



BACKGROUND ASSEMBLY OF STATES PARTIES 17

The Hague, 5 - 12 December 2018



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.

The Coalition Secretariat would like to thank the donors who have supported and continue to support the Coalition's work: the European Union, the Planethood Foundation, Irish Aid, and the governments of Australia, Austria, Finland, Liechtenstein, Norway, The Netherlands, Switzerland, an anonymous foundation, and a number of committed individuals. The contents of this publication are the sole responsibility of the Coalition for the International Criminal Court and should in no way be taken to reflect the views of the European Union, Irish Aid, or any other donor.

The Coalition Secretariat takes all care to ensure accuracy. Corrections and additions are always welcome. For more information about the Coalition, please visit: www.coalitionfortheicc.org

Bezuidenhoutseweg 99 A
2594AC The Hague, The Netherlands

703 Third Avenue, 1215
New York, NY 100 USA

info@coalitionfortheicc.org

Follow us:



Table of Contents

1. Introduction.....	1
2. Call for the Highest Political Commitment.....	1
3. The Assembly of States Parties.....	2
4. Opening Session.....	4
5. The General Debate.....	5
6. Elections.....	6
7. Preparation for the election of the next ICC Prosecutor.....	8
8. Cooperation.....	9
9. Non-cooperation.....	12
10. Twentieth Anniversary of the Rome Statute.....	12
11. Supporting the ICC and its proponents against external interference & political threats.....	14
12. Efficiency and Effectiveness of Proceedings.....	14
13. Victims’ participation and reparations.....	16
14. ICC Policy on Legal Aid.....	18
15. Universality of the Rome Statute.....	18
16. Complementarity.....	19
17. The Court’s 2019 Budget.....	20
18. UN - ICC Relationship.....	22
19. Amendments.....	24
20. Independent Oversight Mechanism.....	26
21. The Omnibus Resolution.....	27
22. Acronyms and Key Terms.....	28

1. Introduction

This paper serves to provide informal background information for delegations from States Parties, observer states, international and regional organizations, and civil society attending the 17th session of the Assembly of States Parties to the Rome Statute (ASP) taking place from 5-12 December 2018 in The Hague, the Netherlands.

Since 1995, the Coalition for the International Criminal Court 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.*”

As in previous years, civil society participating at the 17th ASP session will coordinate its activities through the Coalition. The Coalition will assist more than 180 non-governmental organizations from all regions of the world in making their opinions and recommendations known to the ICC's 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 in the year to come. The consultative arrangements for NGOs at the 17th ASP session will provide States Parties and observers 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 17th 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 17th 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 summary on the Coalition's #GlobalJustice News Center at www.coalitionfortheicc.org/latest-news.

2. Call for the Highest Political Commitment

As the Rome Statute's 20th anniversary year draws to a close, the Coalition is encouraging participants at the 17th ASP session to make supportive statements reflecting on the challenges facing the Rome Statute system (RSS) today and in the decades to come – throughout the plenary sessions, the General Debate, the many side-events, and in other discussions.

Recognizing the serious threats 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 is 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, eradicate impunity for the perpetrators of these crimes, and ensure redress for the victims 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 (usually) 18 States Parties, elected by the Assembly 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 ASP president, vice-presidents, and 18 members of the Bureau were elected by the Assembly by consensus during the 16th ASP session, and assumed their functions immediately following the conclusion of the session on 15 December 2017.

The current president of the ASP is H.E. Mr. O-Gon Kwon of the Republic of Korea, who is supported by vice-presidents H.E. Ambassador Michal Mlynár of Slovakia (based in New York) and, up until he announced he would end his posting in March 2018, H.E. Ambassador Momar Diop of Senegal (based in The Hague). Since Ambassador Diop's departure, the HWG has been chaired by H.E. Ambassador Jens-Otto Horslund of Denmark, however an "*Election of a Vice-President*" will take place during the 17th session of the Assembly to formalize this arrangement.

The current Bureau members are:

Argentina	Australia	Austria
Colombia	Côte d'Ivoire	Denmark ¹
Ecuador	Estonia	France
The Gambia	Ghana	Japan
Mexico	Netherlands	Senegal
Serbia	Slovenia	State of Palestine ²
Uganda		

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 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 in the decision-making process of the ASP (RS Article 112(7)), 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.

Observers

States that signed the Statute but have not ratified it or signed the Final Act of the Rome Conference, 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, the Agreement on Privileges and Immunities of the Court (APIC), or the conclusion of voluntary cooperation agreements with the Court.

¹ Denmark occupies a "regular" Bureau position up to and until H.E. Ambassador Jens-Otto Horslund is official elected ASP Vice-President.

² The State of Palestine will temporarily step down as a member of the Bureau for one year, based on a seat-sharing arrangement agreed to by Bangladesh, Japan, and the State of Palestine, candidates to the 2017 Bureau elections.

Sessions of the Assembly of States Parties

The ASP meets collectively in what is known as a 'session' at least once a year, in either New York or The Hague. The 17th ASP session will take place at the World Forum Convention Center in The Hague, the Netherlands from 5 to 12 December 2018.

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, with reporting 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 at <https://asp.icc-cpi.int>.

The 17th 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 17th 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 20th anniversary of the Rome Statute, universality, cooperation, the relationship between the ICC and the United Nations, victims and affected communities, complementarity, the Independent Oversight Mechanism, and the 2019 ICC budget, 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 17th ASP session.

The ASP Journal is available on the ASP website (https://asp.icc-cpi.int/en_menus/asp/sessions/documentation/17th-session/Pages/ASP17-Journals.aspx) and is regularly updated throughout the annual session.

4. Opening Session

The 17th ASP session opens on Wednesday 5 December 2018 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, or other high-level state or intergovernmental organization representatives.

The Assembly begins by formally adopting the agenda of 17th ASP session, followed by the election of its second Vice-President and 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 (5 and 6 December 2018). 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 17th ASP session, some key positions for states to consider during their General Debate statements include:

- Unconditional **commitment** to the ICC as the cornerstone of the fight against impunity and a critical element of a rules-based international order;
- Commitment to work together as States Parties to **oppose efforts to undermine the court's work and independence** and in particular threats made against the ICC, its officials, and those cooperating with the Court;
- The need to safeguard the **integrity of the Rome Statute**, and its cornerstone principles;
- The commitment to strengthen and defend the ICC's **judicial and prosecutorial independence**, including by ensuring a proactive, fair, informed, and transparent search and selection process for the next ICC Prosecutor;
- The need for **universality of the Rome Statute**, as well as for its **full and effective implementation** into domestic jurisdictions;
- The commitment to **robust cooperation**, including through enhanced efforts to execute arrest warrants, the conclusion of voluntary cooperation agreements with the ICC, and ratification of the Agreement on Privileges and Immunities of the ICC (APIC);
- Governments' **financial commitment** to the ICC to enable it to effectively execute the mandate they have given it, without political or arbitrary, limitations to its annual budget;
- Commitment to upholding **complementarity** obligations and to building the capacities of national legal systems;

- The **centrality of victims – including their meaningful participation** in the Rome Statute system and the **right to reparations**;
- Full support for **outreach and public information**, and their crucial importance for raising the Court's profile, creating environments conducive for the ICC's work, and managing expectations;
- The milestone reached this year with the **20th anniversary of the Rome Statute** and the need to look for ways strengthen the Court's effective delivery of justice in the future; and,
- The Rome Statute system's integral **role in conflict prevention and sustainable peacebuilding**; in implementing SDG Goal 16; and in advancing the indispensable role of women in international peace and justice processes.

