



# CICC BACKGROUND PAPER

IN PREPARATION FOR  
THE REVIEW CONFERENCE OF THE ROME STATUTE  
31 MAY – 11 JUNE 2010

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## I. INTRODUCTION

The Coalition for the International Criminal Court (CICC) has prepared this Background Paper in preparation for the first Review Conference of the Rome Statute of the International Criminal Court (ICC), to be held in Kampala from 31 May to 11 June 2010.

The Review Conference constitutes a special meeting of States Parties to the ICC – distinct from the annual Assembly of States Parties (ASP) – to consider amendments to the Rome Statute and to take stock of its implementation and impact. The following three amendments to the Rome Statute will be considered: the revision of Article 124 of the Rome Statute; the definition of the crime of aggression and the inclusion of the use of certain weapons as war crimes in the context of an armed conflict not of an international character.

The Review Conference will also include stocktaking to consider the holistic success and impact of the Rome Statute to date with a particular focus on the areas of: peace and justice; the impact of the Rome Statute system on victims and affected communities; complementarity and cooperation.

Furthermore, there have been consultations on a high-level declaration to be adopted at the Review Conference as part of the high level segment scheduled at the beginning of the Conference. Many States and NGOs have expressed support to the idea of having such a declaration as a concrete outcome of the Review Conference that could set a positive tone and create a constructive framework for discussions at the Conference and could encourage the constructive engagement of officials at the ministerial level in the Review Conference.

The Coalition expects approximately 500 non-governmental organisation (NGO) representatives to attend the Review Conference and another 500 NGO representatives to attend the People's Space which will take place parallel to the Conference. Hundreds of government delegates, representatives of the International Criminal Court (ICC) and other international organisations are also expected to participate in the Review Conference. The Secretary General of the United Nations, Ban Ki-Moon will attend the meeting on its first day, as well as the former Secretary General, Kofi Annan.

### Relevant documents:

- Website of the CICC:  
<http://www.coalitionfortheicc.org/?mod=review>
- Latest issue of 'The Monitor', the journal of the CICC:  
[http://www.coalitionfortheicc.org/documents/monitor40\\_english\\_web.pdf](http://www.coalitionfortheicc.org/documents/monitor40_english_web.pdf)

## II. OVERVIEW OF THE REVIEW CONFERENCE AGENDA

The Review Conference will commence with the general debate that will take place on Monday 31 May and Tuesday 1 June. During the general debate, States Parties, Observer States, international organisations and NGOs will give opening statements in which issues of particular concern in relation to the Review Conference will be addressed. Furthermore, a ceremony will be held to announce the pledges presented by different States and other relevant actors.

On Wednesday 2 June, the third day of the Review Conference, the stocktaking exercise will commence. Over two days, the holistic success and impact of the Rome Statute to date will be considered, focused in particular on the impact of the Rome Statute system on victims and affected communities on Wednesday morning and peace and justice on Wednesday afternoon. On Thursday 3 June stock will be taken on the progress in relation to complementarity and cooperation.

Following the stocktaking exercise, the proposals for the amendments of the Rome Statute will be discussed. The Working Group on the Crime of Aggression will commence its discussions after the conclusion of the general debate on Tuesday 1 June (discussions that will be continued on Friday 4 June and Monday 7 and Tuesday 8 June). The Working Group on the Belgian proposal to amend Article 8 of the Rome Statute on weapons will convene in the afternoon of Friday 4 June. The proposal on the deletion of Article 124 will be dealt with on the Wednesday 9 June. On 11 June, the Plenary Session will close the Review Conference with *inter alia* the consideration of the reports of the Working Groups, the oral report of the Rapporteur and the adoption of the report of the Conference.

Throughout the two weeks of the Review Conference, side events organised by NGOs, the ICC and governments will take place during lunch time and in the evenings.

The first ever Review Conference of the International Criminal Court is organised by the Secretariat of the Assembly of States Parties. The ASP consists of representatives of each State Party to the ICC and is led by a Bureau, which is chaired by its current President, Mr. Wenaweser from Liechtenstein. In addition to the President, there are two Vice Presidents and eighteen further elected representatives of States Parties. The Bureau has established two Working Groups to support its activity – one in The Hague where the ICC is located and one in New York. The Bureau also appointed two facilitators to help prepare the Review Conference, Brazil and Kenya. The President of the ASP will be the Chair of the Review Conference.

