

REPORT

The Fourteenth Assembly of States Parties of the International Criminal Court

The Hague, The Netherlands



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Summary

From 18 to 26 November 2015, the Assembly of States Parties (ASP) of the International Criminal Court (ICC) met in The Hague for its fourteenth annual session. The ASP was attended by States Parties, observer States, international organisations and non-governmental organisations, including a delegation from No Peace Without Justice (NPWJ), which was headed by its Secretary-General Niccolò Figa-Talamanca. NPWJ convened one side-event on 25 November 2015 with the financial support of the European Union and co-sponsored by the Governments of Belgium, Canada, France, Italy, Liechtenstein, Netherlands, United Kingdom and the National Coalition of Syrian Revolution and Opposition Forces on: “Accountability and the Prospect of a Political Solution to Conflict in Syria”¹, and organised an exhibition of the Caesar files on 18-20 November 2015. NPWJ also contributed to other side events, through the participation of Senior Program Associate Greta Barbone as a panellist in a Side event on “Enhancing the Court’s Impact on the Ground: A Strategic Approach to ICC Field Presences and External Operations”² organised by the ICC Registry and the participation of Legal Counsel and Director of International Criminal Justice program, Alison Smith as chair of a side event on “Making Justice Count: Pushing Forward the ICC’s Local Impact” organised by Human Rights Watch, Denmark and the UK. Finally, NPWJ Secretary-General Niccolò Figa-Talamanca delivered a statement on behalf of the CICC during the closing session of the ASP.³

The Assembly held discussions about the budget, complementarity, cooperation, efficiency and effectiveness of court’s proceedings and permanent premises as well as informal discussions on the “omnibus resolution”. The Assembly also discussed in plenary session two requests about the application and implementation of articles 97 and 98 of the Rome Statute and about the application of amended rule 68 made respectively by South Africa and Kenya. Many side events were organised during the ASP on various themes such as the crime of aggression, victims, sexual violence, the ICC’s field presence, etc.

1. Opening session

The Fourteenth ASP of the ICC gathered in The Hague from 18 to 26 November 2015. Hundreds of government delegates from States Parties and observer States participated in the session, alongside over 100 NGO representatives and representatives of international organisations.

On Wednesday 18 November, during the opening plenary session, the ASP adopted the agenda, organised its work and heard reports from the Court and the Trust Fund for Victims. H.E. Sidiki Kaba, President of the ASP, chaired the opening session, which included remarks from, Mr Motoo Noguchi, Chair of the Board of Directors of the Trust Fund for Victims of the International Criminal Court; Judge Silvia Fernandez de Gurmendi, President of the ICC; and Ms Fatou Bensouda, ICC Prosecutor.

Judge Silvia Fernandez de Gurmendi, the President of the ICC, presented the annual report of the Court. She indicated that the main priority of Court is to enhance its effectiveness and efficiency and that the judges had worked on changes to expedite the proceedings of the Court reflected in a published manual. On the governance of the Court, she emphasised the need for coordination, cohesion and cooperation. The development of performance indicators has been a process to improve the Court’s effectiveness and efficiency. She made a brief outline of the future activities on the Court and emphasised the need to engage with victims and the

¹ See Side Event Report in Annex 3 of this report.

² See full speech in Annex 1 of this report.

³ See full speech in Annex 2 of this report.

importance of field presence. Judge Fernandez de Gurmendi restated the importance of the independence of the Court, which has been a recurring subject in this ASP. With respect to the budget, she stressed the Court's need for sufficient resources and noted that while she understands the financial pressures States are under, it is crucial the Court is given sufficient resources in regards of increasing caseload.

Ms Fatou Bensouda, the Prosecutor of the Court, stressed the importance of preliminary examinations, an issue discussed in a published report that was presented at the ASP during a side event. She mentioned the opening of preliminary investigations in Jordan, Ukraine and Palestine. The Prosecutor noted that the increase in cases has not been matched by an increase in financial resources and that resource constraints can impede the ability of the OTP to work efficiently. She also spoke about the importance of cooperation and political support for the Court, which include safeguarding the judicial functions of the Court. She insisted on the need for States Parties to stand firm in their commitment to the Rome Statute and to the Court.

Mr Motoo Noguchi, the Chair of the Board of Directors of the ICC Trust Fund for Victims (TFV), spoke about the election for new members for the Board that was held during this ASP. He raised the issue of child soldiers not benefiting enough from demilitarisation and integration processes. He mentioned that the TFV had a draft implementation plan for reparations with a proposal to pay reparations of 1 million euros to sustain this implementation. He noted the TFV had 6 new projects in Northern Uganda but that it was unable to rekindle its program in Central African Republic because of security considerations. He also emphasised the gender specific elements that need to be taken into consideration in the TFV's work.

Mr Roberto Bellelli of Italy addressed the Assembly regarding the permanent premises of the Court. He presented the report on the permanent premises to the Assembly and noted there is a current budget of 200 million euros; 9 million euros will need to be funded but no new contributions will be asked from States Parties as funds from the surplus of the Court should be used to fund the rest of the project.

2. General debate

The general debate took place over the span of two days. 56 States Parties made interventions; observer States and NGOs also intervened during the plenary held during the second week of the meeting.

