and 2016, the Court reported to the ASP on its progress in these regards.

In 2017, the ICC reported on progress with its methodology while also previewing data collected until September 2017, as reflected in the third Court report on the development performance indicators. The Court indicated it would continue to streamline and refine indicators in 2018 while developing the new Court-wide strategic plan. This meant the SGG will likely not discuss performance indicators again until 2019.

The ICC Registry has meanwhile offered examples of practical application of performance indicators related to management—the second key goal of efficient and effective performance—while the OTP has explained links between the exercise and its independent initiative to develop specific OTP indicators.

For the Registry's part, all sections are already collecting data for different purposes, including preparation of the ICC budget, the Court's report to the ASP, and organization development plans, resulting in hundreds of key performance indicators. To refine the excessive number of indicators so far, the Registry looks to incorporate performance indicators into its first ever organ-specific strategic plan to begin in 2019.

The OTP exercise meanwhile considers a slightly different set of goals: effectiveness, through prosecutorial results in Court; operational excellence, through quality of core activities, efficiency, and productivity; management excellence, through human resources, financial management, and risk management; and innovation and learning, through an evaluation of improvement.

The next steps for the OTP involve integrating the performance indicators with its strategic plan, its budget objectives, and its risk management policy.

## 16. Victims' participation and reparations

Victims of grave crimes are the reason the ICC exists. The Rome Statute empowers victims of war crimes, crimes against humanity, and genocide to hold their persecutors to account and live with hope, dignity and respect.

The creation of a system of retributive and restorative justice that recognizes victims as its ultimate beneficiaries is largely due to the tireless efforts of civil society organizations at the Rome conference in 1998. Victims can—through a Court or self-appointed legal representative—present their views and concerns during proceedings before the ICC. The Rome Statute also established victims' rights to seek and receive reparations. Reparations are not limited to monetary compensation; they can come in many forms, including rehabilitation. Reparations are decided by the Court's judges and – when ordered by the judges – administered by the Trust Fund for Victims (TFV).

The Trust Fund for Victims operates under the guidance of the TFV Board of Directors (TFV Board), whose decisions are implemented by the TFV Secretariat. The TFV has a two-fold mandate: (i) to implement Court-Ordered reparations and (ii) to provide physical, psychological, and material support to victims and their families. Both mandates require voluntary contributions for adequate financing.

The current TFV Board of Directors is composed of the following five members: Ms. Alma Taso-Deljkovic (Bosnia and Herzegovina), Ms. Mama Koité Doumbia (Mali), Baroness Arminka Helić (UK), Mr. Felipe Michelini (Uruguay) and Mr. Motoo Noguchi (Japan), the current chairperson of the Board.

### **Victims' rights at the 16<sup>th</sup> ASP session**

Language relating to victims' rights and reparations, legal aid and representation, and the TFV will be included in this year's *omnibus* Resolution.

The Victims' Rights Working Group (VRWG), facilitated by Coalition member REDRESS, seeks to ensure that Rome Statute provisions relating to victims' rights are effectively implemented by the Court's judges, and regularly issues opinions and papers to that effect. The VRWG will issue a recommendations paper for the 16<sup>th</sup> ASP session.

### **NGO advocacy on effective victims' representation**

At its 15<sup>th</sup> session, the ASP had requested that the Court reassess the functioning of the legal aid system. A number of NGOs made submissions during the legal aid review consultations, which took place on 19 June in The Hague, Netherlands. The consultations allowed civil society the opportunity to exchange views with the Registry on how to best develop the overall system moving forward.



## 17. Universality of the Rome Statute

Worldwide ratification of the Rome Statute is necessary to achieve an international criminal justice system that eradicates the existence of any safe havens for individuals who commit the worst crimes known to humankind. The ICC is actively striving towards ending impunity by holding the perpetrators of the gravest international crimes accountable.

