

5. THE INTERNATIONAL CRIMINAL COURT

I. INTRODUCTION

1. The Rome Statute (hereinafter “Statute”)¹ created an international legal/judicial system, the International Criminal Court (hereinafter “the Court”) to prosecute and try the international crimes of genocide, crimes against humanity and war crimes, as well as the crime of aggression when defined and adopted by the Assembly of States Parties² (hereinafter international crimes). The Court may exercise jurisdiction over such international crimes only if they were committed on the territory of a State Party or by one of its nationals. These conditions however do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, or if a State makes a declaration accepting the jurisdiction of the Court. In words of the United Nations Secretary-General “The creation of the International Criminal Court is unquestionably one of the major achievements of international law during the past century”. Currently, as of 1 October 2009, 110 countries are States Parties to the Rome Statute of the ICC³.

2. The Statute recognizes that the States shall have the primary responsibility for investigating and punishing the above mentioned crimes and also that the Court is complementary to the efforts of States in investigating and prosecuting international crimes. The Court is the focal point of an emerging system of international criminal justice, which includes national courts, international courts and tribunals with both national and international components. The implementation of the Statute in domestic legal systems also has positive effects on wider aspects of the national justice system, such as offering greater access to justice for all and setting higher standards of due process for the accused. And the powerful deterrent effect of the Statute may increasingly help safeguard the rights and dignity of future generations.

3. There are currently four situations, which are under investigation by the Office of the Prosecutor of the ICC. Three States Parties have referred situations on their territories to the Prosecutor, and the Security Council has referred one situation to Prosecutor for investigation. The mere existence of the Court and the activities of the Prosecutor and the Court create a legal and political incentive that cannot be underestimated; especially in the long run. Although everyone is not fully satisfied with all the areas that it seeks to encompass, the Court surely is a strong manifest for the conviction that perpetrators of grave crimes can also be held responsible at an international level. It is certainly not easy to point to particular cases where the Court’s mere existence has prevented the perpetration of severe crimes. But the attention that the Court receives on the international level, even (or in particular) by its critics and opponents seems to suggest

¹ The Rome Statute was adopted on 17 July 1998 and circulated as A/CONF.183/9 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002.

² http://www.icc-cpi.int/library/about/ata glance/ICC-Ata glance_en.pdf.

³ Out of the 110 countries that are States Parties to the Rome Statute of the International Criminal Court, 30 are African States, 14 are Asian States, 17 are from Eastern Europe, 24 are from Latin American and Caribbean States, and 25 are from Western European and other States.

that committing an international crime and/or getting away with it has become somewhat more difficult.

4. The Asian-African Legal Consultative Organization (AALCO) has followed developments relating to the establishment of the International Criminal Court since 1996. The topic has been keenly deliberated upon during the Annual Sessions. With the aim of disseminating information regarding the activities and developments in the functioning of the Court it has held many seminars and workshops.

5. The Forty-Seventh Annual Session held in New Delhi (HQ), vide Resolution RES/47/S 9, adopted on 4th July 2008 had in Operative Paragraph 6 “Requested the Secretary-General to explore the feasibility of convening an inter-sessional meeting, *inter alia*, for promotion of human rights in the backdrop of the Rome Statute of the International Criminal Court.

6. In partial fulfillment of that mandate and with the objective of pondering over legal issues relating to the Rome Statute of the International Criminal Court and its contemporary relevance to the AALCO Member States, a One-Day Seminar, jointly organized by the Government of Japan and the AALCO on “The International Criminal Court: Emerging Issues and Future Challenges” was held on 18th March 2009, in New Delhi. Nearly 100 Delegates from 19 Member States, 20 Non-Member States, 3 International Organizations and several academic experts based in New Delhi participated in the highly successful day-long deliberations.

7. The discussions in the seminar were centered on the themes: “Progressive Development of International Criminal Jurisprudence: An Overview”- “Contribution of International Criminal Tribunals to the Development of International Criminal Law” - “Principles of International Humanitarian and Human Rights Law in the Rome Statute” and “ICC: Current Developments and Contemporary Challenges”- “Asian-African Perspectives on ICC” – “Issues before the First Review Conference of the Rome Statute to be held in 2010. One of the key presentations on the topic “The ICC Today Activities and Challenges” was made by late Judge Fumiko Saiga of the ICC. The debate in the course of the seminar was informal in nature, wherein all the participants spoke in their informal capacities and no formal resolutions or conclusions were adopted. The Report of the Seminar was published and circulated among Member States of AALCO keeping in view that it would help delegates in understanding some of the issues to be taken up during the forthcoming Review Conference to be held in 2010 at Kampala, Uganda.

8. It is pertinent to mention that AALCO has always believed that cooperation with other international organizations is a very effective tool of promoting and conducting research on any topic. AALCO and ICC had signed a Memorandum of Understanding on 5th February 2008, one of the objectives of which is to facilitate the convening of seminars and workshops for the benefit of Member States. AALCO has entered into such agreements with several other international and regional organizations as well.

