



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

REPORT

ON THE RESUMED EIGHTH SESSION OF THE ASSEMBLY OF
STATES PARTIES TO THE ROME STATUTE



22- 25 MARCH 2010
New York

This document was compiled by the CICC Secretariat, based on reports and notes from CICC caucuses, teams, experts and interns as well as on official ASP documents on each respective subject. It should not be taken to represent the views of all Coalition members.

Content

I. Introduction	2
II. Crime of aggression.....	3
III. Stocktaking.....	4
1. <i>Introduction</i>	4
2. <i>Complementarity</i>	5
3. <i>Cooperation</i>	5
4. <i>Impact of the Rome Statute on victims and affected communities</i>	6
5. <i>Peace and Justice</i>	7
IV. Other Issues	7
1. <i>Resolution of the Resumed Session (“Resolution on the Review Conference”)</i> ..	7
2. <i>Belgium proposal on the elements of crimes</i>	7
3. <i>Enforcement of sentences/ Norwegian proposal</i>	8
4. <i>Memorandum of Understanding with the Government of Uganda</i>	8
5. <i>High-level participation</i>	8

I. INTRODUCTION

This report constitutes a summary of the resumed eighth session of the Assembly of States Parties to the Rome Statute (ASP), which took place in New York from 22 to 25 March 2010. The Coalition Secretariat would like to thank the following CICC interns for their production of daily minutes of the plenary and working group meetings of the ASP (which are also available through the Coalition): Fiorella Zuniga; Karim Boussak; Ramya Sekaran; Galina Lapadatova; Carla Hung; Adelaide Blot and Lauren Maccarone. The Coalition Secretariat takes all care to ensure accuracy. Corrections and additions are always welcome.

United Nations Deputy Secretary General Dr. Asha-Rose Migiro opened the resumed session of the eighth ASP. In her speech, she emphasized the importance of the Review Conference as a historic event to take stock and reflect on the Court's future. She also reaffirmed the ICC as the centerpiece of international criminal justice. The Deputy Secretary General insisted on the need to fortify and strengthen international criminal justice as a concept that rejects impunity for crimes against humanity, war crimes and genocide. Dr. Asha-Rose Migiro as well called on every nation to become a party. Later during the meeting, the news of the ratification of Bangladesh was applauded by the ASP welcoming Bangladesh who will become the 111th State Party to the Rome Statute as of 1 June 2010.

CICC reports of each day's events during the eighth resumed session, as well as a large number of CICC and NGO papers can be found at: <http://www.iccnw.org/?mod=asp8>.

II. CRIME OF AGGRESSION

Under the facilitation of H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, discussions at the Resumed Eighth session focused on the two questions presented by the facilitator in his non paper: 1) Should the UN Security Council be the decisive jurisdictional filter for a case to proceed within the ICC or could there be another additional jurisdictional filter or no filter at all? and 2) Should the ICC only initiate an investigation where the alleged aggressor state has (one way or another) accepted the jurisdiction of the Court over the crime of aggression or should the victim state's acceptance suffice for this purpose? While there were different preferences voiced during the debate, there was widespread affirmation of a continued commitment to work towards a compromise solution.

Furthermore, the Chair performed a roll-call of the delegations present in the room based on four preliminary variations of the different scenarios arising from the two questions raised above. While there were still different preferences voiced during the debate, there was strong affirmation of a continued commitment to work towards a compromise solution. In terms of numbers, the largest number of states expressed support for no filter or a filter other than the Security Council (ICJ, GA or an ICC filter).

Within this second alternative, the views were split as to whether the aggressor state would need to consent, with a slight majority opposing the requirement for such consent. A small number of states, mainly (but not only) permanent members of the Security Council and some WEOG states supported the Security Council jurisdictional filter following the expressed consent of the aggressor state. The Chairperson highlighted that the 'roll-call' is not a conclusive exercise, but simply a guiding tool for him in order to prepare for Kampala and to proceed constructively with the deliberations.