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 four 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 – in 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 17th ASP session, a number of positions in the Rome Statute system will be filled, including one ASP vice-president, one member of the ASP Bureau, five members of the Board of Directors of the Trust Fund for Victims, and all 8 members of the Advisory Committee on Nominations (ACN). Preparations will also be made for the election of 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.

As part of its electoral monitoring activities, the Coalition urged States Parties to nominate only the most highly qualified candidates for the Board of Directors of the TFV and the Advisory Committee on Nominations (ACN). While the ASP resolutions governing the elections of the TFV Board and the ACN 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.

Election of Members of the Board of Directors of the Trust Fund for Victims

At the 17th ASP session, states will elect 5 members of the Board of Directors of the Trust Fund for Victims.

The Board governs the secretariat of the Trust Fund for Victims and is in charge of establishing and directing the Fund's activities and projects and the allocation of resources. The Board has five members, who are elected for a three-year term and serve in an individual capacity on a *pro bono* basis. Members of the Board of

Directors may be re-elected once.

The ASP has established (ICC-ASP/1/Res.6) that the members of the Board shall be elected on the basis of equitable geographical distribution and taking into account the need to ensure equitable gender distribution and equitable representation of the principal legal systems of the world. The distribution of seats shall be as follows:

- African States: 1 seat;
- Asian States: 1 seat;
- Eastern European States: 1 seat;
- Group of Latin American and Caribbean States: 1 seat; and,
- Western European and Other States: 1 seat.

The Board of Directors is also to be composed of individuals of high moral character with competence in the assistance to victims of serious crimes.

At the closure of the nomination period on 25 September 2018, States Parties had nominated the following candidates for election to the Board of Directors of the Fund:

- BELAL, Sheikh Mohammed (Bangladesh)
- HELIĆ, Arminka (United Kingdom) – *incumbent member*
- KOITE DOUMBIA, Mama (Mali) – *incumbent member*
- LORDKIPANIDZE, Gocha (Georgia)
- MICHELINI, Felipe (Uruguay) – *incumbent member*

As the number of candidates equals the number of vacant seats, the election will be “clean slate.” The Coalition has consistently encouraged States Parties to ensure that all elections are competitive, open, and fair as this would allow for fresh insight and expertise to be utilized for the good of the entire Rome Statute system.

Election of Members of the Advisory Committee on Nominations

At the 17th ASP session, states will also elect 8 members of the Advisory Committee on Nominations (ACN). The ACN is mandated to facilitate ensuring that the highest-qualified individuals are appointed as Judges of the International Criminal Court (ICC-ASP/10/36). The Committee carries out assessments of judicial candidates based on the requirements of Article 36 of the Rome Statute and makes its resulting analyses available to States Parties and observers.

The ASP established (ICC-ASP/10/36) that the Advisory Committee on Nominations should be composed of nine members, nationals of States Parties and designated by the Assembly by consensus, reflecting the principal legal systems of the world and an equitable geographical representation as well as a fair representation of both genders. ACN members should have established competence and experience in criminal or international law and should be of high moral character. The members of the Committee serve in their personal capacity and are not representatives of their state.

At the closure of the nomination period on 9 October 2018, and in keeping with the limitation of 3 for the number of extensions of the nomination period, States Parties had only nominated 8 candidates for election to the Advisory Committee on Nominations:

- BARRAK, Ahmad (State of Palestine)
- BÎRSAN, Corneliu (Romania)
- COTTE, Bruno (France) – *incumbent member*

- FULFORD, Adrian (United Kingdom) – *incumbent member*
- KAMBUNI, Lucy Muthoni (Kenya)
- MONAGENG, Sanji Mmasenono (Botswana)
- STEINER, Sylvia Helena De Figueiredo (Brazil)
- VELTZÉ, Enrique Eduardo Rodríguez (Bolivia)

As with the TFV Board elections, the number of candidates for the ACN also equals the number of vacant seats, resulting in another “clean slate” election.

Election of an ASP Vice-President

The election of a new Vice-President is necessary following the departure of the previously-elected Vice-President of the Assembly, H.E. Ambassador Momar Diop of Senegal, on 19 March 2018, due to the end of his term in the Netherlands. Since Ambassador Diop's departure, the duties of the Vice-President have been executed by H.E. Ambassador Jens-Otto Horslund of Denmark.

The election of a new Vice-President will take place on the first day of the Assembly, following the adoption of the agenda.

Election of an ASP Bureau member

At the conclusion of the 17th ASP session, the State of Palestine will step down as a member of the Bureau for one year, as per the following seat-sharing arrangement agreed among Bangladesh, Japan, and the State of Palestine:

- 15 December 2017 until the conclusion of the 17th ASP session: Japan and Palestine;
- The day after the conclusion of the 17th ASP session until the conclusion of the 18th session: Bangladesh and Japan;
- The day after the conclusion of 18th session until the conclusion of the 19th session: Bangladesh and Palestine.

7. Preparation for the election of the next ICC Prosecutor

ICC Prosecutors are elected for nine-year terms by the Assembly of States Parties and cannot be re-elected. Ms. Fatou Bensouda entered office on 15 June 2012 as the second ICC Prosecutor, after being elected by consensus during the 10th session of the Assembly of States Parties in December 2011. Her term will run until 15 June 2021.

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

In part due to Coalition advocacy, ahead of the last Prosecutor election, the ASP Bureau had 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 produced 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 17th ASP session, the Coalition has welcomed the ongoing early discussions carried out in Bureau meetings and the proposal by the ASP President to establish a “Prosecutor Search Committee (PSC)” to assist

the Bureau and the ASP in the election of the next ICC Prosecutor. The Coalition strongly believes that this committee and the body (if different) which would conduct the assessment of candidates and make subsequent recommendation to the Bureau should be formed by highly qualified, independent experts. The members should be representative of diverse legal systems, regions, and possess significant expertise regarding the Rome Statute and the ICC, and in complex international criminal investigations, including sexual or gender-based crimes. Gender parity and wide geographic representation should be required. It is important for States Parties, Court officials, and civil society to engage in constructive discussions on the Prosecutor election process during the 17th ASP session.