### Relevant documents:

- Journal of the Assembly of States Parties:  
<http://www.icc-cpi.int/NR/rdonlyres/7618AE39-31D4-4978-BC8E-4243525AE167/0/advanceRCJournal22apr1700ny.pdf>
- Provisional work programme:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/RC-provisionalworkprogramme.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-provisionalworkprogramme.pdf)
- CICC Calendar of Events  
<http://www.iccnw.org/?mod=currentevents>

### III. AMENDMENTS TO THE ROME STATUTE

In Kampala, States Parties will discuss the following amendment proposals:

- The revision of Article 124 of the Rome Statute;
- The crime of aggression;
- The inclusion of the use of certain weapons as war crimes in non-international armed conflicts.

As a result of discussions at the eighth ASP session, a number of other proposals did not gather sufficient support for their consideration at the Review Conference. Nevertheless, the ASP agreed to create an ASP Working Group on Amendments that will serve to continue discussions on the submitted proposals and any other future proposal starting at the ninth ASP session in December 2010.

#### 1. ARTICLE 124 OF THE ROME STATUTE

Article 124 of the Statute is an optional protocol which allows States to choose not to have their nationals subject to the Court's jurisdiction over war crimes for seven years. The Article itself provides that it must be reviewed at the upcoming Review Conference to determine if revisions are required. A draft amendment proposing the deletion of Article 124 was agreed at the 8<sup>th</sup> ASP session to be considered at the Review Conference. Hence, debate at the Review Conference will focus on whether the provision should be maintained – thus allowing for application to future States Parties – or whether it should be removed from the Statute. If the Review Conference decides to retain Article 124, no amendment to the Statute would be necessary.

The Article's original purpose was twofold: firstly, it facilitated compromise on the text of Article 8 at the Rome Conference and secondly, it sought to persuade hesitant Parties to sign on to the Statute by giving them a grace period to make their national laws, processes and military guidelines and procedures consistent with the Statute. However, since the Statute's adoption in 1998, only two States have invoked it. Even then, France withdrew its declaration before the seven year period terminated and Colombia's seven year period ended last October such that no State Party currently falls within its provisions. Despite its alleged ability to increase universality, there is currently no reason to believe that Article 124 will be employed more frequently going forward.

At the Rome Conference, the CICC membership was strongly opposed to the inclusion of Article 124 into the Rome Statute for it weakened the jurisdictional regime of the ICC and was seen as incompatible with the object and purpose of the Rome Statute: "to put an end to impunity for the perpetrators of [the most serious] crimes [of concern to the international community as a whole] and thus to contribute to the prevention of such crimes." Since its inclusion in the Rome Statute as a transitional provision, the CICC has continually advocated that States not make use of Article 124.

These issues will be discussed in more depth as States Parties and organisations try to develop solid positions on where they stand on this issue. There is currently no consensus on what the outcome of the Review Conference will be.

The discussion on Article 124 of the Rome Statute is scheduled to take place on Wednesday 9 June (10:30 am - 1 pm) and will be complemented by a side event hosted by the CICC on 8 June.

**Relevant Document:**

- Resolution ICC-ASP/8/Res.6 on the Review Conference:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf)

## 2. THE CRIME OF AGGRESSION

The discussion on the crime of aggression will be facilitated by H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein of Jordan and will build upon many years of preparatory work, most recently done during the resumed eighth session of the Assembly of States Parties in March 2010. These discussions will form a principle part of the Review Conference and are scheduled to occupy at least three of the ten days of the program at Kampala.

Reflecting a compromise reached during the negotiation of the Rome Statute, Article 5 lists the crime of aggression as one of the core crimes under the Court's jurisdiction. However, in contrast to the other three crimes (genocide, crimes against humanity and war crimes), the Court remains unable to exercise jurisdiction over the crime of aggression as the Statute does not define the crime or set out jurisdictional conditions. The discussions of the crime of aggression at the Review Conference will therefore be directed towards finalizing the text of amendment proposals, which if adopted, would complete the Court's jurisdiction over this crime.

The text of the proposal for consideration at the Review Conference is the product of extensive work over a period of many years by the Preparatory Committee for the Establishment of the ICC (prior to 1998), the Working Group on the Crime of Aggression (from 1999-2002) and also by the Special Working Group on the Crime of Aggression (2002-2009). The text submitted for consideration at the Review Conference includes proposals for:

- A definition of the crime of aggression (Article 8 *bis*);
- The conditions under which the Court will exercise of jurisdiction over the crime (Article 15 *bis*);
- The deletion of Article 5(2);
- The draft elements of the crime; and
- Minor changes to Articles 9(1), 20(3) and 25(3).