9. The present Report seeks to highlight the developments that have taken place after the 63rd Session of the General Assembly of the United Nations. The Report refers to: The Seventh Session of the Assembly of States Parties (ASP); a Report on the Special Working Group on the Crime of Aggression; ICC President's Report to the UN General Assembly, likely issues before the Review Conference; Deliberations on the topic during the Forty-Eighth Annual Session of AALCO; Recent Developments and finally AALCO Secretariat Comments.

II. ASSEMBLY OF STATES PARTIES

10. The Assembly of States Parties is the management oversight and legislative body of the International Criminal Court and Part 11 of the Rome Statute provides for the Assembly of States Parties (ASP). It is composed of representatives of the States that have ratified and acceded to the Rome Statute. Each State Party is represented by a representative who is proposed to the Credential Committee by the Head of the State of the government or the Ministry of Foreign Affairs.⁴ Moreover, each State Party has one vote and every effort has to be made to reach decisions by consensus. If consensus cannot be reached then decisions are taken by vote.⁵ Other States, which have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference, may sit in the Assembly as Observers. On the basis of the principles of equitable geographic distribution and the adequate representation of the principal legal systems of the world, the Bureau of the Assembly of States Parties consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for a three year term. The Assembly is responsible for the adoption of the normative texts and of the budget, the election of the Judges and of the Prosecutor and the Deputy Prosecutor. It meets at least once every year.

11. The AALCO Secretariat has in the past extensively covered the proceedings of the Five Sessions of the ASP⁶, that held its first Session in 2002, second Session in 2003, third Session in 2004, fourth Session in 2005, fifth Session in 2006 and sixth session in 2007. It may be mentioned that the resumed Sessions of all these Sessions took place in the following year.

A. Seventh Session of the Assembly of States Parties (ASP VII)⁷

12. The Seventh Session of the ASP was held from 14 to 22 November 2008, in the Hague and was opened by the new President, Mr. Christian Wenaweser (Liechtenstein), who would preside over the ASP until 2011. The ASP consists of two Vice-Presidents⁸

⁴ According to Chapter IV of the Rules of Procedure of the Assembly of States Parties.

⁵ Rome Statute Article 112 (7).

⁶ The document prepared for the Sixty-Third Session of the UNGA "Notes and Comments on Selected Items before the Sixty-Third Session of the General Assembly of the United Nations (AALCO/NOTES&COMMENTS/UNGA/63/2008) had referred briefly on the First-Fifth Sessions and extensively covered the Sixth and Resumed Sixth Session of the Assembly of States Parties.

⁷ A detailed report of the Seventh Session of the ASP can be found in AALCO/48/PUTRAJAYA/2009/S 9 also available on AALCO website www.aalco.int

⁸ Mr. Jorge Lomonaco (Mexico) and Mr. Zachary D. Muburi-Mutia (Kenya).

and 18 members elected by the Assembly for three year terms. The President in consultation of the Bureau continued in his capacity as Chairperson of the Special Working Group on the Crime of Aggression, while Mr. Masud Husain (Canada) was appointed to the chair of the Working Group on the Programme Budget for 2009. Mr. Rolf Fife (Norway), the Assembly's focal point on the review of the Rome Statute, chaired the Working Group on the review Conference. The Assembly approved a budget totaling Euro 101,229,900 and a staffing level of 744 (379 at the professional level and 365 at the general service level).

13. As regards the construction of the permanent premises of the Court, the Assembly accepted the offer of the host State (Netherlands) to provide a loan of up to a maximum of Euro 200 million, to be repaid over a period of thirty years, at an interest rate of 2.5 percent.

14. The Assembly also decided that the review Conference of the Rome Statute would be held in Kampala, Uganda, during the first semester of 2010 i.e. from 31 May to 11 June 2010.

15. The **Eighth Session** of the ASP will take place in The Hague from 18 to 26 November 2009.

B. First Resumption of the Seventh Session of ASP

16. The first resumption of the Seventh Session of the ASP was held from 19 to 23 January 2009. The Assembly elected six judges of the International Criminal Court for a term of nine years beginning from 11 March 2009, namely: Joyce Aluoch (Kenya); Sanji Mmasenono Monageng (Botswana); Fumiko Saiga (Japan); Mohamed Shahabuddeen (Guyana); Cuno Tarfusser (Italy); and Christine Van den Wyngaert (Belgium).

17. It also elected six members of the Committee on Budget and Finance for a term of three years from 21 April 2009 to 20 April 2012, namely Mr. Masud Husain (Canada); Ms. Rossette Nyirinkindi Katungye (Uganda); Ms. Elena Sopková (Slovakia); Mr. Santiago Wins (Uruguay); Mr. Fawzi Gharaibeh (Jordan) and Mr. Shinichi Iida (Japan).