8. 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 2018, 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.

Cooperation Facilitation in 2018

Over the course of 2018, discussions in The Hague Working Group on cooperation were facilitated by Ambassador Philippe André Lalliot (France) and Ambassador Momar Diop (Senegal), re-appointed by the Bureau on 18 March 2018. Upon the departure of Ambassador Momar Diop, on 11 September 2018, the Bureau appointed Ambassador Momar Guèye (Senegal) as co-facilitator on Cooperation. In 2018, the facilitation focused on the 20th anniversary the Rome Statute; following-up on the implementation of the 2017 priorities, including the *Paris Declaration on financial investigations and asset recovery* and voluntary agreements; arrests' procedures; and the Court's relationship with the United Nations and the Security Council.

On the occasion of the **20th anniversary of the Rome Statute**, the co-facilitators prepared a short video to reaffirm at the highest level the collective support of States Parties for the fight against impunity, the international criminal justice system, and the Court's work:

<https://www.youtube.com/watch?v=GU0uMt8VLeg>.

In 2007, the Assembly had 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, and it was the focus of the Cooperation Facilitation throughout 2017, leading to the adoption of the **"Paris Declaration on Cooperation in Asset Recovery"** on 14 December 2017 as an annex to the resolution on cooperation. The Paris Declaration invited the Court to: create and strengthen the ICC's partnerships with national authorities (para 11); to raise awareness of the ICC's mandate (para 12); and to conduct efficient and effective financial investigations to obtain freezing and seizure of assets (para 13). Steps have since been taken by different organs of the Court to follow up to the recommendations contained in the Paris Declaration: the Court has arranged bilateral meetings with three States Parties with which it works on a

regular basis to strengthen cooperation and has further identified focal points on financial investigations and asset recovery to improve channels of communication. The Court has also had several meetings at a strategic level to see how to best coordinate efforts of the Registry and the OTP on these issues.

Procedure for Arrests

The ICC relies entirely on national law enforcement systems to implement its orders, including arrests warrants, and there is an absolute urgency for ICC arrest warrants to be executed. Without arrests, ICC cases cannot proceed and the Court’s purpose to deliver timely justice is defeated. The execution of arrest warrants requires strong political will and diplomatic pressure, which States Parties should look to exert during the 17th session. Short of executing these warrants, states should commit to avoiding non-essential contact with persons who are subject to ICC arrest warrants.

The informal consultations which took place in 2018 represent a continuation of the discussions on arrests strategies mandated by the Assembly in previous sessions. At its 13th session, the Assembly had taken note of a report on arrest strategies submitted by the Rapporteur, and had invited the Bureau to continue discussions on the topic with a view to submitting a consolidated draft Action Plan on arrest strategies for consideration by the Assembly. At its 14th and 15th sessions, the Assembly had taken note of the *Report on the draft Action Plan on Arrest Strategies*, and had mandated the Bureau to continue consideration of the recommendations therein contained with a view to its adoption. Informal consultations have been carried out in 2017 and 2018.

On 7 November 2018, the co-facilitators on cooperation, the Court, and the Organisation Internationale de La Francophonie organized a seminar entitled, “*Arrests: a key challenge in the fight against impunity,*” aimed at discussing ways of strengthening cooperation for arresting persons suspected of committing crimes within the mandate of the Court. The seminar brought together officials of the International Criminal Court, judges from national courts, national and international authorities with powers relating to arrests, representatives of civil society, as well as legal practitioners. The seminar resulted in a number of proposals aimed at improving cooperation with respect to the implementation of arrest warrants being noted for further discussion:

- including specific provisions for operational implementation of requests of cooperation on arrests and surrender of suspects in the implementation laws of the Rome Statute;
- enhancing dialogue between States Parties, and States Parties and the Court by establishing direct contact points at the national level and instituting networks to share national practices and procedures allowing the Court and States Parties to better coordinate with national authorities;
- establishing informal arrangements to strengthen and streamline interactions between the Court and national actors to gather relevant information to allow arrests;
- establishing a specific and unique national procedure, or institution such as a specialized unit, to centralize and process requests from the Court;
- envisaging the use of innovative tools to implement arrest warrants, which may include incentives or assistance means; and,
- considering to sign agreements with the Court on transport of suspects, providing confidential, secured and dedicated air transport, with the capacity to reach sensitive areas within a short timeline.

ICC Arrests Campaign

The November 2018 seminar on arrests also saw the launch of an ICC advocacy and social media campaign directed at raising awareness on arrests and the surrender of suspects to the Court. With 16 arrest warrants

against 15 individuals outstanding, the campaign aims to highlight this crucial component of the cooperation framework. The Court’s campaign includes creating and regularly updating a dedicated website page about suspects at large: www.icc-cpi.int/defendants?k=At%20large; preparing a leaflet that underscores the importance of arrests; and launching a social media campaign to raise awareness on this issue. The Court has asked all stakeholders to support the campaign by, among others, launching their own campaign to promote arrest and surrender; following and sharing the Court’s campaign on social media; making public statements on the importance of arrest and surrender during the 17th ASP session – in particular during the plenary segment on cooperation on 7 December 2018; distributing the leaflet created by the Court; and publishing op-eds on the topic of arrest and the ICC.

“Voluntary” Cooperation Agreements

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. Such voluntary cooperation can also take the form of bilateral framework agreements on topics such as witness relocation, interim and final release, and enforcement of sentences.

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. 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.

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 outlining the framework agreements currently available and clarifying misconceptions about any obligations they may create for States Parties: https://www.icc-cpi.int/news/seminarBooks/Cooperation_Agreements_Eng.pdf.

In 2018, the co-facilitators engaged in informal consultations with States that are considering signing an agreement with the Court.

As of November 2018, the following cooperation agreements have been concluded:

- 10 framework enforcement of sentence agreements;
- 2 *ad hoc* enforcement of sentence agreements, with the Democratic Republic of the Congo in relation to sentences of Thomas Lubanga and Germain Katanga;
- 20 witness relocation agreements;
- 1 release of persons agreement, with Argentina;
- 2 interim release agreements, with Argentina and Belgium; and,
- 0 agreements on hosting persons in the event of final release.

17th ASP session: Special plenary on cooperation

On Friday 7 December 2018, the 17th ASP session will feature a special plenary meeting dedicated to the topic of cooperation and entitled, “*20 years after Rome: Back to the major challenges of cooperation.*” The plenary on cooperation will be divided into three segments focusing on financial investigations, with a follow-up to the Paris Declaration; arrests, with the presentation of the conclusions of the 7 November 2018 seminar; and

voluntary cooperation agreements, looking at the achievements so far and at the priorities for the future. The Plenary will also feature a signing ceremony on enforcement of sentences at which Slovenia will sign an agreement with the ICC.

