

Resolution ICC-ASP/8/Res.9

Adopted at the 10th plenary meeting, on 25 March 2010, by consensus

ICC-ASP/8/Res.9 Review Conference

The Assembly of States Parties,

Welcoming the report of the Working Group on the Review Conference,¹

Recalling its previous resolutions and reports on the Review Conference and, in particular resolution ICC-ASP/8/Res.6,² with annexes I to IV which contain agenda items to be considered at the Review Conference, namely amendments relating to article 124, the crime of aggression, article 8 and topics for stocktaking,

Recalling its request to the Bureau to consider the issue of strengthening the enforcement of sentences and submitting a proposal for a decision to be considered at the Review Conference,³

Recalling further paragraph 5 of the ICC-ASP/8/Res.6 by which it decided to forward four topics to the Review Conference for its consideration in the stocktaking exercise, i.e. cooperation, complementarity, the impact of the Rome Statute system on victims and affected communities, and peace and justice, taking into account the need to include aspects regarding universality, implementation, and lessons learned, in order to enhance the work of the Court,

Noting the discussions in the New York Working Group and The Hague Working Group on the topics to be considered in the stocktaking exercise and the outcome of those discussions, which are reflected in the reports of the Bureau on stocktaking,⁴

Noting that the discussions on each topic of the stocktaking exercise, which are scheduled to be held on 2 and 3 June 2010, would be led by panelists with expertise in the respective areas,

Recalling further its request to the Secretariat of the Assembly to, inter alia, report to the Bureau on the status of the discussions with a view to the expeditious conclusion, through the Court, of a Memorandum of Understanding between the Government of Uganda and the Court which ensures that the provisions of the Agreement on the Privileges and Immunities of the International Criminal Court are applicable, mutatis mutandis, to the Review Conference,

Welcoming the proposal that a high-level segment be convened during the Review Conference, at which States Parties, Observer States and other States would have the opportunity to reaffirm their commitment to the fight against impunity,

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed eighth session, New York, 22 - 25 March 2010* (International Criminal Court publication, ICC-ASP/8/20/Add.1), annex III.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. I, part II.

³ *Ibid.*, resolution ICC-ASP/8/Res.6, para. 7.

⁴ Report of the Bureau on stocktaking: The impact of the Rome Statute system on victims and affected communities (ICC-ASP/8/49); Report of the Bureau on stocktaking: Cooperation- Background paper and proposals for outcome (ICC-ASP/8/50); Report of the Bureau on stocktaking: Complementarity - Taking stock of the principle of complementarity: bridging the impunity gap (ICC-ASP/8/51); and Report of the Bureau on stocktaking: Peace and Justice (ICC-ASP/8/52).

1. *Decides* to convene a high-level segment at the Review Conference to afford States the opportunity to affirm their commitment to the International Criminal Court, including through pledges;
2. *Requests* the Bureau to prepare a draft high-level declaration for consideration by the Review Conference;
3. *Decides* to organize discussions for the stocktaking topics as reflected in the templates contained in annexes I to IV;
4. *Requests* the Bureau to continue its role in preparing the stocktaking exercise with a view to finalizing any outstanding aspects of the Review Conference;
5. *Requests* the Secretariat of the Assembly to assist the Bureau in this endeavour as well as to cover appropriate travel expenses of panelists to the extent that no other funding sources are available and in consultation with the Bureau;
6. *Requests* the Secretariat of the Assembly to reissue the questionnaire (note verbale ICC-ASP/8/S/PA/19) and to make available a compilation of comments submitted by States Parties in advance of the Review Conference, and *encourages* States Parties to provide information to the Secretariat in this regard;
7. *Welcomes* the decision by the Bureau to adopt the draft resolution on strengthening the enforcement of sentences contained in annex V, and to convey it to the Review Conference;
8. *Takes note of* the draft resolutions entitled “Impact of the Rome Statute system on victims and affected communities”⁵ and “complementarity”⁶ contained in annexes VI and VII, respectively, and *decides* to forward them to the Review Conference for its consideration;
9. *Decides* to forward the draft elements of crimes contained in annex VIII to this resolution to the Review Conference for its consideration;⁷
10. *Urges* the expeditious conclusion of the Memorandum of Understanding between the Government of Uganda and the Court.

⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed eighth session, New York, 22 - 25 March 2010* (International Criminal Court publication, ICC-ASP/8/20/Add.1), ICC-ASP/8/Res.9, annex VI.

⁶ *Ibid.*, annex VII.

⁷ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.6, annex III, para. 1.

Annex I

Stocktaking of International Criminal Justice

The impact of the Rome Statute system on victims and affected communities

Template

1. Format of the debate:

Panel discussion on the impact of the Rome Statute system on victims and affected communities: the role of the outreach, victim's participation, reparations, and Trust Fund for Victims in creating the impact

2. Names of keynote speaker, panelists and moderator:

Keynote speaker: Mrs. Radhika Coomaraswamy, Special Representative for the Secretary General of the United Nations for Children and Armed Conflict (to be confirmed)

Moderator and Rapporteur: Mr. Eric Stover, Director of the Human Rights Center of the University of Berkeley, author of numerous books on war crimes and international criminal justice

Panelists:

Mrs. Justine Masika Bihamba, co-founder and coordinator of Synergie des femmes pour les Victimes des violences Sexuelles – SFVS, an umbrella organization of many local initiatives

Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the Trust Fund for Victims

Mrs. Carla Ferstman, Director of Redress, an international human rights organization with a mandate to assist victims of torture and related international crimes to obtain justice

Mr. David Tolbert, President of the ICTJ (International Center for Transitional Justice)

Mrs. Binta Mansaray, Registrar of the Special Court for Sierra Leone (to be confirmed)

Mrs. Sonia Robla, Head of Public Information and Documentation Section, ICC (to be confirmed)

3. Tentative program of work:

Thursday 3 June 2010

10:00-10:05 Introduction by a short film

10:05-10:20 Keynote speech

10:20-12:00 Panel Discussion

12:00-12:45 Dialogue with the audience

12:45-13:00 Conclusions

13:00-15:00 Side event on the Trust Fund for Victims following the panel discussion, sponsored by Chile and Finland (organized by the Trust Fund for Victims)

4. Expected outcomes:

Declaration (as part of the wider declaration on the Review Conference)

Resolution

Pledges (implementing national measures and legislation relevant to victims/witnesses)

Increased financial support for the Trust Fund for Victims

A final report with compilation of conclusions, contributions and relevant documentation, covering also to the extent possible relevant side-events that take place during the Review Conference.

5. Background materials:

The Hague Working Group report of 5 March 2010 (the main substantive content referred to in the annex)

A background paper (to be prepared ahead of the Review Conference)

6. Additional information: List of side events, activities and publications

For the purpose of comprehensiveness, the focal points wish to share the relevant events, activities and publications for the stock-taking exercise that they have been informed of. The focal points will not have any organizational role in these events, but will try to collect in the final report any possible conclusions these events might bring to the stock-taking exercise.

Events during Review Conference

Events planned to be organized **at the Conference building:**

- Open Society Initiative: Outreach panel;
- Coalition for the International Criminal Court (CICC): Civil society taking stock: Impact of the Rome Statute on Victims and Affected Communities;
- International Center for Transitional Justice (ICTJ): Taking stock of the impact of the ICC in Kenya, Uganda, the DRC, Sudan and Colombia;
- Uganda Coalition for the International Criminal Court (UCICC)/No Peace Without Justice (NPWJ)/ Hurinet: briefing on pre-Conference missions to Uganda;
- Victims' Rights Working Group (VRWG) event on victims' participation; and
- International Refugee Rights' Initiative: panel on intermediaries.