The general debate started with a statement from Palestine, which raised the issue of impunity for crimes committed by Israel as well as the ongoing presence of occupation forces in Palestine. Many States welcomed the State of Palestine to the ICC in their statement while Canada stated that it did not recognise a "State of Palestine".

Following this statement, Ethiopia speaking on behalf of the African Union, reiterated its previous request to expedite the proposed amendments to Article 16 of the Rome Statute. They added that Kenya should qualify for the deferral process in article 16. Further, in the case of William Ruto, the AU stressed that retroactive evidence should not be used, referring to Kenya's request to clarify the application of the amended Rule 68, which was later discussed during a special session on a "review of the application and implementation of amendments to the Rules of Procedure and Evidence introduced at the 12th Assembly", a request supported by the AU. Further, the AU supported South Africa's proposed discussion on clarification of the application and implementation of articles 97 and 98. This statement concluded by saying that the trend of lack of trust and ignorance towards the voices of Africa at the ICC should end. Uganda also spoke about the ReVision project, arguing that it had led to greater geographical and gender imbalance and deplored the fact that it affected many African people at the ICC.

During the general debate, States raised a number of other issues including cooperation, complementarity, the status of victims before the Court and reparations, the Trust Fund for Victims, the budget of the Court, efficiency and efficacy of the Court's proceedings, field presence and terrorism. States Parties reaffirmed their commitment to the ICC and the Rome Statute. Many stressed the importance of universality and the necessity to have more States ratify the Rome Statute. States Parties have also emphasised cooperation and the need for States to cooperate with the ICC.

The Assembly took place in a context of multiple terrorist attacks globally and many States have raised the issue of terrorism being prosecuted in the ICC. Mali and Hungary stressed that terrorism had to be dealt with by the international community and more particularly by the ICC, Slovenia added that the attacks highlight the need to search for solution to remaining accountability gaps.

Kenya requested that the legislative intent behind the amendment to rule 68 be discussed and asked that a decision be taken to reaffirm the non-retroactivity of the rule as amended to situations commenced before 27 November 2013. They argued that this matter was separate from issues dealt by the Court and that it did not interfere with judicial and prosecutorial independence. In response to Kenya's request, many States stressed the importance of the Court's independence and emphasised the fact that the ASP is a non-judicial body and only the Court should deal with judicial issues.

France and Liechtenstein mentioned the Caesar files and the fight against impunity in Syria.

3. Application and implementation of articles 97 and 98 of the Rome Statute

During the Plenary session on November 20 2015, the Assembly discussed the issue raised by South Africa on the application and implementation of articles 97 and 98 of the Rome Statute after consensus was reached in the Bureau to give the floor to the interested delegations on this matter.

South Africa took the floor first, explaining the reasons why they were considering leaving the ICC, naming its inability to prosecute human rights violations committed by Western States and their concern about the unfairness of the Court. They insisted on the fact that discussion of the issue of articles 97 and 98 of the Statute was not a threat to the Court's independence as States Parties are the ultimate interpreter of the Rome Statute. South Africa sought clarification of the relationship between articles 98 and 97, citing inconsistencies in the findings of the Pre-Trial Chamber in relation Mali and DRC cases. They insisted that States Parties should take some time in understanding the provisions and asked for a panel of experts to be convened to provide the ASP with proper advice on this matter. Kenya supported South African intervention.

A majority of States Parties agreed to discuss article 97 in order to clarify it but insisted that article 98 should not to be discussed by the ASP. Many States Parties replied to South Africa's intervention by stressing the importance of judicial independence. Costa Rica noted that under the Rome Statute, the ASP does not have the power to interpret the judicial functions of the Court. Slovenia added, on behalf of Moldova, Norway, Switzerland, Canada and the EU, that any discussion within the ASP must respect the role of the Court to interpret the rules and that States can submit proposals for new rules, which can be discussed in the appropriate body. They said they were ready to engage in constructive discussion about how to reinforce the work of the Court.

Amnesty International took the floor to intervene on this issue noting that this Assembly was the right forum to discuss mechanisms to reinforce the Court's work but that interpretation of article 98 interfered with non-cooperation proceedings as well as with the independence of the

Court. They added that there were no clear proposals on article 97 and therefore the ASP should wait for concrete proposals before continuing this discussion.

4. Review of the application and implementation of amendments to the Rules of Procedure and Evidence introduced at the 12th Assembly

Following the session on articles 97 and 98 of the Rome Statute, the Assembly held a discussion on the application of amended Rule 68, an item that was submitted by Kenya. This comes in the context of the ICC case against Kenyan Deputy President William Ruto and Joshua Sang where the ICC Prosecutor recently used rule 68 to introduce pre-recorded witness testimony without the presence of the witness in the ongoing trial of Mr Ruto and broadcaster Joshua Sang for allegedly orchestrating crimes against humanity during Kenya's 2008 post-election violence. The retroactive use of rule 68 has been challenged by Mr Ruto's defence team and is currently before the ICC Appeals Chamber.