According to Article 121 of the Statute, if consensus cannot be reached, the adoption by the Review Conference of amending provisions on the crime of aggression will require the affirmative vote of a two-thirds majority of States Parties (74 of 111). The issue of entry into force of amendments on the crime of aggression will be discussed

and States Parties remain divided over the process that will apply in the event that the amendments are adopted.

According to one minority opinion, under Article 5 paragraph 2 of the Statute the Court can exercise its jurisdiction over the crime of aggression and the provision can be binding on States Parties at the moment of adoption. According to the majority either paragraph 4 or paragraph 5 of Article 121 is applicable. Under paragraph 4 the provision would enter into force at the same time for all Parties after seven-eighths (currently 97 of 111) of the States Parties have ratified or accepted the amendment. Under paragraph 5 the provision will enter into force for a certain State upon its ratification or acceptance while at the same time preventing the ICC from exercising its jurisdiction for crimes of aggression committed within the territory, or by the nationals of those States who do not ratify or accept the amendment.

**Paragraph 1 of Article 8 *bis* defines the crime of aggression as the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression. Importantly, it contains the threshold requirement that an act of aggression ‘constitutes a manifest violation of the Charter of the United Nations.’**

The act of aggression generally speaking is the use of armed force by one state against another state without the justification of self-defense or without authorization by the Security Council. The definition of the act of aggression as well as the actions qualifying as acts of aggression contained in the amendment proposals (for example invasion by armed forces, bombardment and blockade) are influenced by UN General Assembly Resolution 3314 (XXIX) of 14 December 1974.

The threshold and formulation of this definition, which is heavily drawn upon the pre-existing language and general provisions in the Rome Statute and the UN Charter, reflects a preliminary compromise made by many States and is relatively more settled than other parts of the proposed amendments.

The proposed text of Article 15 *bis* sets out the conditions for the Court’s exercise of jurisdiction over the crime of aggression. There is a broad consensus that an investigation can be opened by the Prosecutor on the basis of a UN Security Council referral, a state-party referral, or *proprio motu* – of the Prosecutor’s own volition. In other words, the same trigger mechanisms apply as for the other three crimes under the Court’s jurisdiction. Furthermore, these draft provisions establish that the Prosecutor may proceed with an investigation only after ascertaining whether the Security Council has made a determination on an act of aggression by the State concerned and also notifying the UN Secretary General. Where there has been a determination by the Security Council, the Prosecutor may proceed with an investigation, but such a determination will be without prejudice to the finding of an act of aggression by the Court.

The amendment proposal offers different options outlining the (in)ability of the Prosecutor to proceed in the absence of a Security Council determination. Alternative 1 provides that no investigation may proceed without a positive determination by the Security Council (referred to as the ‘green light’ proposal) and a permutation of this option. Alternative 2 provides that an investigation may proceed where there has been no Security Council determination for a period of [6] months.

This alternative provides that the investigation may only proceed after there has been a determination on an act of aggression by the Pre-Trial Chamber of the ICC, the UN General Assembly or the International Court of Justice.

**The role of the Security Council and the existence (or not) of a jurisdictional filter** remain controversial aspects of the crime of aggression, reflecting a realization that the existence and nature of such a filter would have a considerable impact on how the crime of aggression could affect international relations. At a roll-call during the discussion of this topic at the resumed eighth session of the ASP, the majority of States expressed support for either having no filter, or for having a filter other than the Security Council.

Interrelated with the issue of whether the amendments for the crime of aggression will enter into force pursuant to paragraph 4 or 5 of Article 121, is the issue of **consent to jurisdiction by the aggressor State**. At a roll-call during the resumed eighth session, many delegations expressed the view that the victim State's acceptance of jurisdiction over the crime of aggression should not be sufficient for the Prosecutor to initiate an investigation, instead insisting on the requirement that the aggressor State has (in one way or another) accepted the ICC's jurisdiction over this crime. On the other hand a small majority of States indicated that the victim State's acceptance of ICC jurisdiction over the crime was sufficient. This issue is expected to be another controversial aspect of the discussions at the Review Conference.

The Working Group on the crime of aggression is scheduled to meet on Tuesday 1 June (5-6 pm); Friday, 4 June (10 am-1 pm); Monday, 7 June (10 am-1 pm; 3-6 pm); and on Tuesday 8 June (11 am-1 pm).