A similar 'roll-call' will take place in Kampala, giving states the position to reconfirm or reconsider their position. Those states who preferred the second alternative (no filter or non-SC filter) referred to a number of considerations when expressing their position, including but not limited to the importance to treat the Crime of Aggression similarly to the other crimes in the Rome Statute, the need to protect the independence of the Court, the political nature of the Security Council, the need to respect the will of the victim state, etc. Those who supported Security Council filter and consent of aggressor state referred to the different nature of this crime (resulting from a state act) compared with other crimes, the respect for the role of the Security Council in dealing with the crime of aggression, etc. There were also informal proposals on whether a 'menu' of jurisdictional filters could be provided, from which states could choose regarding how the court's jurisdiction would apply to them.

As mentioned, the wish to reach consensus and the willingness to compromise were widely expressed, though it is clear that it will be a enormous challenge to bring the most diverging sides together. The United States was more substantive in its intervention that at the 8th Session, reconfirming its strong commitment to the role for the Security Council, and also expressed its position that consent to the court's

jurisdiction of the aggressor state would be necessary. The United States also referred to the negative impact this deliberation could have on the goals of the stocktaking process and questioned whether the court is ready to take on this additional crime. As in the past, other non-States Parties participated actively in the discussion which, in its entirety, gave a good indication on the challenges the deliberations will meet in Kampala.

The amendment proposal of Liechtenstein on behalf of the Special Working Group on the Crime of Aggression: <http://www.coalitionfortheicc.org/?mod=swgca-proposal>

For more information on the crime of aggression:
<http://www.coalitionfortheicc.org/?mod=aggression&lang=en>

III. STOCKTAKING

1. Introduction

During the resumed session **good progress was made on all the four stocktaking issues**. In general, the respective focal points received support for their proposed approach. Templates outlining format of the debate, panellists, expected outcomes, background materials helped focus the discussion. During a CICC lunch side event on the first day of the resumed session, NGOs stressed the importance of stocktaking in the respective areas and the need for states to support the endeavour.

Against initial reservations from France and Germany, the ASP agreed upon **two resolutions on complementarity and victims to forward to the Review Conference for adoption**. The CICC has strongly supported the idea of action-oriented resolutions aiming for tangible outcomes and was generally comfortable with what has been agreed.

Progress was also achieved in relation to a **high-level declaration**. Mexico took on the task of coordinating efforts to prepare the declaration. It was agreed that it would deal with 1) reaffirmation of the commitment of States Parties to the Rome Statute 2) reference to the stocktaking exercise and 3) reference to the pledges to be made. Consultations will continue in April in the framework of the NYWG.

The Bureau appointed the Netherlands and Peru as focal points for **pledges**, to facilitate commitments and recommitments to the Rome Statute on the part of States and Non-States Parties. Prior to the Resumed Session, the Coalition had strongly advocated for the idea of pledges by States Parties that would inter *alia* facilitate greater cooperation with the Court and ensure full compliance with the Rome Statute. The Focal Points called on States to work with NGOs in identifying those pledges that would be of importance to the Rome Statute System. A deadline of 14 May was imposed for States to lodge their pledges with the Focal Points. The opportunity to announce pledges made at the Review Conference is also explicitly referenced in the Resolution on the Review Conference.

For more information on stocktaking: <http://www.coalitionfortheicc.org/?mod=stocktaking>

