



Eighth session of the Assembly of States Parties

At its eighth session, held from 18 to 26 November 2009 in The Hague, the Assembly of States Parties (“the Assembly”) inter alia filled two judicial vacancies, elected five members of the Board of Directors of the Trust Fund for Victims, as well as adopted resolutions on several issues highlighted below. In addition, there were numerous side-events organized by States Parties, the Secretariat of the Assembly, the Court and non-governmental organizations. Further information on the session, including the documentation and statements delivered during the general debate segment are available on the website of the Court (<http://www.icc-cpi.int/menus/asp>).

General debate

At its eighth session a total of 49 States (43 of them States Parties, six as Observers) addressed the Assembly in the general debate segment. The statements focused, inter alia, on issues to be dealt with at the Review Conference, cooperation of States and regional organizations with the Court, including the need for enhancing domestic judicial systems so as to ensure such cooperation. Reference was also made to advancing towards universality of the Statute and supporting the participation of victims in the proceedings, as well as the work carried out by the Trust Fund for Victims.



For the first time, a delegation of the United States participated in the Assembly as an Observer. In his statement to the Assembly, Ambassador at Large for War Crimes Issues, Mr. Stephen J. Rapp, highlighted the Obama Administration’s commitment to the rule of law and the principle of accountability in line with the United States’ tradition of support for international criminal justice.

Results of the election to fill two judicial vacancies



Ms. Silvia A. FERNÁNDEZ DE GURMENDI (Argentina, list A) is a widely acclaimed jurist and diplomat. She participated actively in the process of creating the International Criminal Court, inter alia, by presiding over the process of establishing the criminal procedure contained in the Statute and, following the Rome Conference, drafting the Rules of Procedure and Evidence.

From 2003 to 2006, she fulfilled the role of Director of the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor. She combines experience in international criminal law and procedures with established competence in international law, international humanitarian law and human rights law. In the Ministry of External Affairs of Argentina, she held the posts of Director General for Human Rights, Deputy Director General for Human Rights and Deputy Legal Counsel. As a Professor of international criminal law, she taught at the University of Palermo and at the University of Buenos Aires.



Ms. Kuniko OZAKI (Japan, list B) has enjoyed a long and successful career, both as a competent career diplomat with expertise in international law, humanitarian law and law of human rights, including matters related to the ICC, and as a specialist in criminal law and refugee law in the Ministry of Justice of Japan. She also served as Director, Division for Treaty

Affairs, United Nations Office on Drugs and Crime, from 2006 to 2009. In addition, she has vast experience as an academic lawyer, having undertaken research and teaching as a Professor in the fields of international criminal law, humanitarian law and human rights law at various universities and institutions. She has written extensively in the relevant fields and has numerous publications.

Results of the election for the Board of Directors of the Trust Fund for Victims

Mr. Bulgaa ALTANGEREL (Mongolia) was re-elected by the Assembly to serve for a second term on the Board. He has enjoyed a long and successful career in the Ministry of Foreign Affairs, which included the post of Director of the Legal Department of the Ministry. As a competent career diplomat with expertise in international law, Mr. Altangerel served as Ambassador in Bulgaria, Iceland, Ireland, Lebanon, Romania, South Africa, Turkey, the United Kingdom and Uzbekistan. As a Professor of Law he is connected to the Mongolian National University.



Ms. Betty Kaari MURUNGI (Kenya) has over 23 years experience in the practice of law at the national, regional and international level and over ten years experience in the management and governance of non-governmental and non-profit organizations, including as founding director of the Urgent Action Fund which aims at advancing the human rights of women and girls globally with a primary focus in areas of armed conflict or escalating violence. She has extensive background in international human rights in the context of violent conflicts and experience in international criminal justice and accountability mechanisms such as the Special Tribunal for Sierra Leone and the International Criminal Tribunal for Rwanda.



Mr. Eduardo PIZARRO LEONGÓMEZ (Colombia) has wide, acknowledged experience, nationally and internationally, as an academic and expert on issues pertaining, inter alia, to violence, peace and the victims of heinous crimes. Committed to the cause of victims in Colombia, he served as President of the Colombian National Reparation and Reconciliation Commission and as a member of the Board of Directors of the foundation “National Forum for



Colombia”. He was further appointed Professor of the Institute of Political Studies and International Relations of the National University of Colombia and has written numerous publications on issues related to international law and governance.

Ms. Elisabeth REHN (Finland) served a long career as a member of the Finnish Parliament, as Minister of Defence and Minister of Equality Affairs and as a member of the European Parliament. At the international level, she served as UN Special Rapporteur on Human Rights and as Special Representative of the UN Secretary General in the former Yugoslavia. Ms. Rehn is a recognized international expert on issues related to the most serious crimes, having witnessed and reported on such crimes and their impact on victims in the western Balkans and Africa. She has knowledge of the legal challenges faced by the victims through her experiences in giving testimony at the International Criminal Tribunal for the former Yugoslavia.



Ms. Vaira VĪĶE FREIBERGA (Latvia) served as President of Latvia from 1999 to 2007. She was instrumental in achieving Latvia’s membership in the European Union and the North Atlantic Treaty Organization. She is active in international politics, was named Special Envoy by the UN Secretary-General on UN reform and was an official candidate for the position of UN Secretary-General in 2006. Since the end of her presidency, Ms. Vīķe-Freiberga participates as an invited speaker in a wide variety of international events. She is a founding member of the Club of Madrid, a member of the European Council on Foreign Relations and honorary patron of several foundations. Furthermore, she is a professor and interdisciplinary scholar and has published numerous books and articles.



Photo : Ms. Silvia A. Fernández de Gurmendi, Ms. Kuniko Ozaki, Mr. Bulgaa Altangerel, Mr. Eduardo Pizarro Leongómez and Ms. Elisabeth Rehn © CICC

Photo : Ms. Betty Kaari Murungi © CardozoJCR

Photo : Ms. Vaira Vīķe Freiberga © VVF Consulting

National teller : Interview with Ms. Glenna Cabello de Daboin



Counsellor, Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations

This is the second time that you have taken part in the election of judges as a national teller. How would you compare these latest elections with the previous ones, where six judges were elected?

Although only two judges were elected on this occasion, the process was a long one and the results were eagerly awaited, just as with the last elections in New York.

This is the first time the elections have been held in The Hague. Do you see any difference, in terms of the substance or of form, in these elections, compared to those held at United Nations Headquarters?

I didn't notice any overall differences as to the substance or form of the elections; both were held in accordance with established guidelines, and no one would question the results.

The balloting for the vacancy assigned to the GRULAC region ended with votes being dispersed among the four candidates from the region. Do you believe that in future

this situation could be avoided by having fewer candidates put forward?

It depends on how you look at the situation. Admittedly, it could be said that it would be preferable to nominate fewer candidates in cases where the election is for just one judge for the region, so that the integrity of that region is not called into question. Fortunately, this did not happen and, despite everything, once it became sufficiently clear who was likely to win, the balance swung in that direction. However, at the same time, and I think that this how the region views it, the number of candidates reflects the commitment of the States Parties of the GRULAC region to the International Criminal Court and to the Rome Statute, and, as representative of the region, I found that situation satisfactory.

What do you think of the fact that the majority of judges are women?

Without taking a feminist position on this issue, I am very pleased that women are beginning to hold such high ranking and important offices. And I wish them all much success in their duties. In some countries, gender equality is State policy; and in many the government is in the hands of women, including the Presidency of the Republic.

Are female delegates following Court issues at the United Nations particularly sensitive to gender issues?

Actually I do not believe that female delegates are more interested in gender issues, but I can assure you that each of the delegates following the International Criminal Court at the United Nations does so with much pride and dedication, as we know and understand how important the

Court is for international peace and justice.

Generally speaking, how complicated is it to participate in meetings and parallel events at an Assembly session in The Hague, as opposed to in New York?

The session in The Hague was not complicated, but exhausting. The difference between the two sessions lies without any doubt in the number of meetings and parallel sessions, which makes the session in The Hague more rewarding. I hope that we will enjoy the same dynamic next year, at the ninth session of the Assembly of States Parties in New York.

In The Hague, the Assembly works on Saturday too, but were you still able to get to visit the town and the Netherlands?

Yes, on the Sunday I was able to go to Amsterdam, and I visited the van Gogh museum, and over and above fully enjoying this great painter's exhibition, I was pleasantly surprised because an exhibition was also being held of the Belgian painter Alfred Stevens, whom I consider one of my favourites. I was also able to make a boat trip through the canals, filled not only with wonderful sights but also with plenty of history.

Do you have any stories you would like to share with us?

Well, had the Assembly lasted a few more days, I would have been fit to compete in any hurdling event. My delegation was seated in the middle of the row, and to get out without disturbing the other delegations you had to jump over the seats. At first only the men did so, but the female delegates in that row ended up doing the same too.

National tellers

The election of the judges is by secret ballot, under the responsibility of the President of the Assembly, with the assistance of five national tellers (see ASP Newsletter #1).



From left:
Mr. Draganco Apostolovski
(The former Yugoslav Republic of Macedonia)
Ms. Glenda Cabello de Daboin
(Bolivarian Republic of Venezuela)
Mr. Herman Benjamin Van Heerden (South Africa)
Mr. Fabio Rossi (Netherlands)
Mr. Akram Harahsheh (Jordan), national tellers, and
Ms. Gabrijela Filipović, Secretariat teller.