#### Relevant Documents:

- Resolution ICC-ASP/8/Res.6 on the Review Conference:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf)
- Informal inter-sessional meeting on the crime of aggression, hosted by the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, at the Princeton Club, New York, from 8 to 10 June 2009:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8/ICC-ASP-8-INF.2-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-INF.2-ENG.pdf)
- Discussion paper on the crime of aggression proposed by the Chairman (revision January 2009):  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ICC-ASP-7-SWGCA-INF.1%20English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ICC-ASP-7-SWGCA-INF.1%20English.pdf)

### 3. ARTICLE 8 OF THE ROME STATUTE

Belgium tabled for the Review Conference a proposal to **amend Article 8 of the Rome Statute by adding three additional categories of war crimes**. The proposal aims at extending the criminalisation of the use of certain weapons to non-international armed conflicts. The Rome Statute distinguishes international armed conflicts from non-international armed conflicts, and currently these three categories are only included in the Rome Statute as war crimes in international armed conflicts.

The proposed new categories would criminalise: employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases; and all analogous liquids, materials or devices; and employing bullets that expand or flatten easily in the human body.

**Belgium justified its proposal** by explaining that the use of the above listed weapons is already incriminated by Article 8, paragraph 2(b) of the Rome Statute in the case of an international armed conflict. The proposed amendment would extend the jurisdiction of the Court for crimes in an armed conflict not of an international character (Article 8, paragraph 2(e)). The International Committee of the Red Cross as well as some NGOs stated that the adoption of the proposal would promote greater protection for civilians as well as combatants in non-international armed conflicts and would bring Article 8 of the Rome Statute more in line with the current status of customary international humanitarian law. During the Rome Conference in 1998, most of the discussions on weapons related to situations of international armed conflict. There was very little debate about whether or not to include the above mentioned weapons for situations of non-international armed conflict. Due to time constraints, more thorough reflections were left for the future work of the Assembly of States Parties or the Review Conference.

At the resumed ASP session in March 2010, Belgium complemented its proposal by suggesting “**elements of crimes**” which further define the crimes of the proposed additional categories. (The proposed elements of crimes are identical to those adopted for the relevant crimes in the context of an international armed conflict.)

The amendment originally proposed by Belgium was **co-sponsored** by 18 further States during the “pre-negotiations” at the last ASP meeting in November 2009. These States included Austria, Argentina, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxemburg, Mauritius, Mexico, Romania, Samoa, Slovenia and Switzerland. A few other States expressed certain reservations regarding the third category of expanding and flattening bullets (so called “dum dum” bullets). Their reservations are linked to the fact that they use these weapons in certain circumstances, for example in the context of law enforcement/hostage taking.

Formal discussions on this topic are scheduled to take place on 4 June 2010 (3-6 pm).

#### Relevant Documents:

- Rome Statute amendment proposals:  
<http://www.icc-cpi.int/Menus/ASP/ReviewConference/Rome+Statute+amendment+proposals.htm>
- Resolution ICC-ASP/8/Res.9 on the Review Conference:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf)

## IV. STOCKTAKING EXERCISE

Stocktaking at the Review Conference has been noted as an important endeavour by numerous States, the ASP, the CICC and other members of civil society. The Review Conference will include stocktaking to consider the holistic success and impact of the Rome Statute to date with a particular focus on the following areas:

- Impact of the Rome Statute system on victims and affected communities;
- Complementarity;
- Cooperation;
- Peace and Justice.

As recognised by the ASP, the process of stocktaking should involve reflection on the performance to date of the system as established by the Rome Statute and the sharing of experience by a diverse group of relevant actors. The perspective of victims and communities affected by the Court's work, States Parties officials, national judicial and prosecutorial authorities, NGOs and other members of civil society are all relevant and necessary to effectively take stock of the status and impact of international criminal justice and the Rome Statute system.

During recent sessions of the ASP many delegations have stressed the importance that they placed on the stocktaking segment. It was mentioned that the stocktaking exercise should be treated as an integral part of the Review Conference. It was also suggested that adequate amount of time, possibly two days or four sessions, be devoted to this matter at the Review Conference.

The ASP has broadly supported the idea that the outcomes of the stocktaking exercise should be action-oriented, provide concrete guidance to the Court and especially to States Parties. It was recognised that the proposed topics may be suited to different formats of discussions and outcomes. It was also emphasised that the various issues – due to their unique nature – each demand a unique mechanism of taking stock appropriate to the subject matter and to the particular parties whose experience is called upon. As noted by the ASP, this involves a sort of dialogue distinct from ordinary ASP sessions.