2. Complementarity

While there was consensus amongst State Parties on the Bureau's Report on Complementarity and Stocktaking, the same was not true of the resolution at the start of the Resumed Session, with France; Germany and Italy, querying whether a resolution was required at all and whether the outcomes would be too onerous on the Court and States Parties, fearing that such a resolution would create additional obligations or have budgetary implications. Following clarifications, Consensus was reached on submitting an amended draft resolution on complementarity for further discussion to the Review Conference. The Coalition through its bilateral and multilateral advocacy had stressed the need for concrete and tangible outcomes to be codified in a resolution. Reference to negative comments about the complementarity exercise made by several non-States Parties, which were included in the the Draft Report of the Working Group on the Review Conference was also the subject of much concern. Through its bilateral advocacy at the Resumed Session, which stressed the negative impact of those statements, the Coalition contributed to galvanizing support amongst States Parties to take issue with the comments and voice their concern as well as stress their affirmation of support for the complementarity exercise. According to the template as prepared by the Focal Points and adopted as an annex to the report of the session, the stocktaking discussion at the Review Conference will take place in the format of a panel discussion, inviting speakers such as the High Commissioner for Human Rights, the ICC Chief Prosecutor and the Prosecutor of the ICTY. The discussion would focus on the elaboration of the principle of complementarity, as well as its practical application. The discussion would also debate what 'positive complementarity is, the need for it and its practical implementation. The suggested outcome would be the resolution mentioned above.

CICC Team on the Review Conference: Comments and Recommendations on Complementarity in the Context of the Stocktaking Exercise at the Review Conference, presented at the eighth resumed session of the ASP: <http://www.coalitionfortheicc.org/?mod=aggression&lang=en>

Report of the Bureau on stocktaking: Complementarity: http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf

For more information on the stocktaking issue of Complementarity: <http://www.coalitionfortheicc.org/?mod=complementarity>

3. Cooperation

While the Cooperation Focal Points had not submitted a resolution or declaration at this stage, the possibility was not ruled out. The Focal Points would also explore whether to use the Ministerial Declaration and Pledging activity as a means to carry forward the outcomes of the exercise. The importance of a resolution, which the Coalition had emphasized, was stressed by certain States Parties. The DRC, on behalf of the African Union reiterated its earlier call for specific discussion on the relationship of Articles 27 and 98. The Focal Points however, were reluctant to include this, citing it as a matter for the Court's interpretation. Prior to the Resumed Session the Coalition had strongly recommended reissuing the questionnaire submitted to the States Parties by the ASP Secretariat in the context of the Plan of Action as a means of gathering data for further analysis, the importance of this and the need for

States Parties to respond to the questionnaires was reiterated by the Focal Points and is explicitly referenced in the Resolution on the Review Conference. The stocktaking session in Kampala would be through two consecutive round table discussions with two speakers in each, introducing two different clusters (1: implementing legislation, supplementary agreements and arrangements and how to deal with cooperation challenges met by SPs; 2: cooperation with the UN and how to raise awareness about the Court). Speakers suggested were the Foreign Minister of Costa Rica (and former ASP President), the Registrar of the ICTR, speakers representing a State Party and a speaker from an IO. The outcomes would be documented in a report and possibly the Ministerial Declaration and or Resolution as described above.

Report of the Bureau on stocktaking: Cooperation: http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-50-ENG.pdf

For more information on the stocktaking issue of Cooperation: <http://www.coalitionfortheicc.org/?mod=cooperation>

4. Impact of the Rome Statute on victims and affected communities

NGOs have followed this issue very closely from the very early stages and were actively involved in shaping the issue. Three documents built the basis for the discussions of States on this topic: The Report of the Bureau on victims and affected communities; a template and a draft resolution. The focal points Chile and Finland received broad support for their approach on the victims' topic. The emphasis on the importance of outreach found specific appreciation. Furthermore, the need for an interactive approach of the panel discussion in Kampala was stressed as well as the need for good coordination on the substance of the side events. The panel discussion would involve experts from local and international civil society organisations, the Trust Fund for Victims, international tribunals and the ICC.

The draft resolution was only introduced at the resumed session itself and hence States did not have a lot of time for preparing their views in advance. Nevertheless, the focal points Chile and Finland received good feedback and it was stated that the resolution addressed the main issues at stake. The French delegation introduced language underlining the importance of ensuring transparency in the management of the Trust Fund for Victims.

In terms of other concrete outcomes, the focal points also highlighted the importance of making pledges and increasing financial support for the VTF.

