

COALITION FOR THE
INTERNATIONAL CRIMINAL COURT



CICC BACKGROUND PAPER

IN PREPARATION FOR
THE EIGHTH SESSION OF THE ICC ASSEMBLY OF STATES PARTIES,
18 NOVEMBER - 26 NOVEMBER 2009
5 NOVEMBER 2009

I. INTRODUCTION

The Coalition for the International Criminal Court (CICC) has prepared this Background Paper in preparation for the eighth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ASP). The Assembly will meet in The Hague, The Netherlands, from 18 -26 November 2009. The Coalition expects approximately 200 non-governmental organization (NGO) representatives to attend the eighth session of the ASP. Hundreds of government delegates and representatives of the International Criminal Court (ICC) and other international organizations are also expected to participate in the Assembly.

II. OPENING PLENARY AND GENERAL DEBATE

On the first day of the session, the ASP will organise its work and hear reports from the Court, the Trust Fund for Victims, the Bureau, and the Oversight Committee on the Permanent Premises respectively. Following those reports and once the elections have been concluded (see below), the General Debate will start, giving each state (and groupings of states) the opportunity to address issues of particular concern in relation to the Assembly's work and the Rome Statute as a whole. At the end of the debate, NGOs are given 45 mins to address the Assembly.

III. JUDICIAL ELECTIONS

On the first day of the Eighth session, the Assembly will elect two ICC judges. The five candidates were nominated for elections are Ms. Kuniko OZAKI of Japan (List B); Ms. Cecilia Medina Quiroga of Chile (List B); M. Marco Gerardo Monroy Cabra of Colombia (List B); Ms. Silvia Fernandez de Gurmendi of Argentina (List A) and M. Duke E.E. Pollard of Guyana (List B). According to the Assembly's elections procedure and the so-called 'minimum voting requirements', states must vote for at least one candidate from the Grulac region. Asia would have had the same advantage if it had nominated more than one candidate.

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These elections take place due to vacancies arising in-between the regularly planned judicial elections. The judicial term will run until 2018.

IV. TRUST FUND FOR VICTIMS

The Trust Fund's Board of Directors will make a presentation to States Parties on the first day of the ASP meeting. The report will summarize the activities and projects conducted in 2009. The Board will inform States Parties on the progress made over past year: In 2009, the TFV saw the second full year of operations. Importantly, in January 2009, the TFV started the implementation of 36 (?) projects designed to assist victims in the DRC and Uganda. According to the Trust Fund Secretariat, the projects will benefit more than 380.000 victims.

On the opening day of the ASP (18 November 2009) States Parties will elect the 5 new members of the Board of Directors. Each new director represents one of the five big geographical regions of the world and will be elected for a 3-year term. For Asia, Bulgaa ALTANGEREL, from Mongolia. For Africa, Betty Kaari MURUNGI, from Kenya. For Grulac, Eduardo PIZARRO LEONGÓMEZ, from Colombia. For WEOG, Elisabeth REHN, from Finland. For Eastern Europe, Vaira VĪĶE-FREIBERGA, from Latvia. The Board members can be reelected once. The Mongolian candidate served already in previous board (this will be his second and final term).

In the general debate, States may pledge contributions to the Trust Fund.

VI. REVIEW CONFERENCE

The eighth session will serve as the preparatory meeting for next year's Review Conference of the Rome Statute, the first Review Conference to take place since the Statute was adopted. The ASP will assess the level of consensus around the various proposals and thereby steer the Review Conference both in terms of agenda and substance. This will be the last ASP meeting before the Review Conference and the guidance given by the ASP for both review and stocktaking will be of utmost importance to the future of the Rome Statute.

The Working Group on the Review Conference will meet for the first time on the third day, Friday 20 November and consider the various issues proposed for the agenda of the Review Conference. The Review Conference will for sure consider the definition of the crime of aggression and review Article 124, a transitional exemption from the Court's jurisdiction over war crimes. Beyond this, ASP Bureau's working group is currently discussing some informal proposals to assess whether there is consensus to bring them forward to the review conference. The Netherlands submitted a proposal regarding the adoption of the crime of terrorism as a distinct crime under the Rome Statute. A proposal has been tabled by Belgium to add the use of specific weapons under war crimes, including the use of biological weapons, chemical weapons and landmines. Mexico has tabled a proposal to include the use of nuclear weapons in the

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definition of War Crimes. A proposal has also been circulated by Japan to consider the amendment and stocktaking of a number of administrative, structural and financial aspects of the ICC.

VII. COOPERATION

In the Provisional Work Programme for the Eighth session, there is one hour assigned to informal consultations on cooperation. It can be foreseen that the discussions will continue the inter-sessional discussion by the Hague Working Group and address the Bureau's report on cooperation, which draws upon the report of the Court on the same detailing the level of success and failure it has had with respect to cooperation from States and international and regional organisations.