### 1. PEACE AND JUSTICE

There is a common understanding among the organs of the United Nations and a majority of states within the international community that there can be no lasting peace without justice. However, despite this awareness, one of the central controversies surrounding the ICC is the claim that accountability efforts – including the prosecution of crimes within the Rome Statute – can threaten ongoing peace efforts. In light of this ongoing debate, the Review Conference offers an ideal opportunity to take stock and facilitate a grounded discussion on the role of the ICC in peace efforts.

This exercise will necessarily take into account the unique position the ICC holds as a permanent international criminal court mandated to investigate ongoing crimes. This position raises unique challenges and questions relating to the role of the ICC in ongoing peace building efforts as well as the ability of the ICC to contribute to peace through deterrence.

The ASP Bureau's **Focal Points, Argentina, the Democratic Republic of Congo and Switzerland**, have organised this stocktaking exercise including preparing a paper which includes a definition of the topic, a description of the substantive content, and provides an outline of the schedule planned.

The central focus is the need to balance the ICC's pursuit of the mutual goals of peace and justice. The panel **discussions** scheduled for the afternoon session on 2 June will be framed around: the relationship between 'peace and justice' as referenced in the Preamble of the Rome Statute and within the UN system as valid and legitimate goals, as well as the importance of the future efficacy of the ICC as a fundamental element of peace. The panelists will convey these themes through the panel presentations focused on international criminal justice, its challenges, the truth and reconciliation process as a complement to criminal justice, and safeguarding the interests of victims. Former President of South Africa, Thabo Mbeki has been chosen as the keynote speaker and Ken Roth, Director of Human Rights Watch will act as moderator. Speakers include representatives from the UN, States Parties, experts in peace negotiations and civil society. In preparation for the panel discussion, the Focal Points have been focusing on deepening the understanding of the topic's substance (drawing on the Nuremberg Declaration on Peace and Justice), creating **background papers for the panelists**, developing a way to facilitate participation from NGOs and representatives of affected communities, and working towards securing a reference on the issue within the Ministerial Declaration.

The proposed **outcome** will include a Chair's summary of events and reference to the desirability of continuing discussions on 'Peace and Justice' within future session of the Assembly of States Parties. The entire event will be complemented by side events, one of which is being planned by the CICC as a lunchtime meeting on Thursday 3 June 2010.

According to the CICC Team's view, the outcome of the event should contribute towards a broader understanding of the peace-justice dynamic as a mutually reinforcing relationship, subject to variable application in different contexts, and potentially a statement of principles to this effect.

**Relevant documents:**

- Stocktaking: Peace and Justice Template:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.II-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.II-ENG.pdf)
- Resolution ICC-ASP/8/Res.9 on the Review Conference:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf)
- 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 (Ms. Priscilla Hayner, former director of the peace and justice programme of the International Center for Transitional Justice)
- Truth and reconciliation processes as a complement to criminal justice (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)
- Safeguarding the interests of victims (Ms. Katya Salazar Luzula, executive director of the Due Process of Law Foundation)

## 2. THE IMPACT OF THE ROME STATUTE SYSTEM ON VICTIMS AND AFFECTED COMMUNITIES

In the framework of the stocktaking exercise, the Review Conference offers a unique opportunity to reflect on the question how victims and affected communities experience and perceive justice 8 years after the entry into force of the Statute, while at the same time recognising that the Court is still at a very early stage of its functioning.

**Finland and Chile**, the appointed ASP Focal Points on this topic, have worked closely with NGOs and the Court to prepare the discussion for the Review Conference.

The fact that the topic was selected as one of the four areas for stocktaking has been very welcomed by NGOs as it reinforces that victims and affected communities are stakeholders of the ICC system with valid interests in the proceedings and in the broader system as a whole. It recognises that their views count, as the direct and indirect beneficiaries of the Rome Statute system, and are significant for the Court's judicial work as well as its future planning process.

With a view to contribute to the stocktaking exercise, the Victims Rights Working Group (VRWG), a network of over 200 civil society groups and individual experts including from Uganda, DRC and Sudan developed and distributed a questionnaire to assess the Court's impact in different perspectives. Questions, for example, referred to the impact on victims' expectations of obtaining justice and on the local recognition of specific types of harm. The questionnaire was disseminated among partner organisations in situation countries but also in non-situation countries. The feedback received was compiled in a report for submission to the Review Conference.

