

Report on 15th Assembly of State Parties (ASP) to the International Criminal Court

by

Lisa Barrett

The 15th Assembly of State Parties (ASP15) to the International Criminal Court (ICC) met in The Hague from the 16th to the 24th of November 2016. Lisa Barrett attended the Assembly on behalf of Lawyers Right Watch Canada as part of the NGO delegations who are members of the Coalition for the International Criminal Court (CICC).

The CICC captured the magnitude of the event: “The Assembly was one of the strongest showings of global civil society in recent years, with over 400 NGO delegates in attendance, underlining the continuing relevance of the international justice system in the face of rising occurrences of grave crimes the world over...”

Recurring issues and themes in Plenary and Debates:

Need to work diligently towards achieving the universality of the Court.

Nearly every speaker in the first plenary addressed in some way the importance of universality and the responsibility of all State Parties to exert their influence on those states that have not yet signed and/or ratified the Rome Statute.

Russia, a non-ICC member state took the opportunity to announce on the first day of the Assembly that, although they had never ratified their accession to the ICC they would now be de-activating their Rome Statute signature. This came directly after the release of the Office of the Prosecutor report indicating the prospect of investigations in Georgia and Ukraine.

Need for UN Security Council (UNSC) reform- UNSC referrals to ICC and use of veto to obstruct.

Russia, China, and the United States hold three of the five permanent member seats on the UN Security Council. Not one of these most powerful states is a member of the ICC. Nevertheless, all three states had delegates to the ASP15 and participated as observer states.

In spite of reliable confirmation of the use of chemical weapons in Syria and a resolutions introduced by France on October 8, 2016, the resolution was vetoed by the Security Council.

A previous UNSC resolution to refer Syria to the ICC for accountability and to deny impunity failed on May 22, 2014 when Russia and China used their vetoes to block it.

Need to take seriously and to concretely address the concerns and issues raised by African State Parties.

While three African State Parties - South Africa, Burundi and Gambia had declared their intention to withdraw from the ICC, much of the early plenary was taken up with admonitions and cajoling that left some African representatives feeling insulted. The Canadian delegation was seen to be dismissive, as one African delegate paraphrased it: “It’s nothing. We don’t care. Just go away...” The UNHCR representative was paraphrased as saying “Certain states are masquerading their interests in human rights and justice. If they aren’t interested, they should leave”.

A working session was convened to discuss the issues and additional plenary time set aside for later in the week. This proved to be a wise decision on the part of the ASP15 executive and organizers.

Much of the ASP15 attention had been focused on pressure to amend Article 27 of the Rome Statute, which ensures application of the Statute without any distinction based on official status, and underpins the jurisdiction of the Court to hold individuals responsible for crimes and liable for punishment. Non-African ICC member states categorically rejected any such amendments..

In the working session and later in the plenary it became apparent that amendment of Article 27 was not the major concern of most African states. Issues of colonialism, oppression, racism and sovereignty were of much greater concern, as was prosecutorial discretion and timing.

It emerged that the issues of cooperation and complementarity were often issues rooted in a given state's capacity to respond to the ICC requests and/or to proceed using the national justice system to investigate and prosecute serious crime. The Registrar confirmed that the ICC experienced difficulty at times trying to establish investigations or to support a complementary approach with limited resources available.

Need to fully fund the ICC.

The Registrar of the ICC discussed the importance of adequate funding both for the Office of the Prosecutor's work investigating and prosecuting serious crimes, and for the work required to support Least Developed Countries (LDCs) in their efforts to engage co-operatively and to effect complementarity. Priority areas of support include protection of victims and witnesses, and chain of custody protocols for collection and preservation of evidence.

While the Registrar was circumspect in his assessment of the prospect of further demands from the ASP's Committee for Budget and Finance (CBF), state party representatives - especially from African nations and NGO representatives characterized the proposed "zero growth" budget as an "austerity program" that would effectively cut ICC's operating funds year over year, curtailing current investigations and prosecutions and precluding the initiation of new investigations. This comes just as the Office of the Prosecutor released a report indicating investigations may soon be opened in Palestine, Ukraine and Afghanistan - where there are allegations of torture by US officials.

Canada's Hugh Adsett is a member of the CBF and one of the "G7" countries (Japan, Germany, UK, France, Italy, Spain and Canada) accused of collectively working to reduce ICC funding. A "one off" cut of €3 million last year resulted in serious reductions in staffing, negatively affecting the number of women in leadership positions and causing losses of staff from African nations. It was observed that the wealthier funding states have been pushing the austerity-style on the CBF since 2008. The CBF report cost €6.4 million, containing language of "irregularities" when referring to the Office of the Registrar and making recommendations for policy changes, would only save €300,000/year. It was suggested by a number of NGO delegates that this type of control over the ICC budget amounts to political interference with the work of the ICC.

When the budget was approved, the total "envelope" for 2017 at €141.6 million, compared to the 2016 budget of €139.5 million. This is €6 million less than Court officials had requested to maintain court activities and to open new investigations and prosecutions and to improve essential victim-related activities. Only the week before, Canada's foreign affairs minister, Stéphane Dion stated: "We must work harder to enable the court to better protect the inhabitants of other continents against those who trample their most fundamental rights with impunity. We need more of the International Criminal Court, not less."