



BACKGROUND PAPER

Assembly of States Parties 15

The Hague, 16-24 November 2016



COALITION FOR THE INTERNATIONAL CRIMINAL COURT

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1. Introduction

This is an informal background paper to the 15th session of the Assembly of States Parties to the Rome Statute (ASP) taking place from 16 to 24 November 2016. The background paper is one of several materials prepared by the Coalition for the International Court (Coalition) to help guide and inform discussions among delegations from States Parties, observer states, international and regional organizations, and civil society attending the annual ASP session.

Since 1995, the Coalition has led the civil society effort that successfully campaigned for the adoption of the Rome Statute in 1998 and the creation of a permanent international court to hold perpetrators of genocide, war crimes, and crimes against humanity to account. The 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 consensus among States Parties, for its “coordinating and facilitating role.”

As we celebrate the Coalition’s 20th anniversary of fighting for the “Never Again Court,” which continues to take shape in the form of the ICC, the Coalition is encouraging participants at the 15th ASP session to consider using the occasion to make supportive statements on the pressing issues facing the Rome Statute system today.

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. The Coalition will assist more than 70 nongovernmental organizations from all parts of the world in making their opinions and recommendations known to the ICC governing body during the 15th ASP session.

The annual ASP session remains the primary forum to consider existing and future short- and long-term challenges facing the Rome Statute system. Civil society continues to build upon its original investment into justice and accountability for victims of the most shocking international crimes, and consultative arrangements for NGOs at the 15th ASP session will provide States Parties an opportunity to share information and forge relationships toward the same goal.

Drawing from the Rome Statute preamble declaration that “*all peoples are united by common bonds, but this delicate mosaic may shatter at any time,*” ahead of the 15th session, the Coalition for the International Criminal Court has launched the **United by Common Bonds** campaign to underline the global nature of the Court’s mandate and mission; of the worldwide movement that brought about its establishment; and of the continuing desire to see it deliver justice to victims worldwide. Toward this end, our recently launched [new website](#) serves as platform for resources and means of expressing solidarity.

This new interactive platform reaffirms who we are, what the ICC is, and where we want this truly remarkable system of international criminal justice to go. Arriving in the face of threats to the wider Rome Statute system, our new website aims to tell the true and complete story of international justice, so that selective mischaracterizations of the ICC do not obscure the Statute’s mission to bring global peace and security through justice and rule of law.

As in previous years, civil society participating at the 15th ASP session coordinates its activities through the Coalition. Numerous side-events (co-)organized by the Coalition or by members of civil society will take place in the margins of the 15th session, providing a platform for enhanced dialogue between the participating NGOs on the one hand, and the Court and States Parties on the other.

In advance of and during the 15th ASP session, the Coalition will continue its advocacy for a fair, effective, and independent Court by addressing a number of key issues through advocacy documents, letters, meetings, press briefings, and other events. At the conclusion of each working day of the annual session, the Coalition will publish an informal daily report – to be featured on the Coalition’s [#GlobalJustice News Center](#) – of the events that took place.

2. 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 International Criminal Court (ICC). The ASP comprises all 124 States Parties to the ICC's founding treaty, the Rome Statute.

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

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

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

The current president of the ASP is H.E. Mr. Sidiki Kaba of Senegal, who is supported by vice-presidents Ambassador Sebastiano Cardi of Italy (based in New York) and, up until the conclusion of his tenure in 2016, Ambassador Álvaro Moerzinger of Uruguay (based in The Hague). Since, Ambassador Moerzinger's departure, the HWG has been coordinated by Ambassador Sergio Ugalde (Costa Rica). The current 18 Bureau members, as elected, are:

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

The current ASP Presidency and Bureau were elected by consensus in late 2014 for a three-year term and assumed functions at the beginning of the 13th ASP session (December 2014). A to-be-elected ASP Presidency and Bureau will assume functions at the 16th session in 2017.

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 124 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 (Article 112 (7)) in the decision-making process of the ASP, both the Rome Statute and the ASP Bureau encourage states to reach prior consensus on matters that require a vote; only when this is impossible, is resort to an actual vote undertaken. All other states that signed the Statute but have not ratified it or signed the Final Act of the Rome Conference may attend the ASP session as observer entities.

A	France	P
Afghanistan	G	Palestine, State of
Albania	Gabon	Panama
Andorra	Gambia	Paraguay
Antigua and Barbuda	Georgia	Peru
Argentina	Germany	Philippines
Australia	Ghana	Poland
Austria	Greece	Portugal
B	Grenada	R
Bangladesh	Guatemala	Republic of Korea
Barbados	Guinea	Republic of Moldova
Belgium	Guyana	Romania
Belize	H	S
Benin	Honduras	Saint Kitts and Nevis
Bolivia	Hungary	Saint Lucia
Bosnia and Herz.	I	Saint Vincent
Botswana	Iceland	Samoa
Brazil	Ireland	San Marino
Bulgaria	Italy	Senegal
Burkina Faso	J	Serbia
Burundi	Japan	Seychelles
C	Jordan	Sierra Leone
Cabo Verde	K	Slovakia
Cambodia	Kenya	Slovenia
Canada	L	South Africa
Cen. Afr. Republic	Latvia	Spain
Chad	Lesotho	Suriname
Chile	Liberia	Sweden
Colombia	Liechtenstein	Switzerland
Comoros	Lithuania	T
Congo	Luxembourg	Tajikistan
Cook Islands	M	Macedonia
Costa Rica	Madagascar	Timor-Leste
Côte d'Ivoire	Malawi	Trinidad and Tobago
Croatia	Maldives	Tunisia
Cyprus	Mali	U
Czech Republic	Malta	Uganda
D	Marshall Islands	United Kingdom
DRC	Mauritius	Tanzania
Denmark	Mexico	Uruguay
Djibouti	Mongolia	V
Dominica	Montenegro	Vanuatu
Dominican Republic	N	Venezuela
E	Namibia	Z
Ecuador	Nauru	Zambia
El Salvador	Netherlands	New Zealand
Estonia	Niger	
F	Nigeria	
Fiji	Norway	
Finland		

Sessions of the Assembly of States Parties

The ASP meets collectively in what is known as a ‘plenary’ meeting at least once a year, in either New York or The Hague. The 15th plenary meeting, or ASP session, will take place at the World Forum Convention Centre in The Hague from 16 to 24 November. 2016.

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 ICC proceedings.

The annual ASP session is an important forum for states and civil society actors to commit to consistent, strategic, and forward-looking actions: international institutions are only as powerful as their members allow them to be. The ICC is dependent on its member states, and as such, ASP decisions not only reflect and impact States Parties’ political will and cooperation, whether obligatory or voluntary, but also the functioning of the Court itself.

In addition to taking decisions, at each annual session the ASP tasks the Bureau to facilitate 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 are appointed to lead specific discussions.

At every annual session, the ASP has tasked subsidiary bodies like the Committee on Budget and Finance, as well as organs of the Court and sometimes independent external actors, to report back on relevant issues the following year. These reports, and more information about the ASP, can be found on the [ASP website](#).