Report of the Bureau on stocktaking: The impact of the Rome Statute system on victims and affected communities: http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-49-ENG.pdf

For more information on the stocktaking issue of the impact of the Rome Statute on victims and affected communities: <http://www.coalitionfortheicc.org/?mod=impactonvictims>

5. Peace and Justice

The Focal Points stated that the outcome of this stocktaking exercise would be a report as opposed to a resolution. This report would follow the pre-conference production (by 30 April) of background papers by four distinguished experts. Further, States and other entities were also invited to submit their experiences and lessons learned on this issue by 30 April and for further consideration at the Review Conference. There was consensus to include the participation of all actors in discussions at the Review Conference, some however, were of the opinion that States Parties should have a higher profile. The panel as suggested by the focal points would include the following leaders and experts, Kenneth Roth (HRW), Kofi Annan, David Tolbert, James LeMoyné, Yasmin Sooka and Chhang Youk.

Report of the Bureau on stocktaking: Peace and Justice:

<http://www.icc-cpi.int/NR/rdonlyres/F65C594A-20EE-485E-90CC-6846D34C85B0/0/ICCASP852ENG.pdf>

For more information on the stocktaking issue of Peace and Justice:

<http://www.coalitionfortheicc.org/?mod=peaceandjustice>

IV. OTHER ISSUES

1. Resolution of the Resumed Session (“Resolution on the Review Conference”)

The ASP issued a resolution that acknowledged the discussions thus far on stocktaking in particular, but also drawing reference to the amendments and draft resolution on strengthening the enforcement of sentences. The Resolution also formerly submits the material on stocktaking (Bureau reports; resolutions et al) to the Review Conference. Venezuela was insistent on there being explicit reference in the resolution to the discussions that had taken place on the crime of aggression; language however could not be agreed upon in this regard.

Resolutions adopted by the Assembly of States Parties at the Eighth Resumed Session: ('One-time payments for the permanent premises' and 'Review Conference')

<http://www.icc-cpi.int/NR/rdonlyres/063E0E42-3DD0-490A-8DF6-F2F1C49C68EE/0/ICCASP820Add1PartIIENG.pdf>

Annexes to the resolutions adopted by the Assembly of States Parties at the Eighth Resumed Session:

<http://www.icc-cpi.int/NR/rdonlyres/4A6BA682-73E4-4442-A7B5-3AE9A379860E/0/ICCASP820Add1PartAnnexENG.pdf>

2. Belgium proposal on the elements of crimes

Upon a proposal from the Belgium Delegations, the ASP decided to forward to the Review Conference the draft elements of crime that correspond to the draft amendments of war crimes that the Assembly already agreed in Nov 2009 to forward to Kampala. It is worth noting that the proposed elements of crimes are exactly the

same elements of crimes as those approved for the corresponding war crimes in the context of an international armed conflict.

Elements of crimes corresponding to the proposed amendment by Belgium of article 8: (from page 26):

<http://www.icc-cpi.int/NR/rdonlyres/063E0E42-3DD0-490A-8DF6-F2F1C49C68EE/0/ICCASP820Add1PartIIENG.pdf>

3. Enforcement of sentences/ Norwegian proposal

The ASP was informed that the Bureau decided to forward a draft Resolution on Strengthening the Enforcement of Sentences to the Review Conference for its consideration.

4. Memorandum of Understanding with the Government of Uganda

The ASP was informed that Uganda and the ICC had agreed on the provisions of an MOU and that it should be concluded before mid-April. The ASP Secretariat gave a detailed presentation of the conference facilities in Kampala and the Ugandan Government encouraged everyone to participate in the Review Conference. The presentation by the Government also included commitment to shuttle participants to and from the conference venue, to offer visa for free to all participants, and the assurance that the President of Uganda will attend the opening of the meeting.

5. High-level participation

Throughout the resumed session, NGOs encouraged states strongly to send high-level participants to Kampala. This call was also made by, among others, the UN Deputy Secretary General and the Government of Uganda.