For the ICC to be truly successful, universal membership is an integral component. By joining the ICC, states can give the Court a global reach thereby increasing access to justice to victims. Through membership, states can also work to improve the efficiency and effectiveness of international justice, put forward candidates for election as ICC and ASP officials; and, propose amendments to core ICC texts.

Equally important is the full and effective implementation of the complementarity and cooperation provisions of the Rome Statute into national legal frameworks. This enables states to have the necessary legal framework through which to pursue investigations and prosecutions of RS crimes at the national level. It also allows for more effective support and cooperation with the Court, particularly in areas such as execution of arrest warrants and surrender, and in permitting investigation and the collection of evidence in the territory of states where international crimes are alleged to have been committed. Implementation of the RS also enables a modernization of national legal systems as many RS provisions are progressive and forward-looking, for example on victims' participation and on sexual and gender-based violence.

At its fifth session in 2006, the Assembly of States Parties adopted the *“Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court.”* The Plan of action calls upon States Parties to proactively make use of the political, financial, and technical means at their disposal to promote the universality and full implementation of the Rome Statute through bilateral, regional, and multilateral relationships. It also calls on the Secretariat of the ASP to support States in their efforts to promote universality and full implementation of the Statute by acting as a focal point for information exchange.

In 2017, the ASP's *ad country* focal point on the implementation of the Plan of action, Denmark, facilitated actions and discussions on achieving universality and spearheaded negotiations on the 2017 ASP Bureau Report on the Plan of Action. For example, along with Cyprus (*ad country* co-focal point on universality in 2016), on the occasion of International Justice Day 2017, Denmark launched a social media campaign – #JOIN – featuring a video with statements by the President of the Assembly and the Foreign Ministers of Argentina, Cyprus, Czech Republic, and Denmark, to promote universal ratification of the Rome Statute.<sup>2</sup>

The Coalition also undertook public campaigns to promote universality and support for the Court: for example, for International Justice Day 2017, the Coalition launched a campaign entitled, *“#WarAfterWar”* seeking to build universal support for the Court.<sup>3</sup>

<sup>2</sup> [www.facebook.com/universality](http://www.facebook.com/universality)

<sup>3</sup> <http://www.coalitionfortheicc.org/international-justice-day-2017>

In 2017, the ICC Registry (with the support of the EU and the *Organisation internationale de la Francophonie*, The Netherlands, and Norway) organized 3 seminars to promote the ratification and full implementation of the Rome Statute: in Trinidad, the Republic of Korea, and Samoa. The focal point's report also lists other activities undertaken throughout the year by the ASP President, the Court, international organizations, civil society, and other stakeholders.

Recommendations on promoting universality in 2018 will be included in the *omnibus* resolution for adoption at ASP16.

## 18. The Omnibus Resolution

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

The ASP will adopt an updated version of the omnibus resolution this year, following New York Working Group (NYWG) consultations chaired by facilitator Ms. Damaris Carnal (Switzerland). However, a number of The Hague Working Group (HWG) and other New York Working Group facilitations have suggested language for inclusion in the omnibus resolution as well.

### **Omnibus topics and related facilitations and focal points**

A number of other topics will be addressed in the 2017 omnibus resolution. The below list of topics indicates those that have already been discussed in ASP Bureau facilitations in the lead-up to the 16<sup>th</sup> ASP session. The omnibus resolution will include the date of the next ASP session as well as the mandates of the ASP Bureau for 2018. The Bureau will then meet at the beginning of next year to appoint the facilitators and focal points for the approved topics.

- **Universality and full implementation of the Rome Statute**  
*Ad country* co-focal point: Mr. Christian Nygaard Nissen (Denmark)
- **Agreement on Privileges and Immunities**
- **Cooperation**  
Co-facilitation (HWG): Ambassador Philippe Lalliot (France) and Ambassador Momar Diop (Senegal)
- **Non-cooperation**  
*Ad country* co-focal points: Senegal (on behalf of the President of the Assembly), Australia, Czech Republic, Japan, and Peru
- **Host State**
- **Relationship with the United Nations**  
Facilitation (NYWG): Ambassador Sebastiano Cardi (Italy)
- **Relationships with other International Organizations and Bodies**
- **Activities of the Court**
- **Procedure for the Nomination and Election of Judges (Elections)**  
Facilitation (NYWG): Mr. Stefan Barriga (Liechtenstein)
- **Secretariat of the Assembly of States Parties**
- **Counsel**
- **Legal Aid**

- **Study Group on Governance (SGG)**  
Co-facilitation (HWG): Ambassador Hiroshi Inomata (Japan) and Ambassador María Teresa Infante Caffi (Chile)
  - **Cluster I:** Increasing the Efficiency of the Criminal Process – Co-facilitation: Ms. Erica Luccero (Argentina) and Mr. Philip Dixon (United Kingdom)
  - **Cluster II:** Governance and Budgetary Process - Co-facilitation: Mr. Alfredo Álvarez Cárdenas (Mexico) and Mr. Reinhard Hassenpflug (Germany)
- **Proceedings of the Court**
- **ASP Bureau Working Methods Review**
- **Strategic Planning**  
Facilitation (HWG): Ambassador Eduardo Rodríguez Veltzé (Bolivia)
- **Victims and Affected Communities, Reparations and Trust Fund for Victims**
- **Geographical Representation and Gender Balance of Staff at the Court (Recruitment of Staff)**  
Facilitation (NYWG): Mr. Patrick Luna (Brazil)
- **Complementarity**  
*Ad country* co-focal points (HWG): Ms. Christina Hey-Nguyen (Australia) and Ms. Raluca Karassi-Rădulescu (Romania)
- **Independent Oversight Mechanism**
- **Programme Budget**  
Facilitation: Ambassador Per Holmström (Sweden)
- **Consideration of Amendments / Working Group on Amendments**  
Facilitation (NYWG): Ambassador May-Elin Stener (Norway)
- **Participation in the Assembly of States Parties**

## Acronyms and Key Terms

ACN	Advisory Committee on the Nomination of Judges
ASP	Assembly of States Parties
ASP 16	The 2017 session of the ASP
AU	African Union
BoD	Board of Directors
ASP Bureau	The President, Vice-Presidents, and Rapporteur, along with 18 States Parties
CBF	Committee on Budget and Finance
CICC/Coalition	Coalition for the International Criminal Court
EU	European Union
GRULAC	Latin America and Caribbean Group
HWG/THWG	The ASP Bureau's Hague Working Group
IAC	International armed conflict
IOM	Independent Oversight Mechanism
MENA	Middle East and North Africa Region
NIAC	Non-international armed conflict
NGO	Non-Governmental Organization
NYWG	New York Working Group
OAS	Organization of American States
OP	Operative Paragraphs of a Resolution
OTP	Office of the Prosecutor
Omnibus	An ASP resolution formally entitled, " <i>Strengthening the International Criminal Court and the Assembly of States Parties</i> "
PE	Preliminary Examination
PP	Preambular Paragraphs of a Resolution
Plenary	General discussions at the ASP with all States Parties attending
ICC Presidency	President: Judge Silvia Fernández de Gurmendi (Argentina); First Vice-President: Judge Joyce Aluoch (Kenya) and Second Vice-President: Judge Kuniko Ozaki (Japan)
RPE	Rules of Procedure and Evidence
SASP	Secretariat of the ASP
Statute/RS	Rome Statute, founding document of the ICC and the legislation that states must ratify to become members of the ASP and to the ICC
SGBV/SGBC	Sexual and Gender-Based Violence/ Sexual and Gender-Based Crimes
SGG/Study Group	Study Group on Governance
TFV	Trust Fund for Victims
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
VWU	Victims and Witnesses Unit (of the ICC's Registry)
WGLL	Working Group on Lesson Learnt



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