



REVIEW CONFERENCE TEAM
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
STATEMENT¹ TO THE NEW YORK WORKING GROUP
INFORMAL DISCUSSIONS ON THE REVIEW CONFERENCE

14 APRIL 2009, NEW YORK

The Coalition for the International Criminal Court (CICC) gives great importance to the Review Conference and the need to ensure that the Conference is successful, protects the integrity of the Rome Statute, and enhances international understanding of and support for the International Criminal Court (ICC). Accordingly, we would like to commend the facilitators on the issue of the Review Conference, Ms. Angela Nworgu (Nigeria) and Mr. Marcelo Böhlke (Brazil), for the opportunity to participate in these informal discussions and convey our views in relation to the preparatory process of the Conference. Moreover, we hope that this constructive consultative relationship between civil society and States Parties will continue and further develop throughout the process leading up to the Review Conference.

The CICC Team on the Review Conference (Team) has enabled Coalition members to monitor, work and develop positions on key policy issues related to the preparations for the Conference. The Team has closely followed the preparatory process for the Review Conference to date and has contributed to this process by coordinating and conveying NGOs' expertise, views and concerns to the Assembly of States Parties (ASP), the Bureau Facilitators and the ASP Focal Point on Review Conference, Ambassador Rolf Fife (Norway).

The Team will continue to coordinate the active involvement and participation of civil society in relation to the preparation for the Review Conference and, when necessary, will work towards achieving common positions and providing common statements on the different issues at stake. The various NGOs which compose the CICC Review Conference Team have, however, different expertise and different mandates. Individual organizations will therefore also contribute on their behalf where necessary. We believe this will only further enrich the discussions.

A. Preparatory Process of the Review Conference

The Team welcomes the work done by the Review Conference facilitators in planning a series of preparatory discussions in the framework of the New York Working Group in a transparent and inclusive manner. In this regard, the Team recommends that the facilitators allocate sufficient time to discuss thoroughly all pertinent issues that ought to be discussed in advance of the eighth ASP session.

The Team notes the Assembly's decision to discuss at its eighth session proposals for amendments to be considered at the Review Conference and further notes that in their report to the Bureau on the informal consultations of 11 March 2009, the facilitators stated that any new initiatives for draft amendments should be communicated to and discussed within the New York Working Group. In this connection, the Team recommends that adequate guidelines be developed as soon as possible for the submission of proposals for amendments to be considered at the Review Conference. Such guidelines should include clear deadlines and procedures. It should also provide sufficient time for the facilitators organize discussions on these proposals prior to the eighth session of the ASP and allow them to report back to the ASP at its eighth session.

¹ While the work of the Review Conference Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC.

We would also like to recall the Team's recommendation to the seventh session of the ASP to consider the different issues in relation to the Review Conference in close consultations with other relevant Bureau facilitators. This is particularly important in the context of the discussions around stocktaking in which other Bureau facilitators could identify key topics for discussion, the objective and methodology for the consideration of the issues under their mandate. Particular attention should be given to the input of the facilitator for cooperation, Ambassador Yves Haesendonck (Belgium) and the facilitator for the Plan of action for achieving universality and full implementation, Marko Rakovec (Slovenia),

B. Preliminary comments on some substantive issues

▪ Article 124

The Team welcomes the non-paper of the Review Conference facilitators on the important issue of article 124. Since its inclusion in the Rome Statute as a transitional provision, the CICC has continually advocated that States not make use of the article.

To date, only two States, France and Colombia, have made use of this article, and one, Burundi, publicly considered using it. In 2008 France withdrew its declaration under Article 124 leaving Colombia as the only state party with a declaration under Article 124. On several occasions Colombian authorities publicly stated their intentions to withdraw Colombia's declaration under Article 124 and a parliamentary initiative has been launched in the Senate to this effect. Although to date no effective withdrawal has been undertaken, the effects of such declaration for Colombia will expire on 1 November 2009. Concerning Burundi, when it initially considered ratifying the Rome Statute, the government declared its intention of lodging an article 124 declaration in conjunction with its ratification in early 2002; however, outcry from civil society and members of parliament was so strong that the government ratified the Rome Statute on 21 September 2004 without the declaration².