On Wednesday 2 June 2010 (10 am-1 pm) a **formal panel discussion** will take place. Focus of the discussion will be the role of outreach, victims' participation, reparations, and the Trust Fund for Victims in creating the impact. To that effect, a discussion paper has been prepared (see link below) which puts the different issues into context and serves as guidance for the debate. Six panelists have been invited from the ICC, a number of civil society organisations, the Special Court for Sierra Leone and the Trust Fund for Victims. The keynote speaker will be Ms. Radhika Coomaraswamy, UN Special Representative for Children and Armed Conflict. It is hoped that the panel discussion, as the stocktaking exercise as a whole, will

contribute to identify areas in which the Court's impact can be further strengthened, including where States can make their contributions.

The stocktaking exercise is not limited to the formal agenda of the Review Conference. Rather, there will be numerous **side events** organised by civil society or states or jointly that will be integral part of the stocktaking process and nourish the analysis and outcome. For example, the CICC together with the VRWG will hold a roundtable discussion at lunchtime on 1 June to make an analysis from a civil society perspective. (For more information on the side events, please consult the official journal as well as the programme for the Peoples' Space)

It is envisaged that States will adopt a **resolution** on the "Impact of the Rome Statute system on victims and affected communities." During the resumed ASP session in New York in March 2010 States have already deliberated on a draft that was prepared by Finland and Chile. The draft highlights, among other things, the importance of the 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.

NGOs encouraged States to use the Review Conference to make **pledges** relevant to the different stocktaking issues, including the victims' topic. Welcomed pledges for instance would be regular contributions to the Trust Fund for Victims or the conclusion of relocation agreements. It is hoped that States come forth with concrete and measurable pledges.

#### Relevant documents:

- Report of the ASP Bureau

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8R/ICC-ASP-8-49-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-49-ENG.pdf)

- Template

[http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.I-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.I-ENG.pdf)

- Draft Resolution

[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf)  
(p.14/15)

- Discussion Paper prepared by Focal Points with the assistance of several experts:
- Contribution from the Court: "Turning the lens"
- Contribution from the Court: Fact Sheet
- VRWG Report:

<http://www.vrwg.org/Publications/05/Stocktakingreport2010.pdf>

### 3. COMPLEMENTARITY

The preamble of the Rome Statute explicitly references the duty of States to address the commission of international crimes, while emphasizing the complementary nature of the ICC. The ICC in this regard will assume responsibility for the investigation and prosecution of crimes that fall under the Rome Statute where a State has failed to exercise that duty. The ASP Bureau's **report on stocktaking of complementarity**, produced by the Focal Points on Complementarity, Denmark and South Africa and in

consultation with States, seeks to structure discussions at the Review Conference on the inability of States Parties to carry out their own investigations and prosecutions of Rome Statute crimes. In this regard a panel discussion organised by the Focal Points and scheduled for **3 June**, will focus on the elaboration of the principle of complementarity; its practical application in the context of the Rome Statute and with a particular focus on positive complementarity efforts and on how it seeks to enable national jurisdictions to address such crimes. In order to guide these discussions the Focal Points have assembled a **panel** comprising of representatives from national governments; regional and international organisations and the ICTY. There will, in addition be several other side events, including one hosted by the Coalition at lunchtime on **2 June**, that seek to address the issue of complementarity and positive complementarity initiatives.

The **outcome of the panel discussion** will be formulated in a resolution that was provisionally approved by States Parties and which aims to capitalise on discussions by *inter alia* reaffirming the obligations of States under the Rome Statute including by implementing the Rome Statute under domestic law as a means of facilitating the investigation and prosecution of crimes contained therein, and by mandating the ASP Secretariat to facilitate the exchange of information with relevant actors, including States; the Court; and civil society and with a view to strengthening domestic jurisdictions.

The Coalition, through its **Review Conference Team**, issued a **paper** to the 8<sup>th</sup> resumed session of the ASP stressing the need to assess not only positive complementarity initiatives, but assessing the extent to which States Parties have themselves attempted to put in place procedures that would enable national jurisdictions to address Rome Statute Crimes. In addition to addressing the ability of States, the Team has stressed the need to address the willingness, or lack thereof, of States Parties to use national mechanisms to address Rome Statute crimes, without which any amount of capacity building and outside support will be ineffectual. For its part the Coalition's side event on complementarity aims to discuss these very issues.