IX. BUDGET AND FINANCE

The Working Group of the budget will meet both informally and formally during the Eighth session to consider the Proposed ICC Budget for 2009, as proposed by the Court. The main discussion will focus on the report from the Committee on Budget and Finance (CBF), a subsidiary mechanism to the ASP, which considered the Proposed 2009 Budget on 5-12 September 2008.

The Proposed budget for 2010 is €102.98 million. This reflects an increase of €1.75 million (1.7%) over the approved budget for 2009 (€101.23 million). The budget for 2008 was €90.38 million. The second trial, which was originally projected to begin in the first half of 2009, but is now scheduled to begin on 24 November amounts to an increase of approximately €6 million in the 2009 budget. The growth in the 2010 Proposed Budget is attributable entirely to the inflation increases for staff salaries.

In addition to the three organs of the Court, the budget also covers the work of the Assembly and its Secretariat, the Secretariat of the Trust Fund for Victims and the work on the future permanent premises. This does not include, however, the budgets for expenditure associated with mechanisms that require approval by the ASP for their establishment, namely the African Union Liaison Office (€0.5 million) and Office for Independent Oversight (€0.5 million). Also external to the Proposed Budget is the budget for Review Conference related matters to the tune of €1.4 million.

The Committee has recommended that the budget for legal aid for the defence should be reduced by 7% and that the budget for legal representation of victims should be reduced by 15%. The Committee justifies its recommendation on "the current trends in expenditure."

XI. FAMILY VISITS OF INDIGENT DETAINEES

The Assembly will hold information consultations on this issue and discuss a report from the Bureau and seek to adopt a resolution. The issue of funding family visits of indigent detainees has been debated by the ASP for over 2 years without a final conclusion being reached. On 10 March, 2009, the Presidency of the ICC found that in a particular case, in the particular circumstances of a detainee, there was a positive obligation for the Court to fund family visits in order to make a right effective. Further, the Presidency found that this entitlement did not extend to unlimited family visits and that it will be restricted by the resource constraints faced by the Court.

XIV. PREMISES

The work programme for the 8th session provides for informal consultations on permanent premises. The ICC is currently located in interim premises that the Host State, The Netherlands, provides free of charge until 2012. Permanent premises are to be built in The Hague. The worldwide architectural design competition launched in early 2008 led to the designation by jury of 3 prizewinners. While it had been hoped that a decision on the preliminary version of the final design would be taken this summer, this has been delayed. The ICC Project Board is still pursuing negotiations with all three architectural firms to determine the winning design and the modalities of the construction contract. It is now hoped, though as yet uncertain, that a decision on the final architect will be made by the Assembly of States Parties at the 8th session.

XV. INDEPENDENT OVERSIGHT MECHANISM

The Assembly will meet in informal consultations to consider the establishment of an 'independent oversight mechanism'. Pursuant to Article 112(4) of the Rome Statute, the Assembly "may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy." The ASP will consider the creation of such a mechanism as proposed by the Bureau's report, wholly independent of the Court and established under the tutelage of staff from the UN Office of Independent Oversight ('UN OIOS').

XVI. OMNIBUS RESOLUTION

Since 2003 the ASP has adopted what is called an 'omnibus resolution,' formally titled 'Strengthening the International Criminal Court and the Assembly of States Parties'. The ASP will adopt a similar resolution again this year. As in previous sessions, the

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omnibus resolution will be dealt with by an informal working group. These resolutions usually call for ratification of the Rome Statute and other agreements, note developments linked to institution building and to each organ of the Court, highlight cooperation issues, and deal with administrative issues as relevant.

Universality: The Report of the Bureau on the Plan of action for universality and implementation of the Rome Statute falls under the debates on the omnibus resolution.

Legal Aid: The ASP will discuss the Court's two legal aid reports (which have been debated by the Hague Working Group throughout the year) in the context of the omnibus resolution. At its previous session in November 2008, the Assembly of States Parties invited the Court to present to the Assembly at its eighth session 1) a report on the "legal and financial aspects for funding victims' legal representation before the Court" and 2) a report "considering alternatives to the formula currently used by the Court for calculating indigence".

Strategic Plan: It is expected that the ASP will place discussions on the Court's Strategic Planning Process in the context of the "Omnibus Resolution". During 2009, the Court has made efforts to implement the Strategic Plan and to further develop some of the areas identified by States in the 2006 ASP resolution. In particular, the Court has worked on a court-wide victims' strategy.

Outreach: Any discussion on outreach will most likely take place during the informal consultations on the omnibus resolution. In the Omnibus Resolution adopted at the 7th session, States Parties encouraged the Court to, yet again, "intensify" its outreach activities, including through the implementation of the Strategic Plan for Outreach.

ICC office at the African Union: The establishment of such an office, and the consideration of the Court's report, will fall within the Omnibus Resolution. The budgetary consequences of such an establishment will be dealt with as part of the deliberations of the 2010 court budget (see above).

Recruitment: The Report of the Bureau on equitable geographical representation and gender balance among ICC staff will be discussed as part of the omnibus resolution consultations.