Events planned to be organized **at the People's Space**, a forum at the Review Conference venue for civil society:

- The VRWG: a commemoration event prior to the start of the RC;
- The VRWG: an expert meeting on massive trauma; and
- The Women's Initiatives for Gender Justice: side event "Women's Court", bringing women's rights and peace activists from the situation countries.

Pre-Review Conference activities

VRWG's questionnaire as part of outreach and sensitization initiatives for the Review Conference by Uganda Victims Foundation (UVF), LIPADHO¹ (an NGO based in the DRC, in Ituri and North Kivu); and womens' organizations in the eastern DRC; a UVF/REDRESS workshop was held in February in Lira, northern Uganda, bringing members in 14 districts of the north to discuss inter alia, the questionnaire (with participation of NGOs from the DRC);

HURINET/UCICC² and NPWJ, visits by delegates of States Parties to Uganda to meet with victims, affected communities and other relevant stakeholders;

The Women's Initiatives for Gender Justice in cooperation with the Nobel Women's Initiative, convenes in April an "International Gender Justice Dialogue" with 80-90 gender experts, feminist legal theorists and practitioners, peace mediators, jurists, women's rights advocates, political leaders, and other key actors. Participants will identify the strategic directions required for advancing gender justice through implementation and use of the Rome Statute and the Court in preparation for the Review Conference; and

HURINET/UCICC "Pre"-Review Conference bringing civil society together, with working groups on each of the stocktaking topics, in the week before the Review Conference.

Written contributions/background papers

Report of the activities of the Trust Fund for Victims;

Longitudinal Study on the Lessons Learned on the impact of the Trust Fund for Victims;

UVF report following the 15-17 February workshop on the Impact of the Court on victims and affected communities;

VRWG substantive paper on the impact of the Court on victims and affected communities, following the results of the questionnaire;

Eventual REDRESS/UVF paper on impact of the Court on the Ugandan peace process and corresponding legislation, e.g. International Crimes Bill, Reconciliation Bill;

LIPADHO report/paper on the impact of the Court on victims and affected communities in eastern DRC HURINET/UCICC and NPWJ: Report on visits by State delegates to Uganda;

Avocats Sans Frontières (ASF) report: the DRC and the Rome Statute System: 7 years after ratification: the expectations and perceptions of Congolese victims who had sought to participate in criminal proceedings before the national courts and the ICC; and

ICTJ briefing paper on case studies on the ICC's impact on Kenya, Uganda, the DRC, Sudan and Colombia, and possibly a briefing paper on reparations and the ICC.

¹ La Ligue pour la Paix et les Droits de l'Homme.

² Human Rights Network/Uganda Coalition for the International Criminal Court.

Annex II

Stocktaking of International Criminal Justice

Peace and justice

Template

1. Format

Panel discussion

2. Participants (subject to change depending on availability)

Moderator: Mr. Kenneth Roth (Executive Director of Human Rights Watch)

Keynote speaker: Mr. Kofi Annan (former Secretary-General of the United Nations and Nobel Peace Prize laureate)

Panelists

- Mr. David Tolbert (President of the International Center for Transitional Justice)
- Mr. James LeMoyne (former Special Advisor for Colombia to the United Nations Secretary-General; has been involved in the processes in Colombia, El Salvador, Guatemala, Haiti, Nicaragua, Northern Ireland and the former Yugoslavia)
- Ms. Yasmin Sooka (member of the Truth and Reconciliation Commissions of South Africa and Sierra Leone; lawyer, adviser for different peace processes such as in Liberia and in Afghanistan)
- Mr. Chhang Youk (Director of the Documentation Center of Cambodia, an NGO which has been at the forefront of documenting the crimes of the Khmer Rouge)

3. Tentative programme of work

Keynote speech (15 minutes)

Intervention of panelists (1 hour)

Questions, answers and comments between the room and the panelists (1 hour and 30 minutes). It is expected that this part of the segment will be devoted to interaction between the panelists and participants, including the possibility of making brief comments. The first 45 minutes will be reserved for interaction with States Parties.

