

Challenges and expected outcomes of the 16th Assembly of States Parties at the International Criminal Court

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This post was written by Silviana Iulia Cocan with inputs from her fellow delegates.

The 16th Assembly of States Parties (ASP16) to the International Criminal Court (ICC) will take place from the 4th to the 14th of December 2017 at United Nations Headquarters in New York City. Several important challenges and outcomes are going to be discussed during this annual meeting between States Parties to the Rome Statute.

First, significant elections are going to take place at the ASP16. Besides the election of six judges, six members of the Committee of budget and finance and the ASP's Presidency and Bureau will also be elected. Further, the ICC Registrar is going to be elected in 2018. Since the creation of the ICC, electing judges has always been a complicated diplomatic exercise for States Parties, as most of them want to see elected a judge or a diplomat of their country whose rulings at the ICC may have long lasting impacts on international criminal law but also on concrete - and often fragile - post-conflict settlements. Through this process, States Parties can also demonstrate their commitment towards the ICC and international justice while improving their international reputation, without having to implement expensive financial, political or diplomatic actions. This year's election is also important for the gender equity of the bench as five female judges have to be replaced and no one can confirm yet that it will be the case if the first four rounds of vote are unsuccessful. Indeed, although [the minimum voting requirements for List A and List B \(i.e. relative to the judges' qualification\) apply throughout the whole voting process, those relative to gender equity and geographic repartition only apply during the four first rounds](#). The election of six judges may be a long process: four plenary sessions are already dedicated to this agenda item, but during the last election in 2014 it took 22 rounds of vote.

Second, on subject matters, recommendations to the ASP16 were addressed by multiples civil society bodies. [The International Bar Association](#) (IBA) has defined its priorities as including elections based on merit and competence in regard of candidates' relevant skills and commitment to a fair administration of justice and equality of arms as well as protection of witnesses and evidence for ICC investigations and trials. Furthermore, the IBA recommends to States Parties to take direct actions to support the ICC such as insuring a legal aid system, providing sufficient resources for financial investigation capacity and a Trust Fund for family visits and concluding voluntary agreements with the Court in order to cooperate regarding crucial issues like enforcement of sentences, interim release and relocation of persons released by the ICC.

[In the opinion of the Association française pour la compétence universelle](#), victims should have freedom of choice of their lawyers and have access to legal aid in order to be fully represented. The respect of the rights

of the Accused is also an important issue. Moreover, the ICC should be granted the appropriate budget for its missions and actions meanwhile cooperation between the Court and the States should be reinforced in order to enhance complementarity.

As stated in its report, [Amnesty International](#) (AI) expects strong statements in support of the ICC and for the ASP16 to highlight key issues during general debate and discussions. ASP should adopt amendments to article 8 expressly defining the employment and use of certain weapons as war crimes. Among other things, the Assembly should adopt clear and binding procedures for States Parties to consult with the ICC pursuant to [Article 97](#) aimed at ensuring cooperation.

[According to the Coalition for the ICC \(CICC\)](#), State cooperation is crucial for an effective ICC and to enhance justice worldwide since the Court has no enforcement mechanism of its own. As the general subject matter was the principle of complementarity at the ASP15, the cooperation will be a central topic of discussion during 2017 session. Among other issues, it considers that States should use the 20th anniversary as a framework for recommitment while demonstrating unity and determination to deliver ICC justice to victims since support for the international justice system is more essential than ever before to strengthen rule of law worldwide. Existing serious threats and challenges would thus require political support and commitment. According to the CICC, it is necessary to safeguard the integrity and fundamental goals of Rome Statute towards the question of immunity of heads of State and high-level government officials. Despite [Article 27](#)'s cornerstone prohibition on immunity of State officials, let us remind ourselves that Sudanese President, Omar Al-Bashir, accused of genocide and war crimes, still has not been arrested and brought to justice after [the ICC ruled in July 2017 that South-Africa failed to comply with its obligations during African Union Summit in June 2015](#). The CICC emphasized the necessity to give responses to non-cooperation and execute outstanding arrest warrants. In order to realize universality and full implementation of the Rome Statute, the CICC also highlights the need for the ASP16 to serve as a key forum to encourage non-State Parties to join Rome Statute system and to encourage States Parties to cooperate with the Court, in particular through the Agreement of Privileges and Immunities of the ICC and other cooperation agreements. Also, the ASP16 should give a strong response to withdrawal announcements since Burundi's withdrawal entered into force on 27 October 2017.

[Concerning the crime of aggression](#), on 1 October 2017, 34 Rome Statute States Parties have ratified amendments on the crime of aggression defined in 2010 at the Kampala Review Conference. The activation of the ICC's jurisdiction over the crime of aggression is expected to occur at the ASP16 but decision must be adopted by consensus or by at least a majority of two thirds of the present and voting States Parties. Among other key matters, [the situation of Afghanistan](#) was assigned to a Pre-Trial Chamber on 3 November 2017 after the preliminary examination of the Office of the Prosecutor, started in 2007. On 20 November 2017, the Prosecutor officially requested for the Pre-Trial Chamber to authorize an investigation into alleged war crimes and crimes against humanity on the territory of Afghanistan and other States Parties (Lithuania, Poland, Romania) due to the absence of relevant national proceedings and to the principle of complementarity.

Finally, [Belgium has addressed proposal of amendments to Article 8 of the Rome Statute](#) in the purpose of adding four war crimes to the list contained in this Article. Those four war crimes are the use of biological or toxin weapons, of anti-personnel mines, of weapons causing injuries by fragments which in the human body escape detection by X-Rays and of weapons causing permanent blindness. Belgium considers that the special recognition of these crimes will consolidate the international legal framework that already prohibits the use of such a type of weapon.



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