Kenya opened the discussion by demanding clarification of the legislative intent behind the amendments to rule 68, requesting a clear statement that rule 68 as amended should not be applied retroactively. They argued that when they agreed to the amendment at the 12th session, they had a clear understanding – one they believed was shared by the Assembly – of the non-retroactivity of the amendment. Uganda followed, speaking in favour of Kenya's proposition and stating that there should be no retroactive application of the amendment. A majority of States replied by reiterating the fundamentality of the Court's independence, arguing that the interpretation of rule 68 as amended, and how amendments in general should be applied, is an issue for the Court and not the ASP, expressing their concern about political interference in the Court's work.

The issue was present during the whole ASP and put a great deal of pressure on those present. An agreement was reached by the bureau on the last day of the ASP. At the closing session, the report of the 14th Assembly was adopted, approving the language proposed by Kenya on the non-retroactivity of rule 68 and including the language in the report. The fact it is in the report and not in a resolution means it is not binding on States Parties or the ICC. It remains for the ICC Appeals Chamber to decide on the application of rule 68. Canada, Switzerland and several States took the floor to stress the importance of the Court's independence and to encourage cooperation. NPWJ Secretary-General Niccolò Figa-Talamanca also made a statement on behalf of the CICC, criticising the language adopted in the ASP report, which shows a weakness of the Assembly, and reminding the Assembly of the crucial importance of the Court's independence. President Kaba closed the session with a speech calling for stronger cooperation, rejecting the argument of an anti-African Court and called for unity and universality.

5. Discussion on Complementarity

During the Fourth Plenary meeting on Thursday 19 November, the Assembly held a discussion on complementarity with a thematic focus on "strategic action to enhance national capacity to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute Crimes". The discussion was moderated by Ms Irene Khan, Director-General of the International Development Law Organization (IDLO) and included six panellists: H.E. Margot Wallström, Minister for Foreign Affairs of Sweden; H.E. Sidiki Kaba, Minister of Justice of Senegal and President of the Assembly of States Parties; Ms Fatou Bensouda, ICC Prosecutor; Dr Athaliah L. Molokomme, Attorney General of Botswana; Ms Thelma Aldana, Attorney General of Guatemala; Mr Mike Chibita, Director of Public Prosecutions (DPP) of Uganda; and Ms Brigid Inder, Executive Director of Women's Initiatives for Gender Justice.

The speakers noted that gender equality is essential for peace and security and highlighted the importance of addressing sexual and gender-based violence. They deplored the lack of accountability for SGBV despite the high scale of these crimes. They stressed the important role of civil society in raising these issues and their necessary assistance to develop practical tools to address this violence. The panellists and the participating States talked about progress in the fight against impunity for SGBV crimes in their respective countries.

The ICC Prosecutor said the effective investigation and prosecution of gender-based crimes has been a key component of the work of the office of the OTP. During the preparation of every investigation plan, gender based crimes are tracked and brought to the attention of the Prosecutor. During the discussion, Australia noted that national capacity must be developed to have extensive law to prosecute SGBV. Many other speakers noted the importance of national prosecution of SGBV. For FIDH, the main challenge is that these crimes are often forgotten at the national level. Botswana deplored the fact that these crimes are often considered as “soft”, less important and that this mind-set needs to change. A majority of speakers said the victims should be at the core functioning of the Court. On the empowerment of victims, panellists expressed their support for civil society on the ground and of the TFV.

6. Discussion on Cooperation

At the beginning of the Plenary on Friday 20 November, 2 hours were devoted to a discussion on the following theme: “Cooperation with the Court with a focus on voluntary framework agreements or arrangements”. The discussion was facilitated by Ambassador Maymouna Diop Sy (Senegal) and Ambassador Jan Lucas van Hoorn (the Netherlands). The panel included H.E. Sidiki Kaba, President of the Assembly of States Parties; Judge Silvia Fernández de Gurmendi, President of the International Criminal Court; Ms. Fatou Bensouda, Prosecutor of the International Criminal Court; The Hon Aminata Mallé Sanogo, Minister of Justice and Human Rights, Keeper of the Seals of Mali; Mr Gerard Dive, Head of the Belgian Central Authority for the Cooperation with the International Criminal Court and the other International Criminal Tribunals; and Mr Herman von Hebel, Registrar of the International Criminal Court.

Cooperation with ICC States Parties is the cornerstone of the architecture of the Court. Without cooperation with States, IGOs and NGOs, the Court would never be in a position to dispense with its duties soundly and effectively.

The President of the ASP opened the discussion, stressing that because the Court does not have an independent law enforcement organ, it depends on States Parties for cooperation, which has to be practical, definitive and measurable.

The President of the ICC added that the Court needs assistance now more than ever as the workload increases. States Parties took the floor reinterring their commitment to cooperation with the ICC. She reminded the Assembly that the system is based on double consent. She insisted on the importance of witness in trials and stressed the importance of protection from the Court and the States through cooperation. Judge Fernandez de Gurmendi called for more agreement on released individuals and stated that the Court needs more assistance as the workload is growing.

The Prosecutor added that cooperation needs to be genuine, proper and timely. She added that overall, there has been an increase in compliance from States.

Ms Aminata Mallé Sanogo said that international justice should be a complement of national efforts and that the cooperation regime as set out in the Rome Statute depends on the political will of the States that ratified the Statute.

Mr Gerard Dive put an emphasis on information sharing and communication in cooperation.

