

News: First Week of the Assembly of States Parties to the ICC

December 9, 2017

By: Amanda Ghahremani, Leah Gardner and Isabelle Jacovella Rémillard

The Canadian Centre for International Justice is currently attending the Assembly of States Parties (ASP) to the International Criminal Court (ICC) Statute in New York City as a member of the Canadian Partnership for International Justice ("the Canadian Partnership").

The ASP is the Court's management oversight and legislative body and is composed of representatives of the States which have ratified or acceded to the Rome Statute. It considers a number of issues, including the budget of the Court, the status of contributions, the audit reports, the reports on the activities of the Bureau, the Court and the Board of Directors of the Trust Fund for Victims, and the election of judges to the Court.

The Canadian Partnership brings together leading Canadian academics and non-governmental actors to contribute to strengthening access to justice for victims of international crimes, and our attendance at this event from 4 to 14 December 2017 allows us to stay informed of all the developments at the ICC with respect to this mandate. Funded by a 5-year grant from the Social Sciences and Humanities Research Council (SSHRC), this is the second annual delegation to the ASP by the Canadian Partnership, comprised of co-researchers as well as law students from various Canadian universities.

The goal of the first week recap is to inform those who were not at the ASP about the topics and discussions that were on the agenda, with relevant links for those who would like to pursue these topics further.

This recap was collated and edited from contributions by the student delegates of the Canadian Partnership who have been taking notes on all the events during the ASP. The student delegates are, in alphabetical order: Silviana Iulia Cocan, Sophie Gagné, Geneviève Geneau, Maxime Mariage, Jenny Poon, Catherine Savard, Nicole Tuczynski, and Annika Weikinnis.

Day 1: 4 December 2017

> The opening of the 16th Assembly of States Parties.
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Assembly Plenaries

Opening

The main issues emphasized during the opening of the 16th ASP were the activation of the ICC's jurisdiction over the crime of aggression, the issue of non-cooperation, the relationship of the Court with States Parties – more particularly with African States – and reparations for victims.

Election of six judges

Two judges were elected in the first round of voting: Ms. Tomoko Akane (from Japan, List A, deemed "particularly well qualified" by the ASP's Advisory Committee on Nominations of Judges), and Ms. Luz del Carmen Ibáñez Carranza (from Peru, List A, deemed "particularly well qualified" by the ASP's Advisory Committee on Nominations of Judges). No judges were elected in the second round. The votes were to be continued the next morning.

Select Side Events

The Professionalization of the Investigation of International Crimes: Yesterday, Today, and Tomorrow

Justice Rapid Response (JRR) and the Permanent Missions to the UN of Finland and Uganda organized an event showcasing the work of JRR and presenting their Annual General Report. The event, which featured the short documentary "Evidence of Hope", highlighted the work of JRR's Experts Roster which has become a leading tool in improving the quality of investigation of atrocity

crimes. In the documentary, Phumzile Mlambo-Ngcuka, the Executive Director of UN Women emphasized that collaborating with JRR is a necessity in order to enhance cooperation and accountability for international crimes, especially those related to SGBV in conflict, claiming that "justice delayed is justice denied."

ICTY Commemoration: Reflections on 24 years of fighting impunity through International Courts and Tribunals

This event commemorated the International Criminal Tribunal for the Former Yugoslavia (ICTY) with a panel comprised of Judge Carmel Agius, the ICTY President, Serge Brammertz, the ICTY/MICT Prosecutor, and John Hocking, the ICTY Registrar. They explained the role of the ICTY in setting precedents in international criminal law which have impacted the current contours of the ICC. Such precedents include the establishment of criminal responsibility in the chain of command and the judicial recognition that sexual violence can be a planned and deliberate war crime, crime against humanity, or an act of genocide (as opposed to being labeled a "crime of opportunity" as courts had previously held). Another important legacy of the tribunal, next to the judgments and the legal findings, is the archive that now also exists documenting the war. There are thousands of statements and more than ten million pages of documents related to the conflict in Yugoslavia that will be preserved and memorialized for historical purposes.

AI Reception: Launch of Human Rights in International Justice Programme

Amnesty International organized a reception to launch their new advocacy platform, the Human Rights in International Justice Project. Amnesty International's Legal Adviser, Jonathan O'Donohue, presented the initiative's goals of promoting various efforts to strengthen international justice and improve human rights compliance. The presentation highlighted the importance of protection mechanisms for the rights of victims, as well as access to justice initiatives. Finally, it noted the contribution of women to ICC policies and the important work of the Trust Fund for Victims in providing needed support to victims of atrocity crimes.

