



## ***REPORT ON THE TENTH SESSION OF THE ASSEMBLY OF STATES PARTIES, NEW YORK, DECEMBER 2012***

The AMICC secretariat participated in the tenth session of the Assembly of States Parties (ASP) at the United Nations in New York, December 12-21, 2011. The annual meeting of States Parties to the Rome Statute of the International Criminal Court (ICC) elected new Court leadership and officials, adopted a program budget for the Court for 2012, and dealt with other issues important to the work and governance of the Court. Representatives from most of the 118 States Parties at the time of the session, as well as observer states, including the United States, participated in the meetings.

AMICC was one of many NGOs participating in the ASP, and it worked closely with the international NGO Coalition for the ICC (CICC), of which AMICC is the US national network. The CICC represents over 2,500 member organizations internationally, and facilitates the participation of NGOs in ASP meetings as well as strategy sessions at them. The AMICC delegation, which included members of the secretariat and independent ICC experts, attended all of the sessions and side events, including on such issues as complementarity, gender justice, cooperation and universality. During these many events, AMICC issued live updates to its constituents and the public through social media outlets. These updates remain archived and available on AMICC's Facebook page, Twitter feed and blog.

### Participation of the United States

Representatives of the US Government participated extensively in the tenth session of the ASP, as they had at ASP sessions beginning in November 2009 and at the 2010 Review Conference in Kampala, Uganda. The US may participate as an observer as of right, with many of the privileges of States Parties except voting and making proposals. The large delegation was co-led by Ambassador-at-Large for War Crimes Issues Stephen Rapp, who now heads the newly-renamed Office of Global Criminal Justice, and State Department Legal Adviser Harold Koh, and it included representatives from the departments of Defense and Justice in the US government.

Ambassador Rapp, in his statement on behalf of the US delegation during the General Debate portion of the ASP, emphasized that “the ICC can become an even more important safeguard against impunity” and pledged continued US support for international justice mechanisms.<sup>1</sup> He also explained the action by President Obama in August 2011 to establish an Atrocities Prevention Board which will coordinate a government-wide approach to preventing and responding to atrocities. The US also co-sponsored, with Norway and Uganda, a side event at the ASP on witness protection at which Ambassador Rapp spoke. The US was again well received in the ASP and its presence was positive and appreciated by other governments as well as civil society.

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<sup>1</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ICC-ASP10-GenDeba-USA-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-USA-ENG.pdf);  
[http://www.state.gov/j/gcj/us\\_releases/remarks/179208.htm](http://www.state.gov/j/gcj/us_releases/remarks/179208.htm)





## Election of New ASP Leadership

The session began with the formal handover of the ASP leadership from Ambassador Christian Wenaweser, Liechtenstein's permanent representative to the UN, to Ambassador Tiina Intelmann of Estonia. Prior to the formal election, Ambassador Wenaweser offered reflections on his tenure as ASP President.<sup>2</sup> Ambassador Intelmann was elected by acclamation, along with the two vice-presidents of the ASP and the 18 other members of the Bureau, the ASP's executive body.<sup>3</sup> Following the election, Ambassador Intelmann immediately began presiding over the session. She and the other members of the Bureau will serve for terms of three years. She is the first ASP President to serve the position full-time since her government has decided to support her to do so, in New York, without any other responsibilities.

## Statements by UN and Court Officials

On the first morning of the session, UN and ICC officials, including the ICC President,<sup>4</sup> ICC Prosecutor,<sup>5</sup> UN Human Rights Commissioner<sup>6</sup> and UN Deputy Secretary-General,<sup>7</sup> made statements on the work and activities of the Court. It was the last session to which Prosecutor Luis Moreno-Ocampo reported; his non-renewable nine-year term expires in June 2012.