9. 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, in 2017, the ASP Bureau appointed five non-cooperation focal points, one for each regional group, in accordance with the Assembly procedures on non-cooperation: the Czech Republic, Liechtenstein, Peru, the Republic of Korea, and Senegal make up the five current regional focal points.

The non-cooperation focal points are to 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 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: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ICC-ASP-15-31-Add1-ENG.pdf.

In 2018, discussions within the NYWG aimed at updating the ASP's procedures relating to non-cooperation, focusing in particular on Article 87, paragraphs 5 and 7 ("*Requests for cooperation: general provisions*"), and Article 112, paragraph 2 ("*Assembly of States Parties*") of the Rome Statute. The Bureau also discussed the issue of informal responses to instances of non-cooperation, with suggestions that the President of the Assembly more clearly delineate the role of the focal points on non-cooperation and the reporting obligations of the President when he engages in "good offices".

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 his non-arrest.

Discussions and activities on non-cooperation in 2018 once again revolved around failures to execute the ICC's 2009/2010 ICC arrest warrants against al-Bashir: following a judicial finding on 11 December 2017 that the Hashemite Kingdom of Jordan had failed to comply with its obligations under the Statute by not executing the Court's request for the arrest of al-Bashir and his surrender to the Court while he was on Jordanian territory in March of the same year. The Chamber decided to refer the matter of Jordan's non-compliance to the ASP and to the UNSC.

On 12 March 2018, Jordan appealed this decision. The Court, specifically the Appeals Chamber, invited observations from international organizations, States Parties, and professors of international law on the legal arguments raised by Jordan. The Appeals Chamber subsequently conducted five days of hearings in September 2018 and received oral submissions on legal matters raised in the appeal from Jordan, the ICC Prosecutor, and *amici curiae* including representatives of the African Union, the League of Arab States and international law professors. The decision of the Appeals Chamber is still *sub judice* - under judicial consideration.

10. Twentieth Anniversary of the Rome Statute

The Rome Statute of the International Criminal Court was adopted on 17 July 1998. Marking the 20th anniversary of the adoption of the Statute, 2018 been a year of celebrations by civil society, states parties, and the Court itself of a renewed commitment of the Rome Statute system to its founding values. Throughout the

year, the Coalition has encouraged states to use the opportunity of the 20th anniversary celebrations to encourage all stakeholders to take concrete steps towards the universality of the Rome Statute, the adoption of national implementing legislations, the ratification of APIC, and the conclusion of voluntary agreements in view of an enhanced cooperation.

The Coalition welcomes the several initiatives carried out by a wide range of stakeholders on the occasion of the anniversary, and the renewed commitment towards the values of the Rome Statute expressed on several occasions throughout the anniversary year. A round-up of the different activities is available on the website of the Coalition: <http://www.coalitionfortheicc.org/rome-statute-20-calendar-2018>.

For its part, the Coalition launched its 20th anniversary commemorations on 15-16 February 2018, convening in The Hague stakeholders involved at all levels in the Rome Statute system 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 establishment of the only permanent international court mandated to end impunity for genocide, war crimes, crimes against humanity, and the crime of aggression.

At the launch, and throughout the year, while celebrating this historic advance in peace, justice, and international law, the Coalition has encouraged all stakeholders to take stock of the treaty and the international justice system it created - from its progressive provisions to unexpected lacunae; from its idealistic vision to an increasingly challenging political reality. Crucial to this process of reflection has been the consideration of the ongoing challenges faced by the Rome Statute system and by other multilateral institutions in an increasingly hostile international political environment, and how the future of effective, independent, and fair international justice can be assured.

To build on the momentum created by the 20th anniversary of the Rome Statute, the Coalition has called on stakeholders to 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.

In support of this momentum, the Coalition published a *“Toolkit for commemorating a milestone in the fight against impunity,”* offering concrete suggestions for action targeted to States, international and regional organizations, the Court, civil society and the media, which is available for download in English and French on the Coalition website:

[http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/CICC%20RS20%20Toolkit 0.pdf](http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/CICC%20RS20%20Toolkit%200.pdf).

17th ASP session: Special plenary on 20th anniversary

The 17th ASP session will see a plenary discussion on the 20th anniversary take place on Friday 7 December 2018 providing an Assembly-wide opportunity for the international community to take stock of achievements to-date, and to consider how to enhance efforts to tackle such challenges for the Court going forward. The Coalition hopes that the renewed commitment towards international justice expressed on the occasion of the Statute’s 20th anniversary will continue to provide momentum for State Parties, as well as for countries that have yet to join the Rome Statute to demonstrate their political support for a system that has fought for two decades for an end to impunity for the worst crimes.

11. Supporting the ICC and its proponents against external interference & political threats

On 5 October 2018, the State of Palestine issued a request for the inclusion of an item on the 17th ASP agenda on “*Addressing the threats directed at the International Criminal Court, its Judges and States Parties cooperating with the Court.*” The State of Palestine’s motivation cited the ASP’s collective concern – noted at the 16th ASP session – “*regarding attempts at intimidation to deter cooperation,*” and highlighted that, “*Today the International Criminal Court faces an outrageous attack, unprecedented since its establishment twenty years ago. These threats against the Court and punitive measures against States Parties of the ICC require a strong and unified stance from all States Parties, and need to be addressed during the upcoming 17th session of the Assembly of States Parties of the ICC.*”

As the Court has engaged in new preliminary examinations and investigations, the institution and its supporters have come under increasing attack. During the General Debate, and during plenary segments – in particular during the discussion on the 20th anniversary of the Rome Statute on 7 December, states should resolutely condemn all efforts to interfere in the Court’s investigations and prosecutions; all threats levied against the Court and its proponents; and the spread of misleading and false information about the Rome Statute system. States should commit to work together to oppose any and all efforts to undermine the Court’s work and its independence and in particular threats made against the ICC, its officials, and those cooperating with the Court. States should continue to support civil society engaged in international justice efforts, including by ensuring their protection as defenders of human rights and their access to debates and discussions focused on strengthening the Rome Statute system and bringing justice to victims the world over.

12. 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 the 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.

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.

In 2018, the SGG was co-chaired by Ambassadors Hiroshi Inomata (Japan) and María Teresa Infante Caffi (Chile). The SGG is composed of ‘clusters,’ each with its own specific focus. During its 17th 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.

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) currently serving as co-focal points. In 2018, Cluster I discussions focused on victim participation in ICC proceedings and on a proposed amendment to Rule 26 of the Rules of Procedure and Evidence of the ICC (RPE).