Day 2: 5 December 2017

> Joseph Manoba, Legal Representative of Victims in the Ongwen case at the ICC, delivered his speech
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> *Joseph Manoba, Legal Representative of Victims in the Ongwen case at the ICC, delivered his speech during the side-event "Victims' Reflections on Reparative Justice".*

Assembly Plenaries

Election of Judges (Continued)

Three additional women judges were elected on day 2 of the ASP: Reine Alapini-Gansou (from Benin, List B, deemed “formally qualified” by the ASP’s Advisory Committee on Nominations of Judges) and Solomy Balungi Bossa (from Uganda, List A, deemed “particularly well qualified” by the ASP’s Advisory Committee on Nominations of Judges) were elected in the 4th round. Kimberly Prost (from Canada, List A, deemed “particularly well qualified” by the ASP’s Advisory Committee on Nominations of Judges) was subsequently elected in the 6th round.

Select Side Events

Victims’ Reflections on Reparative Justice: The Voice and Role of Victims in the Fight against Impunity for Core Crimes under International Law

The event was organized by Parliamentarians for Global Action and the International Organization for Victims Assistance(IOVA). The panel, which comprised of survivors, legal representatives of survivors, and the Chairman of the Victim’s Trust Fund, highlighted the unique system of international justice found in the Rome Statute that values both retributive and reparative justice. The statute not only provides for investigation, prosecution and adjudication, but also enshrines a set of comprehensive provisions protecting victims, allowing them to participate in the ICC’s proceedings and sharing their testimony as well as entitling them to apply for reparations. More more than 22,000 victims have applied to participate in the Court’s proceedings, and thousands more have made submissions at the investigation stage or for reparations proceedings. Despite these successes, Yael Danieli of IOVA noted that an important challenge for the court is to avoid the re-traumatization of victims as long periods of time pass without justice, or even updates on ICC cases.

If you are interested in Reparations at the ICC, read: Reparations for Death and Destruction in the Congo and Reparations for the Destruction of the Precious Past.

NGO Meeting with Prosecutor Fatou Bensouda

This side event organised by the Office of the Prosecutor (OTP) was an opportunity for civil society organisations to ask questions of the ICC Chief Prosecutor Fatou Bensouda and ICC Deputy Prosecutor James Stewart. The Canadian Partnership had the opportunity to ask two questions, one of which was about the steps taken by the OTP to implement the 2014 Policy Paper on the Prosecution of Sexual and Gender-Based Crimes. Prosecutor Bensouda emphasised that sexual and gender-based crimes (SGBV) have been a priority for her office and that they have implemented trainings for staff, invited interactions with experts outside of the office, and appointed gender experts to advise the Prosecutor at all stages of a case (analysis, preliminary examinations, trials, appeals, and reparations).

Day 3: 6 December 2017

Brigid Inder of Women's Initiatives for Gender Justice at the side-event "An Examination of Gender Just

Brigid Inder of Women's Initiatives for Gender Justice at the side-event "An Examination of Gender Justice Crimes and Current Conflicts". Photo by Maxime Mariage.

Assembly Plenaries

Election of Judges (Continued)

The sixth and last judge, Rosario Salvatore Aitala, from Italy, was elected during the 2nd Plenary Session after nine rounds of voting. He obtained 84 votes, while his opponent, Henrietta Mensa-Bonsu, from Ghana, received 39 votes. The elections this year went by relatively quickly compared to the 2014 elections, which required 22 rounds of voting.

Election of Bureau Members from Group of Latin American and Caribbean States

Prior to this plenary session, fourteen members of the ASP Bureau were elected by acclamation after consensus. During this session, the ASP was tasked with the election of four members allocated to the regions of Latin America/Caribbean and Asia-Pacific, who were not selected by prior consensus. The prevailing state members were Argentina, Colombia, Ecuador, and Mexico.

Select Side Events

The Challenge of Effective Cooperation: The Case of Côte-d'Ivoire

This side event explored the tensions that exist with respect to the cooperation of African State Parties and the ICC, and included representatives from the ICC's Office of the Prosecutor, the ICC Defence Office, the African Union and civil society. Panelists discussed the Simone Gbagbo case in relation to the principle of complementarity as the former first lady of Côte d'Ivoire has been prosecuted before national courts in Côte d'Ivoire for crimes against humanity, and is also the subject of an outstanding arrest warrant by the ICC. Simone Gbagbo was acquitted in Côte d'Ivoire amidst concerns about irregularities in her trial.