Observers

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

The 15th session of the ASP

While the outcomes of each annual ASP session differ according to the specific issues discussed in any given year, they usually fall under recurring general topics. At the conclusion of the 15th 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 2017 ICC budget, cooperation, complementarity, victims and affected communities, universality, and the relationship between the ICC and the United Nations Security Council, among many other topics.

A great number of **side events** will be organized in the margins of the ASP. Many topics on the ASP 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.

Civil society (co-)organizes a large number of these side events during the ASP session.

For a non-exhaustive list of some of the events that the Coalition and/or its members and partners will be organizing during the 15th ASP session, see Annex 1.

All side-events can be found in the ASP Journal, which provides a daily agenda and overview of the plenary sessions and side-events taking place during the 15th ASP session. The [ASP Journal](#) can be found on the ASP website and is updated regularly throughout the annual session.

3. Opening Session & Elections

The 15th ASP session opens on Wednesday 16 November with a plenary session dedicated to preliminary (and administrative) tasks, as well as two elections. The opening session also typically features a number of keynote addresses – by the ASP President, the ICC President, and the ICC Prosecutor - and possibly by participating Heads of State, Ministers and other high-level state or intergovernmental organizations' representatives.

The Assembly begins by formally adopting the agenda of ASP15, followed by the appointment of the Credentials Committee. After appealing to states in arrears to satisfy their contribution requirements, the Assembly will hear reports from the Court, the Board of Directors of the Trust Fund for Victims, the Bureau, and the Oversight Committee on the permanent premises.

The ASP is typically tasked with electing members to the Assembly's independent and subsidiary bodies during the opening session. In line with customary ASP practice, to promote cooperation among states and to avoid time-consuming rounds of voting for these posts during the annual sessions, the ASP Bureau requests that States Parties achieve consensus on which nominees to elect ahead of the scheduled annual session.

Elections at the 15th ASP Session

The Coalition for the ICC 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.

Time has been allotted during the 15th ASP opening session (on 16 November) to elect:

- 1) One vice-president of the ASP Bureau (replacement candidate); and
- 2) Six members of the Committee on Budget and Finance (CBF).

Election of one ASP Bureau vice-president

Ambassador Alvaro Moerzinger (Uruguay) completed his term as ASP Bureau vice-president earlier in 2016 after his tenure as ambassador of Uruguay to the Netherlands ended. While The Hague Working Group coordinator/ASP Bureau vice-president will be officially elected during the 2016 ASP opening session, Ambassador Sergio Ugalde (Costa Rica) has served in this position in the interim period, and is expected to be appointed by consensus for the remainder of the current ASP Bureau term, which will run until December 2017.

Election of 6 members of the Committee on Budget and Finance

The Committee on Budget and Finance (CBF) is an independent [expert body](#) responsible for the technical examination of any document submitted to the ASP containing financial or budgetary implications. The ASP may also entrust to the CBF any other matter of a financial, budgetary, or administrative nature.

The work of the CBF is instrumental in the decisions that States Parties will make on the Court's annual budget, which in turn impacts the activities of the Court in terms of the investigations and cases it can pursue.

To ensure a qualified and impartial CBF assessment, the 12 CBF members are meant to bring recognized financial expertise at the international level to the budget-setting process. To ensure the CBF's assessments are geographically equitable and representative, States Parties at the first ASP agreed to distribute seats based on the representative composition of the ASP. At this year's elections, one member will be elected from African states; one from Eastern European states; one from Latin American and Caribbean states; and three from Western European and other states.

There are eight nominees for the six CBF seats up for election at the 2016 ASP session:

- **African states:** François Xavier Nsabimana (Burundi); and François Marie Didier Zoundi (Burkina Faso)
- **Eastern European states:** Emina Ćirić (Bosnia and Herzegovina); and Urmet Lee (Estonia)
- **Latin American and Caribbean states:** Carolina Maria Fernandez Opazo (Mexico)
- **Western European and other states:** Gerd Saupe (Germany); Richard Veneau (France); and Helen Warren (United Kingdom)

While each State Party to the Rome Statute receives one vote (Article 112 (7)) in the decision-making process of the ASP, both the Rome Statute and the ASP Bureau encourage states to reach prior consensus on matters that require a vote and only when this is impossible to resort to an actual vote.

4. The General Debate

The General Debate is scheduled to take place during the first two days of the ASP session (16 and 17 November 2016). 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 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). Delegations can also use the General Debate to highlight efforts undertaken to improve cooperation with the Court, as well as to provide updates on the progress of investigations and prosecutions of Rome Statute crimes at the national level – as per the principle of complementarity.

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 15th ASP session, some key positions for states to consider addressing during their General Debate statements include:

- High-level political support and commitment to the ICC and Rome Statute;
- A strong response to recent Rome Statute withdrawal announcements;
- The need to safeguard the integrity of the Rome Statute;
- Acknowledgment of the ICC's judicial and prosecutorial independence;
- The need for universality of the Rome Statute;
- The importance of fully implementing the Rome Statute into national law;
- Enhanced cooperation, including by pledging to ratify the Agreement on Privileges and Immunities of the ICC ahead of the Rome Statute's 20th anniversary in 2018;
- Financial commitment to the Rome Statute system, including the ICC budget and voluntary funds;
- The centrality of victims' participation and reparations in the Rome Statute system.

Civil society takes part in the General Debate with 10 to 12 individual non-governmental organizations, including the Coalition for the ICC, delivering statements. The General Debate also serves as a forum for civil society to raise concerns that are not prominently featured – if at all – on the ASP program. Civil society can thus raise awareness about their own contributions and ability to assist or partner with interested States Parties. The points raised by civil society during the General Debate often inform the decision-making process of States Parties throughout the remainder of the Assembly. The list of General Debate speakers is finalized in advance of the ASP, with each speaker encouraged to take the floor for a maximum of five minutes. Participants can also contribute to the General Debate by making advance written submissions, which will be published on the ASP website.

5. Withdrawals from the Rome Statute

Article 127 of the Rome Statute outlines the procedure for a State Party to withdraw from the treaty. A withdrawing State Party must provide official written notice to the United Nations Secretary-General, the depositary of the Rome Statute, of its intention to withdraw. The actual withdrawal comes into effect one year after the date the notification was received by the UN.

At the time of writing, three States Parties to the Rome Statute of the ICC – South Africa, Burundi, and The Gambia – have officially notified the UN Secretary-General of their intention to withdraw from the Rome Statute. The ICC Office of the Prosecutor is currently conducting a preliminary examination in Burundi, which it opened in April 2016, and South Africa is the subject of ongoing domestic as well as ASP procedures in relation to the country's failure to arrest and surrender Sudanese President Omar al-Bashir (subject to two ICC arrest warrants) in June 2015.

Should a dedicated plenary session be convened during the 15th ASP session to address the recent withdrawal announcements, the Coalition for the ICC urges States Parties in that forum to display high-level political commitment to the Rome Statute; provide a strong response to the withdrawals; promote safeguarding the integrity of the Rome Statute; and reaffirm the centrality of justice for all victims of atrocities, regardless where they may be.