#### Relevant documents:

- CICC Team on the Review Conference: comments and recommendations on complementarity in the context of the stocktaking exercise at the Review Conference, presented at the eighth resumed session of the ASP:

<http://www.coalitionfortheicc.org/?mod=aggression&lang=en>

- Report of the Bureau on stocktaking: complementarity:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8R/ICC-ASP-8-51-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf)

- Template of the stocktaking exercise on complementarity:

[http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.IV-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.IV-ENG.pdf)

- Complementarity Resolution

[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.9-ENG.pdf)

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#### 4. COOPERATION

It is commonly understood that the ability of the Court to execute its mandate and its success is dependant on the level of cooperation it receives. In this regard a diagnosis of the progress made and obstacles faced in securing cooperation with the Court is in order. Since their appointment by the Bureau, the ASP Focal Points Costa Rica and Ireland have consulted with States Parties and the Court in producing the Bureau's **report on stocktaking of cooperation** that will set the standard and outcome of discussions at the Review Conference and in a bid to make such a diagnosis. As per the background paper the following topics will form the basis of discussions over the three hours dedicated to cooperation as a stocktaking topic: implementing legislation; supplementary agreements, arrangements and other forms of cooperation; challenges encountered by States Parties in relation to requests for cooperation; cooperation with the UN and other intergovernmental and regional bodies; and enhancing knowledge of and support of the Court. **The discussions**, scheduled for **3 June** and moderated by H.E. Philippe Kirsch, former President of the ICC and *ad hoc* Judge at the ICJ, will include several keynote speakers, speakers from foreign governments; regional and international bodies and the ICTR. In addition to the Bureau report, the Focal Points have produced a "**draft outcome document**," so-called as consensus could not be attained amongst States Parties with respect to whether the format of the document should be a resolution or declaration. The draft document aims to codify the outcome of the Review Conference discussion by *inter alia* reaffirming the obligation of States Parties under Parts 9 and 10 of the Rome Statute and the importance of executing arrest warrants. A decision on the format of the draft document by the Bureau has been requested by the Focal Points, which at the time of writing was still pending. As well as the prospective issuance of a resolution or declaration, the stocktaking event will culminate with a **report** summarising the discussions.

The **Coalition's Cooperation Team** which has monitored the stocktaking preparations has provided comments to the Focal Points in the development of the Bureau's report on stocktaking of cooperation and its corresponding "draft outcome document." The Team believes that the cooperation discussions at the Review Conference should include a **reflection** on how States Parties have complied with the cooperation regime in the Rome Statute, and in particular its obligation to ensure the availability of procedures under national law to facilitate cooperation with the Court as well as observance of the Bureau's 66 recommendations on cooperation contained in its report from the 6<sup>th</sup> session of the ASP. In addition the Coalition hopes that States Parties not only use the Review Conference to make **pledges** that would ensure greater cooperation, but that it take full advantage of the stocktaking exercise by making announcements of prospective government initiatives that would facilitate the same following and based on the outcomes of the stocktaking discussion that should identify successes and obstacles to cooperation.

The Coalition also aims to capitalise on momentum created by the Review Conference with its **side event** on stocktaking of cooperation, scheduled for **31 May** which will seek to address cooperation-related issues from the perspective of civil society that are of critical importance to the Court and will be for the Bureau's Cooperation Facilitator.

**Relevant documents:**

- Report of the Bureau on stocktaking: cooperation:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP8R/ICC-ASP-8-50-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP8R/ICC-ASP-8-50-ENG.pdf)
- Template of the stocktaking exercise on cooperation:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.III-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/ICC-ASP-8-Res.9-ANNEX.III-ENG.pdf)
- Draft outcome document: (publication on ICC website pending at the time of writing)
- Bureau report on cooperation – 6<sup>th</sup> session of the ASP  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/library/asp/ICC-ASP-6-21\\_English.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-6-21_English.pdf)

**V. ENFORCEMENT OF SENTENCES**

On 26 November 2009, Norway presented a proposal for an amendment to Article 103 of the Rome Statute to the ASP. It sought to strengthen cooperation with the Court regarding the enforcement of sentences without disrupting the obligations of the States Parties and their relationship with the Court. While the ICC has not yet carried out any sentences, other international criminal tribunals have met challenges in finding states willing to accept sentenced, international criminals.

Norway therefore seeks to address these problems for the ICC by encouraging Parties to take on sentenced persons and to provide support to those States who are already willing to volunteer but do not have the infrastructure. At the 8<sup>th</sup> session of the ASP, States Parties agreed with the fundamental purpose of the proposal, but did not think an amendment to the Statute would be necessary or desirable. As a result, the ASP agreed to mandate the Bureau to consider ways in which this issue could be addressed at the Review Conference.