C. Second Resumption of the Seventh Session of ASP

18. The second resumption of the Seventh Session of the ASP was held from 9 to 13 February 2009, at the United Nations headquarters in New York⁹. The Special Working Group on the Crime of Aggression, which has been chaired since 2003 by Mr. Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations, concluded its discussions on, *inter alia*, the definition of the crime of aggression and the conditions for the exercise of jurisdiction by the Court over this crime. Furthermore the Assembly

⁹ For a detailed Report of the Special Working Group on the Crime of Aggression refer to AALCO/48/PUTRAJAYA/2009/S 9, pages 17-27 available at website www.aalco.int

also adopted a decision on the issue of an independent oversight mechanism foreseen in Article 112, paragraph 4 of the Statute.

19. The draft provisions on the crime of aggression under consideration include a definition of the act of aggression, which is based on United Nations General Assembly resolution 3314 (XXIX), with a threshold, a lists of acts that would qualify as an act of aggression and wording on the requisite leadership element to establish individual criminal responsibility for the act.

20. There are divergent views regarding the possible role for the United Nations Security Council prior to the initiation of an investigation in respect of a crime of aggression if the Security Council has previously made a determination that an act of aggression has been committed by a State.

21. Additional work on the crime of aggression was undertaken at an informal inter-sessional meeting held from 8 to 10 June 2009 in New York and will be considered during the Eighth Session of the ASP in November in order to further refine the proposals which would be submitted for consideration by the Review Conference.

III. CRIME OF AGGRESSION

A. Retreat on the Elements of Crimes for the crime of aggression, Montreux, Switzerland, 16 to 18 April 2009

22. The Special Working Group on the Crime of Aggression (SWGCA) dealt with the drafting of Elements of Crimes for the crime of aggression on several occasions. Paragraph 42 of the Report of the SWGCA, dated 20 February 2009 (ICCASP/7/SWGCA/2), reflects the fact that two delegations were preparing a discussion paper on the Elements of Crimes and were willing to discuss it with interested delegations.

23. Upon consultation with the two delegations referred to – Australia and Samoa – the Swiss Federal Department of Foreign Affairs invited a number of experts involved in the work on the crime of aggression to participate in a retreat on the Elements of Crimes for the crime of aggression in Montreux, Switzerland, from 16 to 18 April 2009. Participants included experts from foreign affairs and justice ministries, academic institutions as well as a non-governmental organization. Every effort was made to ensure a balanced regional representation, but not all persons invited were able to attend.

24. The aim of the retreat was to exchange, in a small and informal gathering, initial ideas and thoughts on the drafting of the Elements of Crimes for the crime of aggression. Discussions during the Montreux retreat were based on the definition of the crime of aggression as drafted in the Report of the SWGCA of 20 February 2009. Australia and Samoa agreed to submit the result of their reflections for consideration at the retreat. On the basis of the paper submitted by them, participants examined the following issues:

- Scheme and principles of the Elements of Crimes
- The individual's conduct
- The leadership requirement
- The State act of aggression – material element and mental element
- The threshold requirement – material element and mental element
- Other matters (eg a special introduction)

25. Several options for possible elements were envisaged, and a number of drafting ideas were suggested. In light of the meeting, the authors of the paper who attended the retreat expressed their intention to undertake further work in preparation for the intersessional meeting in June 2009 in New York.

B. Inter-sessional Meeting on the Crime of Aggression.

26. Pursuant to a recommendation by the Assembly of States Parties and at the invitation of the Government of Liechtenstein, an informal inter-sessional meeting on the Crime of Aggression was hosted by the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, on the premises of the Princeton Club, New York, United States of America, from 8 to 10 June 2009. H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) chaired the meeting.¹⁰

27. During the inter-sessional meeting opinions were reflected on various issues pertaining to the crime of aggression on the basis of the proposals for a provision on aggression elaborated by the Group and adopted on 13 February 2009¹¹. The report of the inter-sessional meeting would facilitate the future work of the ASP on the crime of aggression during the upcoming Eighth Session.

28. The discussions were held on the basis of two papers submitted by the Chairman: a non-paper on the Elements of Crimes, as well as a non-paper on the conditions for the exercise of jurisdiction. The Chairman introduced both non-papers and recalled the significant progress that had been made by the Group, culminating in the adoption of the Group's final report in February 2009. He underlined that the future work on aggression should focus on the outstanding issues left over from the Group, as well as the Elements of Crimes. The Chairman furthermore noted that the participation of both States Parties and non-States Parties was essential, despite the fact that the Group no longer existed as such. The future format of the work on aggression would have to be decided by the Assembly of States Parties at its next session.

¹⁰ See document ICC-ASP/8/INF.2

¹¹ See February 2009 SWGCA report, in Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh Session (first and second resumptions), New York, 19-23 January and 9-13 February 2009.

IV. ICC PRESIDENT'S REPORT TO THE 63RD SESSION OF THE UNITED NATION'S GENERAL ASSEMBLY, 30TH OCTOBER 2008

29. The fourth annual report of the International Criminal Court (hereinafter “the Court”) was submitted to the Sixty-Third Session of the General Assembly (A/63/323) in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court ¹². Since the conclusion of the Relationship Agreement on 4th October 2004, the Court and the United Nations have steadily developed their mutual cooperation while respecting the independence and judicial nature of the Court. The report covered the period from 1 August 2007 to 31 July 2008. It covers the main developments in the Court’s activities and other developments of relevance to the relationship between the Court and the United Nations.