What the Rome Statute says about withdrawals

- Obligations from before the entry into force of the withdrawal remain (such as **financial obligations**);
- **Cooperation obligations** remain regarding ongoing investigations and proceedings that were opened before the withdrawal came into effect;
- **Investigation(s)** that the ICC prosecutor has opened in the territory of a withdrawing state or involving nationals of a withdrawing state, prior to the withdrawal coming into effect, continue;
- **Ongoing cases** from a situation in the withdrawing state or involving nationals from the withdrawing state continue;
- The Rome Statute does not explicitly mention any potential impact of a withdrawal on the continuation of a **preliminary examination** after the effective date of withdrawal. Article 127 does, however, provide that withdrawal shall not *“prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.”*
- The **United Nations Security Council** can still refer a situation on the territory of the withdrawing state to the ICC Office of the Prosecutor.

Reactions from civil society

Civil society has overwhelmingly considered the intended withdrawals of several African states as damaging to democracy, rule of law, peace-building efforts, and most of all, victims' access to justice – both in Africa and across the Rome Statute system. Although the issue is expected to figure prominently during this annual ASP session, the Coalition for the ICC has been calling for victim perspectives and opinions to be prioritized above all else during the session, as well as in the fight for global justice more generally. Civil society encourages all parties to engage with the

ASP in open and frank discussion, without compromises on cornerstone principles such as the Rome Statute prohibition on immunity for heads-of-states and high-level government officials.

Reactions from States Parties

Following the announcements of withdrawal from the Rome Statute, several States Parties have voiced their support to international justice and the work of the ICC and have invited the concerned states to reconsider their position on the matter on different occasions.

6. Cooperation

Cooperation is an absolutely vital part of the system of international justice set up by the Rome Statute and must be multi-faceted to enable the effective execution of the various functions of the ICC, grounded in its ultimate goal to bring those most responsible for atrocity crimes to account. With no enforcement mechanism of its own, the ICC is largely dependent on the cooperation it receives from states, the UN, regional organizations, and other relevant actors. Without this support international justice simply cannot work. The various ways in which states are to cooperate with the ICC are laid out in Part IX of the Rome Statute.

Hague Working Group discussions on cooperation

Over the course of 2016, and under the facilitation of Ambassador Maymouna Diop-Sy (Senegal) and Mr. Paul Wilke (The Netherlands), The Hague Working Group (HWG) discussed, among other topics, the *66 Recommendations on cooperation* (first developed in 2007), voluntary cooperation agreements, arrest strategies, and the feasibility of establishing a coordinating mechanism for national authorities dealing with cooperation.

66 Recommendations

In 2007, the Assembly adopted *66 Recommendations on cooperation*, an extensive list of recommendations identifying the challenges and key priority areas regarding cooperation. The document provides guidance as well as possible remedies for overcoming cooperation challenges.

In 2015, the facilitation on cooperation operated under a mandate to review the 66 recommendations. Both the Court and States Parties agreed the recommendations continue to be valid and relevant today. Through the HWG facilitation on cooperation, States Parties and the Court worked together to identify seven recommendations that are particularly relevant for enhanced cooperation at this point in time, resulting in a flyer entitled, “*Recommendations on States’ Cooperation with the International Criminal Court (ICC): Experiences and Priorities.*”

In 2016, the HWG continued to review the *66 Recommendations* and, for this purpose, sent States Parties a questionnaire on their implementation of the seven key areas of cooperation identified in the 2015 flyer. The responses will form the basis for future discussions on cooperation. As of 30 September 2016, only 12 states had provided responses to the questionnaire.

Voluntary cooperation

The Court calls on states to supplement their explicit Rome Statute obligations with forms of voluntary cooperation – such additional cooperation is crucial to the ability of the ICC to grow as a fair and effective legal institution.

Toward this end, the Court has developed voluntary framework agreements to facilitate States Parties’ ability to accommodate ICC requests, when necessary, in relation to witness relocation and protection, hosting acquitted persons, hosting accused persons who have been granted interim release, and enforcing ICC sentences. However, the low number of concluded voluntary framework agreements remains a reality that will continue to hamper the Court’s ability to function effectively.

With framework agreements, states agree to engage with the Court to develop cooperative frameworks that are amenable to the requirements of both parties. Such engagement allows for gradual domestic capacity-building – to satisfy relevant international human rights norms – in advance of any specific cooperation request. States Parties should enter into discussions with the Court in this regard and sign such cooperation agreements, or address obstacles to doing so, as soon as possible.

By concluding voluntary **enforcement of sentence agreements**, states show that they have the legal framework in place to enforce an actual sentence handed down by the ICC. While such states may still decline actual enforcement of sentence requests, the Court has a greater chance of avoiding expenditures and delays related to unsuccessful negotiations with states that are unwilling or unable. Locating a host state more efficiently in turn reduces the Court's interim detention costs.

July 2016 saw the first new enforcement of sentence agreement concluded since 2012, with Norway joining Austria, Belgium, Denmark, Finland, Mali, Serbia, and the United Kingdom as states with the cooperative framework in place to enforce ICC sentences.

At the end of 2015, the ICC also concluded two **ad hoc enforcement agreements** in cooperation with the Democratic Republic of the Congo (DRC) after two DRC nationals convicted by the Court (Thomas Lubanga and Germain Katanga) requested to serve the remainder of their sentences there.

More urgently, States need to conclude voluntary **interim release agreements** with the ICC. Defendants often make applications, as is their right before the ICC, for interim release during the course of their trials. If there is no risk that such a defendant may subsequently not appear for trial; that he/she may continue to commit the crimes alleged; or that he/she may obstruct proceedings or interfere with witnesses, ICC judges may provisionally release the defendant pending trial. The right to interim release must be given prompt effect once it has been recognized; but again, a state willing and able to host the defendant must first be identified if the country of origin is not an option. To date only one state – Belgium – has signed an agreement on interim release.

In 2014, the ICC Registry circulated the Court's draft **framework agreement on release in case of acquittal**, which only applies to acquitted individuals who cannot return to their countries of origin. No state has yet concluded such an agreement with the Court.

The ICC can similarly improve its ability to effectively protect witnesses, whether from persecution or tampering, if states conclude voluntary **witness relocation and protection agreements** with the Court. Witnesses are essential to determining truth at the ICC, and the Rome Statute requires the Court to guarantee their rights and safety; but witness support and protection can be challenging as they may be susceptible to intimidation or bribery or may be suffering from trauma. While witness protection and relocation is primarily the responsibility of the ICC Registry, the ICC looks to its governing body of states to cooperate and effectively protect witnesses when such needs arise. In 2016, two new witness relocation agreements were signed, bringing the total number of such agreements to 17.