Victims’ participation in ICC proceedings

On 6 February 2018, the co-focal points organized a half-day seminar on “*Victim Participation at the International Criminal Court,*” featuring then-ICC President Silvia Fernandez de Gurmendi, experts from civil society, practitioners, and the ICC Bar Association. The seminar highlighted issues and challenges surrounding the various aspects of victim participation in ICC proceedings, and resulted in a set of recommendations:

- Provide information to victims in a clear, timely (early) and effective manner;
- Establish clear processes – the Court’s revised and simplified victim application form was widely praised;
- Provide essential training for intermediaries and representatives; and development of professional and ethics standards;
- Establish a clear Court-wide strategy for outreach and engagement with victims;
- Consolidate best and common practice to ensure some consistency and predictability (to assist with managing expectations), while also recognizing the need to maintain some flexibility to allow adaption of approaches to take account of specific circumstances in specific cases;
- Develop common practice on the practical elements of victim participating in proceedings, e.g. would it involve provision of evidence, questioning of witnesses, etc.;
- Balance the rights of the accused and victims.

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

17th ASP session: Special plenary on victims’ participation and legal representation

On Tuesday 11 December 2018, the 17th ASP session will feature a special plenary segment entitled, “*Achievements and challenges regarding victims’ participation and legal representation 20 years after the adoption of the Rome Statute,*” organized at the initiative of the Cluster I co-facilitators. Civil society representatives, Court officials and State Parties will share their views on the topic and consider questions such as, “*at what stages may victims participate?; which victims may participate; what does participation mean in practice; and how does legal representation work?*”

Amendment to Rule 26 RPE

In the 2016 annual report, the then-Head of the Independent Oversight Mechanism (IOM), Mr. Ian Fuller, suggested possible amendments be made to Rule 26 of the Rules of Procedure and Evidence, to make the rule more compatible with the IOM’s mandate. The ASP subsequently mandated the Study Group on Governance to consider the amendment proposal.

During 2018, Cluster I held five informal consultations to consider whether States Parties should amend Rule 26, during which the Acting Chef de Cabinet of the Presidency, Mr. Hiram Abtahi, and the Acting Head of the IOM, Ms. Judit Jankovic, were invited to participate in discussions.

At the conclusion of the consultations, a draft amendment to Rule 26 was agreed by consensus and conveyed to the Working Group on Amendments with the recommendation to consider the agreed amendment with a view to proposing it for adoption at the 17th session of the ASP.³

SGG Cluster II: Governance and budgetary process

SGG Cluster II addresses “Governance and Budgetary Process.” The co-focal points of Cluster II in 2018 were Mr. Reinhard Hassenpflug (Germany) and Mr. Alfredo Alvarez Cardenas (Mexico).

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.*”

In 2015, the Court identified four objectives of the Court’s performance to focus on as part of the exercise:

- expeditious, fair, and transparent ICC proceedings at every stage;
- effective ICC leadership and management;
- adequate security for ICC work, including protection for those at risk from involvement with the Court; and,
- victims’ access to the Court.

Cluster II discussions in 2018 focused on the fourth key goal, “*Victims have access to the Court.*” During SGG discussions, Mr. Philipp Ambach, the Chief of the Victims Participation and Reparation Section (VPRS) of the Registry, noted that qualitative indicators relating to the Court’s impact on victims and affected communities are inherently difficult to measure, while the resource and capacity constraints made it difficult to measure the impact in the field.

The Study Group aims to continue its consideration of the topic of performance indicators in 2019.

Meanwhile, the Court issued its 4th “*Report on activities and programme performance of the International Criminal Court*” for the year 2017 in August 2018.

13. 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, genocide, and the crime of aggression 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 (*See Chapter 12 for details on discussions in 2018 regarding victims participation in ICC proceedings*). 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.

³ At the time of writing, it is not yet known if the WGA will refer the amendment to the ASP for consideration at its 17th session.

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. At the 17th ASP session, states will elect 5 members of the Board of Directors of the Trust Fund for Victims. (*see Chapter 6 for further details*).

Reparations

The Trust Fund’s reparations mandate is related to specific judicial proceedings before the Court that result in a conviction. Resources are collected through fines or forfeiture and awards for reparations and complemented with “other resources of the Trust Fund” if the TFV Board so determines.

Three cases before the Court are currently in the reparations phase, ranging from draft implementation plan (*Al Mahdi* in Mali) to implementation phase (*Lubanga* and *Katanga* in the Democratic Republic of Congo). Each of the three cases now at the reparations stage involve different crimes, which have resulted in diverse and distinct harms to the victims and their families. Reparations proceedings may potentially occur in *Ntaganda*, *Gbagbo* and *Blé Goudé* and *Ongwen*, subject to convictions. In partnership with the Court, the Trust Fund’s task is now to ensure that the design of awards for reparations are responsive to the specific harms suffered by victims in each case as found by the respective Trial Chambers, and that, through their efficient and timely implementation, the promise of reparations can become a concrete and meaningful reality for victims, setting them on a path to healing and positive reintegration within their families and communities.

Faced with these developments, for 2019, the Fund had requested an increase of €1,486.3 thousand or 58.5% from the 2018 APB of €2541.5 thousand, to meet its rapidly expanding and intensifying responsibilities during the implementation phase of reparations proceedings. The Committee on Budget and Finance, however, recommended reductions in the amount of €746.8 thousand in Major Program VI from its originally proposed budget. The Committee accordingly recommended that the Assembly approve a total amount of €3,281.0 thousand for the TFV (*See Chapter 16 for further details on the Court’s Proposed 2019 Budget and the CBF’s related recommendations*).

With significant impact on anticipated reparations, on 8 June, the Appeals Chamber (Chamber) of the International Criminal Court (ICC) decided, in a majority decision, to acquit Mr. Jean-Pierre Bemba Gombo of charges of war crimes and crimes against humanity. The judgement reversed the decision handed down on 21 March 2016 by Trial Chamber III, which had found Bemba – Commander-in-Chief of the rebel group Mouvement de Libération du Congo (MLC) and former Vice-President of the Democratic Republic of Congo – guilty of war crimes and crimes against humanity against civilians committed by troops under his control during an unsuccessful MLC operation to suppress a 2002 coup d’état in the Central African Republic (CAR). At the time of the acquittal, Mr. Bemba had been serving an 18-year sentence as a result of that original decision.