The Registrar of the ICC stressed that the Court is facing unprecedented challenges. He noted that political will is a necessary prerequisite to complete the agreements and to cooperation in general. He added that there are interests on the States' side and expertise on the side of the Court: cooperation is always possible and in some instances, fruitful exchanges have resulted, especially concerning the protection of witnesses. He reminded the Assembly that the funds from the TFV can be used for technical assistance for victim's protection.

During the discussion, States reiterated their commitment to cooperation. The Netherlands stressed the need for more relocation, serving sentences and witness protection agreements, which was concurred by many other States Parties.

7. Discussion on the Efficiency and Effectiveness of Court Proceedings

On 24th November, the Ninth plenary meeting focused on the efficiency and effectiveness in the ICC. The dialogue involved States Parties, the Court and civil society. It was stressed that improving the efficiency and effectiveness of the Court Proceedings is a shared responsibility and priority of the Court and State Parties. The discussion of the delegates followed remarks from the President of the ICC, the ICC Prosecutor, Professor Carsten Stahn and Mr Richard Dicker, Director of International Justice for Human Rights Watch. The discussion also included the report of the Study Group on Governance (SGG) - chaired by Ambassador Masaru Tsuji (Japan) and Ambassador María Teresa Infante Caffi (Chile) - and the Working Group on Lessons Learnt (WGLL), chaired by ICC President Fernández de Gurmendi.

Ms Fatou Bensouda, while commenting the activities carried out by her office, highlighted the importance of improving the performance of the Court in order to achieve better and timely redress for victims of atrocities, without deficiencies. The OTP has to deal with a growing number of demands and this requires continuous adjustments of their investigation strategy and organisation of resources. However, the office had a positive performance in 2015 and managed to reduce costs.

Among the State Parties interventions, Belgium spoke on the behalf of the EU to reiterate the support to the Court and call for harmonisation of the jurisprudence and procedures as a responsibility of all States Parties.

The CICC stressed the importance of improving efficiency and effectiveness, including a reduction of the time and the human cost of inefficiency. They warned that the political interference may pressure the Court financially and undermine its leadership. They asked for reconsidering a review of the UN System rules and apply the lessons learnt.

8. Consideration on the Budget

In its program budget for 2016, the Court sought an increase in its budget. The Registrar and the Chair of the Committee on Budget and Finance presented their reports during the eighth plenary meeting on Saturday 21 November. They insisted on the importance of cooperation, stressing that non-cooperation can have great financial implications for the Court. The Committee on Budget and Finance recommended a 17.3% increase on the 2015 ICC budget, which was set at €130,660,000, thereby resulting in a €153,328,200 proposal for the 2016 budget. Several States have sought a lower percentage. Eight States Parties broke the silence procedure, meaning that there was a discussion during the ASP about the budget.

Finally, the States Parties agreed on the budget proposal contained in Resolution ICC-ASP/14/Res.1,⁴ which was adopted by consensus on 26 November 2015. The program budget for 2016 was set at €139,590,600, an increase of €8,925,000 (6.83%) on the Court's 2015 budget, but approximately €370,000 less than the budget recommended by the Committee on Budget and Finance. The ICC Prosecutor commented that the budgetary constraints were obstacles to the efficiency of her work, in particular with an increasing workload.

9. Working Group on the Omnibus Resolution

At each of its sessions since 2003, the ASP has adopted an “Omnibus Resolution”. The Omnibus Resolution, formally titled “Strengthening the International Criminal Court and the Assembly of State Parties”, addresses a wide range of substantive, practical and policy issues in relation to the Court, the ASP and other stakeholders.

This year, States Parties adopted the Omnibus resolution⁵ on 26 November 2015 by consensus. The great part of the text was already agreed upon before the ASP during informal consultations on the resolution, chaired by the facilitator Ms Damaris Carnal from Switzerland, but the discussions on the resolution continued until the very last session of the ASP. Kenya made a proposal for two paragraphs to be included in the omnibus resolution related to the retroactive use of rule 68 as amended and the ICC Office of the Prosecutor's use of witnesses. Discussions on this proposal continued during the informal consultations on the resolution. At the end, the language was not added to the omnibus resolution as it was decided to be included in the ASP final report.

Canada made a proposal to change OP1, which reads as “Welcomes the State that has become a Party to the Rome Statute of the International Criminal Court since the thirteenth session of the Assembly” to welcome the State of Palestine as a State Party, by replacing “the State” with “the States” which was seen as a reflection of Canada rejection to recognize the State of Palestine and was met by a strong opposition from most State Parties and Canada finally retracted its proposal at the closing session of the ASP.

South Africa made a request to discuss the interpretation of article 97 in conjunction with articles 27 and 98. The discussion will continue in the ASP Bureau next year and language to that effect was included in the omnibus resolution.

10. Side Events

During this ASP, NPWJ held one side event on 25 November 2015 on Accountability for Syria⁶ and organised the Caesar exhibition on 18 November 2015. NPWJ also participated in other side events, with Greta Barbone as one of the panellist during the side event on “Enhancing the Court's Impact on the Ground: A Strategic Approach to ICC Field Presences and External Operations” organised by the ICC registry⁷ and with Alison Smith chairing the Human Rights Watch side event on “Making Justice Count: Pushing Forward the ICC's Local Impact”. NPWJ also participated in many other side events during the ASP.

The side event on Syria discussed the situation in Syria and the lack of accountability and justice for the Syrian people. The panel included Rami Nakhla, NPWJ Syria Project Coordinator; Ayman Ghojal, Human Rights Defender; Raheb Alwany, Human Rights Defender; and Stephen

⁴ See https://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP14/ICC-ASP-14-Res1-ENG.pdf

⁵ See https://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP14/ICC-ASP-14-Res4-ENG.pdf

⁶ See Annex 3

⁷ See Annex 1

Rapp, former Prosecutor of the Special Court for Sierra Leone, former US Ambassador on War Crimes Issues. It was co-chaired by Niccolò Figà-Talamanca, Secretary General of No Peace Without Justice, and Hussein Sabbagh, Secretary General of Euro-Syrian Democratic Forum. Welcome remarks were made by Ms Alexandra Valkenburg, Head of Human Rights for the Ministry of Foreign Affairs of the Netherlands. Closing remarks were made by Elizabeth Evenson, Senior Counsel, Human Rights Watch. The speakers addressed this issue of impunity in Syria and deplored the lack of international commitment toward accountability. They expressed concern about enabling crimes against Syrians through international support of the current regime and called for the international community to fight against this repressive government, noting that it is the only way to have accountability for Syrians. Different types of international actions and solutions were also discussed.

The Caesar files exhibition was held in the margins of the ASP from Wednesday 18 November to Friday 20 November and was co-hosted by Syrian Association for Missing and Conscience Detainees, Euro-Syrian Democratic Forum. The opening of the exhibition was held on Wednesday 18 November and was well attended. Statements were made by representatives from No Peace Without Justice, the Syrian Association for Missing and Conscience Detainees, Liechtenstein and the United States. The exhibition remained open for the next two days and received many visitors, who expressed their concern for the victims and their families and their belief of the need for accountability for the crimes depicted in the photographs.

In addition, there were a wide variety of side events organised by other actors, which dealt with a number of key issues and concerns relevant to State Parties, observer States and members of civil society. NPWJ attended a majority of these events. The side events included: field presence, sexual and gender-based violence, crimes of aggression, the place of victims at the ICC, performance indicators, assistance and reparations, and many others.

Annexes NPWJ Side Events and Participation

Annex 1: Greta Barbone, the ICC's field presence and external operations

Greta Barbone speech at side event on “Enhancing the Court’s Impact on the Ground: A Strategic Approach to ICC Field Presences and External Operations” (ICC Registry)

I would like to thank the organisers of this event for giving me the opportunity to share with you some thoughts on enhancing the Court’s impact on the ground.

As some of you know, in the past years NPWJ has consistently called on the Court to re-conceptualise the relationship between Headquarters and situation countries, by recognising the critical relevance of field offices and field engagement for the implementation of the mandate of the ICC. We have equally called over the years States Parties to support this process, as we believe it will contribute considerably to the enhancement of the Court impact. Therefore it is really an honour and a personal pleasure to be here today to discuss with you a strategic approach to field presence and external operations.

My first comment is that the field focus that we have seen in the last years is one of the most important policy shifts the ICC has undergone since its establishment.

Looking back, we can say that in these first years the Court considered itself an institution based in The Hague. Not only its Headquarters premises were based in The Hague, but the Court considered itself an institution based here.

When we discuss the Court impact in the field I think we should start recognising that what we are really discussing is the only impact for which the Court was established: bringing accountability for crimes under international law in a way that ensures victims participation and reparations. To have that impact the Court needs to be in the field.

Furthermore, the Court needs to be in the field to make the whole system work. Where are the witnesses? In the field. Where are the victims? In the field. Where are the accused? In the field. Where is the evidence? In the field. Without the field, without the Court’s presence there, you cannot have effective cases and trials.

So we welcome very much this policy shift that the Court is conducting from being TH-based to a field-oriented institution and we invite the Court to continue further in this direction as more is needed to entrench the idea of the ICC as a field-based institution within its culture and approach. One step that could help in that direction is requiring time spent in the field as a condition of promotion, which is a normal operating procedure for international organisations and foreign ministries.

Coming to the second point of my intervention, I would like to say a few words on a new structure for field operations and particularly field offices that the Registrar has also mentioned. Field Offices already play a critical role in allowing the ICC to implement its mandate, enabling it to conduct investigations; to protect both victims and witnesses; to ensure the implementation of victims’ rights to participation and reparation also through outreach. They also provide security, logistical and administrative support and assistance to counsel for all parties and the Trust Fund for Victims.

However, there is a need to change the structure of field offices to ensure the effective functioning of the FO and adequate support to all Registry clients in the field, including the Prosecutor who has already increased the level of support requested for its operations in

situation countries. Indeed since the previous strategic plan for 2013-2015, we have seen the Prosecutor changing the way to conduct investigations, which has been confirmed in the new strategic plan for 2016-2018, replacing focused investigations that only entailed short missions in the field with in-depth thorough investigations that by their nature require investigators to be on the ground to follow leads and winning trust of local communities. Following the experience of the International Criminal Tribunals, the Prosecutor has now based investigators in the field to enhance the quality of investigations and the evidence brought to trial, which ultimately contribute to successful prosecutions, and we welcome this development for which we have been calling for many years.