Arrest Strategies

Failures to execute arrest warrants have a negative impact not only on the ICC's ability to achieve its mandate, but also on its credibility as a legal mechanism. At the 2013 ASP session, the Assembly decided to consider concrete steps and measures aimed at securing arrests in a structured and systematic manner. The resulting [draft Action Plan on Arrest Strategies](#) is intended to provide general recommendations on the implementation of relevant Rome Statute obligations. In response to States Parties' concerns, the HWG rapporteur on Arrest Strategies and others explained that the Action Plan, if adopted, would not create any new legal obligations for States Parties or other states. A 2014 report by the rapporteur clarified that the Action Plan would take a results-oriented approach to promoting full compliance with Court requests for the execution of restrictive orders, including arrest warrants.

Due to a lack of consensus among States Parties in 2015, the Action Plan remained in draft form during 2016.

At its 14th session, the ASP did, however, take note of the draft Action Plan and urged the ASP Bureau to continue considering the recommendations it contained and to report on any progress during the 15th ASP session. The co-facilitators indicated that bilateral consultations had taken place with concerned states during 2016, and that likely no consensus around adoption would be reached prior to or during the 15th session. A minority of delegations disagreed that they had been adequately consulted. Several states suggested only renewing the Bureau's mandate regarding the draft Action Plan if discussions could be focused to the provisions blocking consensus.

Bureau discussions on Rome Statute Article 97

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

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

Earlier in 2015, South African courts found that the state had a duty to arrest and surrender ICC suspect President Omar al-Bashir when he visited South Africa for the African Union Summit in June 2015. Regarding its failure to arrest the sitting Sudanese president, South Africa invoked Article 98 in relation to Article 27, pointing at obligations as an African Union member for its failure to comply with the Court's request. South Africa referred to an African Union interpretation of head-of-state immunity as fundamental under international customary law.

The ASP heard South Africa's concerns at its annual session in 2015 and mandated the Bureau to establish a working group to further discuss Article 97 of the Rome Statute. However, this process was interrupted before any concrete solutions could be identified when South Africa notified the UN Secretary-General of its intent to withdraw from the ICC. States Parties will decide at the 15th ASP session how or whether to proceed with Article 97 discussions.

ASP 15 Special Session on Cooperation

On Friday, 19 November, the 15th ASP session will feature a special plenary panel discussion dedicated to the contribution of national, regional, and intergovernmental initiatives to effective cooperation and investigating and prosecuting Rome Statute crimes. The expert panel, including civil society actors, will aim to identify ways to further develop cooperation and coordination networks with increased benefits and opportunities. Panelists will also consider the challenges that such initiatives can face, such as a lack of political will and capacity. The expert panel will be followed by an open dialogue segment with delegates.

7. Non-cooperation

The lack of cooperation from states is one of the great challenges the Court faces in its work. In the past years, two situations before the ICC have been particularly affected by the non-cooperation of states: the situations in Darfur, Sudan and in Kenya.

In the situation in Darfur, ICC judges have made several findings of non-cooperation in the case against ICC suspect President Omar al-Bashir. Each finding was related to the failure of states to enforce the outstanding arrest warrants against the Sudanese president. In July 2016, findings of non-cooperation were issued against Djibouti and Uganda.

In the situation in Kenya, ICC judges made a finding of non-cooperation against Kenya itself in the case against President Uhuru Kenyatta. In this particular case, the finding is related to a lack of cooperation with the ICC prosecutor during the investigation of post-election violence in the country between 2007 and 2008. The finding of non-cooperation against Kenya was issued in September 2016 and the Court's decision was officially referred to the ASP soon after.

In both situations, the Court's judges decided to refer these issues of non-cooperation to the ASP.

The ASP has adopted a procedure to deal with the issue of non-cooperation.

For more information about the ASP procedures regarding non-cooperation, see Annex 2

8. 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 prosecutor will decide whether to investigate and prosecute – and thereby fill the impunity gap.

The ICC recognizes that either a lack of capacity or of 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.

Complementarity discussions and events in 2016

Leading up to ASP15, the *ad country* co-focal points - Botswana and Sweden - convened working group discussions related to complementarity in both New York and The Hague, with a focus on discussing how to strengthen effective domestic implementation of the Rome Statute to enhance the capacity of national jurisdictions. Specifically, the co-focal points were mandated to facilitate discussions with the Court and other stakeholders 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 to assist on issues such as witness protection and sexual and gender-based crimes*”.¹

The co-focal points also organized or assisted in organizing events in Dakar, Stockholm, and Kampala with high-level representation from the ICC, ASP presidency, states, international organizations, and civil society. The roundtable workshop in Kampala served as a follow-up to an August 2015 workshop in the country and focused on improving the investigation and prosecution of sexual and gender-based crimes (SGBC); developing standards for the victims’ medical care; and increasing resources for victims.

At the 15th ASP session, the co-focal points will organize a side-event to present their work on complementarity, including progress reports from Uganda and Guatemala on their implementation of recommendations developed during the workshops to ensure enhanced victims’ empowerment and access to justice at the national level.

The draft Bureau report, outlining the discussions on complementarity led by the co-focal points throughout 2016 as well as the events (co-)organized by the co-focal points around the world, will be uploaded on the [ASP15 website](#).

The HWG proposed resolution language on complementarity to be included in the Omnibus Resolution and the ASP is expected to mandate the Bureau to continue discussions on complementarity in 2017.

¹ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 – 17 December 2014 (ICC-ASP/13/20), vol. I, ICC-ASP/13/Res.5, annex I, para. 12.

9. The Court's 2017 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 income. The ASP will consider the following figures at their annual session this year:

2017 Court budget proposal (in millions)

- Proposed Court budget: €147.25
- Proposed increase to approved 2016 budget: €9.86 (7.2%) increase from €137.39
- Host State loan interest: €2.99
- Total requested: €150.24

2017 Committee on Budget and Finance recommendations (in millions)

- Recommended Court budget: €144.6 million
- Recommended reduction to Court request: €2.65 (a 1.8 % decrease)
- Recommended increase to approved 2016 budget: €7.21 (5.2 %) increase from €137.39

The ICC Registrar coordinates the drafting of the Court's overall budget request. In the 2015 ASP resolution on the ICC budget, and toward the goal of implementing the "One-Court Principle," States Parties stressed the need to promote synergies between the different organs when drawing up the overall ICC budget proposal – beginning with the 2017 budget.

While the Coalition does not take a position on the specific amount of resources that should be allocated to the ICC in any given year, it urges states to treat the CBF review and recommendations as the bare minimum approach in their 2017 budget discussions. States Parties should oppose arbitrarily limiting the Court's 2017 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.

CBF recommendations for the 2017 ICC budget

To prepare for its final recommendations to the ASP, the Committee on Budget and Finance (CBF) – an independent 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 the conclusion of its fall meeting in 2016, the CBF recommended that the ASP approve a budget of €144.6 million compared to the 2016 approved budget of €137.39 (an increase of €7.21 million, or 5.2%). This is a €2.65 million reduction to the Court's requested 2017 budget of €147.25 million, which excludes the host state loan interest of €2.99 million.

