



## ***REPORT ON THE NINTH SESSION OF THE ASSEMBLY OF STATES PARTIES, NEW YORK, DECEMBER 2010***

The AMICC secretariat participated in the ninth session of the Assembly of States Parties (ASP) at the United Nations in New York, December 6-10, 2010. Representatives from the 114 States Parties, several observer states, including the United States, and NGOs concerned about the ICC came together with ICC officials to discuss the financing, governance, and effectiveness of the ICC. AMICC worked closely with the international NGO Coalition for the ICC (CICC), to which AMICC along with 2,500 other member organizations belongs, and with other NGOs leading up to and at the meeting.

In addition to following, advocating and reporting on the below issues relevant to our advocacy, the AMICC delegation monitored and provided information about the US participation as an observer at the ASP. AMICC had regular contact with the US delegation. This session was the second regular session the attended by the US; the first was in November 2009 in The Hague. The US delegation was led by Ambassador-at-Large for War Crimes Issues Stephen Rapp and State Department Legal Adviser Harold Koh, and included several other delegation members representing the Departments of State and Defense. Ambassador Rapp made a statement on behalf of the US during the general debate. On the margins of the session AMICC Convener John Washburn interviewed Ambassador Rapp. A video of the interview was released on AMICC's blog and YouTube channel to coincide with Human Rights Day on December 10. Links are available at [www.amicc.org](http://www.amicc.org).

Discussions at the meeting included reviewing and approving the ICC's annual budget; revisiting the stocktaking aspect of the Review Conference at Kampala earlier this year; reports on the activities and projects of the Court and the Trust Fund for Victims; reviewing the performance of the Court; current investigations such as Darfur; actions by working groups dealing with governance, operations of the ASP and other budgetary issues; and the election of six individuals to the Committee on Budget and Finance. In addition, there were further discussions on how to address proposed amendments to the Rome Statute not considered at the Review Conference. The Assembly also passed an omnibus resolution which dealt with many of the issues on the Court's agenda. Lastly, the ASP approved the mandate of the Independent Oversight Mechanism, initially established last November at the eighth session. This approval will permit the new body to begin work on a manual of procedure to be approved at the next ASP.

### Establishment of an Independent Oversight Mechanism for the ICC

This session of the ASP took an important step to make operational the independent oversight mechanism (IOM) established in November 2009 pursuant to Article 112(4) of the Rome Statute. It approved the mandate of the mechanism, drafted by the temporary head of the IOM in consultation with States Parties and the organs of the Court. The mandate provides the basis for the completing the procedural manual for the IOM to be approved at the next ASP. Once activated, the IOM will have the capacity to investigate ICC staff and elected officials for misconduct. The mechanism will help to prevent and address waste, fraud and abuse at the ICC. In carrying out its mandate, the IOM will help to rebut critics of the Court in the US who claim that there are insufficient checks and balances on the Court.

Delegates reached agreement on the question of the mandate after intense negotiations on concerns about the IOM compromising the independence of ICC judges and the Prosecutor. The temporary head of the IOM had





already proposed changes to the mandate as a result of extensive consultations held by the ASP's working group in The Hague over the last year. The ASP ultimately resolved concerns, in particular those of the Prosecutor, about intrusive investigations by deciding that the procedures for the IOM will include referral to a third party arbiter. This will occur if the head of a Court organ being informed of a potential investigation into that organ's staff on the initiative of the IOM does not permit it to proceed.

The IOM will eventually consist of two permanent staff members, and likely more if the inspection and evaluation functions – also contemplated by the Rome Statute – are activated. The temporary head of the IOM was seconded to the ICC by the UN Office of Internal Oversight Services (OIOS) and will continue developing the procedures for the IOM until they are completed or until a permanent head is recruited. OIOS may also provide support services to the mechanism with cost recovery, based on a memorandum of understanding to be finalized soon. The ASP has also asked OIOS to complete a “mapping study” of the ICC's current oversight functions to help determine whether to activate the inspection or evaluation functions of the IOM. The ASP will consider this study at its tenth session.

### Approval of the ICC's Annual Budget

The ASP approved the Court's annual budget of approximately 103 million Euro, or about \$140 million. The ASP endorsed the recommendations of its subsidiary body, the Committee on Budget and Finance (CBF), on the Court's requested budget but ultimately decided to increase the budget by 1.3% from 2010, in line with the inflation rate of The Netherlands, the Court's host. This compromise agreement, which reduced the CBF recommendations by .3%, represented a success by those countries arguing against efforts to adopt a “zero-growth” approach to budgeting for the Court which would likely have left the Court unable to fully fund its expanding activities.

In addition, the ASP decided to allocate some funds for supporting diplomatic efforts to establish an ICC Liaison Office at the African Union (AU) Headquarters in Addis Ababa, Ethiopia. The ASP decided last year to establish such an office and included funds in its 2010 budget to support it. However, in July 2010 the AU decided to reject the ICC's request for the time being. The ICC will use the 38,000 Euro set aside for 2011 to cover travel costs to maintain diplomatic engagement.

The ASP also addressed several other fundamental issues in its budget process. First, it denied the Prosecutor's request to abolish the post of Deputy Prosecutor for Investigations, currently unoccupied and unfunded, because it felt that the next Prosecutor who will take office in 2012 should have the flexibility to decide on the composition of his or her office. Second, it established a voluntary fund to make possible visits to indigent ICC detainees by family members. The ICC Presidency had decided in March 2009 that detainees had a right to such visits and that they should be funded by the ASP, setting up a conflict with the ASP which it is now seeking to address without impacting the Court's budget. Third, the ASP rejected a plea by ICC Trial Judge Sir Adrian Fulford to reconsider its revision of the pension scheme in 2006 which he and other judges believe will have a negative impact on the nomination of the most qualified candidates for ICC judicial posts by reducing their overall compensation.