At this early stage of the discussion, the Team would like to recall that at the Rome Conference, the CICC and its Members were strongly opposed to the inclusion of Article 124 into the Rome Statute for it weakened the jurisdictional regime of the ICC and was seen as incompatible with the object and purpose of the Rome Statute: "to put an end to impunity for the perpetrators of [the most serious] crimes [of concern to the international community as a whole] and thus to contribute to the prevention of such crimes"³.

▪ Belgian proposal on the criminalization of the use of certain weapons, methods and means of warfare

The Team welcomes the decision of the government of Belgium to introduce its proposal for amendment of Article 8 of the Rome Statute sufficiently early as to allow for proper discussions by States before the eight ASP. The criminalization of the use of certain weapons within the framework of the Rome Statute is of interest to a large number of NGOs and we believe therefore that many of our members will wish to contribute to the preparatory discussions on the Belgian proposal.

² As assessed by the Burundian members of Parliamentarians for Global Action, the dispute around Article 124 caused a delay of over 2 years of the relevant ratification process: Parliament would not approve it if the jurisdiction of the ICC would have not been accepted unconditionally and especially with respect of the most frequent atrocities committed on its territories, war crimes.

³ Rome Statute of the International Criminal Court; Preamble, paragraphs 4 and 5.

In this regard, the Team notes at the outset that the Belgian proposal contains in fact different sub-proposals which, in some cases have very different legal basis, reasoning and consequences. Therefore, the Team would recommend that each of the sub-proposals be given separate consideration with a view to facilitating well informed discussions on the matter.

Furthermore, taking into account the constant evolution of the legal regime governing the use of weapons, the Team suggests that regardless of the outcome of the discussions at the Review Conference in relation to the Belgian proposal, the facilitators should consider the creation of a permanent ASP working group on weapons, methods and means of warfare. This working group could usefully monitor new developments in the field and act as a focal point to gather the views of government experts, specialized international organizations, academics and NGOs.

▪ **Stocktaking**

The CICC welcomes the Assembly's recognition of the Review Conference as an occasion for a stocktaking of international criminal justice in addition to considering amendments to the Rome Statute that command very broad (preferably consensus) support. Through a stocktaking process, the impact of reflecting on the principles of international criminal justice and on the Rome Statute system could be maximized. However, the effectiveness of this stocktaking process relies on adequate preparations by the Assembly in advance of the Review Conference.

Accordingly, States need to identify the main issues to take stock of and consider ways in which those issues could be considered at the Review Conference as well as possible achievable objectives. It is important to also note that a successful stocktaking process will heavily depend on the willingness and ability of States Parties and other important actors to constructively share experiences, lessons learned and challenges faced.

For these reasons, the Team recommends that the stocktaking at the Review Conference focus on issues related to the challenges, lessons learned, experiences and way forward of States Parties in dealing with the Rome Statute at the national level as well as on the performance of the ASP. It would be inappropriate to focus the stocktaking exercise on issues that would undermine the integrity and independence of the judicial or prosecutorial activities of the ICC.

In this regard, the CICC recommends that the agenda for the Review Conference stocktaking includes the following issues:

- Impact of international justice on affected communities, the implementation of victims' rights and outreach strategies;
- State cooperation with the ICC;
- Strategies for achieving universality of the Rome Statute and implementation legislation;
- Complementarity and impunity gap;
- Impact of international justice on peace process and peace building.

Furthermore, as part of the stocktaking exercise, the Review Conference should include a high level segment (General Debate) which can set the tone of the Conference by having a political debate on the impact that international criminal justice has had on national prosecutions and the affected communities including peace processes and peace building (perception, deterrent effect).