Summary of the moderator (15 minutes)

4. Expected outcome

Moderator's summary

5. Background material

Background papers to be produced by 30 April 2010 (authors subject to change depending on availability)

- The importance of justice in securing peace (Mr. Juan Méndez - Former President of the International Center for Transitional Justice; visiting professor at the American University Washington College of Law)
- Managing the challenges of integrating justice efforts and peace processes (Mr. Martti Ahtisaari – Former President of Finland and Nobel Peace Prize laureate)
- Truth and reconciliation processes as a complement to criminal justice (Mr. Barney Afako – Legal Adviser to the Chief Mediator on the Ugandan peace process negotiations)
- Safeguarding the interests of victims (Ms. Katya Salazar Luzula – Executive Director of the Due Process of Law Foundation)

Other contributions by States and other entities are welcome to share specific experiences and lessons learned on peace and justice by 30 April 2010. It is already foreseen that Mr. Carlos Castresana, Head of The International Commission Against Impunity in Guatemala, will be making such a contribution.

6. Additional information

Definition of the topic

- The preamble to the Rome Statute recognizes the link between peace and justice, stating that “grave crimes threaten the peace, security, and well-being of the world” and affirming that States Parties are “determined to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes.”
- Since the Statute’s adoption, there has been increasing recognition of this important link between peace and justice. In September 2009, United Nations Secretary-General Ban Ki-moon acknowledged that “the debate is no longer between peace and justice, but between peace and what kind of justice.” Also, the Secretary-General has often said that “peace and justice go hand in hand.” Indeed, amnesties, once viewed as a necessary price for peace, are no longer considered acceptable for the most serious international crimes.
- But the pursuit of peace and justice, together, has also presented challenges. Even as they complement each other in the long term, in the short term tensions have arisen between efforts to secure peace and efforts to ensure accountability for international crimes. These require careful management, drawing on past experience.
- Individuals suspected of involvement in international crimes may at times play an unavoidable role in peace negotiations and in peace-building contexts. In some cases, obtaining their consent to end a conflict may be difficult if they are facing criminal charges, while in other cases, an end to a conflict may actually be facilitated by their facing criminal charges. Questions may arise about when – and what other kinds of – accountability is appropriate in different situations. It may also prove complicated to coordinate the efforts of independent political and judicial actors with the interests of victims and the strategies of international peacemakers and peacekeepers.

- There is no simple or formulaic answer for meeting these challenges. At the “Peace and Justice” stocktaking session, we hope to draw lessons from past experience about what can be done to manage tensions that may arise between these two important and complementary objectives.

Sub-topics

- The importance of justice in securing peace: the role that international justice mechanisms can play in facilitating peace processes and transitions.
- Managing the challenges of integrating justice efforts and peace processes: ways in which accountability and peace efforts can be integrated, and challenges involved.
- Truth and reconciliation processes as a complement to criminal justice: role that truth-telling and reconciliation processes can play in complementing formal criminal justice mechanisms and helping to secure peace.
- Safeguarding the interests of victims: challenges involved in safeguarding the interests of victims in any post-conflict situation.

Follow up

- A publication of the background papers, the presentations of the keynote speaker and the panelists as well as the summary of the moderator is foreseen.
- In order to leave open the possibility for further discussion on the topic in the framework of appropriate fora, a factual reference should be made to the event in the report adopted by the Review Conference.

Annex III

Stocktaking of International Criminal Justice

Cooperation

Template

1. Format of the debate: (e.g. panel, roundtable);

2 consecutive round table discussions on each of the 2 proposed clusters (see 6 below).

2 keynote speakers to introduce each cluster. Ten minutes allocated to each speaker.

The format should provide for an interactive debate between all relevant stakeholders. A single moderator is proposed for the full session on cooperation.

Secretariat to open speakers' list for those delegations and stakeholders wishing to participate in the Round Table discussion.