Summaries of the Resolutions from the eighth session



Independent oversight mechanism (resolution ICC-ASP/8/Res.1)

The Assembly established an independent oversight mechanism, pursuant to article 112, paragraph 4 of the Rome Statute, with an initial mandate to provide an investigative capacity for the Court to address alleged misconduct of elected officials and staff. Further elements of oversight envisaged in the Statute, including inspection and evaluation are expected to be considered by the Assembly at its ninth session.

Facilitator : Mr. Akbar Khan (United Kingdom)



Cooperation (resolution ICC-ASP/8/Res.2)

The Assembly requested the Bureau to appoint a facilitator and recommended that, in close consultation with States Parties, the Court and NGOs, the issues identified in the resolution, including ways to continue enhancing public and diplomatic support for the Court, be dealt with as a matter of priority.

Focal point : Ambassador Yves Haesendonck (Belgium)



Strengthening the Court and the Assembly (resolution ICC-ASP/8/Res.3)

The provisions of this “omnibus” resolution contain steps to enhance the Plan of action for achieving universality and full implementation of the Rome Statute, continue the work of the Assembly on equitable geographical representation and gender balance in the recruitment of staff, further address the issue of the arrears of States Parties. The Assembly also established a liaison office at the headquarters of the African Union in Addis Ababa.

Facilitator : Mr. Emmanuel Bichet (Switzerland)



Legal aid (resolution ICC-ASP/8/Res.3)

As regards the assessment of indigence, the Assembly invited the Court to report to the Assembly at its tenth session on the desirability of introducing absolute thresholds of asset holdings beyond which legal aid would not be provided.

Facilitator for legal aid-victims (left) : Ms. Yolande Dwarika (South Africa)

Facilitator for legal aid-defense (right) : Ms. Marie-Charlotte McKenna (Australia)



Family visits for indigent detainees (resolution ICC-ASP/8/Res.4)

The Assembly decided that the Court may, on a temporary basis, partly or fully subsidize family visits for indigent detainees up to an amount to be determined by the Assembly in the context of the approval of the programme budget, pending the establishment of a voluntary system of funding family visits.

Facilitator : Ms. Miia Aro-Sánchez (Finland)



Permanent premises of the Court (resolution ICC-ASP/8/Res.5)

The Assembly took note of the decision of the Oversight Committee on permanent premises that the architectural design contract should be awarded to Schmidt Hammer Lassen Architects, subject to satisfactory negotiations on the terms and conditions of the contract with the selected design team.

Chairperson : Ambassador Lyn Parker (United Kingdom)



From left:
H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini, head of the delegation of Jordan, leading the discussions on the crime of aggression, and Mr. Renan Villacis, Director of the Secretariat of the Assembly.



Coordinators :
Ms. Stella K.Orina (Kenya)
and
Mr. Marcelo Böhlke (Brazil)

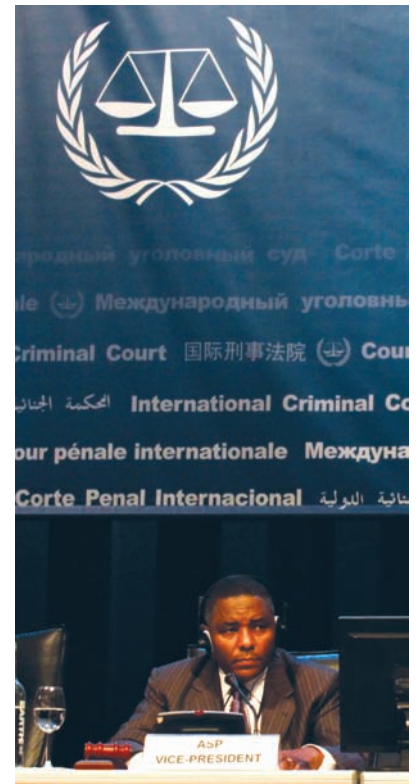
Review Conference (resolution ICC-ASP/8/Res.6)

The Assembly decided that the Review Conference would be held in Kampala, Uganda, from 31 May to 11 June 2010, for a period of ten working days to consider two main items:

- a) Amendments to the Rome Statute
 - The possible deletion of article 124 of the Statute, which allows a new State Party to opt for excluding from the Court’s jurisdiction war crimes allegedly committed by its nationals or on its territory for a period of seven years;
 - The definition of the crime of aggression, the conditions for the exercise of jurisdiction by the Court, as well as draft elements of the crime;
 - The inclusion of the employment of certain poisonous weapons and expanding bullets in the definition of war crimes in article 8 of the Statute.
- b) A stocktaking of international criminal justice focusing on four topics:
 - Complementarity (Denmark and South Africa);
 - Cooperation (Ireland and Costa Rica);
 - The impact of the Rome Statute system on victims and affected communities (Chile and Finland);
 - Peace and justice (Argentina, Democratic Republic of the Congo and Switzerland).

The Assembly also decided to establish a working group to, inter alia, consider, as from its ninth session, the other amendments to the Rome Statute that had been proposed at the eighth session.

Furthermore, the Assembly requested the Bureau to consider the issue of strengthening the enforcement of sentences and to submit a proposal for a decision to be considered at the Review Conference.



Vice-President Zachary D. Muburi-Muita (Kenya) presiding over a meeting of the eighth session

Amendments to article 8 of the Rome Statute, to be considered at the Review Conference

Belgium

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

- “xvii) Employing poison or poisoned weapons;
- xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xix) 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.”

Issue of the enforcement of sentences, to be considered at the Review Conference

Norway

The Review Conference would decide as follows:

1. A sentence of imprisonment can also be served in a prison facility made available to the designed State by an international or regional organization, arrangement or agency.
2. To this end, States shall, directly or through competent international organizations, promote actively international cooperation at all levels, particularly at the regional and sub regional levels.

Request the Secretary-General of the United Nations to bring this decision to the attention of all members of the United Nations, with a view to ensuring that the above objectives be taken into account in the preparation and implementation of programmes of assistance of the World Bank, the regional banks, the United Nations Development Programme, and other relevant multilateral and national agencies.

Amendments to be considered at the ninth session of the Assembly

African Union States Parties to the Rome Statute

Amend article 16 so as allow a State with jurisdiction over a situation before the Court to request the United Nations Security Council to defer the matter before the Court as provided for in the article. Also, when the Security Council fails to decide on the request by the State concerned within six months of receipt of the request, the requesting Party may request the United Nations General Assembly to assume the Security Council's responsibility under article 16 consistent with Resolution 377 (v) of the General Assembly ("Uniting for Peace resolution").



Ambassador Peter Goosen (South Africa) who introduced the proposal for amendment of the African Union States Parties to the Rome Statute.

Belgium

Expand the lists of war crimes contained in article 8, paragraphs 2 (b) and (e), by including the employment of:

Agents, toxins, weapons, equipment and means of delivery as defined by the Biological Weapons Convention;
Chemical weapons as defined by the Chemical Weapons Convention;
Anti-personnel mines as defined by the Mine Ban Treaty;
Weapons as defined by Protocols I and IV to the Convention on Certain Conventional Weapons.

Mexico

Amend article 8, paragraph 2 (b), to include the use or threat of use of nuclear weapons as a war crime.

Netherlands

Amend article 5 to include the crime of terrorism.

Trinidad and Tobago and Belize

Amend article 5 to include the crime of international drug trafficking.

Informal consultations on the contribution paper by Japan to the Review Conference



On 20 November 2009, the Government of Japan hosted an event related to its contribution paper to the Review Conference on a list of items intended for enhancing the universality, effectiveness and sustainability of the Court's future activities.

The informal consultations, which attracted more than 100 representatives from States, international organizations and civil society participating in the eighth session, provided an opportunity to identify issues to be addressed at the Review Conference, in particular promoting the universalization of the Rome Statute, the principle of complementarity, making the Court's procedures and proceedings more effective, efficient and accountable through, inter alia, expeditious trials and adopting procedures to ensure that budgetary implications of judicial decisions are identified to Chambers, and improving the governance and structure of the Court.

The way forward to "Kampala" would be used for further and more focused consultations on stock-taking issues through the work of the New York and Hague Working Groups.

Mr. Masataka Okano (*left*),
Director of the International Legal Affairs
Division, International Legal Affairs Bureau, of
the Ministry of Foreign Affairs of Japan,
chaired the informal consultations.

To the right,
Mr. Shotoku Habukawa, Mr Jun Hasebe and
Mr. Yoshiki Ogawa from the Japanese delegation.



Assembly approved Programme budget for 2010

Proposed programme budget for 2010

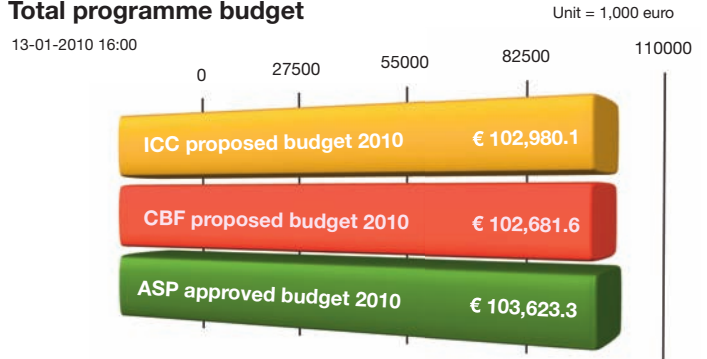
(resolution ICC-ASP/8/Res.7)

The Assembly approved a budget of approximately €103,600,000 for 2010 and a staffing level of 768 (395 at the professional level and 373 at the general service level). The threshold for the Contingency Fund was set at €7 million; below that level, the Assembly would consider its replenishment.