The CBF recommended that the **Office of the Prosecutor's (OTP)** requested budget of €46.280 million be reduced to €45.648.7 million. The OTP assumptions for its activities in 2017 included nine preliminary examinations; ten investigations overall and six active ones (two in the Central African Republic; one in Côte d'Ivoire; one in Libya; one in Darfur, Sudan, where the OTP suggested it has new investigative opportunities and existing cases to bolster; and one in

Georgia, which has thus far been financed through the Contingency Fund); three trial teams; and two final appeals.

The CBF recommended reducing the **Registry's** €79,603.0 million request to €78,068.4 million. The Registry had sought an increased budget to cover, among other activities, increasing legal aid for reparations proceedings in the *Lubanga* and *Katanga* cases; improving the Court's information security and storage capacities to support increased courtroom activities; and maintaining and operating equipment in the new permanent premises. The increase sought would allow the use of three courtrooms during 2017. The Registry proposed continuing to slightly stagger recruitment for its reorganized structure to reduce the cost of recruitment in 2017 to €2.6 million.

The CBF recommended slightly reducing the **Judiciary** requested budget of €13.24 million (up €813,100 (6.5%) from the 2016 judiciary budget) to €13.138 million. €580,900 of the requested increase is tied to 18 judges' salaries, which, in contrast to other The Hague-based international court or tribunal judges' salaries, have never been reviewed. The budget request considered, as mandated by the ASP in 2015, the feasibility of a departure from the UN Common System. The CBF recommended against doing so, finding that the Common System best fits the needs of the Court, that departing from it would reduce mobility between the Court and other UN organizations, and that a new and costly administrative system, including a pension scheme for newly recruited staff, would have to be put in place. Staff costs rise 2% per year (1.84 million) in the UN Common System.

Among the other 2017 ICC major program budget requests, the **Trust Fund for Victims'** Secretariat requested a €617,600 (32.8%) increase to €2,502.1 million, while the CBF recommended a budget of € 2,224.5.

The ASP will adopt the final 2017 ICC budget during its 15th session.

States Parties in arrears

When States Parties are in arrears – meaning that the assessed contributions from the previous year remain outstanding – the Court cannot access its allocated budget. The ASP discusses this issue throughout the year in a dedicated New York Working Group facilitation, currently facilitated by Mr. Slavomir Kantor (Slovakia). According to the report by the CBF on states in arrears, by October 2016 the Court had not yet received €34.16 million in assessed contributions. This included €17.88 million from the 2016 approved budget, and a further €15.95 million from previous years. This was the result of 37 State Parties not having paid their contributions in full as of 15 September 2016. States with arrears that amount to more than two years' assessed contributions will be classified as ineligible to vote at the ASP session.

Discussion on Setting a Financial Envelope

In 2014, the Coalition's Team on Budget and Finance had expressed extreme concern at the CBF's recommendation that States Parties consider whether a financial envelope should be set at each Assembly meeting. Such an envelope risks reinforcing a budget process driven not by the resource needs of the ICC, but by how much States Parties are willing to pay. This approach is entirely inappropriate given the fluctuating workload of the ICC, and is inconsistent with the important ASP practice of deciding the budget as near as possible to the start of the financial year. The Coalition's Team has also warned of a real danger that such an approach could be used to strengthen efforts by a minority of states to impose zero growth on the ICC budget.

Following discussions in 2016 around the feasibility of setting a financial envelope, Cluster II (governance and budgetary process) of the Study Group on Governance (SGG) proposed language for the omnibus resolution to be adopted at the 15th ASP session, acknowledging that the SGG has concluded its mandate to consider such a practice and echoed the CBF's finding that such an approach would be resource-driven.

Precautionary reserves

The Working Capital Fund (WCF) is designed to meet short-term liquidity problems pending the receipt of assessed contributions. It was initially set to retain a minimum of €7.4 million, representing one month of Court expenditure at the time, however it now stands at €5.79 million and therefore does not even satisfy the previous one-month expenditure level. The CBF has meanwhile recommended that the Assembly raise the minimum level of the WCF to €11.6 million to reflect current one-month assumptions, requiring a €4.2 million payment in 2017. The CBF considered funding this replenishment over a number of years, with the Contingency Fund meanwhile acting as a cash reserve in addition to its intended purpose.

The Contingency Fund was established to meet unforeseen and unavoidable expenses, and is currently €1.2 million lower than the €7 million minimum level previously set by the ASP. The CBF recommended replenishing the fund, requiring €1.2 million in contributions in 2017.

United Nations Security Council referrals

At the 14th ASP session, States Parties [requested](#) that the Registry report on the approximate costs allocated to activities in the situations referred by the UN Security Council (Darfur and Libya). Article 115 of the Rome Statute provides that the expenses of the Court and the ASP are to be covered by contributions from States Parties, but can also be borne by the United Nations in relation to situations referred to the ICC by the Security Council. The Registry [reported](#) in November 2016 that costs in relation to Security Council referrals have to date been borne exclusively by States Parties to the Rome Statute and total €55 million. The Registry has noted this as a point of concern and has urged States Parties to begin discussions on potential solutions to the issue.

10. Amendments

Throughout 2016, States Parties addressed a proposed amendment to the Rules of Procedure and Evidence (RPE). 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.

For Rome Statute amendments, the Assembly may deal with a proposal directly at the ASP or convene a Review Conference if the amendment warrants such a measure. Once adopted, amendments to articles not dealing with core crimes enter into force for all States Parties after ratification by seven-eighths of all States Parties.

To allow for a year-round structured dialogue between subsidiary bodies of the ASP, the Court, and other stakeholders on proposals for amendments to the RPE, the ASP set out a road-map through the Study Group on Governance (SGG). The ASP also set up a Working Group on Amendments (WGA) for the purpose of considering amendments to the Rome Statute and to the RPE with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

The WGA, chaired in 2016 by Ambassador May-Elin Stener (Norway), and meeting in New York had the goal to achieve greater clarity on both the substantive views on the amendment proposals and the procedure to be followed in dealing with amendment proposals, as well as to inform the ASP in considering the amendments during its annual session. The SGG road-map and the WGA, however, do not preclude States Parties from exercising their right to submit amendment proposals to the RPE at any time in the year prior to an ASP session, pursuant to Article 51 of the Rome Statute.

Proposed Amendment to the Rules of Procedure and Evidence

Rule 165 of the RPE relates to the procedures for Article 70 offences against the administration of justice. In February 2016, in the context of the proceedings in *Bemba et al.*, ICC judges provisionally amended the rule, in accordance with Article 51(3) of the Rome Statute. Under this amendment, the number of judges needed at pre-trial and trial stage was reduced from three to one, and the number of judges needed at the appeals stage was reduced from five to three, among other measures. The reasoning offered was that the nature and gravity of offences under Article 70 differ from those under Article 5 and therefore the process for exercising jurisdiction over Article 70 offences could be simplified. The amendment also removed the separate sentencing hearing procedure under Article 76(2) and removed the interlocutory appeal procedure under Article 82(1)(d) on issues that significantly affect fair and efficient conduct of proceedings.