The President of Botswana also addressed the Assembly and pledged his country's continued support to the ICC and sought to counter the argument that the Court unfairly targets African nations in its investigations.<sup>8</sup>

## Election of the Prosecutor

On the first morning of the session, the ASP elected Fatou Bensouda of the Gambia, now ICC Deputy Prosecutor, to be the next Prosecutor. She will take office in June 2012, replacing current Prosecutor Moreno-Ocampo. She was elected by acclamation following a consensus agreement made by the ASP.<sup>9</sup> This agreement<sup>10</sup> resulted from an extensive search process undertaken by a committee established by the ASP Bureau to identify highly-qualified candidates and to issue a report recommending candidates to the Bureau.<sup>11</sup> The Bureau, through informal consultations among States Parties, selected a single candidate to formally propose to the ASP for election in plenary session.

Mrs. Bensouda has become well known in the US during her time as Deputy Prosecutor and is widely perceived by governments and NGOs to be well qualified for the position. She vowed to "build on what has

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<sup>2</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-PASP-CW-CLRemarks-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-PASP-CW-CLRemarks-ENG.pdf)

<sup>3</sup> <http://icc-cpi.int/Menus/ASP/Bureau/>

<sup>4</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-Pres-Song-Remarks-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-Pres-Song-Remarks-ENG.pdf)

<sup>5</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-ProsecutorLMO-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-ProsecutorLMO-ENG.pdf)

<sup>6</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-UNHCHR-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-UNHCHR-ENG.pdf)

<sup>7</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-UNDSG-Remarks-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-UNDSG-Remarks-ENG.pdf)

<sup>8</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-Botswana-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-Botswana-ENG.pdf)

<sup>9</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/ICC-ASP-10-38-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-38-ENG.pdf)

<sup>10</sup> <http://icc-cpi.int/Menus/ASP/Press+Releases/Press+Releases+2011/PR749.htm>

<sup>11</sup> <http://icc-cpi.int/menus/asp/press%20releases/press%20releases%202011/pr736>

been accomplished so far in terms of institutional development of the Office [of the Prosecutor], with a view to continuing to ensure the consistency, predictability and transparency of our work.”<sup>12</sup>

## Election of Six New Judges

The ASP elected six new judges to fill vacancies to be left by the six judges whose terms will expire in March 2012. States Parties nominated 19 candidates, one of which withdrew prior to the election, for the six vacancies.<sup>13</sup> Because of special requirements in the Rome Statute which require the ASP to consider the composition of the judiciary at the time that the outgoing judges’ terms end, States Parties were required to vote for a minimum number of candidates who met certain criteria relating to gender, geographic regional representation and legal expertise and experience. These requirements made it difficult for candidates to reach the requisite two-thirds of required votes in 15 rounds of voting held during seven three-hour sessions over the course of five days. The ASP had allocated three three-hour sessions, over one and a half days, to conduct the secret balloting.

The voting demonstrated the difficulty of conducting international elections, especially ones done by paper ballot, and was an early test for the new ASP President. The voting on the first day was delayed because several delegations were unhappy with the arrangement of desks in the UN’s temporary conference building which deprived them of access to microphones. Once this issue was resolved and it became clear that the elections would need substantial extra time beyond that allocated, one government objected to holding consultations on another matter in the same room as the voting while the ballots were being counted in another room. In another round, consultations by delegates from one regional group delayed the balloting. When the delegates were informed that the balloting resumed, they requested additional time even though the ballots had been distributed. This resulted in confusion among delegations in the conference room, another significant delay, and the need to distribute new ballots for that round of balloting.<sup>14</sup>

The following candidates were elected at the tenth session of the ASP to be ICC judges:

Anthony Thomas Aquinas CARMONA, Trinidad and Tobago, 72 votes (first round of balloting)  
Miriam DEFENSOR-SANTIAGO, Philippines, 79 votes (first round)  
Robert FREMR, Czech Republic, 77 votes (second round)  
Olga Venecia HERRERA CARBUCCIA, Dominican Republic, 77 votes (twelfth round)  
Howard MORRISON, United Kingdom, 72 votes (thirteenth round)  
Chile EBOE-OSUJI, Nigeria, 102 votes (fifteenth round)<sup>15</sup>