In response, on 13 June, the Trust Fund for Victims decided to accelerate the launch of a program under its assistance mandate, to provide physical and psychological rehabilitation, as well as material support, for the benefit of victims and their families in the situation of the Central African Republic. In a statement announcing this decision, the Fund underlined its assurance to “*the victims in the Bemba case and other victims who have suffered harm in the CAR I situation: You are not forgotten. The harms you have suffered are recognized and urgently call for a meaningful response.*”

14. ICC Policy on Legal Aid

At its 15th session, the ASP had requested that the Court reassess the efficiency of the legal aid system to “uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility.” In 2018, based on lessons learned and previous consultations, the Counsel Support Section (CSS) and the Division of Judicial Services (DJS) produced a new draft legal aid policy, “*Legal aid policy of the International Criminal Court.*” Some of the topics covered in the draft include the determination of indigence; the composition of defense and victims teams; remuneration of counsel and team members; the budget for defense investigations; and the field budget for victim teams. The new draft policy will be the focus of a dedicated Consultation Meeting ahead of the 17th ASP session on 3 December 2018 in The Hague.

15. 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. The Plan also calls on States to annually provide the Secretariat of the ASP with information about actions they have undertaken to promote the ratification and full implementation of the Rome Statute; as of 30 November 2018, only 4 states had so responded to the 2018 request: Austria, Chile, Luxemburg, and the Slovak Republic.

In 2018, the ASP’s *ad country* focal points on the implementation of the Plan of action, The Netherlands and the Republic of Korea, facilitated actions and discussions on achieving universality and spearheaded negotiations on the 2018 ASP Bureau Report on the Plan of Action. For example, the Republic of Korea invited Ambassadors from Asian countries to The Hague in June and held a regional briefing in which ICC Prosecutor Bensouda took part. Some non-states parties also attended the briefing. Another event focused on universality and the full

implementation of the Rome Statute, was organized in Seoul in November with countries from the region. Former ICC President, Judge Sang-hyun Song, delivered a keynote speech during the event.

Recommendations on promoting universality in 2019 will be included in the *omnibus* resolution for adoption at ASP17.

The Coalition also undertook public campaigns to promote universality and support for the Court in light of the 20th Anniversary of the Rome Statute: for example, the Coalition convened a high-level forum at the ICC in February followed by a day of interactive forums at the Peace Palace, entitled, “*Rome Statute at 20: Commemoration of the 20th Anniversary of the Rome Statute.*” The Coalition also developed a *Toolkit*⁴ with concrete suggestions, specific targets for action, and resources to help inform stakeholders in designing events and initiatives to bolster commitment to the Rome Statute system and the fight against impunity.

On 17 March 2018, the government of The Philippines notified the UN Treaty Office of its intent to withdraw from the Rome Statute. The withdrawal will come into effect one year after the deposit of notice, on 17 March 2019, at which time the number of States Parties will reduce to 122. On 8 February 2018, the ICC’s Office of the Prosecutor announced it would conduct a preliminary examination of the situation in The Philippines in relation to crimes allegedly committed since 1 July 2016 in the context of the “war on drugs” campaign of the Government of the Philippines. A withdrawal has no impact on on-going proceedings or on any matter which was already under consideration by the Court prior to the date on which the withdrawal becomes effective; nor on the status of any Judge already serving at the Court. ICC Judge Raul Cano Pangalangan, elected on 24 June 2015, is a national of The Philippines.

16. 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, during the 16th ASP session in 2017, States Parties decided that in 2018 they would “*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 re-appointed *ad country* co-focal points on complementarity for 2018, to facilitate the discussions in The Hague, New York, and elsewhere.

⁴ http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/CICC%20RS20%20Toolkit_0.pdf

Discussions on complementarity in 2018

Consultations on complementarity in the HWG in 2018 facilitated 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 continue to develop its efforts in facilitating the exchange of information between the Court, States Parties, and other stakeholders aimed at strengthening domestic jurisdictions.

In 2018, a number of meetings and consultations on the issue of complementarity were held with relevant stakeholders, including States, all organs of the Court, and representatives of civil society and international organizations. The meetings centered on how States retain primary responsibility to exercise their criminal jurisdiction over the crimes set out in the Statute; Article 18 of the Rome Statute (preliminary rulings regarding admissibility); and efforts by domestic, regional and international jurisdictions to investigate or prosecute Rome Statute crimes.

Following consultations with the Court, States Parties, and civil society, in October 2018, the ASP Secretariat announced the creation of a “*Complementarity Platform for technical assistance*” aimed at facilitating links between ICC States Parties requesting technical assistance with actors that may be able to assist national jurisdictions in their efforts to investigate or prosecute Rome Statute crimes.

The co-focal points also chaired various informal discussions and information sessions in The Hague Working Group. In October 2018, an informal session consisted of two panel discussions on the topics of “*Complementarity: obligations, rights and challenges, including for non-states parties*” and “*Complementarity in practice: efforts by domestic, regional and international jurisdictions to investigate or prosecute Rome Statute crimes*”.

17. The Court’s 2019 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 2018, States Parties considered budgetary matters within the ASP Bureau’s Working Group on the Budget, facilitated by Ambassador Jens-Otto Horslund (Denmark). A sub-facilitation on budget management and oversight led by Ambassador Eduardo Rodríguez (Bolivia) continued, as did discussions on the ICC premises under Ambassador Willys Delvalle (Panama).

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 2019 budget discussions during ASP17.

States Parties should oppose arbitrarily limiting the Court’s 2019 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.

2019 Court Budget Proposal

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

Proposed 2019 ICC budget: €147.55 million

[Proposed increase above approved 2018 ICC budget: €3.70 million (2.6%)]

Host State loan 2018 interest and installments: €3.585 million

Total ICC budget request: €151.134 million

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 2019 budget proposal, the CBF recommended the following figures for the ASP to consider at their 17th session:

CBF recommended 2019 ICC budget: **€144.87 million**

Recommended reduction to Court’s 2019 budget request: €2.68 million

Recommended increase to approved 2018 ICC budget: €1.02 million (0.6%)

Among other issues, in its report, the CBF noted that one of the most pressing issues for the Court is the liquidity shortfall. The committee expressed concern about the potential for the impact of the short-fall to be felt as early as December 2018. The CBF also did not recommend approval of requests for reclassifications, on the grounds that a practice of changing the title of a post might convey to staff unrealistic expectations that such a change would automatically result in a change of grade level. The CBF also took note of the significant ICC developments impacting the Trust Fund for Victims, particularly as regards reparations (*See Chapter 13 for further details on reparations in 2018*).

The CBFs resulting recommendations for funding the Court’s major programs in 2019 were as follows:

- Major Program I – Judiciary: €12.1 million (*a decrease of 4.8% from the Approved 2018 Program Budget (APB)*);
- Major Program II – Office of the Prosecutor: €46.8 million (*an increase of 1.8 % from the 2018 APB*);

- Major Program III – Registry: €76.7 million (*a decrease of 0.6% from the 2018 APB*); and,
- Major Program VI – Secretariat of the Trust Fund for Victims: €3.3 million (*an increase of 29.1% from the 2018 APB*).