An Examination of Gender Justice Crimes and Current Conflicts (CAR & Iraq): Reflections on Progress Over the Past 15 Years

Women's Initiatives for Gender Justice (WIGJ) organized an event on Gender Justice Crimes and Current Conflicts. Hillary Margolis of Human Rights Watch presented HRW's report documenting over 300 cases of rape and sexual slavery in the Central African Republic. Jonathan O'Donohue of Amnesty International discussed different challenges regarding sexual and gender-based violence (SGBV). Lisa Davis of CUNY Law School presented on the constructive ambiguity of the Rome Statute's definition of gender, and the need to challenge that definition. Brigid Inder of WIGJ discussed the progress made over the last few years and the need to raise the profile of SGBV crimes.

Fighting Impunity for the Most Serious Crimes – Strengthening the Central Role of National Jurisdictions

During this event co-hosted by Belgium and Senegal, the audience heard from ICC Prosecutor Fatou Bensouda, ICTY Prosecutor Serge Brammertz, the President of the Senegalese Court of Appeal Sir Demba Kadji and the Ambassador of Sudan. The Sudanese ambassador criticized what he perceived as the non-respect of the principle of complementarity and the targeting of African States by the Court. Prosecutor Bensouda refuted these allegations and reiterated that the ICC is a court of last resort.

Making Reparations a Reality: The Experience of the Trust Fund for Victims

The event hosted by the Trust Fund for Victims and co-sponsored by the Permanent Missions of Uruguay, Finland, and Ireland to the UN, highlighted the work of the Fund in terms of its reparations mandate, which seeks to provide physical, psychological, and material support to victims of atrocity crimes and their families. The Executive Director of the Fund, Pieter de Baan, pressed the necessity of achieving a justice that is rights-based, driven by the survivors and implemented by locally-based partners. As such, the need for consultation with affected communities and the importance of building trust with the beneficiaries was emphasized throughout the event.

Legal Representation of Victims at the ICC and Beyond

This event was organized by the Open Society Justice Initiative and Human Rights Watch, and critiqued the current model of legal representation before the ICC. The panelists, which included a member of the victims' legal team in the Ongwen case and a special representative of the Registry, addressed the need for the reform of victims' legal representations procedures within the ICC. The key message from the panelists that work directly with victims was that the ICC has drifted away from prioritizing the voices of victims when it comes to who can represent them in Court which is a missed opportunity to empower victims from an early stage in a case. Nevertheless, the panelists expressed appreciation to the Victims Participation and Reparations Section of the ICC Registry for their openness and willingness to improve legal representation through consultations with stakeholders and the creation of guidelines for procedures within the Registry that take into account victims' wishes.

Climate Ecocide: a Crime of Our Time

Ecological Defence Integrity (EDI) organized the side-event exploring climate ecocide. Speakers highlighted the situation in Tuvalu, which is disproportionately impacted by climate change. Ecocide expert Polly Higgins made a strong plea in favour of the integration of the crime of ecocide within the ICC's jurisdiction. She also presented on the Earth Protectors Trust Fund, launched by the EDI, which will work towards this goal.

The Importance of Deterrence and the ICC's Role in Current Violations

This panel, co-hosted by The Netherlands and Lawyers for Justice in Libya, focused on the importance of the ICC's role in the pursuit of deterrence, and the issue of complementarity. The Deputy Prosecutor of the ICC, James Stewart emphasized that complementarity is a helpful principle for the Court, despite the potential issues with its application, for the simple reason that the ICC cannot deal with all cases. Jennifer Trahan, Associate Clinical Professor at New York University, expressed her concerns with the principle of complementarity in the Rome Statute, particularly in the case of Abdullah al-Senussi, where the domestic trial was so flawed with due process issues and human rights violations, that in theory, the OTP should be able to reopen the case. Fleur Ravensbergen, Assistant Director of the Dialogue Advisory Group, noted that perpetrators are paying attention to the ICC and its work, as they do not wish to be prosecutred, thus the ICC is indeed influencing perpetrator behaviour. Finally, Elham Saudi, Director for Lawyers for Justice in Libya, pressed the Deputy Prosecutor of the ICC to do more on the situation in Libya and offered recommendations for improvement at the Court.