Coordinator : Ambassador Francisco José Aguilar Urbina (Costa Rica)

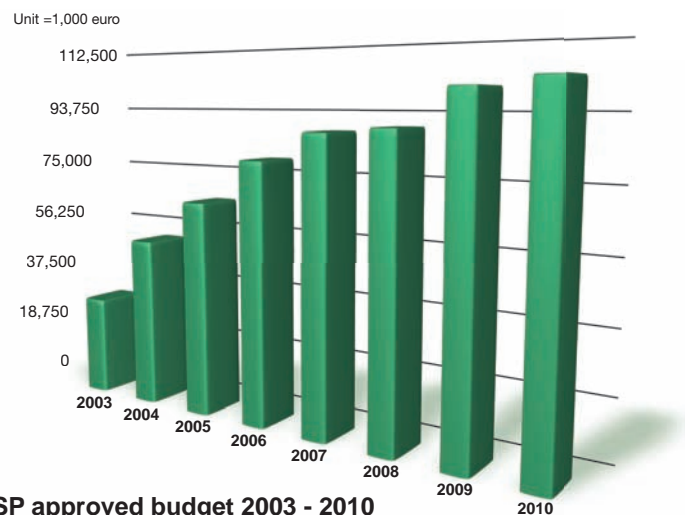
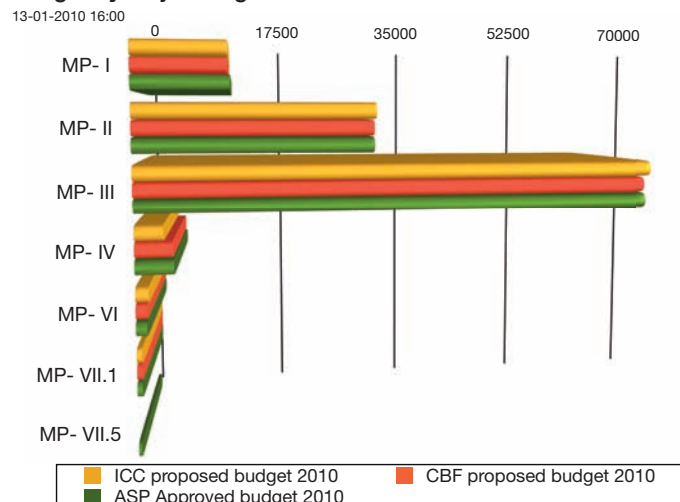
Total programme budget



	ICC proposed 2010	CBF proposed 2010	ASP proposed 2010
MP- I - Judiciary	€ 10,501.1	€ 10,462.7	€ 10,743.7
MP- II - Office of the Prosecutor	€ 27,087.6	€ 26,828.3	€ 26,828.3
MP- III - Registry	€ 60,222.6	€ 59,467.8	€ 59,631.1
MP- IV - Secretariat of the ASP	€ 3,150.2	€ 4,121.1	€ 4,272.8
MP- VI - Secretariat of the TFV	€ 1,432.3	€ 1,217.5	€ 1,221.6
MP- VII.1 - PO Permanent Premises	€ 586.3	€ 584.2	€ 584.2
MP- VII.5 - Ind. Oversight Mechanism			€ 341.6
TOTAL	€ 102,980.1	€ 102,681.6	€ 103,623.3

(Unit = 1,000 euro)
This table does not include:
 - Working capital fund (€ 7,406.0)
MP-IV - ASP approved 2010 includes:
 - Review Conference budget (€ 1,100.0)

Budget by Major Programme



ASP approved budget 2003 - 2010

ASP Plan of action

In 2006 the Assembly adopted a Plan of action for achieving universality and full implementation of the Rome Statute (resolution ICC-ASP/5/Res.3, annex I). The Plan which sets out measures to be taken by the States Parties, the Secretariat of the Assembly and the Court, is updated on an annual basis through the New York Working Group of the Bureau. The main focus of the Plan of action is to, inter alia, promote:

- the universality of the Rome Statute;
- the implementation of the relevant provisions of the Statute in the respective national legislation;
- full cooperation with the Court;
- the ratification and implementation of the Agreement on the Privileges and Immunities of the ICC;
- the Court via regional and sub-regional organizations;

The Plan also calls for convening and supporting conferences and seminars to these effects and to identify national contact points for such purposes.

Plan of action panel

At the eighth session, a panel organized by the Secretariat of the Assembly addressed the successful ratification experience of Chile; the technical assistance and capacity building, including legislative draftsmen, that can be provided by the Commonwealth Secretariat; the Model Law on implementing legislation which has been widely used throughout the Commonwealth States; the assistance that can be provided by the International Committee of the Red Cross on the definition of crimes at the national level and the implementation of international obligations with regard to international humanitarian law. NGO representatives on the panel provided recommendations regarding the national implementation processes, including the removal of the distinction between international and non-international armed conflict; the importance of the inclusion of individual criminal responsibility irrespective of official capacity; as well as the need to follow-up on those countries where a strong political motivation to adopt implementing legislation has been identified.



From left : Ms. Eva Šurková, the moderator, and Ms. Anne-Marie La Rosa, Legal Adviser, International Committee of the Red Cross; Mr. Jonathan O' Donohue, Legal Adviser on International Justice, Amnesty International; and Mr. David Donat Cattin, Director of the International Law and Human Rights Programme, Parliamentarians for Global Action.

Plan of action: figures

Number of States Parties that replied

- to the SASP request for information from 2007-2009 50
- directly to SASP request for information in 2009 27
- replied to SASP 2009 questionnaire 13

Number of States that submitted information regarding

- national implementation of the Rome Statute 29
- the complete or partial text of implementing legislation of the Rome Statute 4
- plans of promotion of universality and technical/ financial assistance 24

Number of States that submitted information regarding

- pending national implementation of the Rome Statute 15
- ratification of the Agreement on Privileges and Immunities of the ICC 10
- bilateral agreements with the Court regarding enforcement of sentences 6
- bilateral agreements with the Court regarding relocation of witnesses 5



From left: Ambassador Claudio Troncoso, Director of Legal Affairs, Ministry for Foreign Affairs of Chile; Mr. Akbar Khan, Director of the Legal and Constitutional Affairs Division, Commonwealth Secretariat; and the moderator of the panel, Ms. Eva Šurková, facilitator for the Plan of Action, Legal Adviser, Permanent Mission of Slovakia to the United Nations.

Feedback

Please submit your comments and views on the newsletter to the following e-mail address: asp@icc-cpi.int.

Interview with H.E. Christian Wenaweser, President of the Assembly of States Parties



Ambassador Christian Wenaweser, President of the Assembly of States Parties 2008-2010, Permanent Representative of Liechtenstein to the United Nations, former Chair of the Special Working Group on the Crime of Aggression (2003-2008)

How do you view the outcome of the eighth session of the Assembly and its more salient features?

The outcome is what we had hoped and worked for. I am particularly pleased that we got all the decisions we needed for the Review Conference – which I believe are good decisions. We also made significant decisions on the permanent premises, the liaison office in Addis Ababa and the establishment of the independent oversight mechanism. It was a session of much substance and I am very satisfied. Improvements on process are always possible – we can do better on the budget discussions, for example.

What are the key challenges faced by the Rome system, at the external and internal level?

The Court is now fully operational, but we as States still struggle with the best way of integrating it into the work of other international organizations and institutions. We have to create a deeper understanding around the consensus to fight impunity – this consensus exists even among those who have not signed on to the Rome Statute yet – and that the ICC is at the core of this common effort. The Review Conference offers a great opportunity to advance our thinking and our actions on some of the key challenges, such as complementarity, peace and justice. Cooperation needs a boost: There are too

many outstanding arrest warrants, some have been around for years. Finally there is the challenge of universality: A very ambitious goal, but we must not lose sight of it.

As one of the drafters of the Rome Statute in 1998, how have you viewed the Court's evolution?

There are a number of unexpected developments when it comes to the practical application of the treaty. The most prominent example is the practice of “self-referrals” that was not much on people’s minds when we negotiated the Statute. The most important statement is, however, that the Statute offers a very solid framework and is a treaty of high quality. This is reflected in the very small number of amendments suggested for Kampala. In the future, we may see some adjustments to judicial proceedings, elections issues, etc., but it is comforting to see the level of confidence in the Statute and its practical application.

In hindsight, what do you think could have been done differently in Rome in 1998 to improve the work of the Court and its Assembly?

Some of the provisions governing the relationship between the organs could have been clearer. That would have helped avoid or at least shortened some of the discussions on governance and thus saved time, resources and energy. The functioning of the Assembly is largely governed by decisions made after the adoption of the Statute, and I see no need for adjustments of the provisions in the Statute itself.