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. Mohammad Humayun Kabir (Bangladesh).

According to the CBF, € 19,209,858 of assessed contributions in 2018 (13.4%) remained outstanding as of 31 August. The CBF further noted that still outstanding contributions from previous years stood at € 16,616,019, for a total of €36.9 million Euros.

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 31 August 2018, 13 States Parties were in arrears and therefore ineligible to vote at ASP 17.⁵

18. UN - ICC Relationship

The UN Security Council and the ICC

The UN Security Council (UNSC) 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 UNSC 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.

Article 3 of the Relationship Agreement between the International Criminal Court and the United Nations established a reciprocal obligation of cooperation between the two organizations. However, 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 suspected atrocity crimes situations involving non-states parties in the absence of a UNSC referral. 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

⁵ The 13 states as of 31 August 2018: Antigua and Barbuda; Central African Republic; Chad; Comoros; Congo; Dominica; Dominican Republic; Guinea; Maldives; Marshall Islands; Niger; Venezuela (Bolivarian Republic of); and Zambia.

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. The ACT (Accountability, Coherence, Transparency) Group established a *Code of Conduct*⁶ in 2015, in which states pledge to support action in the UNSC with the goal of preventing or ending the commission of genocide, crimes against humanity and war crimes, including supporting credible draft resolutions and calling on the Secretary General to continue to use the full expertise and early-warning capacities of the UN system. As of November 2018, 118 states have signed on to the initiative, including two permanent members, France and the UK. The Code is not restricted to elected or permanent members of the Council, and instead calls on all UN Member States to uphold the principles of the UN Charter by supporting the work of the UNSC to maintain international peace and security. Similarly, the France-Mexico initiative calls on the permanent five members of the Council to voluntarily refrain from using the veto in situations of mass atrocity.⁷ The initiative has garnered the support of 96 Member States.

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; and,
- Engage in constructive dialogue with the Court.

On 6 July 2018, at the initiative of The Netherlands, Bolivia, Sweden, the United Kingdom, Cote d'Ivoire, France, Peru, and Poland, and for the first time since 2012, an Arria formula meeting, entitled, "*UNSC-ICC relations: achievements, challenges and synergies*," was held at the UN Security Council. The aim of the meeting was to "*take stock of work of the ICC, its achievements and challenges and to explore possible areas of, and synergies with the work of the UNSC*" and to consider "*how the ICC's judicial mandate of ensuring accountability for mass atrocities may contribute to the Council's mandate to uphold the rule of law, and maintain peace and security*," and reflect on "*means and ways to strengthen the cooperation between the Council and the ICC, notably with the Office of the Prosecutor*."

Following the Arria formula meeting, the ASP co-facilitators on cooperation indicated that The Hague Working Group should engage in a discussion to decide whether the suggestions presented during the Arria meeting and aimed at improving the cooperation between the Court and the UN Security Council could be further explored through the co-facilitation on cooperation (*See Chapter 8 for more information about the facilitation on cooperation*).

The UN General Assembly and the ICC

Each year, the Court reports on its activities to the UN General Assembly, with the President of the Court presenting the report to UN Member States in a plenary session. The UNGA drafts a resolution welcoming the

⁶ "Explanatory Note on a Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes." 2015. <http://www.centerforunreform.org/sites/default/files/Final%202015-09-01%20SC%20Code%20of%20Conduct%20Atrocity.pdf>

⁷ "Political statement on the suspension of the veto in case of mass atrocities - Presented by France and Mexico." 2015. https://onu.delegfrance.org/IMG/pdf/2015_08_07_veto_political_declaration_en.pdf

report and its contents, and takes note of the ongoing relationship between the UN and the ICC, often with the support needed to adopt the resolution by consensus. Many states use the opportunity presented by this plenary session to reiterate their support for the Court, and highlight the need for continued and effective cooperation between the ICC and the organs of the UN.

As the Court faces ongoing threats, further emboldening its opponents, the 2018 UNGA plenary session on the ICC provided a unique forum for States Parties to articulate their robust support for the Court in an open and public format. The subsequent UNGA resolution on the Report of the ICC⁸ was adopted by consensus with 66 states co-sponsoring the resolution, and just six states preventing consensus: Israel, the Philippines, Russia, Sudan, Syria, and the United States. Speaking on behalf of Austria, Belgium, Costa Rica, Czech Republic, Estonia, Portugal and Switzerland, the representative from Liechtenstein delivered a statement in support of the Court and the resolution, but underscoring the omission of a number of developments since the last report, namely the activation of the crime of aggression and amendments to Article 8.

19. 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.

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.

The Crime of Aggression

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 adoption in 2010 of amendments defining the crime and the modalities for ICC jurisdiction, and the subsequent requisite 30 ratifications and 1-year delay, States Parties decided to activate the Court's jurisdiction at the 16th ASP session in 2017.

On 17 July 2018, the crime of aggression amendment entered into force, thereby completing the legacy of the Nuremberg Trials by granting the ICC the ability to hold accountable individuals for the illegal use of force. To mark the occasion, the Coalition, along with a number of States Parties and civil society organizations, co-organized a high-level panel event entitled, “*20th anniversary of the Rome Statute: the need for universality and the International Criminal Court's jurisdiction over the crime of aggression*” at the United Nations. The panel included H.E. Aurelia Frick, Minister of Foreign Affairs of Liechtenstein; Benjamin Ferencz, former Nuremberg War Crimes Prosecutor; and Coalition Convenor Bill Pace, among others.

Amendment Proposals to Article 8 of the Rome Statute

At the 16th session of the ASP in 2017, States Parties adopted three amendments to Article 8 ('War Crimes') of the Rome Statute by consensus: the use of microbial, biological or toxins weapons; the use of weapons that injure by fragments undetectable by X-rays; and the use of laser-blinding weapons. The war crimes

⁸ “Resolution adopted by the General Assembly on 29 October 2018.” A/RES/73/7. <https://undocs.org/A/RES/73/7>

amendments had come before the Assembly for consideration via the UN Security-General, with whom the government of Belgium had deposited the proposal after the WGA, chaired in 2017 by Ambassador May-Elin Stener (Norway), was unable to arrive at a decision to itself table the proposal. The original Belgian proposal had included four war crimes amendments, however during negotiations at the 16th session of the ASP, the fourth proposed amendment – on the use of antipersonnel mines – fell through.

Working Group on Amendments in 2018

The ASP's Working Group on Amendments (WGA) chaired this year by Ambassador Juan Sandoval Mendiola (Mexico) 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. Sessions of the WGA are closed to civil society and observer states, but the Chair of the group gives regular updates to the NYWG on the progress of discussions.