## Review Conference Follow-Up

A portion of the ASP was devoted to a follow-up of the Review Conference held in Kampala, Uganda earlier this year. Delegates discussed three of the stocktaking topics: cooperation, complementarity, and the impact of the ICC on victim's rights and affected communities. There were no substantive discussions about the crime of aggression amendment adopted at Kampala. The Assembly decided to keep questions of enhancing efficiency and effectiveness of the Court in constant review. The ICC President, Judge Song Sang-Hyun, emphasized the importance of maintaining momentum after Kampala and of not letting any opportunities pass for governments to fulfill their pledges to assist the Court and support international justice. NGO also convened meetings and side events relating to Review Conference issues, discussed below.

The Assembly reported on the pledges made by many nations at Kampala and called on nations that had not made pledges to do so during the ASP. No delegation took the opportunity to make a pledge but the ASP secretariat noted that pledges could be made any time between then and the beginning of the next ASP.

## Working Group on Amendments

The ASP established a permanent Working Group on Amendments (WGA) as a venue for State Parties to discuss how the Assembly will deal with current and future amendments. The session included several informal consultations and agreed to hold informal meetings before the tenth ASP to discuss the WGA's procedural rules for the future as well as tabled and new amendments. The head of the WGA assured all delegations that amendments already proposed will remain on the table for further discussion and eventual consideration.

The establishment of this permanent subordinate body is indicative of a trend toward creating ASP permanent infrastructure to better support the Court. The emergence of subordinate bodies will help to counter charges in the US that the ASP is not equipped to carry out its oversight responsibilities.

## Study Group on Governance

The ASP at this session also passed a resolution to establish a study group on governance. The idea originated from a proposal by Japan to include governance and efficiency as one of the stocktaking topics for the Review Conference. Since other topics were selected for the program in Kampala, Japan and other countries turned to The Hague Working Group of the ASP to address this issue. The resolution, which emphasized the importance of judicial independence, set a framework for establishing a study group to dialogue with the Court and others about enhancing the efficiency and effectiveness of the ICC as an institution. Leading up to and at the ASP, NGOs raised concerns about how this initiative could be primarily focused on cost-cutting without regard for how cost-cutting will impact the Court's activities and growth. AMICC and other NGOs will continue to monitor developments on governance.

## Independent Panel on ICC Judicial Elections

One of the major NGO initiatives at this ASP was an announcement by the CICC that it will convene an independent expert panel to assess nominees for ICC judicial posts. The next election will take place at the





tenth ASP in December 2011; the elected judges will take office in March 2012. The upcoming election of six judges for nine-year terms will have a major impact on the Court's judicial capacity and performance as well as the ICC's early legacy. A major purpose of the panel is to raise awareness about the strict requirements of the Rome Statute for judicial nominees and thereby encourage governments to nominate the most qualified candidates for judicial vacancies. The panel will be a CICC program but operate independently as a body of eminent experts.

## Other NGO Activities

The CICC held daily strategy sessions in order to inform members of all relevant developments and to strategize about them. It also allowed individuals to network and share information about other meetings.

Various ICC organs and NGOs held side-events between formal sessions. On Monday, an ICC Legal Representative of Victims spoke at one of these events about victims' participation in the ICC. They discussed what victims' participation means and what the role of their legal representation may be. ICC Judge Sir Adrian Fulford participated in another event that day where he spoke about his experience at the Court and on ways he felt the system could be improved.

On Tuesday, the CICC held a panel discussion on key issues before the ASP including: cooperation, complementarity, and the role civil society. In addition, the CICC and Parliamentarians for Global Action co-hosted an event on cooperation with the ICC where panelists discussed obstacles to cooperation and how States Parties could overcome them.

On Wednesday, the permanent missions of Germany and South Africa to the UN co-organized an event celebrating the launch of the Trust Fund for Victims Fall 2010 Program Progress Report. The panelists discussed some of the Trust Fund's various activities and impact they have had in Uganda and the Democratic Republic of the Congo. Belgium also hosted a side-event on maintaining family links and visits for ICC detainees. Finally, the ICC Office of the Prosecutor (OTP) gave a presentation on preliminary investigations. The OTP stated that it is examining at least nine situations, including Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea, Palestine, Nigeria, Honduras, and the Republic of Korea.

On Thursday, the International Center for Transitional Justice (ICTJ) held an event on positive complementarity where panelists gave a brief overview of complementarity discussions and discussed concrete steps that nations could take to make complementarity work. Also on Thursday, NGOs attended a formal meeting of the UN Security Council in which the ICC Prosecutor presented his report on the OTP's investigations in Darfur. He reported that Sudan's failure to cooperate is harming peace in the region and that all nations must work together to end the violence in Sudan.

Finally, on Friday, No Peace Without Justice in conjunction with the Uganda Coalition for the ICC held an event about the impact the ICC has had in Uganda and recommendations on ways to engage victims and communities affected by the Court. The Case Matrix Network hosted a briefing on the Capacity-Building Platform Legal Tools Project which provides the public with free access to basic legal information in international criminal law.





## Tenth Session of the ASP

Next year the ASP will be held again at the United Nations in New York, December 12-21, 2011, for eight working days. During this session, the Assembly will elect six new judges and a new prosecutor. The election of the new ASP president will also be held at the start of that meeting since it was deferred at this session.

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