A new element in these judicial elections was the establishment one year earlier of the Independent Panel on ICC Judicial Elections which issued a report on the 19 candidates in October 2011.<sup>16</sup> The expert Panel was established by the CICC at AMICC’s urging and with its support. AMICC’s Deputy Convener, as a consultant to CICC, provided extensive assistance to the Panel. The Panel’s purpose was to encourage the nomination and

<sup>12</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/Statements/ASP10-ST-FatouBensouda-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ASP10-ST-FatouBensouda-ENG.pdf)

<sup>13</sup> <http://icc-cpi.int/Menus/ASP/Elections/Judges/2011/Alphabetical+listing-2011.htm>

<sup>14</sup> <http://amicc.blogspot.com/2011/12/unusual-episode-on-third-day-of.html>

<sup>15</sup> <http://icc-cpi.int/Menus/ASP/Elections/Judges/2011/Results/Final+Results.htm>

<sup>16</sup> <http://iccindependentpanel.org/>

election of the most highly-qualified candidates, in part by making a determination as to whether each candidate is “Qualified” or “Not Qualified” according to the strict requirements of the Rome Statute for judicial candidates. In its report, the Panel also made recommendations about matters related to the nomination and election of judges. In this election, all of the six candidates elected were found to be “Qualified” by the Independent Panel. One commentator observed that “[b]y most accounts, the system was influential.”<sup>17</sup>

### Establishment of an Advisory Committee on Nominations

In addition to the election of important officials at this session, the ASP also took action by way of its omnibus resolution<sup>18</sup> to establish an ASP Advisory Committee on nominations.<sup>19</sup> The Committee is expected to deal only with the assessment of judicial candidates. It will be composed of eminent experts, acting in their personal capacities, who are nationals of States Parties. The next step will be for the ASP Bureau to prepare for the election by the ASP of the nine members of the Advisory Committee prior to the next judicial elections. It is not clear yet whether this expert body would replace or complement the Independent Panel on ICC Judicial Elections. Unlike the Panel, the Advisory Committee would be able to contact the candidates directly and interview them.

### Independent Oversight Mechanism for the ICC

Following the establishment of an Independent Oversight Mechanism (IOM) by the ASP in November 2009,<sup>20</sup> the ASP has not taken action to fully operationalize it. Last year, the ASP sought to address concerns by the ICC Prosecutor about the independence of his office and the ability of the IOM to investigate Office of the Prosecutor staff.<sup>21</sup> It did so by approving a mandate for the IOM but left it to the acting head of the IOM to finalize a draft manual to be adopted by the ASP at the tenth session. This did not occur due to further disagreement between the IOM and the Prosecutor about the reach of the IOM. This further delay means that the IOM will not yet begin carrying out its investigative function, as mandated by the ASP, and thereby make it more difficult to counter US critics who say that the Court has no independent mechanism to detect and address waste, fraud and abuse. The ASP, according to its omnibus resolution, expects to fully operationalize the IOM at its next session, in November 2012, following continued discussions between the ASP and Court officials.<sup>22</sup> The resolution also mandates the IOM to develop a policy preventing retaliation against whistleblowers.

### Amendments to the Rules of Procedure and Evidence

The ASP for the first time amended the Rules of Procedure and Evidence of the Court.<sup>23</sup> This occurred in response to concerns about judges moving to the Appeals Division from the Pre-Trial or Trial Division. The previous version of the Rule 4 left it to the judges in plenary session to assign themselves among the Pre-Trial, Trial and Appeals Divisions. The amended version of the rule requires the ICC President, elected by the

<sup>17</sup> [http://bosco.foreignpolicy.com/posts/2012/01/10/time\\_to\\_grade\\_security\\_council\\_candidates](http://bosco.foreignpolicy.com/posts/2012/01/10/time_to_grade_security_council_candidates)

<sup>18</sup> Resolution ICC-ASP/10/Res.5, para. 19, [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.5-ENG.pdf)

<sup>19</sup> [http://icc-cpi.int/iccdocs/asp\\_docs/ASP10/ICC-ASP-10-36-ENG.pdf](http://icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-36-ENG.pdf)