As we have pointed out in many occasions in the past, we agree with the conclusion of the Registrar as regards the urgent need for greater coordination among the various sections of the Registry in the field to ensure oversight of financial resources in field offices, external coordination and effective engagement with various actors to ensure judicial cooperation, increase the efficient provision of services to all the organs of the Court working in the field, and act as focal point for elaborating country-specific strategies that include elements for setting up field offices and closing them down ensuring proper completion by the Court of its work. The current lack of authority in the field can cause poor or delayed decision-making and prevent field offices from carrying out their day-to-day work autonomously and effectively, which in some cases has repercussions and delays on trials.

Since 2009 the Court has been proposing various ways to enhance its effectiveness in the field and it has made a lot of progress in the development of its strategy and structure in relation to field operations as also illustrated by the Registrar. We urge States to provide proper support for implementing a new structure which is field focused, including providing both political support and the financial means necessary to implement it as quickly as possible. The new structure whereby field offices are strengthened and expanded has great promise, but this requires support to be implemented in full, otherwise it risks losing that promise and, at worst, taking the ICC back several steps.

Both the Prosecutor and the Registrar have come to realise that there is a need to rethink the Court's operating structure towards becoming more field based and we also have seen judges to start opening to the possibility of holding in situ important part of the trials, such as the opening statements, even if this has not materialised yet concretely (Bosco Ntaganda, Ongwen). After all, the success of the Court will depend on the success of its investigations, prosecutions and effective victims participation and outreach, which cannot be achieved without an enhanced field presence and we call on States Parties to be ready to support it.

We are also concerned that in an attempt to reduce current expenditure, the long term impact of the Court may be overlooked, not only from a qualitative point of view, in terms of the ICC's effectiveness in providing justice for victims and its legacy in a situation country, but also from a financial perspective. It is important to evaluate the cause-effect relationship between the activities carried out by the Court in the initial stages and the repercussions of such activities on the cost of trials and how they are conducted in the long term. For example, we are deeply concerned that halving the OTP's investigative field presence will have longer-term implications not only for the quality and depth of investigations, but also later, when the results of those investigations come to trial. We would suggest that this Committee request further details on this issue to ensure savings realized now will not amount to cost increases later. While the Court has not completed a trial yet, we will be recommending the CBF and the ASP to request the Court to make a full assessment of the financial and qualitative implications of the strategies implemented throughout all stages of the case, from initial analysis to appeal.

The topics of field operations and some functions mainly carried out in the field, including outreach, usually arise among States Parties in the context of budget discussions, since they are

perceived as one of the most resource-intensive aspects of the Court's work. Yet, the Court's field operations, including its field offices and presence, represent the methodology that enables the ICC to implement its judicial mandate. Field offices are crucial in enabling the Court to conduct investigations; protect both victims and witnesses; and ensure the implementation of victims' rights to participation and reparation. They are also decisive in bridging the gap between The Hague and its operations in situation countries, through the provision of effective outreach programs. Moreover, field offices provide logistical and administrative support and assistance for all organs of the Court, to counsel for all parties and the Trust Fund for Victims when travelling within situation countries.

Thank you

**Annex 2 Statement by Niccolò Figà-Talamanca during the closing session
on behalf of the CICC**

Mr. President, distinguished delegates, NGO colleagues,

Thank you for allowing us to make this brief statement at the conclusion of this XIV session of the Assembly of States Parties.

My name is Niccolò Figà-Talamanca, I am with No Peace Without Justice and I take the floor on behalf of the Coalition for the International Criminal Court.

Over the years, this Assembly and the States Parties have supported the fight against impunity for crimes under international law. By providing guidance on non-judicial functions, the Assembly has encouraged the Court as an institution to enhance its outreach functions; it has promoted complementarity; it has promoted cooperation; and it has worked to promote universal accession to the Rome Statute. This is to say that under your able and enlightened leadership Mr. President – and under the leadership of your predecessors – the Assembly has done more than just approve the Court's budget or elect the Judges. The Assembly has been a crucial opportunity for States Parties to come together and find ways to provide non-judicial oversight.

And the Assembly should indeed provide guidance on non-judicial issues, recognising the priorities of the ICC as an institution. The legislative role of the Assembly is with respect to the Rules of Procedure and Evidence.

This role of the Assembly is very important and the roles are clearly defined. The Court and the Judges have a different responsibility. Again, these lines are very clear.

We ask the Prosecutor and the Judges not to enter into the political arena, as much as we ask the Assembly not to threaten the independence of the judiciary. The language that was adopted today in the report will have no effect on the judicial decision-making. Even more so on those decisions that are currently sub judice before the Appeals Chamber. This language does not show a weakness of the Court - it does show a weakness of this Assembly.

We place trust in the functioning of the Assembly. And on this occasion, we can only be disappointed.

Thank you.

Annex 3 Side Event on “Accountability and the Prospect of a Political Solution to Conflict in Syria”

18 November 2015 13:15 – 14:45

Africa Room, World Forum

14th Session of the Assembly of States Parties of the International Criminal Court

This side-event was co-sponsored by the governments of Belgium, Canada, France, Italy, Liechtenstein, The Netherlands, United Kingdom, the National Coalition of Syrian Revolution and Opposition Forces and No Peace Without Justice and organised with the financial support of the European Union.