Throughout 2018, States Parties addressed several issues within the WGA:

- Increasing the number of ratifications of the Article 8 amendments, as well as continuing discussions on the fourth proposed amendment on the use of antipersonnel mines. While the issue remains on table, discussions have been paused;
- Mexico's proposal on criminalizing the use of nuclear weapons in the Rome Statute; discussions on this issue were likewise kept on the table, yet postponed;
- Switzerland submitted a new proposal to include starvation as a war crime in non-international armed conflicts (NIAC) under Article 8. During the Rome Statute negotiation process in 1998, the draft Statute had included starvation in NIAC, but it did not make it into the final draft that was adopted. As it stands, the Statute criminalizes the use of starvation as a war crime only in the case of international armed conflicts (IAC). Where the paragraph criminalizing starvation as a war crime, Article 8(b)xxv, refers to the Geneva Conventions, the language proposed by Switzerland would instead use customary IHL as a legal basis for inclusion. Discussions on this proposal are ongoing.

Amendments to the Rule of Procedure and Evidence in 2018

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

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 the pre-trial and trial stages 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 the time of writing, it is not yet known if the WGA will refer the amendment to the ASP for consideration at its 17th session.

Rule 26 of Rules of Procedure and Evidence

In addition in 2018, discussions continued on amendments to Rule 26 originally proposed by the former Head of the Independent Oversight Mechanism (*see Chapter 20 for further details*), concluding with draft language being sent to the WGA with a recommendation that it be proposed for adoption at the 17th ASP session.

20. Independent Oversight Mechanism

The Independent Oversight Mechanism (IOM), was established by resolution (ICC-ASP/8/Res.1) at the 8th ASP session in November 2009 in accordance with article 112 (4) of the Rome Statute. The ASP set out the operational mandate of the IOM at the 12th session in November 2013 (ICC-ASP/12/Res. 6) which established a clear scope for the IOM’s investigative and discretionary authority.

The purpose of the IOM is to provide meaningful oversight of the Court through its mandate to conduct inspections and evaluations at the request of the Assembly or its Bureau, and to undertake investigations at its own discretion into reports received of suspected misconduct, serious misconduct, or unsatisfactory behavior concerning elected officials, staff members, and other Court personnel.

Head of the IOM

With the first Head of the IOM, Mr. Ian Fuller, having resigned in October 2017, the Bureau undertook a recruitment process for the new Head of the IOM in 2018. The Bureau constituted a recruitment panel composed of representatives of five States Parties,⁹ and requested the support of the external experts. The process led to the recruitment of Mr. Saklaine Hedaraly who assumed the post on 1 November 2018.

Review of the IOM’s mandate

The Hague Working Group held four consultations this year on the review of the work and the operational mandate of the IOM. During the facilitations, the issue of identifying the purpose, methodology, and scope of the review was discussed, taking into account the weaknesses of the existing operational mandate.

Specifically, the implementation of the specific procedural mandate of the IOM had revealed potential contradictions concerning pre-existing rules relating to the reporting of misconduct and investigation processes within the Court’s regulatory systems. One example of such an issue is a potential duplication or overlap between the different oversight mechanisms in the Court: namely, a contradiction between Rule 26(2) of the Court’s Rules of Procedure and Evidence that stipulates that, “*all complaints shall be transmitted to the*

⁹ The Panel comprised the following: Ambassador Sergio Ugalde (Costa Rica), Chair; Ambassador Adia Sakiqi (Albania), Alternate Chair; Ambassador Irene Kasyanju (United Republic of Tanzania); Ambassador Sheikh Mohammed Belal (Bangladesh); and Ambassador Martin Sorby (Norway).

Presidency,” and section C of the IOM’s operational mandate (ICC-ASP/12/Res.6)–which requires that, “all reports of misconduct or serious misconduct, including possible unlawful acts, made against an elected official...shall, if received by the Court, be submitted to the IOM.”

In order to eliminate any potential contradictions, the Study Group on Governance Cluster I has been seized of, among other things, discussing and proposing a draft amendment to Rule 26 of the Rules of Procedure and Evidence. (*See Chapters 12 and 19 for further details*).

The Bureau Report on the Review of the work and the Operational Mandate of the IOM provides recommendations for the consideration of the Assembly, including encouraging *“the Assembly, the Court, and the Independent Oversight Mechanism, as appropriate, to ensure that all relevant documents are updated and aligned with the mandate of the Independent Oversight Mechanism in order to harmonize the applicable rules,”* and requesting *“the Bureau to continue forthwith with the review of the work and the operational mandate of the Independent Oversight Mechanism and to report thereon to the Assembly at its eighteenth session’.*

21. 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 consultations in the NYWG chaired by facilitator Mr. Vincent Rittener (Switzerland). The facilitations in NYWG and HWG also inform the text of the omnibus, with reports from the various facilitations containing suggested language for inclusion in the resolution.

Omnibus topics and related facilitations and focal points

A number of other topics will be addressed in the 2018 omnibus resolution. The below list of topics indicates those that have already been discussed in ASP Bureau facilitations in the lead-up to the 17th ASP session. The omnibus resolution will include the date of the next ASP session as well as the mandates of the ASP Bureau for 2019. 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 points: The Netherlands and the Republic of Korea
- **20th anniversary of the Rome Statute**
- **Agreement on Privileges and Immunities of the ICC (APIC)**
- **Cooperation**
Co-facilitation (HWG): Ambassador Philippe Lalliot (France) and Ambassador Momar Gueye (Senegal)
- **Host State**
- **Relationship with the United Nations**
- **Relationships with other international organizations and bodies**
- **Activities of the Court**
- **Elections**
- **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**

- **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 Jens-Otto Horslund (Denmark)

- **Review Conference**

- **Consideration of Amendments / Working Group on Amendments**

Facilitation (NYWG): Ambassador May-Elin Stener (Norway)

- **Participation in the Assembly of States Parties**

22. Acronyms and Key Terms

ACN	Advisory Committee on the Nomination of Judges
APB	Approved Program Budget
ASP	Assembly of States Parties
ASP17	The 2018 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
CSS	Counsel Support Section
DJS	Division of Judicial Services
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
PSC	Prosecutor Search Committee
Plenary	General discussions at the ASP with all States Parties attending
ICC Presidency	President: Judge Chile Eboe-Osuji (Nigeria); First Vice-President: Judge Robert Fremr (Czech Republic); Second Vice-President: Judge Marc Perrin de Brichambaut (France)
RPE	Rules of Procedure and Evidence
SASP	Secretariat of the ASP
SGD	Sustainable Development Goals
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)



JOIN THE FIGHT!



COALITIONFORTHEICC.ORG