30. In carrying out its functions, the Court relies critically on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation include facilitating investigations, arresting and surrendering persons, protecting witnesses and enforcing sentences. The Court has concluded supplementary cooperation agreements with a number of actors and has continued to take steps to ensure the cooperation needed to ensure respect for and enforcement of its decisions.

31. Four situations were before the Court during the reporting period. The Prosecutor continued to investigate the situations in the Democratic Republic of the Congo; Uganda; Darfur, the Sudan; and the Central African Republic. Judicial proceedings took place in each situation. The Prosecutor also carried out analysis activities on three continents.

32. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I stayed proceedings and ordered the unconditional release of the accused in light of the non-disclosure by the prosecution to the defence of potentially exculpatory evidence obtained on condition of confidentiality. The prosecution has since appealed the decisions staying proceedings and ordering Mr. Lubanga’s release and has requested that the Trial Chamber lift the stay of proceedings. Mr. Lubanga remains in custody pending the outcome of the appeals proceedings.

33. The Court issued or unsealed four new warrants of arrest — three in the situation in the Democratic Republic of the Congo and one in the situation in the Central African Republic.

34. Germain Katanga and Mathieu Ngudjolo Chui were surrendered to the Court on 17 October 2007 and 7 February 2008 respectively. They are each charged with nine counts of war crimes and four counts of crimes against humanity in the situation in the Democratic Republic of the Congo. A hearing to confirm the charges against them was held from 27 June to 16 July 2008. A decision on the confirmation of charges is expected to be rendered by 26 September 2008.

¹² See A/58/874 and Add.1 annex and paragraph 16 of Assembly resolution 62/12.

35. In the situation in the Central African Republic, Mr. Jean-Pierre Bemba Gombo was arrested in Belgium and surrendered to the Court on 3 July 2008. He is suspected of having committed three counts of crimes against humanity and five counts of war crimes. A hearing on the confirmation of charges against Mr. Bemba is currently scheduled to take place on 4 November 2008.

36. On 14 July, the Prosecutor submitted an application for a warrant of arrest against the President of the Sudan, on counts of genocide, crimes against humanity and war crimes.

37. Seven warrants of arrest are outstanding: four in the situation in Uganda, two in the situation in Darfur, the Sudan, and one in the situation in the Democratic Republic of the Congo. All of the warrants have been outstanding for over a year; four have been outstanding for over three years. The Court does not have the power to arrest persons. This responsibility belongs to States and, by extension, international organizations.

38. The Court continued to strengthen its cooperation with States, the United Nations and other actors with a view to ensuring the necessary support in all areas. The Court has developed more than three years of experience with its field operations and continues to adapt its activities in the field to reflect its judicial developments.

39. In addition to operational cooperation, the public and diplomatic support of the United Nations continued to be important to the Court. Such support increased the likelihood of international cooperation being received from States and other actors. It also strengthened the Court by reaffirming its judicial, non-political mandate and the importance of upholding the rule of law.

40. Another instance of cooperation between the Court and the United Nations is the conclusion of the first phase of the digitization of the entire legislative history of the Rome process, a project which is funded by the Court and has been undertaken by the Secretariat of the Assembly of States Parties and the Codification Division of the Office of Legal Affairs. This data would greatly benefit the Court, practitioners, academics and the public.

41. Cooperation with regional organizations is also important to the Court. Efforts to finalize a memorandum of understanding between the African Union and the Court continued. The Court aims to finalize and sign this agreement as soon as possible in order to strengthen cooperation with the African Union and African States. In May 2008, the first Vice-President of the Court, Judge Akua Kuenyehia, briefed the plenary of the Pan-African Parliament on the Court's activities and had a fruitful exchange of views with the joint sitting of the Committee on Justice and Human Rights and the Committee on Cooperation, International Relations and Conflict Resolution. The Court has also exchanged letters with the European Union with a view to concluding some form of cooperation with the European Union-led peacekeeping force (European Union military operations in Eastern Chad and North Eastern Central African Republic).

42. On 1 October 2007, the Rome Statute entered into force for Japan following the deposit of its instrument of accession on 17 July 2007. On 14 March 2008, Madagascar ratified the Rome Statute. On 15 July 2008, Suriname acceded to the Rome Statute. On 18 July, the Cook Islands acceded to the Rome Statute. With the entry into force of the Rome Statute for Suriname and the Cook Islands on 1 October 2008, there will be 108 States Parties to the Rome Statute.

43. In July 2008, the States Parties to the Rome Statute and civil society organizations celebrated the tenth anniversary of the adoption of the Rome Statute on 17 July 2008. To mark this event, celebrations were held in a number of locations including The Hague on 3 July 2008, and New York on 17 July 2008. The Secretary- General addressed the informal meeting of the Assembly of States Parties, held at Headquarters in New York, to commemorate the anniversary. A sub regional conference was also held in Benin and was attended by the Registrar of the Court. Another celebration was held in South Africa, where Judge Navanethem Pillay participated on behalf of the Presidency.