Overview

The conflict in Syria has reached further peaks of brutality where human life, democratic values and cultural human heritage is destroyed daily. More importantly, international legality and the rule of law have been violated for five years in an attempt to establish the rule of the might. National laws and international conventions protecting the rights of individuals have been crushed by terrorism, foreign interventions and regional and geopolitical logic that have turned Syria into a territory of conquest. The conflict is increasingly driven by international and regional powers, primarily in accordance with their respective geostrategic interests. The role played by external powers is leading toward a situation where Syrians are gradually losing control over the course of events, including how to find a negotiated solution to the war. With each passing day, the goal of regaining ordinary life is increasingly distant and exponentially harder to reach.

The UN Independent International Commission of Inquiry (CoI) continues to report periodically well-documented patterns of serious violations of international humanitarian law and gross violations of human rights. These transgressions are massive in extent and scope and with no end in sight.

Any solution to the conflict has to take this background into consideration and address accountability and redress for all victims of these atrocities, enabling a Syrian-led political process that meets the legitimate aspirations of the Syrian people, enables them independently and democratically to determine their future and ensures that crimes will not go unpunished and that those who bear the greatest responsibility not be part of the future of Syria. Syria’s people are looking for reprieve and for redress, while increasingly unable to believe this will ever happen. The consequences do not fall on those who are breaking the law, but on those whom the law

should protect, namely the civilian population of Syria, particularly in areas unreachable by aid efforts. Continued impunity has fed the violence; the lack of credible signals that there is an expectation of accountability for what is happening has created a situation where impunity is the norm, breeding extremism, terrorism and widespread violence.

Against this backdrop, this side event in the margins of the ICC Assembly of States Parties looked at the fundamental issue of redress for victims and accountability as an essential component of any political solution to the conflict, addressing some of the difficult questions that will arise. The meeting also served as a reminder that a lasting political solution to the Syrian war requires an inclusive and participatory process capable to ensure redress for all victims of violence, violations and abuses of human rights and violations of international humanitarian law, irrespective of their ethnic, religious and political affiliation, and accountability mechanisms to foster national reconciliation, ensure no repetition, respect of international and humanitarian laws and the end of impunity.

Side event summary

1.1. The participants

Panellists of the meeting - co-chaired by Niccolò Figà-Talamanca, Secretary General of No Peace Without Justice, and Hussein Sabbagh, Secretary General of Euro-Syrian Democratic Forum - included Rami Nakhla, NPWJ Syria Project Coordinator; Ayman Ghojal, Human Rights Defender; Raheb Alwany, Human Rights Defender; and Stephen Rapp, former Prosecutor of the Special Court for Sierra Leone, former US Ambassador on War Crimes Issues. Welcome remarks were made by Alexandra Valkenburg, Head of the Human Rights Division of the Ministry of Foreign Affairs of The Netherlands. Closing remarks were made by Elizabeth Evenson, Senior Counsel, Human Rights Watch.

1.2. The panel discussion

In her welcome remarks, **Ms Valkenburg** provided an overview of the situation in Syria so far while stressing particular issues which have occurred in the past year, remarking that the situation has not improved. She noted that it is useful to discuss and include the views of human rights activists in Syria in the discussion. Ms Valkenburg stressed that more needs to be done on the political side and that the new diplomatic efforts initiated in Vienna at the end of October 2015 offer small hope at the moment. Furthermore, she acknowledged the importance of accountability and its role as a crucial element of a solution to the crisis. She noted that at a UN level, accountability and Syria have received little attention, therefore arguing that more lobbying should be done to have Syrian activists speak at the UN General Assembly. She expressed her support for civil society organisations that document and collect evidence of war crimes, but also noted that there is a clear need for further training and better coordination and management in this area.

Co-Chairs **Mr Figà-Talamanca** and **Mr Sabbagh** led the panellists through a number of questions designed to explore the complexities of what is happening in Syria and potential responses. This approach drew out the panellists' views on issues relating to the pervading sense of impunity, the impact of atrocities and the lack of a clear strategy on how to address these issues and end the conflict. A question was also posed to the panellists on the influence of Assad and ISIS as parties to the conflict and what potential role they might have in a political solution.

Ms Alwany stressed that the current scenario for Syria seems to be one in which one has to choose between ISIS or Assad. She pointed out that this scenario is the biggest of evils for the Syrian people. She stressed that the reason behind any accountability so far is the glaring gap of

impunity: by failing to punish a criminal regime such as Assad's, the international community has let him keep his political position even after the use of chemical weapons by the regime forces. The agreement that he could stay in power as long as he ceased the chemical weapons attacks further strengthened the sense of impunity. Ms Alwany also noted that the focus should be on him and the atrocities committed by the regime, as opposed to focusing solely on extremism and terrorism, which are symptoms rather than fuelling factors and causes of the conflict. Thus, Ms Alwany said the international community's approach is misdirected: further bombing of ISIS would only lead to more refugees and civilian casualties, but would not end the crisis as it would not address the root "disease" of the country, which is the regime. Furthermore, Ms Alwany argued that there is a need to stop viewing women solely as victims of this conflict. On the contrary, they have been active on the ground and in peacebuilding efforts and should be included in the political process and in the transitional justice process.