What can be done to continue along the path to universality?

The most important thing is to have a Court whose quality speaks for itself, by fulfilling the highest standards of judicial independence and diligence, but also of management. Beyond that, education is key: We must counter existing misconceptions about the Court and explain the Rome Statute system – and make States understand that joining the Rome Statute is a matter of enlightened self-interest. Every State in the world is already part of this common venture to end impunity, since the ICC derives its jurisdiction both from the Rome Statute and from the United Nations Charter. But only States Parties also find themselves under the protection of the Court. Finally, we can show ways on how to deal with some of the most difficult problems that States encounter in ratifying (immunities for example).

How do you view the re-engagement by the United States in the work of Assembly, manifested by its participation as an observer after eight years of absence from any ICC related meetings?

The participation of the US is certainly a positive development that was welcomed by pretty much all States, as far as I can see. It is important not to create unrealistic expectations though; eight years of absence is a long time, and the domestic discussions in the US have yet to take place.

What contacts have you had with the Obama administration to assist this process?

I have had regular contacts with the representatives of the US administrations, both the current and the former, and was also invited to speak before the Task Force of the American Society of International Law established to advise the new administration on its ICC policy. I have travelled to Washington DC on several occasions and will continue to do so. During the past ASP, I had several bilateral meetings with the US delegation.

Are States Parties satisfied with the manner in which the “One Court principle” is applied by the three organs?

States Parties and the organs of the Court themselves fully subscribe to the “One Court principle”, so we have a strong consensus there. There is some room for improvement in the practical application.

Seven and a half years after the entry into force of the Statute, is it still to be considered a “young” institution in a set-up phase?

It depends on what aspects we are talking about. As far as internal proceedings,



mechanisms, working methods, the childhood phase of the Court should be over, and all these things should be firmly established. On the judicial work of the Court, it is simply a fact that we have not gone yet through a full judicial cycle – we have not seen the conclusion of a trial, not to mention an appeals process. So in that sense, the Court is indeed still a young institution.

How would you evaluate the relationship between the Assembly and the Court, including the Bureau's working groups?

The relationship is generally sound, dynamic and positive. There are very frequent informal contacts and cooperation is very good. There have of course been a number of disagreements and contentious points, in particular when it comes to specific topics (family visits for indigent detainees, the independent oversight mechanism), but that is to be expected. The oversight functions of the Assembly are likely to become more important in the future and we need this excellent working relationship to continue in order to create common understandings. The judicial independence of the Court must always be sacrosanct.

There have been some areas where the Assembly's legislative/policy-making role seems to have been overlooked by the Court – the issue of the 10 March 2009 Presidency decision on the funding of family visits for indigent detainees being one of them. Given the Rome Statute's mandate in article 112 setting out the Assembly's oversight prerogative, would there be a need to further clarify the roles that correspond to the Court's organs so as to highlight the distinct hierarchy of norms that should prevail, with the Statute constituting the pinnacle of a Kelsen pyramid, followed by resolutions of the Assembly, including the Rules of Procedure and Evidence, and at a third level, Court issued norms?

The Statute has not regulated everything in all detail – which is good – so the Assembly and the Court must come to a common understanding as far as the oversight functions are concerned – that is of

the essence and one of our main tasks for the coming months. There will be differences of opinion, but I am confident that we will come to an understanding that provides for a sound and balanced relationship.

How can the Assembly assist the Court in improving its governance structures and efficiency?

States expect a clear and functioning governance structure, both for the public image of the Court and the best use of the Court's resources. I have communicated this clearly to the heads of the organs, while also making it clear that the Court's organs themselves are in charge of that process. I - or the Assembly – can offer assistance when we are requested to do so, but we all agree that the Court itself is responsible for its own governance structures – of course on the basis of the provisions of the Rome Statute.

What role does the Bureau play in the ASP structure and how dynamic is it, when compared to its working groups?

The Bureau plays an important role between the ASP sessions, both to prepare for the sessions and as a vetting mechanism, to keep all States Parties informed and involved. Its role is thus quite different from that of the working groups – which focus on specific substantive topics, while the Bureau functions as a steering committee.

Are Bureau members allocated specific roles?

Several Bureau members have taken on specific roles as focal points and facilitators, in particular in the framework of the NYWG.

How is the ICC viewed at UN Headquarters?

The Court enjoys solid support – most importantly there is a strong commitment from Secretary-General Ban Ki-moon to the ICC and to the cause of international criminal justice. The ICC also plays a crucial role in the discussions among States, at least on selected country situations.



Meeting with Mr. Roger Miranda Gómez, Executive Secretary, Forum of Presidents of Legislative Branches of Central America and the Caribbean (FOPREL) and Mr. Santiago Rivas Leclair, adviser to the Presidency of the National Assembly of Nicaragua (April 2009). ©PGA

Nonetheless, we are also facing serious challenges. The understanding of the ICC and its work is insufficient and sometimes very limited in quarters where one would not expect it. For this and other reasons the Court does not have the permanent presence in the intergovernmental discussions that it should, and this is what we have to work on: Establish the place and the role of justice in the framework of the other priorities we are pursuing at the UN. Alternatively, one can use this slightly impossible term: “Mainstreaming” the ICC is one of the key challenges for the future.

What are your expectations for the Review Conference?

I am hoping for a positive political discussion and a high-level participation. The Review Conference should have a catalytic effect and take the political discourse on international criminal justice to the next level, thus advancing the fight against impunity. This is the most important goal for the Conference – and of course I am hoping for a positive outcome on the amendments.

Having chaired the Special Working Group on the crime of aggression for several years, how optimistic are you about reaching an agreement in Kampala on the definition and the conditions for exercise of jurisdiction by the Court over the crime?



President Wenaweser (center) presiding over a meeting of the Bureau.

To the left:
Ms. Isabel Frommelt and Mr. Stefan Barriga, from the delegation of Liechtenstein.

To the right:
Mr. Renan Villacis and Ms. Signe Lind from the Secretariat.

We have made progress over the past years that few thought possible when we first began our work. There is very strong support for the draft definition and we are therefore working from a solid basis. The remaining issue is of course the most difficult one and requires political will from States. I believe that we have a good chance, but we have to be determined to seize it.

You are known to be very active in promoting the Court, both via formal and informal channels. How are your own efforts and trips coordinated with those of the Court's three organs?

I am in regular contact with the organs of the ICC – also to coordinate our

activities, and on trips that we undertake. While all of these activities certainly serve the purpose of promoting the Court, our functions and the types of activities we engage in are of course quite different.

The Permanent Mission of Liechtenstein has a reduced number of staff, yet is incredibly active on numerous issues. Is there any particular explanation for that effectiveness?

Thank you for the compliment. We have a clear and selected set of priorities, are well connected and, most importantly, I have few staff, but they are highly professional, dedicated and hard working.



Meeting with Sheik Ali Bin Saleh Al-Saleh, Speaker of the Shura Council of the Bahraini Parliament (March 2009). ©PGA

Personal favorites

Key segments in a regular day:

Early start is essential.
If possible at all, some physical activity.

Favorite pastimes:

Travel, reading, sports

Recent movie to recommend:

White Ribbon (which I have not seen, but must be great from what I hear), Up.

Book currently reading:

Roberto Bolaño, *Savage Detectives*;
Vali Nasr, *Forces of Fortune*;
David Foster Wallace, *Consider the Lobster*.

Favorite New York restaurant:

Gramercy Tavern, Blue Ribbon Sushi.

Predictions of the football teams making it to the quarterfinals in South Africa 2010:

I would expect South Africa, Germany, Brazil, Spain, Italy and hope for Cameroon, Denmark and some exciting underdog.



A "DiploMatch" took place in New York in April 2009 in support of Play 31, an NGO that utilizes the unifying power of football to bring together people who have been torn apart by armed conflict. The two teams of UN Ambassadors were led by President Wenaweser and Ambassador Heraldo Muñoz, Permanent Representative of Chile to the UN. The game was kicked off by the UN Special Representative on Children in Armed Conflict, Ms. Radhika Coomaraswamy. UN Secretary-General Ban Ki-moon divided his time on the pitch with both teams. (<http://www.play31.org>)

2009 Diplomatch



Interview with H.E. Ambassador Jorge Lomónaco, Vice President of the Assembly of States Parties



Ambassador Jorge Lomónaco, Vice President of the Assembly of States Parties 2008-2010, Coordinator of The Hague Working Group of the Bureau, and Ambassador of Mexico to the Netherlands

As Vice President of the Assembly, you are also the coordinator of The Hague Working Group, which has been extremely busy throughout the year, addressing many different topics. What would you like to achieve during the two remaining years of your mandate?

The Hague Working Group is going to have to adjust its work to the Review Conference, a true watershed, and divide its work into a pre- and a post-conference part. This applies to some of the facilitators' topics, and in particular to the topics of the stocktaking exercise, which may produce conclusions in some areas, and lead to medium and long term processes in others. If the stocktaking exercise in Kampala achieves concrete results, not necessarily in the form of conclusions, both groups, in The Hague and New York, could be entrusted with additional mandates for the next Assembly, and most certainly for the 2011 Assembly; each group would have to adjust its work and planning as a result.