44. During the reporting period, the following States became Parties or signatories to the Agreement on Privileges and Immunities of the Court: Mexico, Portugal, the United Kingdom of Great Britain and Northern Ireland and the Netherlands. As of the date of submission of the fourth report, 63 States had become signatories to the Agreement.

45. The past year once again highlighted the importance of international cooperation to the activities of the Court. On the one hand, three individuals were surrendered to the Court, enabling it to begin judicial proceedings against each of them in The Hague. On the other hand, seven warrants of arrest remain outstanding. The credibility of the Court and its impacts depend on its decisions being enforced. While the surrender of three individuals further strengthened its credibility, the outstanding warrants highlight the fact that much more needs to be done.

V. REVIEW CONFERENCE

46. It has been decided that the Review Conference will be held in Kampala, Uganda, from 31 May to 11 June 2010. It maybe recalled that the parameters for the scope of the Review Conference are defined in the Rome Statute (in particular articles 121 to 123, as well as article 5, paragraph 2; and article 124), the Final Act of the Rome Conference (resolutions E and F), as well as in subsequent decisions of the ASP (in particular decisions on the crime of aggression, such as ICC-ASP/1/Res.1, as well as references to the Review Conference in the omnibus resolution, ICC-ASP/7/Res.3).

47. During the Seventh Session of the ASP reference was made to the progress reports of the focal point Mr. Rolf Fife (Norway) made since his appointment at the third session of the Assembly, based on contacts and exchanges concerning the preparation for the Conference. These included views on key parameters for the scope of the Conference, reflected particularly in the focal point's preliminary paper of 21 November 2006 (ICC-ASP/5/INF.2) and the progress report of 4 December 2007 (ICC-ASP/6/INF.3). These showed that approaches made to the focal point had confirmed a deep commitment by

States Parties to the aims and integrity of the Rome Statute. Moreover, they showed that there is a longstanding broad support for the proposed goals of the Review Conference of strengthening the Court and protecting the integrity of the Statute. At the same time, it was acknowledged that the Court has been in existence for only a few years. Some key procedures have not yet been implemented. This has limited the empirical basis for any discussion of amendments in important areas. A key focus should therefore be on what the Review Conference could usefully do in order to enhance the principles and purposes of the Statute and support for the Court. The focal point recommended that, in addition to a focus on amendments that command very broad, preferably consensual, support, consideration should also be given to a stocktaking of international criminal justice in 2010.

48. It was further recalled that the Assembly decided at its seventh session that *“proposals for amendments to the Rome Statute to be considered by the Review Conference should be discussed at the eighth session of the Assembly of States Parties in 2009, with a view to promoting consensus and a well prepared Review Conference”*. Furthermore, the Assembly recommended that, *“in addition to a focus on amendments that may command very broad, preferably consensual support, the Review Conference should be an occasion for a “stocktaking” of international criminal justice in 2010.*

49. The following issues require substantive preparation:

(1) Mandatory issues arising from the Rome Statute and the Final Act of the Rome Conference:

- a) **Review of article 124 of the Statute:** This is the only legally mandatory review to be carried out at the first Review Conference. This concerns the transitional provision in article 124 on deferred acceptance of jurisdiction of the Court for war crimes. The matter should therefore be discussed within the New York Working Group, with a view to elaborating a concrete report reflecting views and containing a recommendation to the Assembly.
- b) **Crime of aggression** (article 5, paragraph 2, of the Statute; resolution F of the Final Act): The Special Working Group on the Crime of Aggression will conclude its work during the second resumption of the seventh session of the Assembly. The future work on aggression (including the preparation of a further intersessional meeting) will be addressed by the Special Working Group directly.
- c) **Consideration of the crimes of terrorism and drug crimes**, in accordance with resolution E of the Final Act.² The matter should be discussed within the New York Working Group, with a view to elaborating a concrete recommendation to the Assembly.

(2) Consideration of other potential amendments to the Rome Statute: Any initiatives for draft amendments beyond those referred to under (1) above should be communicated to and discussed within the New York Working Group. Currently, one such initiative has

been indicated by the delegation of Belgium with respect to the list of weapons contained in article 8, paragraph 2 (b) (xx).

(3) Stocktaking of international criminal justice: The Assembly has recommended that the Review Conference should be an occasion for a “stocktaking” of international criminal justice in 2010. The New York Working Group should discuss and prepare the modalities of such a stocktaking exercise, with a view to elaborating a concrete recommendation to the Assembly.

VI. DELIBERATIONS DURING THE FORTY-EIGHTH ANNUAL SESSION OF AALCO, 17TH – 20TH AUGUST 2009, PUTRAJAYA, (MALAYSIA)

50. **Prof. Dr. Rahmat Bin Mohamad, Secretary-General** underlined the fact that the establishment of the International Criminal Court (ICC) the first permanent, independent, treaty-based tribunal dealing with the most serious crimes under international law, eleven years ago was a small but significant step, towards the realization of the vision of the world, in which peace and justice, prevail in accordance with the rule of law. The ICC was carrying out its mandate and investigating four situations, one Security Council and three State referrals.