Mr Ghoujal also reiterated the point that the international community is fighting the wrong opponent: the biggest threat was and remains the Assad regime, which was the reason the terrorist regime of ISIS grew, even if at the moment Assad is trying to fight them. At the beginning of the revolution, the Syrian President made the mistake of letting all extremists out of prison and this fuelled the rise of extremism and ISIS. Mr Ghoujal concluded by saying that the current message of impunity and lack of accountability is the wrong one to send to future generations and that the Syrian people need to have a voice in the peace negotiations.

Ambassador Rapp noted that 80% of the crimes committed in the conflict have been committed by government forces and its allies, thus ruling out any possibility for Assad to be a part of the political solution to the conflict. Ambassador Rapp also acknowledged that it will be difficult to have a peace deal with a population the majority of which has been victimised and even more impossible if the perpetrators of those crimes will be involved in the negotiations. Thus, the victims need justice first in order to achieve peace later. Amnesty for mass killings and atrocities would not be a viable option, since those crimes cannot be forgiven and amnesty would not address the impunity gap. Ambassador Rapp concluded by stressing that transitional justice processes need to be included in any peace plans and that the Syrian population will have to play an active role in these processes, which will have to ensure that those who bear the greatest responsibility will held to account.

Mr Nakhla stressed that it is crucial for the international community to avoid giving the Syrian people the impression of doing too little and too late in terms of accountability, since that would further increase their mistrust in the international community and its commitment to finding a solution to the conflict. He argued that Syrians should be the main actors in the accountability process and that they will need to be involved in how this process works and in its design. This process should serve the needs and interests of the victims of the conflict rather than being designed to appeal to the international community.

1.3. Discussion from the floor

A central issue highlighted during the discussion was what more could be done by various actors towards contributing to accountability and justice in Syria. Ambassador Rapp noted that documentation and investigative efforts such as the Caesar files so far have been a crucial step towards providing evidence of the atrocities that have been committed, which could be used for their prosecution. He also noted that further effort is needed on the side of States Parties, especially on the part of EU countries, which have a vested interest in justice and thus resolving the refugee crisis.

The second issue discussed reflected on lessons learned from Libya and what could be done differently in terms of rhetoric and military strategy in Syria. Speaking in his individual capacity,

Mr William Pace, Coalition for the International Criminal Court, highlighted the need for an alternative rhetoric in the Syrian case, since one that is solely focused on regime change could cause terrible damage. He noted that a political solution is needed as quickly as possible, but cannot be done with regime change as a focus and starting point. Ambassador Rapp reiterated his point that those who bear the greatest responsibility should be held accountable, but also remarked that the Syrian people will not tolerate a scenario in which Assad is still in power. Mr Nakhla underlined that there needs to be a concrete blueprint plan for the future and that in the present we must focus on advocating to include justice mechanisms in any political decisions that are taken.

The representative of the United Kingdom raised the question of what the international community and more specifically what States can do to ensure accountability in Syria. Ambassador Rapp noted that governments can also start prosecuting at the national level and that they need to provide more resources to find out who is responsible and who to prosecute. He added that the documentation of evidence needs to be increased and that Syrian people need to be involved more in the process. Raheb Alwany answered that stopping the sale of arms to Syria and the violence against the refugees at the borders would be a good start for governments. Speakers also agreed that the international community should improve its credibility of delivering justice and working towards a solution of the crisis. Preventing further atrocities on the ground and against Syrian refugees in Europe, as well as further documentation with the involvement of the Syrian people are all steps speakers identified as strategies to send a clear signal towards the Syrian people that the international community has not abandoned them.

Finally, the issue of prosecution at levels other than international was discussed. Ambassador Rapp spoke about the possibility of a hybrid court that would work both at international and national level, but he emphasised that for now the possible alternative is to work with countries that might have jurisdiction to conduct investigations in Syria. The panellists generally agreed that this could be an important step for justice in Syria and could have an impact within Syria, provided it is managed well and steps are taken to ensure that the Syrian people know about these initiatives and see them as part of their accountability process.

Conclusions

Elizabeth Evenson offered closing remarks starting by echoing other panellists' comments about the importance of seeing so many people interested by this issue, as this sends the message that the international community is not unaware and uninterested by the situation in Syria. She noted that State Parties, the International Criminal Court and civil society should stand together to fight against impunity in Syria. She added that civil society should pressure ICC States Parties to give enough resources to the ICC in order to fight impunity and to continue sending the powerful message given by the ICC's existence. She explained that the commitment of the people in the room sends that message and that we should keep having a consensus on the commitment to have justice. Ms Evenson also agreed with the panellists that impunity is a cause of the crisis in Syria and that it favoured a growth of extremism. On the issue of how to reach a political solution, she referenced to existing efforts, such as the UN Commission of Inquiry and the work done by civil society organisations on documentation and gathering of evidence. She also mentioned the importance of extraterritorial jurisdiction and insisted on the importance of justice mechanisms outside the international context and the importance of making these mechanisms visible. She concluded that a political solution is still possible to obtain and that it will be critical to involve the Syrian population in the process. She ended by saying that as we search for justice, we cannot forget to address ongoing human rights violations in Syria and to protect civilians and that there is no way forward that does not go through justice.