<sup>20</sup> Resolution ICC-ASP/8/Res.1, [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.1-ENG.pdf)

<sup>21</sup> Resolution ICC-ASP/9/Res.5, [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-9-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-9-Res.5-ENG.pdf)

<sup>22</sup> Resolution ICC-ASP/10/Res.5, para. 66, [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.5-ENG.pdf)

<sup>23</sup> Resolution ICC-ASP/10/Res.1, [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.1-ENG.pdf)

plenary of judges, to make these assignments. Judges in a previous plenary session assigned Pre-Trial and Trial judges to the Appeals Division, arguably in violation of Article 39, paragraph 4 which requires Appeals Division judges to serve only in that division. The amendment took effect immediately and thus will be in place when the six new judges take office in March 2012.

### Approval of the ICC's Annual Budget

The ICC's budget, as expected, was the most contentious matter address by the ASP at its tenth session. The Court requested a budget of approximately €118 million, or about \$150 million, for 2012. This represented an increase of about €14 million over the 2011 budget, largely to cover the major increases in the ICC's activities, including the new investigations and proceedings in the Libya and Côte d'Ivoire situations. The ASP's expert Committee on Budget and Finance (CBF) recommended a reduction in the budget by €5.6 million. However, several of the ICC's largest States Parties, who fund much of the ICC's budget based on assessed contributions, sought to limit the Court to a "zero growth" or "zero nominal growth" budget. The governments pushing for a severe limit on the Court's budget were under pressure domestically to limit spending in national budgets and those of international organizations. However, ICC officials and supporters noted that the Court is mandated by its Rome Statute to carry out certain activities and to ensure certain rights which require adequate financial resources.

Following extensive negotiations and compromise, the ASP made appropriations totaling €111 million, less than the total budget recommendation of the CBF, of which €108.8 million is for the 2012 budget and €2.2 is to replenish the Contingency Fund.<sup>24</sup> This fund permits the Court to access funds for activities or needs between budget cycles which were not anticipated or foreseen. The overall budgetary allocations are significantly less than the amount Court officials expected that they will need. It will be left to these officials to determine how to allocate their budgets in order to fulfill their respective mandates as well as to stay within the allocations approved by the ASP.

### Report of the ICC Prosecutor to the UN Security Council on the Darfur Investigation

On December 15, the ICC Prosecutor delivered his 14th Report to the UN Security Council on the Darfur investigation<sup>25</sup> which the Council referred to the Court. The report was scheduled to coincide with the ASP meeting in New York and influenced debates on it. The report came shortly after the Prosecutor's request to Pre-Trial Chamber I to issue an arrest warrant for the current defense minister of Sudan, Abdelrahim Mohamed Hussein. The Prosecutor in his statement confirmed his belief that Omar al-Bashir, the president of Sudan wanted by the ICC for genocide and other atrocities, will eventually face justice.<sup>26</sup> In response to the report, the US representative made a statement about the "need to ensure accountability for those responsible for genocide, war crimes, and crimes against humanity in Darfur."<sup>27</sup> Additional details about the Prosecutor's report are available on AMICC's blog.<sup>28</sup>

<sup>24</sup> Resolution ICC-ASP/10/Res.4, para. 1, [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/Resolutions/ICC-ASP-10-Res.4-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.4-ENG.pdf)

<sup>25</sup> <http://icc-cpi.int/NR/exeres/567E772C-74A8-4071-B2F7-06EF5C1ACB9D.htm>

<sup>26</sup> <http://www.icc-cpi.int/Menu/Go?id=726561cb-7fb5-46bc-9e68-c03279343001&lan=en-GB>

<sup>27</sup> <http://usun.state.gov/briefing/statements/2011/178938.htm>

<sup>28</sup> <http://amicc.blogspot.com/2011/12/icc-prosecutor-reports-to-un-security.html>

## Eleventh Session of the ASP

The next session of the ASP, its eleventh, will be held in The Hague, November 14-22, 2012.

*Updated January 20, 2012*