51. He said that, as of 31st July 2009, 110 State Parties had ratified the Rome Statute. The Statute recognized that States had the primary responsibility for investigating and prosecuting international crimes, guaranteeing fair public trials consistent with internationally recognized human rights principles. Equally important was the cooperation between the ICC and the United Nations; International and Regional Organizations which was essential to an effective and efficient functioning of the Court. The Court also expected active cooperation from civil society.

52. The Secretary-General mentioned that at the Seventh Session (November 2008) and the First and Second Resumptions of the Assembly of States Parties (ASP VII) (January-February 2009) the discussions focused on a non-paper by the Chairman on the Crime of Aggression, it reflected a new structure based on the understanding that the Review Conference would adopt the amendments on aggression as an annex to the enabling resolution. At the June 2009¹³ Inter-sessional meeting, discussions were held on the basis of two papers submitted by the Chairman: a non-paper on the Elements of Crimes, as well as a non-paper on the conditions for the exercise of jurisdiction. He underlined that the future work on aggression should focus on the outstanding issues left over from the Group, as well as the Elements of Crimes.

53. He stated that the main issues to be addressed during the Rome Statute Review Conference, to be held in Kampala, Uganda, next May and June, related to the crime of aggression and Article 124 of the Statute, a provision granting States exemption from jurisdiction over war crimes for a period of seven years. In addition, the Governments of

¹³ Informal inter-sessional meeting on the Crime of Aggression, hosted by the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, at the Princeton Club, New York, from 8 to 10 June 2009.

Belgium and Mexico had circulated informal proposals to expand the list of weapons banned under the Statute. Member States could deliberate on these issues.

54. The **Delegate of the Sultanate of Oman**¹⁴ informed that Sultanate of Oman had signed the Rome Statute of the ICC on 30 December 2000. Thereafter, pursuant to the Rules of Procedure of the Assembly of States Parties it had been granted Observer Status, after that it effectively participated and contributed to the on going work in the sessions of the Assembly of State Parties to the ICC. However, the main task that remained to be accomplished related to the definition of the Crime of Aggression. Arriving at a definition of the Crime of Aggression was in fact the most important aspect to be incorporated in the Rome Statute, and it was in fact a highly controversial matter which could not be resolved without political will. Oman was closely following the work being carried out by the Working Group on the Crime of Aggression, and was optimistic that a consensus on the definition for the crime could be arrived at before the Review Conference next year. The current definition that the Working Group had arrived at was based on the definition of the Crime of Aggression as adopted by UNGA Resolution 3314, thus if a definition of the crime of Aggression can be arrived at, it would be an incentive for more countries to join the ICC.

55. The **Delegate of Japan** in his statement highlighted that the ICC should be a Criminal Court for the entire international community, not for or against certain regions of the world. Currently the membership of ICC comprised of 14 countries from Asia, 30 countries from Africa, 25 countries from the Western Europe and others Group (WEOG), 24 countries from Group of Latin American and Caribbean States (GRULAC) and 17 countries from Eastern Europe. The region wise representation of Judges was as follows: Asia 1, Africa 5, WEOG 6, GRULAC 2, and Eastern Europe 2. Thus, it could be said that the Asian presence was too small. Therefore, he made a humble but sincere plea to Asian countries not members of the ICC to come to the ICC.

56. He recounted that Japan had acceded to the Rome Statute two years ago and by then lot of legal instruments and precedents were already established, like Rules of Procedures of Evidence, Element of Crimes, and Procedures for the election of judges. At that stage they felt that they had joined the ICC too late. Although it was welcome that Asian non member countries were engaged in various activities related to the ICC from the outside, but there was a limit, to such engagement. The fact of the matter was that ICC exists but it could not possibly be changed from the outside. The delegate expressed the desire of Japan to cooperate with more Asian countries along with African member countries for the good development of the ICC.

57. He added that sustainable support for the Court was essential. The ICC is growing at a fast speed and thus there were several problems of management and governance of the organization, relating to areas such as Cost drivers: victims participation, legal aid, increasing number of staff in the Court. In his view these issues should not be dumped on the ICC just because they were difficult. Even though complementarity was the key principle of the ICC, the ICC should not become a job creation machine for lawyers.

¹⁴ Statement delivered in Arabic. Unofficial translation from interpreter's version.

58. The delegate noted that it was important to bear in mind that the Review Conference of the Rome Statute scheduled to take place next year was only for two weeks, and therefore too many issues should not be placed at that Conference. Nevertheless, Member States should not be inhibited to discuss any matter important for the future of the court. The review Conference would be the suitable occasion to take stock of activities of the court and to recommend and decide on necessary reform. Japan would like to work with AALCO members. Regarding the issue of inclusion of new categories of crimes into the Rome Statute, the delegate was of the view that the proceedings of the Court were already slow; Crime of Aggression was too heavy an issue and no prospect for reaching consensus so far especially for the jurisdictional filter existed. Therefore, he opined that the international community should be careful about adding other types of crimes within the jurisdiction of the Court.

