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Historic activation of jurisdiction of crime of aggression at International Criminal Court

Marathon diplomatic negotiation at 16th Assembly of States Parties in New York achieves consensus on activating ICC jurisdiction over leaders who wage aggressive war—with conditions

New York—The historic consensus decision to activate International Criminal Court (ICC) jurisdiction over the crime of aggression at the 16th Assembly of States Parties (ASP) to the Rome Statute brings justice one step closer for victims of aggressive war, the Coalition for the ICC said today at the Assembly's conclusion.

"With this historic activation, for the first time since the post-WWII trials in Nuremburg and Tokyo, an international court may be able to hold leaders individually criminally responsible for the crime of aggression," **said William R. Pace, convenor of the Coalition for the ICC.** "The Coalition congratulates all those who have strived for this fourth ICC crime to be activated and looks forward to a strengthened Rome Statute system and global order based on the rule of law."

"The activation of the ICC's jurisdiction over the crime of aggression was a gift to all humankind. The Court stands for conscience and compassion, and against hatred and violence," **said Jutta F. Bertram-Nothnagel, permanent representative to the UN and ICC-ASP of the Union Internationale des Avocats.** "Our hope for peace on earth and good will to all has been given a new and highly significant boost."

The Assembly also saw the election of six new ICC judges, a new ASP president and two vice-presidents, and the adoption of the ICC budget for 2017 and a range of resolutions relating to legal aid, victims, cooperation and the upcoming 20th anniversary of the Rome Statute.

"As five of the six outgoing ICC judges are women, the Coalition campaigned to ensure that female candidates were nominated by states to ensure fair gender representation on the ICC bench," **Kirsten Meersschaert, director of programs, Coalition for the ICC.** "Having balanced gender representation on the ICC bench is not only conducive, but essential to ensuring more representative justice."

The issue of cooperation and non-cooperation with the Court were also major topics of discussion taking place in both the plenary sessions and side events.

"The Nigerian Coalition for the ICC commends the ASP session on cooperation and the resolution calling on states to increase their cooperation with the ICC," **said Chino Obiagwu, president, Nigerian national Coalition for the ICC.** "However we underline that the ASP needs to take more action against non-cooperating states, including, where necessary, imposing sanctions in order to enable to Court to function effectively. Without cooperation the ICC is ineffective and its independence is undermined."

"We call on states to reinforce cooperation with the ICC, to reinforce their judicial systems to respond better to complementarity, to take appropriate measures to reinforce the protection of, and access for, civil society actors working to advance ICC justice," **said André Kito, president, DRC national**

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coalition for the ICC. “We are encouraged by the African states parties that have decided to stay with the ICC in awareness of the impact of reinforcing cooperation with the Rome Statute system to allow for the enjoyment of fundamental rights of victims and affected communities.”

The Assembly also adopted another set of amendments to the Rome Statute advanced by Belgium, adding a number of weapons to the list of war crimes. However, states failed to include landmines in the list of weapons to be prohibited under Article 8 of the Rome Statute.

“States parties missed the opportunity to criminalize anti-personnel landmines at this Assembly,” said **Matthew Cannock, head of office, Amnesty International Center for International Justice in The Hague.** “Many of those states who did not agree to the criminalization of landmines have ratified the Mine Ban Treaty and should have championed the amendment rather than blocking it. Nonetheless, we will keep pushing states parties to add the landmines provision to the Rome Statute.”

States adopted a 2018 budget for the ICC of €147,431.5 million euro, representing an increase of just 1,47% over 2017.

“In spite of one or even two new investigations next year, ICC members could agree to only a bare-minimum increase in the court’s budget. Relentless pressure from some states to hold down the ICC’s budget is raising serious questions as to just how they expect it to get its job done,” said **Elizabeth Evenson, associate international justice director at Human Rights Watch.** “The ICC’s job, unfortunately, is all the more important now, given human rights crises across the world. As states prepare to mark the 20th anniversary in 2018 of the ICC’s founding treaty, the Rome Statute, we urge them to give the court the practical and political support it needs to deliver justice in these challenging times.”

“International justice must help post-crisis countries to fight against impunity; in order to avoid accusations of bias in investigations, the ICC must take into account all serious crimes committed by the various warring parties,” said **Ali Ouattara, president of the Ivorian Coalition for the ICC.** “Both in Africa and on other continents. In the end, the ICC must also be an instrument of reconciliation through fair and impartial justice.”

“When states fail to provide the ICC with the necessary resources, it creates gaps and inefficiencies as the ICC effectively comes to rely on empty promises. The relocation of the ICC field office from Uganda—a country with continuing violent conflict and the ongoing ICC trial of LRA commander Dominic Ongwen—to Kenya directly impacts us, as it reduces the opportunities for us to interact directly with ICC staff,” said **Juliette Nakyanzi, CEO, Platform for Social Justice Uganda.** “This reduces the impact of the ICC in Uganda—and consequently that of the Uganda national coalition for the ICC in bolstering support for international justice.”

In adopting the 'Omnibus' resolution, a document created in an effort to strengthen the Court and the ASP, the 123 ICC member states resolved to act upon a number of important issues facing the Rome Statute system, including universality, cooperation, the secretariat of the ASP, legal aid, victims, the ASP working methods, and participation in the ASP, among others.