With regard to the organization of the Working Group, I am developing a new format, based on this year's experience, giving the facilitators more autonomy, moving away somewhat from the rigidity of the meetings at which the facilitator leads the discussion and the coordinator remains somewhat on the sidelines; I believe that changes are needed to make the work more efficient and effective.

We also aspire to improve the quality of the dialogue between the Court and the members of the Working Group, which both could benefit from. Moreover, the group could work

with the Court to improve the dialogue between the organs.

How has The Hague Working Group contributed to facilitating the work of the Assembly?

The last few years have shown that the structural advantage of having continuous and regular contacts with Court officials has led to an increase in the number of topics facilitated by The Hague Working Group. Delegates are also increasingly able to spend more time, in terms of quality and quantity, on the work of the Court, resulting in a sense of "ownership" and personal engagement amongst delegates. Moreover, there is less risk that issues of other organizations will "contaminate" the work of the delegates with regard to the Court. These structural factors may over time have enabled The Hague Working Group to address a greater number of increasingly important issues. These issues encompass not only the most obvious administrative ones, but increasingly also more strategic, broader ones, with considerable political weight, which we have been entrusted with here in The Hague, and which, in my opinion, the Group has addressed in a very professional manner, contributing to the work of the Assembly.

You have many contacts with high ranking Court officials, possibly even on a weekly basis. Do you see any need to increase the dialogue on various topics between the Court and the subsidiary organs of the Assembly, or the facilitators?

As I previously mentioned, I believe that although the quality and intensity of the dialogue between the Court and the subsidiary organs of the Assembly is very good, there is still room for improvement; the dialogue could be intensified. The Assembly has increasingly become strategically involved in an increasing number of areas that concern the daily activities of the Court, and an open and honest dialogue is essential for it to work appropriately. The facilitators for instance are unable to make progress if the Court does not adequately contribute to this dialogue. To make progress ideas must first be exchanged, and thereafter expectations must be adjusted to reality.

Do you think that the Court could perceive this aspect of the work of the Assembly and its Working Groups as an influence affecting its judicial independence?

I believe that this is a non-issue: it is presented as a Manichean dilemma, where everything is either black or white, in which the Assembly gains what the Court loses. There is scope to improve the dialogue, as well as the

efficiency of the Court, without affecting in any way the judicial independence of its organs. The Assembly can and must, in my view, play an important role in contributing constructively to improving the work of the Court.

There appears to have been very little interaction with the Board of Directors of the Trust Fund for Victims, with the exception of the annual report of the Board to the Assembly. How could this be improved upon, bearing in mind that States Parties are the main contributors to the Trust Fund?

It takes two to tango, as the saying goes. Therefore it is essential for the Assembly to become more involved in the work of the Fund. This year The Hague Working Group has carried out careful, meticulous, respectful and discrete work, and as such the Assembly has fulfilled its role, for instance by electing the members of the Board and in the recruitment process of the future executive director of the Secretariat of the Fund. Four of the five members of the Board are new, which is an opportunity for closer relations between the Fund and the Assembly. The Assembly must play a crucial and constructive role in 2010 by collaborating with the Board and with the new executive director on the programs for victims, through a hitherto unprecedented interaction with the Fund.

As an architect and as the 2008 Chair of the Oversight Committee on permanent premises, what do you think of the results of the architectural design competition, which were announced to the Assembly on 26 November 2009?

They are the result of a very lengthy and complicated process, in which the Oversight Committee very responsibly and professionally examined all the technical details of the proposals of each of the three selected architects, in order to take not merely a bureaucratic but rather a strategic decision on which of the three projects would be best suited for the Court, in the broadest sense of the term. The selection sought the one which most fully complied both with the technical architectural objectives in terms of planning and budget, and other perhaps somewhat more abstract criteria such as the architectural quality and the image of the Court.

This extremely complicated process thus involved various types of considerations. The selection procedure, which was completed on 26 November, satisfactorily addressed and catered to the practical needs and other somewhat less practical needs of both the Court

and the Assembly.

Could you possibly elaborate a little on what you consider to be the ensuing image which the Court will be projecting?

From the outset the aim of the project was to comply with what is known as the functional brief: specific norms concerning the number of offices, the use of space, as well as local regulations and maintenance and permit issues. An additional aim was to convert the building into a model for the city of The Hague, not only in terms of architectural quality, but also to convey the image of the Court, more or less as the Peace Palace is for the International Court of Justice, which people immediately associate, and which is a main point of interest for tourists visiting The Hague. The aim is also for this new Court building to become a main point of interest for tourists, not only owing to the quality of its architecture, but also because of what the Court represents for humanity in the fight against impunity.

The new premises must also comply with other unique requirements in terms of security and transparency. It is important for the decision-making process of the Court to be visibly transparent, which does not necessarily mean a glass building. We would like this unique urban building to become an icon that reflects dignity and justice through the use of volume and space. This is a challenging task that not all architects may be up to.

You have on various occasions already attended sessions of the Assembly and other Court related events in New York. To what extent do you feel that States Parties in "The Hague" are being heard over there, where the permanent missions address a great variety of topics?

I believe that the work of the delegations in The Hague increasingly finds resonance in Assembly deliberations owing to the quality and quantity of work carried out throughout the year, independently of the place where the Assembly is held. We all know at the end of the day that there are very good delegations in both The Hague and New York, and we also know that delegates in New York may at some point be assigned to The Hague and vice-versa, and hence I do not believe that it makes much sense to draw a comparison. President Wenaweser's excellent decision to have one Vice President in The Hague and another in New York acting as coordinators of both Working Groups of the Bureau will ensure ultimately that both sides, which complement each other, converge at the Assembly. During this eighth session of the Assembly there was a very clear convergence between the positions of the delegations of The Hague and those of New York, barring a very small number of exceptions.

To what extent does the fact that you are one of the ten main contributors to the budget of the Court and also a member of the Security Council help you in your work?

I believe the latter is more important than the former. Being one of the main contributors should not imply more or less responsibility, nor greater or lesser rights and obligations; the United Nations principle of "one State, one vote" should be applied. I believe that it is essential to apply it consistently.

Belonging to the Security Council is a privilege and a responsibility before the international community. There is an undeniable link between the work of the Court, and of course other organizations of the UN system, and the Security Council; a member of the Security Council can therefore contribute to the debate on such issues. Being a member of the Council also entails a great responsibility in contributing to its role in the maintenance of international peace and security.

What do you believe the Assembly and the Court could do to increase the number of States Parties in the Central American region, where three States are still observers?

Rising to the challenge of attaining universality for the Rome Statute is a responsibility for both the Assembly and the Court. I am reluctant to put more emphasis on one particular region than on another, but as we are on the issue, what I am most concerned with is the under-representation of Asian countries rather than of other regions around the world. However, we are naturally concerned by the fact that three of Mexico's neighbouring nations are not parties to the Statute.

In the case of Central America, which could perhaps also be applied to other regions, one of the main challenges is to address the lack of information, the issue of misleading information and misperceptions about the Court and about what it can and cannot do. Mexico could very respectfully work on the respective national procedures, as it did for instance in the case of Chile, where its readiness to share experiences was well received. Mexico could share its experience of the ratification procedure with Central America, as many misperceptions arise out of shared reservations and concerns, which become obstacles at some stage of the ratification procedure. It is essential to reassure the protagonists of the countries that are not parties to the Rome Statute that the latter is not retroactive. This may not be clear to all States, and in particular to some of their politicians.

In which areas do you believe that the Review Conference could achieve substantial progress?

Undoubtedly the energy and political aspirations will focus on making concrete progress on the crime of aggression and on its inclusion in the jurisdiction of the Court. Progress on the crime of aggression is more readily susceptible of being measured, for instance by the adoption of a definition of the crime. It will be more difficult to measure the results of the stocktaking exercise. This is why at the Assembly Mexico emphasized the importance of achieving concrete and substantive results of quality. In some areas, the objective is to identify specific problems and ways to address them in the future rather than to make political statements that do not yield any concrete results.

Mexico's proposal to add the use or threat of use of nuclear weapons to the Statute is not among the proposals which will be considered in Kampala, but it will be on the agenda of the ninth session of the Assembly in November 2010. What does Mexico intend to do to facilitate discussions on this proposal?

We would very much have liked to discuss the proposal at the Review Conference. Nonetheless, Mexico, along with other countries that made amendment proposals, understood the importance of only sending to Kampala proposals that had attained consensus or that general acceptance.

We also realized that a very interesting work opportunity would soon arise in the form of an Assembly working group on amendment proposals. In 2009, Mexico shared its proposal with States Parties, first in New York and then in The Hague during the Assembly. Some delegations had difficulties articulating their position on the specific merits of the Mexican proposal or the reasons why they did not support it, or properly expressing their concerns about the proposal per se rather than the conditions under which the discussion on the amendments would be conducted at the Review Conference in Kampala.



If the deliberations that commence next December in the Assembly are to be productive, we consider that it is necessary to familiarise States with the Mexican proposal and explain its scope and objectives, so that a substantive debate in favour or against it can take place when the deliberations begin in the Assembly; no such debate was held in New York or in The Hague. Mexico would try to involve States Parties in this debate on its proposal. What is not understood cannot be supported. This would allow for a debate to be held on the substance of the Mexican proposal, and on the other amendment proposals, rather than on procedural aspects.