Within informal consultations of the NYWG, Norway put forward a draft resolution on strengthening the enforcement of sentences. As a result of a number of suggestions made by States Parties and non-parties alike, changes were made to the draft resolution. The main concerns expressed during the consultations were that the document should reflect (1) the role of the Court in strengthening enforcement and (2) the voluntariness of the decision to take sentenced prisoners. Both issues have since been addressed. The Bureau agreed to include the consideration of the draft resolution on the issue as part of the Review Conference agenda.

As said, non-States Parties also have concerns. For example, Egypt, representing various parties, has repeatedly refused to support the amendment unless it distinguishes between the responsibilities of States Parties v. other states throughout the text and doesn't place new obligations upon the international bodies that it is party to.

The text of the draft resolution will be considered at the Review Conference where the formal discussion is scheduled to take place on Tuesday 8 June (3-4:30 pm).

**Relevant Documents:**

- Resolution ICC-ASP/8/Res.6 on the Review Conference:  
[http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf)

## VI. PLEDGES

One main purpose of the upcoming 2010 Review Conference is to provide the States Parties with a historic opportunity to assess and reflect upon the progress of the Court and the new system of international justice established by the Rome Statute. With this purpose in mind, the ASP has encouraged States to make specific pledges or commitments at the Review Conference that will contribute significantly in advancing the Rome Statute and the Court.

Pledges can pertain to States' contributions to strengthening the system of complementarity, cooperation, or impact on victims and affected communities, as well as other areas of the Rome Statute. Each government was encouraged to evaluate its domestic resources and capabilities for the purpose of deciding where and in what capacity it can make a pledge. For example, a State could reaffirm its intention to adopt national legislation codifying Rome Statute crimes into national law and facilitate cooperation with the Court, promise to ratify or accede to the Rome Statute or the Agreement on Privileges and Immunities of the ICC, or make a commitment to support the efforts of other States in need of technical capacity to ratify or implement the Rome Statute.

The Bureau appointed The Netherlands and Gonzalo Bonifaz as Focal Points to prepare, facilitate and coordinate the pledging process. The Focal Points requested that pledges be specific, action-oriented and that they indicate in measurable terms the objectives and timeline of each pledge.

The CICC sent a letter to Heads of States and Ministers strongly encouraging governments to contribute pledges which include a timeline or benchmarks to measure and ensure progress in their implementation. The letter included a list of possible pledges and topics.

**Relevant Document:**

- CICC letter to States on pledges at the Review Conference:  
[http://www.coalitionfortheicc.org/documents/CICC\\_Letter\\_on\\_Pledges\\_to\\_States.pdf](http://www.coalitionfortheicc.org/documents/CICC_Letter_on_Pledges_to_States.pdf)

## VI. COMMUNICATIONS AROUND THE REVIEW CONFERENCE

The Review Conference presents an opportunity for dialogue and awareness raising on the International Criminal Court and the Rome system as a whole. NGOs under the umbrella of the CICC are involved in awareness raising activities around the Conference. CICC NGO members worldwide are organising debates, roundtables and parliamentary seminars in capitals as well as within Uganda to build momentum for the Conference. At the Review Conference, a wide range of side events will be held:

moot courts, panel discussions, media briefings, and screenings, among many others, to touch upon issues related to amendments of the Statute but also to complementarity, cooperation, victims, and peace and justice. The CICC is also producing vital information materials and advocacy papers distributed widely among diplomats, tribunal officials, academics, civil society, the media and the general public. The Coalition will continue to ensure a similar information flow at the Conference and beyond.

In a letter sent in January 2009, the Coalition's NGO Team on Communications urged the ICC and ASP Presidents to ensure that an effective Communications Strategy is developed and implemented for the Review Conference. Indeed, the Team believes that the ASP and the Court must capitalise on the fact that the Review Conference is likely to attract substantial global media coverage that requires a comprehensive communications strategy. Further, the venue of the Review Conference provides a unique opportunity for the Court's outreach unit to bridge the gap between affected communities, the Court and ICC Member States. The Team also exchanged a number of concrete suggestions directly with both the ASP Secretariat and ICC to make the most of the event, including in terms of information flow (website, publications, social tools, etc) and media.

**Relevant Documents:**

- ICC webpage on outreach:

<http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/Outreach.htm>

- CICC webpage on ICC communications and outreach:

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

- ICC integrated strategy for external relations, public information and outreach:

[http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6D4F2B93C7506/185049/ICCPIDSWBOR0307070402\\_IS\\_En.pdf](http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf)

- ICC strategic plan for outreach:

[http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512\\_English1.pdf](http://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf)