

REPORT ON THE SIXTH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE ICC NOVEMBER 30-DECEMBER 14, 2007, UNITED NATIONS HEADQUARTERS, NEW YORK

The Assembly of States Parties (ASP) of the Rome Statute of the International Criminal Court (ICC) held its sixth session at United Nations Headquarters in New York from November 30 to December 14, 2007. Nine years after the adoption of the Rome Statute of the ICC, over half of all states have ratified it. At the start of the sixth session, the Assembly was composed of 105 States Parties. The sixth ASP session was the first to serve a fully functioning International Criminal Court. The ICC has four open investigations and is about to start its first trial. Also, this session was an opportunity for civil society representatives to continue and expand their dialogues with the Court and States Parties and to present them their opinions and recommendations regarding the Court's work.

The Assembly elected Ambassador Christian Wenaweser (Lichtenstein) as its new president for the seventh, eight and ninth sessions (2008-2010). He will succeed Ambassador Bruno Stagno Ugarte, Foreign Minister of Costa Rica.

The Assembly of States Parties is the governing body of the ICC. For the Court and for many States Parties its most important function is to consider and approve of the ICC's annual budget. For other States Parties and for many individual civil society supporters, it is equally important that the ASP manages, oversees and legislates for the Court. It does this and directs the Court's performance through its powers over the ICC's most senior officials: it elects the Prosecutor and Judges and makes recommendations on the selection of the Registrar. Also, the ASP implements the rights and obligations of States Parties by monitoring payments of States Parties' financial contributions and application of Privileges and Immunities of the ICC's officials and staff members. In addition, the Assembly must ensure temporary premises and direct the design and building of the permanent premises of the Court. Finally, the ASP has responsibilities for relations with the host country and the UN.

The sixth ASP general debate was opened with a speech by UN Secretary-General Ban Ki-moon, followed by statements of 47 States Parties. The relationship between peace and justice emerged as a key theme. The Secretary-General noted that some ICC cases originated in countries that are struggling to establish peace. He stressed that in these circumstances questions about the relationship between peace and justice are unavoidable. Also, other states in their speeches referred to the inseparable peace and justice issue and agreed that these are not conflicting ideas.

ICC Prosecutor Luis Moreno-Ocampo's briefing to the UN Security Council on progress in his investigation in Darfur, Sudan, coincided with the first week of the ASP. In his address to the Council on December 5, the Prosecutor focused on the non-cooperation by the Sudanese government, as well as on its lack of compliance with the resolution 1593 and on outstanding arrest warrants against Ahmad Harun and Ali Kushayb. The Prosecutor called for the Security Council to "break the silence" by sending a "strong and unanimous message" to the Sudanese government. Also, the Prosecutor announced the opening of two new cases in Darfur: one investigating ongoing attacks against civilians in camps for internally displaced persons and another focusing on recent attacks against humanitarian organizations.





The majority of the 15 Security Council members who spoke in response to the briefing expressed their strong support for the ICC and their concern that Sudan is not cooperating with the Prosecutor and has not arrested two suspects. Many speakers supported the Prosecutor's new investigations and asked for a strong Council statement. No formal statement was adopted, however.

During its sixth session, the ASP formally organized the designing and building of permanent premises for the ICC at the Alexander Kazerne in The Hague. ASP resolution ICC-ASP/6/25 took note of the report of the working group on permanent premises which recommended, among other things, that the architectural design competition take place throughout 2008 and negotiations of contract terms with a winner of the competition take place in January 2009. Also, the group recommended establishing a Project Office and an Oversight Committee to provide overall guidance to the project. The Oversight Committee on permanent premises is ASP's second standing subsidiary body, after the Committee on Budget and Finance (CBF). In addition, the working group indicated its desire that the international Coalition for the ICC (CICC) be an observer on the jury.

More than 250 individuals from civil society representing more than 100 NGOs from around the world participated as observers in the sessions of the ASP.

NGOs representatives were invited to speak during ASP general debate as well. Ten NGOs addressed the sixth ASP, including, among others, the CICC Secretariat, Amnesty International, Caritas France, as well as two AMICC members – Human Rights Watch and Human Rights First. The NGOs raised, among other issues, the importance of support of the Court, called on the Assembly to collectively condemn the opposition of the Sudanese government and stressed the indispensable combination of political will and diplomatic pressure that can contribute to the Court's successful functioning.

During the two weeks of the ASP, civil society representatives and government delegates attended several NGO side events related to the issues of the Assembly. High attendance at many discussions, hearings, situation panels on countries where the ICC has cases or is investigating, as well as at regional meetings proved that there was a strong will to support the Court's activities and a great interest in the issues the ICC is dealing with. For example, strategies on cooperation, enforcement difficulties, outreach tools, implementation of the Rome Statute and victims' rights were discussed at the meetings.

An NGO meeting about the US position on the ICC was particularly important for the AMICC. John Washburn, Convener of AMICC, discussed the latest developments in US legislation about the International Criminal Court, including Bilateral Immunity Agreements (BIAs). Participants present at the meeting expressed concerns and presented their opinions about the US policy on the ICC.

Also, civil society representatives met in person with the Prosecutor of the ICC, Mr. Luis Moreno-Ocampo as well as with the Registrar, Mr. Bruno Cathala. These meetings were unique opportunities for NGO representatives to present their opinions and express their concerns about the work of the officials and their offices.





During the Assembly, AMICC followed several important issues in the Court's work which are an important part of advocacy for the Court in the United States. These were identified previously in AMICC's pre-ASP *Memo on the Sixth Session of the Assembly of States Parties to the Rome Statute of the ICC*, by Agata Porter, available at www.amicc.org/docs/AMICC%20ASP6.pdf :

- Election (free from politics) of highly qualified judges;
- The work of the Special Working Group on the Crime of Aggression;
- The venue and organization of the Review Conference;
- Actions to strengthen an important role of the oversight mechanisms of the Court, including standing committees of the ASP; and
- The assistance and support of the ICC for the defendants and victims and ensuring equality of arms between the defense and the prosecution.

Election of Judges

On November 30 and December 3, 2007 the Assembly of States Parties elected Ambassador Fumiko Saiga (Japan), Mr. Bruno Cotte (France) and Mr. Daniel David Nsereko (Uganda) to replace ICC judges who had resigned prior to the end of their terms. Judge Saiga was selected by lot to serve the remaining one to two years of Judge Claude Jorda's term and will be eligible for reelection for an additional nine-year term. Judge Cotte and Judge Nsereko will serve the remaining three to four years of Judges Maureen Clark's and Karl Hudson-Phillips's terms, which expire in 2012. All of the Judges will serve in the Trial Chamber. The Judges are to be sworn in on January 17, 2008 in The Hague.

Ambassador Saiga is a distinguished diplomat with considerable international human rights experience, but not in courts and trials. Some NGOs and States Parties believed that Ambassador Saiga did not meet the Statute's eligibility requirements for judges, and even more thought that a trial judge with her lack of relevant experience could seriously damage the Court's credibility. Several NGOs called on the ASP to elect only candidates with criminal trial experience.

The Crime of Aggression

The crimes of aggression will be discussed at the Review Conference. In preparation, the Special Working Group on Crime of Aggression (SWGCA) has held several meetings in 2007. The SWGCA met at the sixth session and discussed a paper with suggestions from its Chairman (Ambassador Christian Wenaweser from Lichtenstein) and reports prepared after the meeting of the SWGCA in Princeton. No notable progress was made on the jurisdictional issue, as described in AMICC's pre-ASP Memo on the sixth session (available at www.amicc.org/docs/AMICC%20ASP6.pdf), though the SWGCA did come closer to agreeing on the definition of the crime itself. The Chairman of the SWGCA will produce a new paper in advance of the SWGCA meetings in June 2008. Also, the SWGCA discussed the future roadmap of its work and set out dates for its meetings leading up to the Review Conference.





The Review Conference

A working group of the ASP held several meetings on the Review Conference. The ASP took note of the report of the working group and renewed the mandate of Ambassador Rolf Einar Fife (Norway) as focal point to coordinate the work of the Assembly on the Review Conference. The ASP agreed that the UN Secretary-General would convene the Conference in 2009 and that it would be held in the first half of 2010. The ASP decided on criteria and requirements for choosing the venue of the Conference. The focal point and the working group would apply them and the ASP agreed to take them into careful consideration before making a decision at the resumed sixth session in June 2008. The criteria include, among others, financial implications of the Conference, the existence of national implementation legislation, overall compliance and cooperation with the Court, logistic capacity and security, and the extent to which the population of the country would welcome the Conference. The working group has discussed three possibilities for the venue of the Review Conference: New York, The Hague or a third location. To date, only the Ugandan government has offered to host the Conference outside New York or The Hague. The Ugandan Minister of Justice, E. Khiddu Makubuya, made a presentation on “Uganda’s bid to host the Review Conference” and presented information on the Ugandan implementation legislation, as well as its logistics and security capacity for the Conference.

Oversight by the Assembly of States Parties

Article 112 (4) of the Statute sets out that the Assembly, apart from subsidiary bodies, may establish “an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy”. To date, the Court has not developed any independent internal or external oversight mechanism.

“Oversight” is a term used to refer to “a variety of techniques” that monitor the performance or operation of a person or a group. Oversight services – audit, investigation, monitoring, inspection and evaluation – provide advice on management practices based on a systematic and independent review of an organization’s operations. Also, an independent oversight ensures compliance of various services/operations with the organization’s numerous procedures, policies, and priorities. Finally, such a mechanism investigates cases of misconduct, including sexual exploitation and abuse among the organization’s staff members.

The matter of the independent oversight mechanism was not formally taken up during the sixth session. The ASP in its omnibus *Resolution on strengthening the ICC and the ASP* (ICC-ASP/6/Res.2) “renew[ed] its invitation to the Court, in consultation with the Bureau, to continue to consider concrete proposals for the establishment of an independent oversight mechanism to the next regular session of the Assembly of States Parties”.

However, civil society representatives did discuss this issue among themselves. The Women’s Initiatives for Gender Justice (WIGJ), an AMICC observer, presented their position paper on the oversight mechanism emphasizing that States Parties should consider this question urgently. WIGJ pointed out that the Court has not developed any staff rules on sexual exploitation and abuse. WIGJ called upon on the ICC and the Bureau to take the initiative in preventing these abuses and holding their perpetrators accountable. In addition, WIGJ supports the consultations on the independent oversight mechanism in The Hague Working Group instead of





the New York Working Group because: (1) such a solution would provide regular consultations and involvement about the independent oversight mechanism between the Bureau and the ICC; and (2) development of the mechanism in New York has become too dependent on the discussions taking place in the UN on a similar mechanism and that dependence should be reduced by moving the issue to The Hague.

Defense Counsel at the ICC

The International Criminal Bar (ICB) was established to ensure the quality of defense counsel and to guarantee the independence of the legal profession before the ICC. The ICB acts as the representative of counsel before the Court and since its establishment in 2002, it has sought to be acknowledged by the ASP as an “independent representative body of counsel or legal association, including any international legal associations relevant to Rule 20 (3) of Rules of Procedure and Evidence”. The ICB wants the ASP to declare its wish to facilitate the establishment of the Bar. However, the efforts of members of the ICB were unsuccessful at this session. The ASP in its omnibus *Resolution on strengthening the ICC and the ASP* (ICC-ASP/6/Res.2) “note[d] the important work of independent representative bodies of counsel and legal associations, including any international legal associations relevant to Rule 20 (3) of the Rules of Procedure and Evidence”. The ICB will continue its efforts for the ASP to support its establishment.

The recommendations of the ASP’s Committee on Budget and Finance about legal aid raised many concerns among civil society representatives long before the sixth session. The CBF recommended against increased resources for legal aid and funding for a temporary G-4 Counsel position in the Office of Public Counsel for the Defense. The Assembly endorsed the CBF recommendation. Nevertheless, the ASP stressed the importance of legal aid to fair trials and agreed to keep the issues under review.

Defense matters were also discussed in the debate on permanent premises of the Court (ICC-ASP/6/20). The ASP agreed that there have to be precise requirements concerning the design of the new premises, especially of the future Courtroom and Entrance Clusters. These rooms must enable the Court to function well during the hearings, as well as meet requirements for handling confidential material.

The official records of the sixth session and earlier ASP sessions are available at the Assembly’s website, <http://www.icc-cpi.int/asp.html>.

The resumed sixth session of the Assembly will take place in New York on June 2-6, 2008. The seventh ASP will be held in The Hague from November 14-22, 2008.

*Researched and drafted by Agata Porter
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