The judges considered that the provisional amendments to Rule 165 would still constitute a fair and efficient manner to address such offences, including upholding the right of the accused to a fair trial. They ruled to urgently adopt this provisional amendment due to resource constraints, including judges' workload, so 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.

The SGG reported that it was not in a position to make a concrete recommendation to the WGA regarding the provisional Rule 165 amendment. The WGA has since carried on discussions, and while a majority of States Parties favor the amendment and related efficiency gains, a few delegations have expressed concerns about risks to Rome Statute fair trial standards. Therefore, the WGA in turn reported it was not yet in a position to make concrete recommendations to the ASP either and agreed to reconvene during the 15th ASP session to continue the discussion.

Ratification of Kampala Amendments

The WGA has addressed the status of ratifications to the Kampala amendments throughout the year. As of 1 November 2016, 32 states have ratified both the Crime of Aggression amendment and the Article 8 amendment expanding the illegality of employing chemical weapons or expanding bullets to armed conflicts not of an international character.

11. Efficiency and Effectiveness of Proceedings

Criticisms of drawn-out courtroom proceedings have long dogged international criminal tribunals, and the International Criminal Court (ICC) is no exception. While a measure of feet-finding was to be expected for the Court's first trials, it is now vital to significantly reduce trial duration to bolster confidence in the Rome Statute (RS) system and ensure timely justice for victims.

The Study Group on Governance

The Study Group on Governance (SGG) of the ASP was established to conduct a structured dialogue between the Court and States Parties' representatives in The Hague, with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court. In 2016, the Study Group is chaired by Ambassador Masaru Tsuji (Japan) and Ambassador María Teresa Infante Caffi (Chile). The SGG is composed of 'clusters' each with its own specific focus: SGG Cluster I addresses "*Increasing the Efficiency of the Criminal Process*" (current focal points are Ms. Marisa Macpherson (New Zealand) and Ms. Erica Lucero (Argentina)). SGG I is further divided into discussions on the provisional amendment to Rule 165, and other matters relating to increasing the efficiency of the criminal process. SGG Cluster II addresses "*Government and Budgetary Process*," focusing on two areas: the establishment of a financial envelop, and providing a space for the Court to share updates on the development of qualitative and quantitative indicators (current focal points are Mr. Reinhard Hassenpflug (Germany) and Ms. Lourdes Suinaga (Mexico)). Further information about SGG Cluster II discussions on the financial envelop can be found above in Chapter 9, which covers the Court's budget.

SGG Cluster I discussions

Amendments to Rule 165: SGG Cluster I was in charge of facilitating the first part of the informal discussions regarding the amendment of Rule 165. With opposing views from different States Parties on the matter, the SGG was unable to make concrete recommendations to the WGA which has since taken up the discussions.

The SGG was given a mandate to discuss this amendment after ICC judges provisionally amended Rule 165 of the RPE in February 2016, in an attempt to simplify and expedite the process of trial and prosecution for offences against the administration of justice (Article 70). In doing so, they sought to assist the efficiency of the Court. However, this has led some to raise concerns about the impact an expedited process could have on the effectiveness of the Court. In particular, any amendment must not impact negatively on the rights of the accused, and the Court must ensure this provisional amendment would not affect access to a fair trial.

Other matters relating to increasing the efficiency of the criminal process: On 1 February 2016, ICC Judges issued a *Chambers Practice Manual*. The Manual includes best practices identified by the Judges across various stages of proceedings, and seeks to contribute to the overall effectiveness and efficiency of the proceedings before the Court.

SGG Cluster II discussions

Performance indicators: According to the draft report of the SGG, the Court has stated that as it is still working on the process of collecting data, it is too early to make comparisons with the Court's performance in previous years. The report notes that a second report on the development of these indicators will be made available during the ASP session this year. The second report will address the key goals/parameters of this exercise one-by-one: fairness and expeditiousness of proceedings; effective leadership and management; security for those at risk from involvement with the Court; and victims' access to the Court.

The Working Group on Lessons Learnt

The Working Group on Lessons Learnt (WGLL), chaired by ICC President Fernández, is a focus group composed of ICC Judges that arose out of a 2012 exercise by the judiciary to identify provisions in the ICC's Rules of Procedure and Evidence that might be amended to address inefficiencies in the Court's earlier years. The WGLL's [2012 report](#) had stressed the need to simultaneously standardize best practices – an avenue that does not require voting at the ASP.

The most recent result of this approach is the [Pre-Trial Practice Manual](#), which the WGLL issued in September 2015 with the aim of establishing consistent practices among the different pre-trial chambers. The manual guides judges on how to conduct efficient pre-trial proceedings while preserving the quality of work. The manual also streamlines evidence disclosure procedures; limits the use of live evidence at the pre-trial stage; and suggests reducing the time between initial appearances and confirmation of charges hearings, among other initiatives. The WGLL will update the current manual to reflect harmonized victims' application procedures and eventually aims to convert the document into a Judicial Practice Manual covering pre-trial, trial, and appeals proceedings.

For years, the Coalition has 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 for 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.

Retreat on Efficiency and Effectiveness

From 28 to 29 October 2016, ICC Judges held a retreat in Limburg, The Netherlands to discuss ways in which the efficiency and effectiveness of the Court could be improved. The retreat considered issues relating to preparation and management of trials, evidence, witness testimonies, and legal representation for victims. It considered whether best practices for preparation of trials could be included in the "*Chambers Practice Manual*."

12. Victims' participation and reparations

Victims can – through a Court or self-appointed legal representative – present their views and concerns during proceedings before the ICC. The Rome Statute also established victims' rights to seek and receive reparations. Reparations are not limited to monetary compensation; they can come in many forms, including rehabilitation. Reparations are decided by the Court's judges and – when ordered by the judges – administered by the Trust Fund for Victims (TFV).

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

Trust Fund for Victims Board of Directors

In early 2016, special elections were held to elect one new TFV Board member from Eastern Europe to fill a vacancy after elections at the previous ASP had failed to produce a consensus candidate from the region. Ms. Alma Taso-Deljkovic (Bosnia and Herzegovina) was elected in 2016 to join Chairman Motoo Noguchi (Japan), Baroness Arminka Helić (UK), Mr. Felipe Michelini (Uruguay), and Ms. Mama Koité Doumbia (Mali) on the TFV Board.

Reparation cases at the ICC in 2016

In October 2016, ICC judges approved the implementation of a symbolic collective reparations plan by the Trust Fund for Victims (TFV) for victims of convicted war criminal Thomas Lubanga. Consultations were held with NGOs, governments, and victims prior to the approval of the plan. The plan recommends using the 'Village Saving and Loan Association' model as a tool for economic empowerment for victims.

In March 2014, the ICC found Germain Katanga guilty of war crimes and crimes against humanity. The case is currently in the reparations stage, and the TFV is in the process of drafting a related reparations plan. ICC judges have also begun to request submissions for reparations for victims of two persons convicted by the Court in 2016: Ahmad al-Faqi al-Mahdi, for war crimes committed in Mali; and Jean-Pierre Bemba Gombo, for war crimes and crimes against humanity committed in the Central African Republic.

Victims' rights at the 15th ASP session

The Victims' Rights Working Group (VRWG), facilitated by Coalition for the ICC member REDRESS, seeks to ensure that Rome Statute provisions relating to victims' rights are effectively implemented by the Court's judges, and regularly issues opinions and papers to that effect. The VRWG has issued recommendations for the 15th ASP session.

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

13. The Omnibus Resolution

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

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

Protection of civil society organizations

Following reports of serious threats in The Hague and around the world directed at human rights defenders working to support the ICC mandate, language was proposed for the omnibus resolution urging States Parties to take all necessary measures to respond to such incidents of threats and intimidation. The proposed language, which has not appeared in subsequent omnibus resolution drafts despite overwhelming support among States Parties, also suggests that the ASP recognize the importance of ensuring a safe environment to foster cooperation with the Court. Language has appeared in the preamble of the omnibus resolution, however, expressing concern about such threats and intimidation.

Omnibus topics and related facilitations and focal points

A number of other topics will be addressed in the 2016 omnibus resolution. The **list of topics below** indicates those that have been discussed in ASP Bureau facilitations in the lead-up to the 15th ASP session. The omnibus resolution will include the date of the next ASP session, which will take place in New York, as well as the mandates of the ASP Bureau for 2017. The Bureau will then meet at the beginning of the year to appoint the facilitators and focal points.

- **Universality and full implementation of the Rome Statute**
Ad country co-focal points (HWG and NYWG): Mr. Nicos Argyrides (Cyprus) and Mr. Christian Nygaard Nissen (Denmark)
- **Agreement on Privileges and Immunities**
Ad country focal points (HWG and NYWG): Belgium
- **Cooperation**
Co-facilitation (HWG): Mr. Paul Wilke (The Netherlands) and until Fall 2016, Ambassador Maymouna Diop Sy (Senegal)
- **Non-cooperation**
Ad country co-focal points: Senegal (on behalf of the President of the Assembly), Australia, Czech Republic, Japan, and Peru
- **Host State**
- **Relationship with the United Nations**
Facilitation (NYWG): Ambassador Sebastiano Cardi (Italy)

- **Relationships with other International Organizations and Bodies**
- **Activities of the Court**
- **Procedure for the Nomination and Election of Judges (Elections)**
Facilitation (NYWG): Mr. Stefan Barriga (Liechtenstein)
- **Secretariat of the Assembly of States Parties**
- **Counsel**
- **Legal Aid**
- **Study Group on Governance (SGG)**
Co-facilitation (HWG): Ambassador Hiroshi Inomata (Japan) and Ambassador María Teresa Infante Caffi (Chile)
- **Cluster I: Increasing the Efficiency of the Criminal Process – Co-facilitation: Ms. Erica Luccero (Argentina) and Ms. Marisa Macpherson (New Zealand)**
- **Cluster II: Governance and Budgetary Process - Co-facilitation: Ms. Lourdes Suinaga (Mexico) and Mr. Reinhard Hassenpflug (Germany)**
- **Proceedings of the Court**
- **ASP Bureau Working Methods Review**
- **Strategic Planning**
Facilitation (HWG): Ambassador Eduardo Rodríguez Veltzé (Bolivia)
- **Victims and Affected Communities, Reparations and Trust Fund for Victims**
- **Geographical Representation and Gender Balance of Staff at the Court (Recruitment of Staff)**
Co-Facilitation (NYWG): Ms. Georgina Guillen Grillo (Costa Rica) and Mr. Patrick Luna (Brazil)
- **Complementarity**
Ad country co-focal points (HWG and NYWG): Botswana and Sweden
- **Independent Oversight Mechanism**
- **Programme Budget**
Facilitation: Ambassador Werner Druml (Austria)
- **Review Conference**
- **Consideration of Amendments / Working Group on Amendments**
Facilitation (NYWG): Ambassador May-Elin Stener (Norway)
- **Participation in the Assembly of States Parties**

Acronyms and Key Terms

ACN	Advisory Committee on the Nomination of Judges
ASP	Assembly of States Parties
ASP 15	The 2016 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 for the International Criminal Court
EU	European Union
GRULAC	Latin America and Caribbean Group
HWG or THWG	The ASP Bureau's Hague Working Group
IOM	Independent Oversight Mechanism
MENA	Middle East and North Africa Region
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 named "Strengthening the International Criminal Court and the Assembly of States Parties"
PE	Preliminary Examination
PP	Preliminary Paragraphs of a Resolution
Plenary	General discussions at the ASP with all States Parties attending
ICC Presidency	President: Judge Silvia Fernández de Gurmendi (Argentina); First Vice-President: Judge Joyce Aluoch (Kenya) and Second Vice-President: Judge Kuniko Ozaki (Japan)
RPE	Rules of Procedure and Evidence
SASP	Secretariat of the ASP
Statute / RS	Rome Statute, founding document of the ICC and the legislation that states must ratify to become members of the ASP and to the ICC
SGBV	Sexual and Gender-Based Violence
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
VWU	Victims and Witnesses Unit (of the ICC's Registry)
WGLL	Working Group on Lesson Learnt

Annex 1

Side-events by the Coalition for the ICC and its members

All side-events can be found in the ASP Journal, which provides a daily agenda and overview of the plenary sessions and side-events taking place during the 15th ASP session. The ASP Journal can be found on the ASP website and is updated regularly throughout the annual session.

Friday 18 November

- *Roundtable on thematic developments and boundaries in core international crimes practice (co-hosted by Norway and Centre for International Law Research and Policy)*
- *Carrying Forward the Innovations of the Extraordinary African Chambers for the Prosecution of Habré (co-hosted by the Netherlands, Uganda, Africa Legal Aid, and The Hague Institute for Global Justice)*
- ***Modern day slavery (co-hosted by Liechtenstein, the Freedom Foundation and the Coalition for the International Criminal Court)***
- *Domestic Accountability for Crimes Against Humanity in Mexico (hosted by the Open Society Justice Initiative)*
- *Building and breaking international criminal justice in Africa? (co-hosted by France, the Netherlands and the Institute for Security Studies)*
- ***Global Civil Society and European States: What can be done to advance international justice? (co-hosted by the Coalition for the International Criminal Court, Slovakia and the European External Action Service)***
- *ICC Withdrawals: Is Africa Running Away from Justice? (co-hosted by Africa Legal Aid and the South African Litigation Centre)*
- *Crimes against humanity, sex crimes and command responsibility: developments and boundaries in core international crimes practice (co-hosted by Norway, the UK and the Centre for International Law Research and Policy)*
- ***Reception in honor of the fifteenth session of the Assembly of States Parties (co-hosted by the City of The Hague and the Coalition for the International Criminal Court) (invitation only)***