59. In conclusion the delegate informed that sadly Judge Saiga passed away this April 2009 after she made a wonderful presentation in AALCO seminar in New Delhi. Thereafter, he humbly and sincerely asked for the valuable support from AALCO members to the candidature of Professor Ozaki for a judge of the ICC. The election would take place in November in The Hague. He added that Professor Ozaki is a wonderful lady with legal background especially in the field of international criminal law and international human rights. Japan had presented her candidature believing she would make great contribution to the work of the ICC.

60. The **Delegate of the Islamic Republic of Iran** mentioned that since the inception of the United Nations, the international community, through the General Assembly, had recognized the need to establish an international court to prosecute and punish perpetrators of the most heinous crimes, namely war crimes, crimes against humanity, genocide and the crime of aggression. The establishment of the ICC was a milestone towards achieving peace through justice, though the gulf between rhetoric and reality was still unacceptably wide. The Iranian nation and government, as a victim of many such heinous crimes had always expected the international community to prosecute and punish those who commit the international crimes and the abettors as well.

61. The delegate believed that in order to have a successful ICC, it should remain neutral, independent and apolitical, and avoid double standards, as was intended by its founders. These requirements could assist the Court to play a major role in the global trend towards ending impunity for international crimes. Furthermore, his Government believed that the Court and its organs, as a judicial body, shall respect the existing laws and regulations in the system it belongs to. In other words, in order to achieve its goals, in particular in the field of collecting evidence or arresting the accused persons, it must refrain from taking any measure that could be considered as infringement of international law.

62. He raised some issues with respect to the proceedings that had been initiated against the President of Sudan. He drew attention to the final document of the 15th Ministerial Conference of the Non-Aligned Movement that was held in Tehran in July 2008, the Ministers of the Movement declared their satisfaction to the sustained efforts

made by the Government of Sudan to reactivate the political process leading to a lasting peace in Darfur. They also expressed their conviction that no action should be taken that could jeopardize the delicate nature of the process underway in Sudan. Furthermore, in that context, the Ministers expressed deep concern over the recent application by the Prosecutor of the Court against the President of Sudan, and considered that this action could undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur.

63. The delegate informed that the Review Conference of the Rome Statute would be held in Uganda in 2010. Inclusion of the Crime of Aggression under the jurisdiction was one of the issues to be discussed thereat. He raised some general remarks on that aspect. Firstly, on the issue of the relationship between the ICC and the Security Council, the Government of the Islamic republic of Iran considered that any outcome could have lasting implications for the independence, acceptability and even relevance of the Court. The drafters of the Rome Statute had intended to see it as an independent judicial body, free from influence and interference of political organs. Thus, in principle, the responsibility of the Security Council under the Charter to determine the existence of aggression should in no way undermine the role of the Court in judicial ascertaining of the existence of a crime. The definition of aggression and the role of the Security Council in the related cases before the Court had to be precisely clarified in the Statute. Thus, it should be the endeavour to preclude any perception or misunderstanding that the decisions of the Court in this regard were influenced by the Security Council. Determination of the crime of aggression should thus rest with the ICC itself, and States should have the right to refer the crime to the Court.

64. Secondly, there were different views with respect to the question that how the amendments to the Rome Statute would enter into force? The answer to this question was connected to the interpretation of Article 121 of the Statute. The delegate was of the view that paragraphs 4 and 5 of Article 121 shall not only be observed from a “Treaty-relation” perspective, but also the judicial integrity and effective functioning of the Court shall be preserved. His Government believed that the discussions in this respect shall make a balance between these two elements. Thus, discriminating between States Parties, current and future, for sure, may seriously endanger the process of universalization of the Court.

65. Thirdly, on the issue of the so called Red Light proposal the Islamic Republic of Iran was in principle against any proposal increasing the role of the political bodies in the judicial functioning of the Court. This proposal would have a detrimental effect on the independence of the Court. In his view, the Security-Council’s power pursuant to the United Nations Charter in no way provided the authority to stop an investigation into the crime of aggression. The Statute’s main purpose, namely eliminating the culture of impunity, as clearly stated in the Preamble and repeatedly raised by many delegations during the general debate, shall be taken into consideration in the process of amending any provision in regard to the crime of aggression. Therefore, it seemed that there must be as few exceptions to the general rule as possible. In other words, the Court may exercise its jurisdiction with respect to the crime of aggression. Since, the “crime of aggression is the mother of all crimes”; it seemed that a stronger approach was needed.

Furthermore, Article 16 of the Statute provided enough basis for the Council to suspend the proceedings before the Court.