At a seminar which took place in New York last September, you raised the need to examine the relations between the Assembly and the Court. Considering what happened to the issue of family visits for indigent detainees, and to the discussions on cooperation, how do you believe progress could be made on this issue?

During its seven or so years of operation, States Parties have stood by the Court whilst it was established, grew and gained strength. We have watched it develop, generally very positively, and consolidated itself at the institutional level. At the judicial level this development has of course been very strong, but less so at the institutional one.

That is exactly what it offers, an opportunity to pause along the way and look back to learn from errors and positive results, but above all by looking towards the future. In my opinion the time has come to reflect on the positive work attained, as well as what has not been done so well, and I refer strictly to the institutional side of the Court. I am not referring to the judicial procedures for which the Statute provides judicial independence. This future oriented process to reflect and review could provide opportunities in order for the Assembly, through an honest, constructive

and open dialogue with the Court, to improve the efficacy of the Court, contribute to its institutional stability, and strengthen the "One Court principle".

Is there one particular area which you believe this stocktaking exercise could focus on?

The most obvious and logical area is the budget, where from the outset, States Parties and the Assembly played a crucial role, as provided for in the Statute. Throughout the past years we have come to the conclusion that there are other areas in which the Assembly can and must play an important role. This applies of course to the permanent premises, where a clear distinction is made between the Court, as a user of the building, and the States Parties, as owners; this notion of ownership could be extended to other areas of the work of the Court as an institution.

The subject of family visits is possibly characteristic of the very fine line that separates the areas in which States Parties can and must get involved and those that constitute areas which are the exclusive realm of the independent organs of the Court. We have seen that there is room for manoeuvre, but that it is also a very fine line to tread.

The Court has created new paradigms in many spheres. In the judicial sphere some fundamental issues of principle must be kept in mind, such as non intervention and the sovereignty of States. As States Parties we are finding a balance in these areas with the Court.

This is why I am convinced that it is important to move forward together. Opinions may differ at times and tensions may arise. Nevertheless, as long as all clearly agree on the objective of a successful Court which puts an end to impunity and deters new crimes against humanity and other grave acts, we will all, organs of the Court and States Parties, in the

end move in the same direction.

What are the main topics of your daily agenda?

In my capacity as Mexican Ambassador in The Hague, I am responsible for two important areas, bilateral affairs and multilateral affairs. At the bilateral level, political relations with the Netherlands are very cordial and smooth, and have the potential of becoming more strategic, which is why we must address issues, concerns and aspirations jointly; our economic relations are also essential, the Netherlands being the third most important investor in Mexico. The intensive cultural activities of the Embassy are also growing.

At the multilateral level, my time is divided among the ICC and the Organization for the Prohibition of Chemical Weapons, and on following procedures at other courts and tribunals, in particular the International Court of Justice.

Who is your favorite architect?

History is full of prominent architects; but only the passing of time, enough for a patina to form, will tell whether an architect or his work becomes a classic or not. Factors relating to fashion may influence society at a given moment, but the prevailing architecture will be a reflection of its time, the language of which reflects the society in which it evolves. This is why I would refrain from talking about contemporary architects.

For all these reasons I believe that the architect who has had the greatest influence and whom I prefer is the anonymous architect of any village in Latin America or Africa, Asia or Europe, who builds with local material, as dictated by the climate and landscape, etc., that is to say, the vernacular architect. Luckily the world is full of such anonymous architects, from the Andes to



Ambassador Lomónaco, speaking on behalf of his delegation, on the proposal for amendment submitted by Mexico.

To the left:
Mr. Guillaume Michel, of the Mexican delegation.

To the right:
Mr. Marcelo Böhlke and Ms. Stella K.Orina (coordinators).

the Sahara. They are in sharp contrast with negative urban architecture which attempts to appear to be something it isn't, importing and imposing glass and steel to produce an ill-conceived impression of modernity.

Do you have an anecdote you could share?

My surname is easy to pronounce and spell. Nevertheless, it is not very common, even in Italy, where it comes from. Perhaps that is why it has always been complicated to remember or pronounce, and hence given rise to some confusion. The most recent instance was during the last Assembly, when my name was mentioned in different ways, which led some delegates to wonder why they were referring to me as the "Ambassador of Monaco" when I am "the Ambassador of Mexico". To add to the confusion, a joke circulated that with my second surname, Tonda, implied that I am not only the "Ambassador of Monaco, but also of Tonga".

Personal favorites

Hobbies:

Travel and photography, in that order.

Favorite place:

After Mexico, India.

Countries visited:

Over 90 countries that are members of the United Nations, and over 100 if I count in other countries or places which, while formally belonging to a State, are autonomous, such as Puerto Rico or Curacao.

Collections:

Things that are related to my travel, for instance art or handicraft, tickets, coins, travel guides and photographs.

Favorite restaurant in The Hague:

Other than a good Mexican restaurant, San Telmo.

Favorite dish:

A good taco, ceviche (Mexican, Ecuadorean or Peruvian) or a good piece of meat, with a very cold beer, or red wine, depending on the location, climate or circumstances.

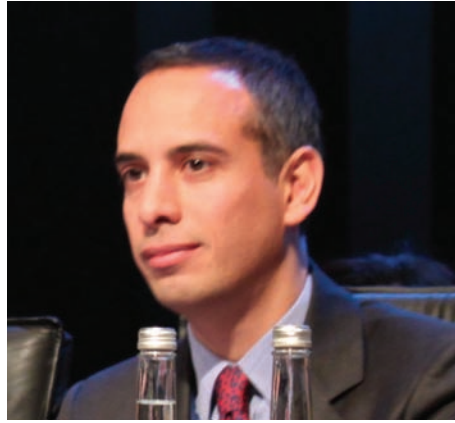
Favorite football team:

Cruz Azul, and more particularly because blue is one of my favourite colours, and they were the Mexican league champions when I was a young man.

Teams expected to qualify for the semi-finals of the 2010 World Cup?

Mexico, Brazil, Italy and the Netherlands.

Interview with Mr. Santiago Wins, Chair of the Committee on Budget and Finance



What is your overall view of the outcome of the eighth session of the Assembly as regards the resolution and discussion on the 2010 budget?

The outcome is very positive because it shows that the Court internalized our message that the establishment phase has come to an end and that it has to start living within the existing means. In addition, the budget is getting more predictable and the Court activities are increasingly matching its assumptions.

States Parties have endorsed the CBF recommendations and recognized the high quality of our report which is very encouraging for all the CBF members that work very hard in each session. The support of the budget coordinator, The Hague Working Group and the different thematic coordinators was very important to achieve this positive outcome for the court's benefit.

The most important thing is that States Parties are committed to supporting international justice by establishing a modern, flexible and non bureaucratic institution.

After seven years, what are the key challenges facing the Court in the budgetary and administrative fields?

The Court has done a great progress since its establishment in its budgetary and administrative fields. However it is natural that in a budget that has increased rapidly to over €100 million, there is room for streamlining the use of resources. The Court still needs to improve the justification for new resources and it also needs to identify concrete areas for efficiencies by developing a more flexible approach, being creative in redistributing existing resources that are no

longer required, before requesting new ones. Furthermore, a closer follow up on the implementation of ASP decisions is overdue just to mention some examples.

How would you describe the relationship between the Court's three organs and the Committee?

The relationship is excellent, there is a lot of confidence in the work of the Committee. As Chairperson I am contacted by Court officials regarding different administrative and budgetary issues as unforeseen situations arise. I also think that the Court has learned to see the CBF as an important ally in its budget preparation and administration.

Is there an inherent tension between an institution that submits a budget proposal and an oversight technical body that reviews such a proposal and, as a rule, proposes downward adjustments to the budgetary requests or questions the basis for some proposals?

It is not the case today. Probably at the beginning of the establishment of the Court there might have been some tension due to the lack of experience and misunderstandings on the information required by the CBF. Today we feel the Court is very open and transparent in its procedures to inform the Committee and as CBF we are very frank in our opinions, given our independence. We tell Court officials what we think through a very open exchange of views without affecting a convivial ambiance.

Just let me clarify one point: we do not propose downward adjustments to the budget as a rule. In the past we had also indicated sometimes that additional resources should be allocated for specific activities. This institution as any other has to be balanced in order to perform efficiently. The different organs submit their budget requests but sometimes this is not a balanced submission because the whole process of preparing the budget is complicated. The CBF takes a comprehensive approach and recommends adjustments in order to strengthen the "One Court principle".

Is there room for improvement in the Committee's communications with the Court's three organs?

There is always room for improvement. I think we have advanced a lot and for example since last year, as a pilot experience, we created informal subworking groups within the CBF to follow up on

specific issues, benefiting from the different background of each member and I think this has improved communication with the Court. This has also given the opportunity to all CBF members to participate on specific items (NGOs, investments, Hague Working Group, diplomatic briefing or ASP). The workload of the CBF is enormous and the support of all colleagues is essential. I am privileged to have excellent workmates in the committee, extremely devoted to its work.

Unlike the formative years of the Court, when the CBF was the only subsidiary body of the Assembly, there are now Working Groups of the Bureau in both The Hague and New York, as well as the Oversight Committee on permanent premises which, in some cases, have been mandated with topics that the CBF must also consider. Is there any complication from a possible overlap of mandates?