2. Name(s) of keynote speaker(s), panelist(s) and/or moderator(s): (e.g. name(s) and current function(s));

Moderator: H.E. Philippe Kirsch, former President of the ICC; Ad Hoc Judge at the ICJ (to be confirmed)

Keynote Speakers:

Mr. Bruno Stagno Ugarte, former President of the Assembly of States Parties of the ICC; Foreign Minister of Costa Rica (to be confirmed)

Mr. Adama Dieng, Assistant Secretary-General, Registrar of the United Nations International Criminal Tribunal for Rwanda

Two other speakers to include a senior representative of a State Party and an international organization/body.

3. Tentative programme of work: (e.g. general allocation of time and main organizational aspects);

Moderator to introduce

Cluster I: 90 minutes

Cluster II: 80 minutes

Moderator to sum up discussions.

4. Expected outcome(s): (e.g. resolution, chair’s summary, declaration);

A report/summary of discussions identifying the main themes and conclusions.

The elements proposed in paragraph 22 of document ICC-ASP/8/50 could be included in the proposed declaration, pledges and/or separate outcome.

5. Background material(s): (e.g. title of the report of the Assembly of States Parties on the topic);

- a) 2007 Report of the Bureau on Cooperation as set out in document ICC-ASP/6/21;
- b) 2009 Report of the Court on Cooperation as set out in annex I to document ICC-ASP/8/44. Resolution ICC-ASP/8/Res.2, para.17 requested the Court to submit an updated report to the Bureau; this will be available in April 2010;
- c) ICC-ASP/8/50;
- d) Questionnaire as set out in note verbale ICC-ASP/8/S/PA/19 – to be reissued to States Parties which have not yet responded.

6. Additional information: (optional item – e.g. sub-topics, follow-up activities, definition of the topic).

Cluster I

- a) Implementing legislation: specific issues which individual States Parties have encountered and good practices in this area.
- b) Supplementary agreements and arrangements and other forms of cooperation and assistance: experiences in relation to the Court and other international judicial bodies – a consideration of the challenges and how these might be overcome.
- c) Challenges encountered by States Parties in relation to requests for cooperation: how these might be overcome.

Cluster II

- d) Cooperation with the United Nations and other intergovernmental bodies, including regional bodies: consideration of the present situation and ways in which it can be developed.
- e) Enhancing knowledge, awareness and support for the Court: including through mainstreaming and galvanizing public support to and cooperation with the Court within States including for the enforcement of Court decisions and arrest warrant.

Annex IV

Stocktaking of International Criminal Justice

Complementarity

Template

1. Format of the debate

Panel discussion on Taking Stock of the Principle of Complementarity: bridging the impunity gap

2. Tentative names of keynote speaker, panelists and moderator

Opening remarks: Focal Points

Panelists

High Commissioner for Human Rights, Ms. Navanethem Pillay (to be confirmed)

Prosecutor of the International Criminal Court, Mr. Luis Moreno-Ocampo

Prosecutor of the International Criminal Tribunal for the former Yugoslavia, Mr. Serge Brammertz

Others to be decided

3. Tentative programme of work

Friday, 4 June 2010

15:00-15:15 Opening Remarks by Focal Point

15:15-16:45 Panel Discussion

Elaboration of the principle of complementarity

Practical application of complementarity and the Rome Statute system

Positive complementarity, what it is and why it is necessary

Practical implementation of positive complementarity/enabling national jurisdictions

16:45-17:45 Open Discussion

17:45-18:00 Summary and concluding remarks

4. Expected Outcome

Resolution (annexed hereto)

5. Background material

Report of the Bureau on complementarity entitled, “Taking Stock of the principle of complementarity: bridging the impunity gap” (annexed hereto)

6. Additional information

- Side events on Complementarity in Practice
- Participation in pledging activities

Annex I

Report of the Bureau on stocktaking: Complementarity

**Taking stock of the principle of complementarity:
bridging the impunity gap¹**

Annex II

Draft resolution on complementarity²

¹ ICC-ASP/8/51.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed eighth session, New York, 22 - 25 March 2010* (International Criminal Court publication, ICC-ASP/8/20/Add.1), ICC-ASP/8/Res.9, annex VII: For possible consideration by the Review Conference.