Day 4: 7 December 2017

> Souleymane Guengueng (ATPDH) talks about his experience as a survivor of the Habré regime's violer
> *Souleymane Guengueng (ATPDH) talks about his experience as a survivor of the Habré regime's violence and his role in the trial held at the Extraordinary African Chambers.*

Assembly Plenaries

General Debate

The general debate is an opportunity for states to emphasise their countries position on the various issues at play at the ASP. Some noteworthy interventions included the Republic of South Africa, whose representative reiterated the country's intention to withdraw from the ICC. He explained that their objective is to repeal the current Rome Statute Implementation Act and present a new bill that would encompass the grave crimes in the Rome Statute but framed within a purely domestic context. Panama pledged its support for the implementation of the crime of aggression by declaring that the country had ratified the Kampala amendments. Uganda's representative also explained why his

country had not arrestedOmar al-Bashir during his recent visit to the country.

Select Side Events

The Need for International Criminal Court Intervention in Extrajudicial Killings for Drug Offences

This side-event, organized by Help Not Handcuffs and Students for Sensible Drug Policy, was a strong plea in favour of an ICC intervention in the Philippines, where persecution and killings in relation to drug crimes are said to constitute crimes against humanity. This intervention would be particularly relevant given that the Philippines have decided not to withdraw from the Rome Statute.

The International Nuremberg Principles Academy

At the side event on the International Nuremberg Principles Academy, speakers discussed the Academy's skills-based approach to training in international law, which they claimed was a significant advancement in the field. Speakers expressed the need to resist the tendency to blame the UN and the ICC for failures in the international sphere (for example, increases in wars of aggression, the construction of anti-refugee walls, etc.). Finally, they noted that of all the organs of the ICC, the ASP is the one that needs the most improvement and reform. Member States need to advance their efforts on cooperation and arrests while also ensuring that the most qualified and diverse candidates are elected as judges.

The MLA-Initiative: Towards a New Multilateral Treaty for the Most Serious International Crimes

The side event on the joint initiative of Argentina, Belgium, the Netherlands, Mongolia, Senegal, and Slovenia for a new treaty on mutual legal assistance for the most serious crimes, known as the MLA initiative, addressed the expected timeline of the treaty drafting process. The panel anticipated the negotiations to proceed throughout fall 2018, with an aim to conclude the negotiations in January 2019. Judge Alphons Orie, who served at the International Criminal Tribunal for the former Yugoslavia (ICTY), stated that the three priorities should be to embrace a multilateral approach, to adopt new instruments, and to cover all international crimes.

Victims of Hissène Habré: The Struggle for Reparations Continues

This event discussed the implementation of the reparations decision of the Extraordinary African Chambers in the case against former Chadian president Hissène Habré. Co-hosted by Switzerland, the Association Tchadienne pour la promotion et la défense des droits de l'Homme, Human Rights Watch, REDRESS, and Africa Legal Aid, the panelists emphasized that the true architects of the

prosecution were the victims themselves, as was exemplified by the powerful testimony of one of the panelists, Souleymane Guengueng (ATPDH). Mr. Guengueng, former political prisoner of the Habré regime, stressed that effective redress – whether psychological, moral, legal, or financial – needs to be implemented swiftly considering that survivors of the violence are aging and may never attain justice in their lifetime.

Global Launch of the Gender Justice Legacy Wall

In the context of the 2017 celebrations for the 15th anniversary of the establishment of the International Criminal Court (ICC), and of the upcoming 20th anniversary of the Rome Statute in 2018, Women's Initiatives for Gender Justice launched the Gender Justice Legacy Wall. The Wall recognizes 151 judges, prosecutors, advocates, victims, witnesses, politicians, diplomats academics, grassroots and international organisations and UN personnel who have contributed to raising awareness about violence against women including conflict-related sexual violence within the international criminal justice framework, including the Canadian Partnership's own Valerie Oosterveld. Brigid Inder was also awarded a special prize in recognition of her work with Women's Initiatives for Gender Justice. She is now stepping down from the organization after nearly 15 years of involvement.

Open Society Justice Initiative Reception: Designing Accountability Mechanisms for Grave Crimes

The Open Society Justice Initiative, in collaboration with the Permanent Mission of Liechtenstein to the UN, hosted a reception to showcase their upcoming Handbook for Designing Accountability Mechanisms for Grave Crimes. This publication will draw on a broad range of accountability mechanisms from various regions to address questions that repeatedly arise in such proceedings, including issues of financing, oversight, jurisdiction, and collaboration with national systems. The Handbook, which will be launched in early 2018, will provide valuable insight for any new justice and accountability measures developed in the aftermath of a conflict.