Saturday 19 November

- *Justice in Kenya after the International Criminal Court (co-hosted by the Open Society Justice Initiative and the International Commission of Jurists - Kenya)*
- *Moving reparations forward, some lessons learnt (hosted by REDRESS)*
- *Accountability options for Syria (co-hosted by Canada, Liechtenstein and No Peace Without Justice)*
- *The ICC children's policy: an essential response to child victims (co-hosted by the State of Palestine and the Institute of Security Studies)*

Monday 21 November

- *The Human Rights Issues in North Korea (co-hosted by the Republic of Korea and the Geoffrey Nice Foundation)*
- *Strengthening ICC Cooperation through Legislation: the Cooperation and Judicial Assistance Database (co-hosted by Norway, Centre for International Law Research and Policy, the Chinese Initiative on International Law and International Nuremberg Principles Academy)*
- *The Bemba Ruling and Beyond: Prosecuting Conflict Related Sexual Violence (hosted by the Institute for Justice and Reconciliation, South Africa)*
- *The role of the ICC in Promoting Accountability for Crimes Committed in Ukraine (co-hosted by the International Partnership for Human Rights and International Renaissance Foundation)*

Tuesday 22 November

- *The ICC in Kenya: Lessons learnt, loose ends and legacy (hosted by Kenyans for Peace, Truth and Justice)*
- *'Book Presentation: The International Criminal Court and Africa: One Decade On' (Africa Legal Aid)*
- *Launch of the Handbook on Complementarity and a subsequent panel discussion on complementarity (co-hosted by Botswana, Sweden, and the International Center for Transitional Justice)*
- *The Future of the ICC: Facing the Challenges and Strengthening its Legitimacy (co-hosted by the Netherlands and Public International Law & Policy Group)*
- *Evidence in International Criminal Trials: Developments and Challenges (hosted by the International Bar Association)*

Wednesday 23 November

- *Witness Interference (co-hosted by the Republic of Korea and Open Society Justice Initiative)*

Thursday 24 November

- *Complementarity in Central and West-Africa (co-hosted by France, Senegal, and Amnesty International)*

Annex 2

Non-compliance under Article 87(7) of the Rome Statute:

Informal CICC Memorandum – updated 4-09-2016

ASP procedures relating to non-cooperation

Article 112(2)(F) of the Rome Statute

“The assembly shall: Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation”

Assembly procedures relating to non-cooperation – Annex to Resolution ICC-ASP-10-Res.5-ENG

Any response by the Assembly will be non-judicial in nature and based on the Assembly’s competencies under article 112 of the Statute.

There is a **formal** response procedure with successive steps that could be taken by the Bureau and the Assembly, in summary:

- An emergency Bureau meeting
- An open letter from the President of the Assembly, on behalf of the Bureau, to the State concerned, including a time-limit for cooperation;
- A meeting of the Bureau could be held (at the ambassadorial level), at which a representative of the State concerned would be invited to present its views;
- Provided the next session of the Assembly is scheduled to take place more than three months after the Bureau meeting referred to under (c), the Bureau could request the New York Working Group to hold a public meeting on the matter to allow for an open dialogue with the requested State;
- Appointment of a facilitator to discuss the issue;
- Discussion of a draft resolution containing concrete recommendations and eventually adoption an ASP resolution on the instance of non-cooperation (para. 14).

There is also an **informal** procedure, which is built on the good offices that the President of the ASP, where the President informally reaches out to officials of the requested state to raise awareness of the issue, sometimes with the help of states designated as focal points for a certain region (paras 15-20).

Currently, the ASP Bureau's non-cooperation focal points (Senegal, Australia, Czech Republic, Japan and Peru) are holding consultations on the *Draft Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures Relating to Non-Cooperation* (attached), aimed to

serve "as a resource for States Parties to improve the implementation of the informal measures of the procedures on non-cooperation" (attached).

These procedures are without prejudice to the actions taken by States at a bilateral or regional level to promote cooperation.

So far, both formal and informal steps have been taken by the ASP.

Previous referrals of non-compliance to the ASP

ICC judges have previously made non-compliance findings under Article 87(7) of the Statute on several occasions in the case of *Prosecutor v. Omar Hassan Hamad Al Bashir*:

- Pre-Trial Chamber I made a finding of non-compliance against the Republic of Malawi and referred the matter both to the ASP and the UN Security Council on 13 December 2011.
- Pre-Trial Chamber I made a finding of non-compliance against the Republic of Chad, on 13 December 2011 and referred the matter to both the ASP and the UN Security Council.²
- Pre-Trial Chamber II made a finding of non-compliance against the Republic of Chad, on 26 March 2013 and referred the matter to both the ASP and the UN Security Council.
- Pre-Trial Chamber II made a finding of non-compliance against the Democratic Republic of Congo on 9 April 2014 and referred the matter to both the ASP and the UN Security Council.
- Pre-Trial Chamber II made a finding of non-compliance against the Republic of Sudan on 9 March 2015 and referred the matter to both the ASP and the UN Security Council.
- Pre-Trial Chamber II made a finding of non-compliance against the Republic of Djibouti on 11 July 2016 and referred the matter to both the ASP and the UN Security Council
- Pre-Trial Chamber II made a finding of non-compliance against the Republic of Uganda on 11 July 2016 and referred the matter to both the ASP and the UN Security Council

The Court also made a finding of non-compliance against Libya in the case of *Prosecutor v. Saif Al-Islam Gaddafi*, against Sudan in the case of *Prosecutor v. Abdallah Banda Abakaer Nourain*, but the matter was only referred to the UN Security Council and not to the ASP.

One finding of non-compliance has been made in the case of *Prosecutor v. Uhuru Muigai Kenyatta*:

- Trial Chamber V(b) made a finding of non-compliance against the Republic of Kenya and referred the matter to the ASP on 19 September 2016.

Actions previously undertaken by the ASP, the States Parties and other stakeholders

- Following President Al Bashir's numerous travels, the Bureau of the ASP has discussed in several meetings the issue of non-cooperation. The President of the ASP also issued press releases, sent letters to Foreign Ministers of the concerned states, and met with

² ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Chad to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, 13 December 2011.

representatives of those states. States Parties and other stakeholders have also issued press statements and engaged in bilateral demarches;

- Following the ICC Decision on the non-cooperation of DRC, the Bureau held a meeting and took note of this decision.
- The ASP non-cooperation focal points (*ad country*) have kept States Parties informed of travels of people under arrest warrant of the Court;
- Consultations on non-cooperation have been held with States Parties in the NYWG;
- A page on non-cooperation has been created on the website of the Assembly Secretariat.

The different steps undertaken by the ASP, States Parties or other stakeholders have not proven their effect to this day. The different actions are non-coercive and it has proven difficult to bring States to comply with their obligation under the Rome Statute. For example, President Al Bashir has continued travelling to different states despite the Court's decisions and the ASP's efforts.

COALITION FOR THE INTERNATIONAL CRIMINAL COURT



The COALITION FOR THE INTERNATIONAL CRIMINAL COURT includes 2,500 non-governmental organisations in 150 countries 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.