Annex V

Draft resolution on strengthening the enforcement of sentences

The Review Conference,

Recalling the Rome Statute of the International Criminal Court;

Conscious of the key role of States in the enforcement of the Court's sentences of imprisonment;

Recalling that the Court's sentences of imprisonment shall be served in prison facilities provided by States that have indicated their willingness to accept sentenced persons, in accordance with the Statute;

Mindful of the need for broader participation of States in the enforcement of sentences in order to allow for such enforcement in all relevant regions and sub regions and *taking note* of the unanimous view expressed by States Parties to this effect;

Emphasising the need for enhanced international cooperation with a view to enabling more States to voluntarily accept sentenced persons on the basis of widely accepted international treaty standards governing the treatment of prisoners;

1. *Calls upon* States to indicate to the Court their willingness to accept sentenced persons in accordance with the Statute;
2. *Confirms* that a sentence of imprisonment may be served in a prison facility made available in the designated State through an international or regional organization, mechanism or agency;
3. *Urges* States Parties and States that have indicated their willingness to accept sentenced persons, directly or through competent international organizations, to promote actively international cooperation at all levels, particularly at the regional and sub regional levels;
4. *Requests* the Secretary General of the United Nations to bring this resolution to the attention of all members of the United Nations, with a view to encouraging that the above objectives may be considered, as appropriate, in the relevant programmes of assistance of the World Bank, the regional banks, the United Nations Development Programme, and other relevant multilateral and national agencies.

Annex VI

Draft resolution on the impact of the Rome Statute system on victims and affected communities

The Review Conference,

Recalling the Preamble of the Rome Statute which reminds that millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity;

Reaffirming the importance of the Rome Statute to the victims and affected communities in its determination to put an end to impunity for the perpetrators of the crime of genocide, crimes against humanity and war crimes, thus contributing to their prevention;

Recalling United Nations Security Council resolutions 1325, 1820, 1888 and 1889 on women, peace and security, as well as resolutions 1612 and 1882 on children in armed conflict, and in this context, underlining the need to address the specific needs of women and children as well as to put an end to impunity for sexual violence in conflict;

Further recalling, inter alia, the 1985 United Nations General Assembly Resolution 40/34 “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, and the 2005 United Nations General Assembly Resolution 60/147 “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”;

Recognizing that victims’ right to equal and effective access to justice; protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice;

Emphasizing the importance of outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court towards victims;

1. *Encourages* States to consider implementing those provisions of the Rome Statute relevant to victims/witnesses, where applicable, through national legislation or appropriate measures.
2. *Further encourages* the Court, in dialogue with victims and affected communities, to continue to optimize the Court’s strategic planning process, including the Court’s Strategy in relation to victims, as well as its field presence in order to improve the way in which it addresses the concerns of victims and affected communities, paying special attention to the needs of women and children;
3. *Underlines* the need to continue to optimize and adapt outreach activities, in light of different phases of the judicial cycle, and encourage further efforts to ensure that victims and affected communities have access to accurate information about the Court, its mandate and activities, as well as about victims’ rights under the Rome Statute, including their right to participate in judicial proceedings and claim for reparations;

4. *Encourages* governments, communities and civil organizations at the national and local level to play an active role in sensitizing communities on the rights of victims in accordance with the Rome Statute in general and victims of sexual violence in particular: to speak against their marginalization and stigmatization, to assist them in their social reintegration process and in their participation in consultation, and to combat a culture of impunity for these crimes;
5. *Expresses its appreciation* to the Board of Directors of the Trust Fund for Victims for its continuing commitment towards easing the suffering of victims;
6. *Stresses* the importance of an ongoing dialogue between the Secretariat of the Trust Fund for Victims, the Court and States Parties, with a view to ensuring the transparency of the management of the Trust Fund and its Secretariat and *further stresses* the importance in this regard of regular exchanges with the international community, including donors and civil society, so as to promote the activities of the Trust Fund and contribute to its visibility;
7. *Calls upon* States Parties, international organizations, individuals, corporations and other entities to contribute to the Trust Fund for Victims to ensure that timely and adequate assistance and reparations can be provided to victims in accordance with the Rome Statute, and *expresses its gratitude* to those that have done so.