“We welcome the announced consultation process for the revision of the legal aid policy in 2018 including with professionals and civil society representatives,” said **Karine Bonneau, international justice desk director, International Federation for Human Rights (FIDH).** “The ICC Registrar must ensure that this revision of the legal aid scheme, including for victims, is designed in accordance with real needs and not resource driven.”



“At various side events, civil society called for greater actions from ICC member states, including to strengthening the victim-oriented approach through local ICC offices in situation countries,” **Nino Tsagareishvili, co-director, Human Rights Center, chair of the Georgian national coalition for the ICC.** “We also call on states to increase contributions to the Trust Fund for Victims so it can apply assistance mandate which is urgently needed in Georgia and elsewhere.”

The Assembly also held a special plenary session on the 20th anniversary of the adoption of the Rome Statute in 2018.

“With Sustainable Development Goal 16, the international community has signalled that ensuring access to justice for all through effective, accountable and inclusive institutions at all levels is integral to the promotion of peaceful and inclusive societies for sustainable development,” **said Jelena Pia Comella, deputy executive director, Coalition for the ICC.** “In its 20th anniversary year, states should voice high-level political support to the ICC as a leading institution in efforts to reduce all forms of violence, promote the rule of law, and to end abuse and exploitation of children and women.”

“2018 will mark the 20th anniversary of the Rome Statute, state parties and all other stakeholders should maximize the potential of all events to be organised in 2018 for the purpose of identifying the gaps and challenges in the Rome Statute system and taking action to make the system more efficient and effective,” **said Dr. David Donat Cattin, secretary-general, Parliamentarians for Global Action.** “Parliamentarians have a key role to play in creating political will and creating opportunities for ratifications and new laws to implement the statute and to empower law enforcement agencies.”

Crime of Aggression continued

The adoption of the resolution on the crime of aggression came after 10 days of intense diplomatic negotiation that stretched into the early hours of 15 December 2017. With ICC member states having decided upon the definition of the crime at a review conference in Kampala in 2010, ASP 16 was tasked with activation. However, a split emerged among states on whether the jurisdiction would apply to all ICC member states once the threshold of 30 ratifications had been met, or only to those that had accepted the Court’s jurisdiction over the crime.

The resolution that was finally adopted will enter into force on 17 July 2018—the date of the 20th anniversary of the ICC’s founding treaty—for ICC member states which have ratified or accepted the amendment to the Rome Statute. It also stipulates that the ICC will not have jurisdiction over ICC member states, or their nationals, that have not ratified or accepted these amendments in the case of a state referral or *proprio motu* (initiated by the ICC prosecutor) investigation. However, ICC judges maintain their independence in ruling on jurisdictional matters and referrals from the UN Security Council have no jurisdictional limitations.

“Such mass atrocities include wars of aggression that have characterized some of the most tragic events in recent history, which more often than not led to the perpetration of war crimes, crimes against humanity, and even genocides,” **said newly elected president of PGA, Ms. Margareta Cederfelt, MP (Sweden).** “Today’s decision by the ICC Assembly of States Parties to activate the Court’s jurisdiction on the crime of aggression reinforces the International Community’s commitment to end impunity for the most serious crimes under International Law.”

Elections to key ICC and ASP positions

States elected six new judges to the ICC bench. Ms. Tomoko Akane (Japan), Ms. Luz del Carmen Ibáñez



Carranza (Peru), Ms. Reine Alapini-Gansou (Benin), Ms. Solomy Balungi Bossa (Uganda), Ms. Kimberly Prost (Canada), and Mr. Rosario Salvatore Aitala (Italy) will serve a nine-year term, which is expected to begin in March 2018.

In other ASP elections, judge O-Gon Kwon (Republic of Korea) was elected as the next ASP president, while Mr. Momar Diop, ambassador of Senegal to The Netherlands, will serve as the vice-president chairing the ASP Bureau's The Hague Working Group, and Mr. Michal Mlynár, ambassador of Slovakia to the United Nations, will chair the New York Working Group. Six members of the Committee on Budget and Finance were also elected on day one of the ASP.

For more information

Visit our webpage on the Assembly of States Parties 2017 for daily summaries, background, civil society key recommendations and other documentation:

<http://www.coalitionfortheicc.org/explore/assembly-states-parties/assembly-states-parties-2017>.

Visit our Crime of Aggression webpage for further information on definitions and application of jurisdiction of the fourth ICC core crime <http://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression>

Visit our elections webpage to find out more about the qualifications and vision for international justice of the six new ICC judges <http://www.coalitionfortheicc.org/icc-judicial-elections>

About the Coalition for the ICC

The Coalition for the ICC is a network of 2,500 civil society organizations, small and big, in 150 countries fighting for global justice for war crimes, crimes against humanity and genocide for over 20 years. We made international justice happen; now we're making it work.

<http://www.coalitionfortheicc.org/>

Experts from human rights organizations members of the Coalition are available for background information and comment. Contact: communications@coalitionfortheicc.org.

About the ICC

The ICC is the world's first permanent international court to have jurisdiction over war crimes, crimes against humanity, and genocide. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes. As one of the most historic advances in the protection of global human rights, the innovative system established by the Rome Statute is designed to punish perpetrators, bring justice to victims and contribute to stable, peaceful societies. The Court has already made significant progress in holding those most responsible for atrocities to account. Victims are already receiving help to rebuild their lives. But global access to justice remains uneven, and many governments continue to deny the ICC jurisdiction where it is most needed.

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