It is natural that as the Court grows and its activity begins, there are more numerous issues to be dealt with. Some of these require almost permanent follow up, such as the permanent premises issues. Our two week sessions a year makes it impossible to cover everything. I think the contribution of the working groups are of great value for the CBF and for the ASP. However CBF members enjoy full independence in their technical opinions within its mandate.

How does the CBF liaise or exchange views with the Assembly and its other subsidiary bodies?

The CBF always reports to the Bureau of the ASP through its President, Ambassador Wenaweser, who has been very open to give us orientation and guidance on some sensitive issues. I also personally communicate directly and exchange e-mails with the coordinators on specific items, make presentations to The Hague Working Group and have had conference calls with State representatives in order to share views in a direct way.

How does the CBF liaise with non-governmental organizations and the Court's staff?

The CBF has always attached great importance and recognition to the work of the Coalition for the International Criminal Court (CICC) that always make a presentation at the beginning of the session on their views and expectations. I personally appreciate very much their commitment with the Court and enjoy very much listening to them, because they are permanently involved in supporting the Court. The CICC has developed a better understanding of the budgetary aspects and they provide us with important background information as well. It is a very useful exchange. We have one CBF member who is always available to meet with NGO

representatives throughout the year.

Picking up on one of the risks identified by the Court's own consultant report, the CBF has pointed to the possible need to review the governance structure. Is there a possible role for the Assembly and the CBF in that endeavour, bearing in mind that the Court's three organs do not seem to be able to move forward expeditiously on the matter?

I would not like to take this recommendation out of its context. As I said, there is always room for improvement, and this recommendation is intended to go in that direction. It is natural in any new institution that some time is needed to deliver as one. Sometime rules are not clear enough or we do not have the same interpretation. The problem is when this affects our work. I have to say it is not an easy task and I know that President Song is fully committed to solve this matter and is taking decisive action. This is also a good moment to reflect on what can be improved, since we are having a Review Conference. It is sort of a constructive criticism opportunity that can contribute to improvements.

As one of the founding members of the CBF, as of 2003 you were part of the efforts to set up a new institution which although independent of the United Nations, was and remains, to a large extent, inspired on the UN, particularly as regards the Financial Regulations and Rules, human resources, assessment of contributions, etc. Since you represented Uruguay in the UN's Fifth Committee and now follow UNESCO issues via your posting as Deputy Permanent Representative of Uruguay to UNESCO in Paris, can you share your overall view on the advantages and disadvantages of that UN inspired course, which was set by the Assembly?

Each institution is unique and has a different mandate. However, even when we budgetary experts tend to criticize many un administrative aspects, it is undeniable that the UN has over 60 years of experience that provide lots of good lessons learned on administration, management and budgetary aspects. The challenge is to take advantage of the many positive aspects of the UN system and also to dare to consider new ways for dealing with some issues where the UN has not fully succeeded.

This is very difficult for staff, because the majority is used to see the UN standards as a general rule, but we also have to keep in mind that the UN is under a challenging reform process because times have changed and improvements are needed in order not to affect the credibility of represented institutions and the multilateral system itself.

I would like to mention one important example. At the beginning the ASP copied

the standards of other international tribunals for judges' pensions, which is extremely expensive. The CBF decided to revisit this item and proposed to the ASP a more efficient system for the ICC judges' pension system without affecting the natural expectation of the judges. This reviewed system was approved by the ASP and it is now considered as a good example by States Parties on how a new institution can be innovative and contribute to modernize the international standards of other organizations and put them to date with the world reality.

A different situation I could mention is regarding staff on the field. The UN has developed an enormous experience through its peacekeeping missions, particularly since the 90's. As I was in charge of UN peacekeeping operations at the Ministry of Foreign Affairs in Uruguay (my country is an important troop contributor), I had the chance to see the reality on the field, and then you understand how important is to prioritize and give staff on the field the motivation and support to accomplish its duties. On this case, UN standards are more recent and do contribute to this objective, but again we prefer custom-made rules and not as a general principle are UN rules the best automatic option for all institutions.

In some areas, the Court has departed from the UN's normative framework, for example in human resources? Has that been advantageous?

In some areas such as recruitment requirements, the Court has taken an innovative approach and you can apply to a senior level position without having 15 years of experience if your qualifications prove to be enough. This gives the Court a fresh and more dynamic approach from the moment you can have qualified young professionals in decision-making positions, as it happens in the private sector.



On other areas we have different views, for example the grading of posts have been more generous in the Court that in other institutions, such as the international tribunals. This was done in order to attract qualified candidates, but I am still not sure it was really needed, since the conditions of service are already very good.

Bearing in mind that the Court's budget has begun to stabilize itself, at more or less €100 million per year, do you see a chance for moving towards a biennial budget?

I think it is still early for that and it would be best to consider this possibility once the Court completes a full trial cycle.

In November the Assembly decided to set a €7 million limit on the Contingency Fund. How does the CBF view the manner in which the Court has addressed the possible use of the Fund in 2009? Is the CBF's role one of taking note of the Court's request or of authorizing the access to the Fund?

Well it is not a limit, it is a threshold for its replenishment. The Court has been careful on the possibility of accessing the Contingency Fund taking into account the level of judicial activity.

Regarding the role of the CBF, pursuant to financial rule 6.7, before entering into such commitments, the Registrar shall submit a budget notification to the CBF and take into accounts its financial comments. So technically the Registrar has to inform us before accessing the Fund and take into account our comments. This is not a

mandatory authorization but it is true that according to the financial rules the Registrar remains responsible, personally accountable and financially liable for the consequences of any contraventions, as any other Court official.

In 2009 alone we received nine communications on the possible access to the Contingency Fund just because it was a possibility and the Registrar felt it was her duty to inform the CBF and receive our comments.

It all depends on how much control or flexibility the ASP wants to give to the Court. Personally I think it is early in time to review these funds until we have experience and a full process finished. So far the Court enjoys a comfortable liquidity situation.

Will the CBF be represented at the Review Conference in Kampala?

Yes, we agreed to have CBF presence during the Review Conference as we believe it is a historical moment and it should be very useful to exchange views with States Parties. It is also very important for the CBF since we are the only body which does not have enough occasions to meet with States Parties to explain and exchange views. I see every year a lot of travel of Court officials to New York, Brussels, etc to present the budget and explain it to States. The CBF does not have that opportunity and sometimes this lack of communication opportunities might affect the understanding of our recommendations. Of course we will set the

example by using our resources efficiently, but I think the presence of the Bureau members is highly desirable.

Personal favorites

Hobbies:

Photography and contemporary art in general, running and yoga.

Favorite author or recently read book:

My favorite book is *Motivos de Proteo* by José Enrique Rodó. Other Uruguayan authors I enjoy are Eduardo Galeano and Mario Benedetti, who unfortunately passed away last year. I also like García Márquez, Paulo Coelho and Irving Wallace. Currently reading *Invictus* by John Carlin.

Preferred beach:

Punta del Diablo, a beach on the Atlantic Ocean in Uruguay and of course internationally known Punta del Este, best place in the world to be in January for sure.

Preferred Uruguayan football team:

Defensor, my neighborhood team of Punta Carretas in Montevideo.

Bureau of the Assembly

In accordance with the mandate entrusted by the Assembly, the Bureau proceeded to allocate topics between its two working groups and to designate the respective facilitators.

New York Working Group

Arrears of States Parties

Mr. Yukihiro Wada (Japan)

Geographical representation and gender balance in the recruitment of staff

Mr. Eden Charles (Trinidad and Tobago)

Plan of action for achieving universality and full implementation of the Rome Statute

Ms. Eva Šurková (Slovakia)

Review Conference

Mr. Marcelo Böhlke (Brazil) and
Ms. Stella Orina (Kenya)

The Hague Working Group

Cooperation

Ambassador Mary Whelan (Ireland)

Independent oversight mechanism

Mr. Vladimir Cvetković (Serbia)

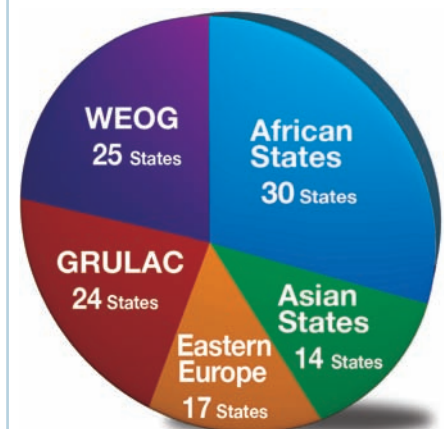
Strategic Plan of the Court

Ambassador Jean-Marc Hoscheit
(Luxembourg)

Trust Fund for Victims

Mr. Martin Strub (Switzerland)

The 110 States Parties to the Rome Statute



Interview with Ambassador Kirsten Biering on positive complementarity



H.E. Kirsten Biering, Ambassador of Denmark to the Netherlands

Before we get into the details of *positive complementarity*, first a few general remarks. South Africa and Denmark have been designated as focal points for complementarity as regards the stocktaking exercise at the Review Conference. As far as positive complementarity goes, this is still work in progress. How precisely we define the concept, or even end up calling it, will depend on the discussions that we will have over the coming months.

Could you explain the concept of positive complementarity?