Annex VII

Draft resolution on complementarity

The Review Conference,

Reaffirming its commitment to the Rome Statute of the International Criminal Court,

Reaffirming its determination to combat impunity for the most serious crimes of international concern as referred to in the Rome Statute,

Reaffirming further that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Welcoming the efforts of the Court to investigate and prosecute those bearing responsibility for the most serious crimes of international concern,

Stressing the need to achieve universality of the Statute as a means to end impunity and *acknowledging* that assistance to strengthen domestic capacity may have positive effects in this regard,

1. *Recognizes* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern;
2. *Emphasises* the principle of complementarity as laid down in the Rome Statute and *stresses* the obligations of States Parties flowing from the Rome Statute;
3. *Recognizes* the need for additional measures at the national level as required and for the enhancement of international assistance to effectively prosecute perpetrators of the most serious crimes of concern to the international community;
4. *Notes* the importance of States Parties taking effective domestic measures to implement the Rome Statute;
5. *Recognizes* the desirability for States to assist each other in strengthening domestic capacity to ensure that investigations and prosecutions of serious crimes of international concern can take place at the national level;
6. *Takes note of* the report of the Bureau on complementarity and its recommendations as a background paper for discussions at the Review Conference;
7. *Welcomes* the fruitful discussions on the issue of complementarity held during the Review Conference;
8. *Encourages* the Court, States Parties and other stakeholders, including international organizations and civil society to further explore ways in which to enhance the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern as set out in the Report of the Bureau on complementarity, including its recommendations;

9. *Requests* the Secretariat of the Assembly of States Parties, in accordance with resolution ICC-ASP/2/Res.3, and, within existing resources, to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and *requests* the Secretariat of the Assembly of States Parties to report to the tenth session of the Assembly on progress in this regard;

10. *Requests* the Bureau to continue the dialogue with the Court and other stakeholders on the issue of complementarity and *invites* the Court to present to the Assembly at its tenth session, as appropriate, a report in this regard.

Annex VIII

Elements of crimes corresponding to the proposed amendment contained in annex III to resolution ICC-ASP/8/Res.6

Belgium proposes, in order to enhance the degree of precision afforded to the definitions of crimes, to forward to the Review Conference for adoption the elements of crimes which correspond to the draft amendments of the war crimes that the Assembly already forwarded to the Conference at its eighth session, in November 2009 (Resolution ICC-ASP/8/Res.6 adopted on 26 November 2009, Annex III).

These elements are exactly the same elements of crimes as those approved for the corresponding war crimes in the context of an international armed conflict, i.e. the elements of crimes set out in article 8, paragraph 2 (b) (xvii), (xviii) and (xix). However, one amendment has been made to these elements, in a logical fashion, to reflect that the crime is committed in the context of an armed conflict not of an international character. Thus, under the third element of the first two war crimes proposed, and the fourth element of the third war crime proposed, the terms “international armed conflict” contained in the corresponding elements of crimes in the context of an international armed conflict are replaced by the terms “armed conflict not of an international character”.

As a reminder – proposal of amendment forwarded to the Review Conference for adoption:

Add the following to article 8, paragraph 2 (e):

“xiii) Employing poison or poisoned weapons;

xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.”

Proposal

Elements of Crimes

Add the following elements to the Elements of Crimes:

Article 8, paragraph 2 (e) (xiii)

War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8, paragraph 2 (e) (xiv)

War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.¹²

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8, paragraph 2 (e) (xv)

War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

¹ Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.