Weaving the Strands: Domestic, Regional, Hybrid and ICC Justice

This event commemorated the second anniversary of the Africa Group for Justice and Accountability (AGJA), an organisation that promotes a holistic and comprehensive approach to international criminal justice. AGJA strengthens justice and accountability measures in Africa through domestic and regional capacity building, advice and outreach, and enhancing cooperation between Africa and the ICC. All speakers highlighted the importance of improving communication between the ICC and African national and regional stakeholders and emphasized the vital importance of improved communication for the ICC's ability to fulfil its mandate. The panel also surveyed the perception on the proliferation of hybrid and regional courts in Africa, which is seen as controversial. While its strongest opponents view it as an attempt to undermine the authority of the ICC, others view the development of hybrid and regional mechanisms as a complement to the work of the ICC.

Day 5: 8 December 2017

Launch of the Study “Congolese Jurisprudence on International Crimes”. Photo by Maxime Mariage.

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Assembly Plenaries

This plenary session included presentations by the Registrar and the Chair of the Committee on Budget and Finance so that States Parties could consider both the budget and the audit reports.

Select Side Events

Launch of the Office of the Prosecutor Report on Preliminary Examination Activities 2017

This event was an opportunity for civil society to meet with Prosecutor Fatou Bensouda and the head of the preliminary examinations unit within the Office of the Prosecutor, Emeric Rogier, for a full briefing on the state of the three completed preliminary examinations (Burundi, Afghanistan, and the Comoros) and the ongoing preliminary examinations currently underway: Colombia, Iraq, Nigeria, Guinea, Gabon, Palestine, and Ukraine. Civil society critiqued the ICC’s communication with victims during preliminary investigations, particularly with respect to the examination of the situation in Afghanistan, for which a representative of Afghan civil society asked that the ICC’s outreach in that country be better-suited to the realities on the ground. Participants noted that, despite the court’s limited funding, its preliminary investigations are a vital, cost-effective way to promote complementarity by encouraging domestic courts to prosecute core international crimes.

Launch of the Study “Congolese Jurisprudence on International Crimes: An Analysis of Congolese Military Court Decisions Applying the Rome Statute”

This panel discussion, co-hosted by the Democratic Republic of Congo and the Open Society Initiative of Southern Africa, showcased the new study on Congolese jurisprudence and the innovative application of the Rome Statute. Jacques B. Mbokani, Professor at the University of Goma and author of the study, analyzed more than 30 Congolese decisions in which the Rome Statute was used to prosecute war crimes and crimes against humanity. Professor Mbokani further emphasized that prosecutions by Congolese domestic courts should not be limited to crimes perpetrated after the entry into force of the Rome Statute.

Burundi in the Aftermath of the Opening of an ICC Investigation

The Coalition for the International Criminal Court, The Netherlands, the Burundian National Coalition for the International Criminal Court, the 'Justice for Burundi' Collective of Lawyers of Plaintiffs, and the International Federation for Human Rights co-hosted this side event. The panelists' key message was that the situation in Burundi requires more international attention, given the vicious cycle of violence experienced by victims in the country, and Burundi's failure to cooperate with the ICC. The side event highlighted the worsening situation in Burundi and the need for international cooperation to assist the International Criminal Court in its investigation on Burundi.

Immunities under International Law

The Wayamo Foundation organized this side event, which was co-hosted by Nigeria, Sierra Leone and Uganda. Panellists emphasized that the best way for the ICC to proceed on the question of senior government official immunities is to resolve the issue in advance, prior to states coming under pressure to cooperate with the ICC on arrest warrants. One speaker noted that, in principle, for cases referred to the ICC by the Security Council, immunity should be waived. Panellists also expressed that being part of the ICC means that states must respect the Court's decisions. It is therefore not up to individual states to decide whether they agree or not with the Court's decisions concerning immunities and arrests. The ICC is the sole arbiter of these issues.

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Amanda Ghahremani, Leah Gardner & Isabelle Jacovella Rémillard **About the Authors**

Amanda Ghahremani (Legal Director), Leah Gardner (Public Interest Articling Fellow), and Isabelle Jacovella Rémillard (Community Engagement Project Coordinator) work at the Canadian Centre for International Justice (CCIJ). They have been monitoring the activities and events during the sixteenth session of the Assembly of States Parties (ASP) as part of the Canadian Partnership for International Justice's delegation. Amanda also co-leads the delegation with Erick Sullivan from Université Laval.

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