Positive complementarity has many different aspects. Fundamentally it is about ensuring that national jurisdictions have all the necessary tools to investigate and prosecute Rome Statute crimes. Under the Statute, all States Parties have the obligation to do this and have committed to protecting their populations from genocide, crimes against humanity and war crimes.

Many countries could, for a variety of reasons, experience difficulties in meeting these obligations and commitments. It is important that we examine ways in which we can help each other with building national administrative systems to shoulder those commitments. This can be done by exchanging best practices and providing assistance and technical expertise in a variety of fields, including legislation, witness protection, forensics, enforcement of sentences and training of the judiciary.

Some are already providing parts of such assistance through rule-of-law development programs. More could be done in exploring

synergies between the Statute and these programs. The same goes for the activities of a number of international organizations.

The Court plays a vital role in ensuring lasting respect for international criminal law and bringing to justice those bearing the greatest responsibility for the most serious crimes. However, it is of equal importance to ensure that States follow the lead of the Court to avoid impunity gaps and to preserve the integrity of the entire Rome Statute system of criminal justice.

What is the main objective of focusing on positive complementarity?

Positive complementarity will contribute to closing any impunity gaps and will enable national jurisdictions to deal with the most serious crimes. This in turn should enhance the preventive effect of the Rome Statute.

If we are to be successful in the fight against impunity, this fight must be carried out at all levels and against all perpetrators. We cannot leave it to the Court alone to ensure success. The primary objective rests with us, the States Parties.

Political agreement on enhanced activity in the framework of positive complementarity will be an effective way of sending a strong signal of support for the Court – and for the Rome Statute system of international criminal justice. The Review Conference should not only take stock of developments within international criminal law, but also look to the future and address ways in which we can do things better.

What would be the possible role of the Court under positive complementarity?

I think the role of the Court would be to some extent limited, both by judicial and financial constraints. The Court is first and foremost a judicial institution, not a development cooperation agency.

However, the Court can contribute in various important ways, bearing in mind the need to guarantee its judicial and prosecutorial independence.

In situation countries where the Court has conducted investigations and prosecutions, it can assist national authorities in prosecuting lesser perpetrators and also contribute to reconciliation processes as well as the documentation of events by sharing evidence

collected. Furthermore, sharing expertise and advice can also help national authorities.

In the broader context, the Court has already, during its relative short existence, accumulated a wealth of expertise, knowledge and experience. This can, in various ways, in cooperation with international organizations and donors, be utilized to enhance the capacity of national jurisdictions of all State Parties. I would like to think of the Court as being a facilitator or broker of cooperation between State Parties themselves and between States and international organizations in furthering the fight against impunity.

How would States Parties to the Rome Statute be able to contribute to the effectiveness of positive complementarity?

The bulk of the work would be carried out by State Parties together with relevant international organizations, civil society and other implementing partners.

In general, the aim is to consolidate the capacity of domestic jurisdictions. One instrument would be development cooperation programmes and other forms of development assistance. Many countries already operate extensive rule-of-law programmes. The scope goes beyond the commitments under the Rome Statute, but these could systematically be taken into account and synergies explored.

A range of international organizations active in the fields of international law and justice and/or development cooperation within the judicial sector could also make further important contributions, as well as civil society.

Furthermore, States often have special expertise within certain areas, which could be of interest to others, such as witness protection or forensics. For instance, Denmark has a dedicated State Prosecutor for international crimes whose experiences may be useful to other countries. Such technical expertise could also be shared with a wider circle of interested States.

Elements to enhance the fight against impunity through positive complementarity already exist to a large extent. What is needed is greater awareness of the Rome Statute system, what can be done to assist and a consequent adjustment and alignment of existing activities. If we can put these pieces together, I believe that we can do a lot of good for international criminal justice, the fight against impunity and the International Criminal Court itself.

How does positive complementarity fit within the Rome Statute system?

Under the Rome Statute, the Court is a court of last resort. It only intervenes when States themselves are unable or unwilling to conduct genuine proceedings, based on a judicial decision by the judges. As such, the Statute attaches priority to genuine national proceedings and, by implication, the ability of national jurisdictions to be able to do so.

As such, positive complementarity, by assisting national jurisdictions in building capacity and meeting their obligations and commitments, fits perfectly with the object and purpose of the Rome Statute.

The Statute does not make explicit provisions for positive complementarity, but the need for additional measures to combat impunity at the national level is highlighted in the preamble. On numerous occasions and in different fora, for instance at the United Nations World Summit in 2005, States have stressed the need for and commitment to protecting civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity, not only in their own jurisdictions but by helping each other to afford such protection, including investigation and prosecution when such crimes have been committed.

The Rome Statute system is a two-pillar system with the States and the Court complementing each other. All States Parties are obliged to cooperate with the Court, but we should also look at ways of combating impunity by cooperating ourselves.

What would be the possible challenges and complications in introducing positive complementarity?

As I have tried to describe it here, positive complementarity is in essence not a new idea. The challenge for us will be to add value without duplicating existing structures and activities, and at the same time maintaining and enhancing the Court's judicial and prosecutorial independence and integrity. Many activities are already underway in the area of positive complementarity but probably under a different heading. How best to exploit existing structures and increase "output" is of the essence.

It may not be easy but this should not deter us from trying to bridge the impunity gaps with the means at our disposal.

Are there any programme budget implications due to the introduction of positive complementarity?



This will be for States Parties to decide. It also depends on the approach that would eventually be taken. Budget implications need not be vast. You could imagine tasking a small dedicated unit or person within the Court with working on this issue and acting as a facilitator or broker.

I would not personally see many new activities undertaken by the Court in addition to what is already being done. The main task is now for States Parties, international organizations and civil society to get their act together.

What are the future steps to further discuss positive complementarity in the lead up to the Review Conference stocktaking exercise?

We are currently, together with South Africa, in the process of preparing background documents on the substance as well as on possible outcomes of the Review Conference in terms of stocktaking and complementarity. We will, at the earliest possible stage, submit these proposals for consideration by the working groups of the Bureau. Based on the progress made in the working groups, we hope we would be able to agree on these issues at the resumed session of the Assembly in March, with a view to ensuring a successful outcome of the Review Conference as far as this issue is concerned.

ASP8 : Figures

Number of official documents	69
Number of pages in	
Arabic/ English/ French/ Spanish	1055 each
Chinese/ Russian	242 each
Missing receivers	47
Missing headsets	41
Number of side events	23

Participation	
States Parties	100
Observer States	29
Invited States	2
Total States participated	131
International organizations	19
NGOs	33

Number of delegates / representatives	
States Parties	438
Observer States	98
Invited States	7
Total States delegates	543
International organizations	25
NGOs	166
Total number of participants	734



Towards the Review Conference

H.E. Mr. Frederick Ruhindi, Deputy Attorney-General/Minister of Uganda, delivering his statement wherein he invited all States to the Review Conference in Kampala.

Proposal on the issue of enforcement of sentences

H.E. Ambassador Rolf Fife, introducing the Norwegian proposal on the issue of enforcement of sentences.



Towards a "greener" conference servicing

Mr. Renan Villacis, Director of the Secretariat of the Assembly, and Mr. Luis Niño, Director of the Department of Conferences and Meetings of the Organization of American States, during a visit to Washington D.C. to discuss cooperation on conference servicing and documentation procedures, including the "paper-light" approach and digital registration system used by the OAS.



Roundtable meeting with NGOs

Mr. Renan Villacis, Director of the Secretariat of the Assembly, briefs representatives of non-governmental organizations on the preparations for the Review Conference as part of the biannual meetings between Court officials and civil society.



ASP Calendar

2010

Assembly of States Parties
Resumed eighth session
New York
between 22 - 25 March

Ninth session
New York
6 - 10 December

Review Conference
Kampala, Uganda
31 May to 11 June

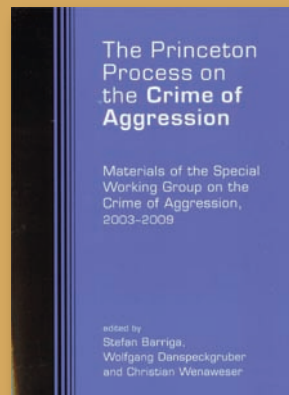
Committee on Budget and Finance
Fourteenth session
The Hague - 19 - 23 April

Fifteenth session
The Hague - 23 - 31 August

Board of Directors of the Trust Fund for Victims
New York - 22 - 25 March

Publication*

The Princeton Process on the Crime of Aggression



* English

From 2003 to 2009, the Special Working Group on the Crime of Aggression, created by the Assembly, struggled with the question of how to define the crime of aggression. The Group was also mandated to specify the conditions under which the ICC should be allowed to prosecute this crime, in particular in light of the responsibility of the UN Security Council for the maintenance of peace and security. The Group, which was open to government representatives from all States, made most of its remarkable progress at informal meetings hosted by the Liechtenstein Institute on Self-Determination at Princeton University. This book contains the complete reports, as well as a legal analysis of the negotiation process.

Colophon

Secretariat of the Assembly of States Parties
International Criminal Court
P.O. Box 19519, 2500 CM, The Hague, The Netherlands

e-mail : asp@icc-cpi.int
website : www.icc-cpi.int/Menus/ASP

Copyright © International Criminal Court - All rights reserved