66. Finally, the delegate made some observations with respect to the declaration filed by Palestine with the registrar of the Court pursuant to Article 12(3) of the Statute on 22 January 2009. This declaration provided jurisdiction to the ICC with respect to the crimes committed on the territory of Palestine since 1 July 2002. The Court was currently considering the capacity of Palestine to issue the declaration. In this respect, the Islamic republic of Iran was expecting the Prosecutor to interpret Article 12 of the Statute in a manner that the main purpose of the Court's, namely to put an end to impunity for the perpetrators of international crimes, is materialized. Furthermore, his delegation believed that the current situation of Palestine holds the necessary requirement for statehood. Among many other factors, the Court shall take into consideration recognition by many other states. Therefore, his delegation was of the view that the Court shall exercise jurisdiction with respect to the crimes committed in the territory of Palestine, in particular the recent crimes in Gaza Strip.

67. The **Delegate of Malaysia** placed on record its appreciation to the Special Working Group on the Crime of Aggression, for its tireless efforts to elaborate a universally acceptable definition of the Crime of Aggression for the purposes of the Rome Statute before the Review Conference of the Statute in 2010. Malaysia also thanked the AALCO Secretariat for its detailed report of the deliberations of the Special Working Group on the Crime of Aggression that was held on 9, 10, 11 and 13 February 2009. It welcomed the Chairman's Paper, the non-paper on other substantive issues regarding aggression to be addressed by the review Conference and the informal note on the work programme.

68. On the issue of the development of the ICC, Malaysia continued to urge the Court and the ICC Prosecutor to remain independent and impartial. The relevance and value of both much depended on them adhering strictly to their prescribed mandates. Only this would convince non-States Parties that the Court and the ICC Prosecutor were purely independent institutions. Neither the Court nor the ICC prosecutor should be tainted by political negotiations in the initiation or termination of investigations or proceedings. The Court and the ICC Prosecutor should also therefore strongly resist any attempts to undermine their authority through political machinations that sought to influence their prosecutorial independence.

69. Malaysia noted that the review Conference would afford States Parties their first opportunity to consider amendments to the Rome Statute to address lacunae therein, not least the definition of the Crime of Aggression. It also noted the administrative difficulties in the amendment process highlighted through the work of the Special Working Group on the Crime of Aggression. The decisions on the interpretation, application and possible amendments to Article 121 would have far reaching implications both for the existing States parties and potential future States Parties.

70. In this regard Malaysia noted the recommendation of the Coalition for the International Criminal Court (CICC) Team that the stocktaking at the review Conference should focus on issues related to the challenges, lessons learned, experiences and way forward of States Parties in dealing with the Rome Statute at the national level as well as on the performance of the ASP and should avoid actions that would undermine the integrity and independence of the judicial or prosecutorial activities of the ICC.

71. Although Malaysia is not a State Party to the Rome Statute, it nonetheless remained concerned at its development. Malaysia therefore invited the member States of AALCO to work together to formulate proposals to amend the Rome Statute that would be mutually beneficial as well as strive for a unified position on the work of the Special Working Group on the Crime of Aggression.

72. In this regard, Malaysia urged the AALCO Secretariat to convene an Experts Working Group before the VIII Assembly of States parties (ASP) in 2009 (18-26 November 2009) to formulate a consolidated and cohesive approach on the substantive proposals to be considered at the VIII ASP as set out in para 142 of the AALCO Secretariat Report as well as the substantive issues arising from the work of the Special Working Group on the Crime of Aggression thus far.

73. In conclusion, on the issue of considering the crimes of terrorism and drug crimes to be included under the jurisdiction of the Court, Malaysia was of the view that the ICC should focus on the four existing international law crimes and not intervene in crimes that were already adequately handled by States' jurisdiction. Terrorism being very much a domestic offence should remain in the sole purview of individual States parties. In this regard, it was noted that serious advancement had been achieved by States in criminal terrorism under their domestic law as well in adhering to the 16 sectoral United Nations Terrorism Conventions and protocols. While for offences related to drugs, Malaysia regarded the efforts to combat that crime as national priority and had developed comprehensive legislative framework and machineries beyond the capabilities of the Court.

74. The **Delegate of the People's Republic of China** at the outset thanked AALCO for its efforts in following the latest developments of the ICC. Its annual sessions provided a good opportunity for all Member States to update their understanding of the Court and to exchange their views on international criminal and judicial systems.

75. The delegate said that the People's Republic of China supported the establishment of an independent, impartial, efficient and universal criminal court which would punish the most grievous international crimes. It had participated in the entire process of establishing the Court in a constructive manner and would continue to follow closely its progress and operation. She hoped that the Court's work would bring positive influence on regional peace building and national reconciliation.

76. The delegate noted that the Court's prosecution of the Sudanese President and the issuance of a warrant of arrest against him last year were highly controversial in the

international community. Criminal charges and warrants of arrest against an incumbent head of state by international judicial bodies involved complicated political and legal issues and affected the direction of the development of international political and legal order. Thus, all countries should act cautiously. She appreciated what the African Union and the League of Arab States had done on that matter.

77. The delegate further noted that the People's Republic of China condemned all crimes that violated human rights and international humanitarian laws. It also supported the efforts of the international community in bringing an end to impunity in conflict regions. However, the efforts of pursuing justice could not be made in isolation from the specific political and social environment on the ground or in violation of the ultimate objective of ending conflicts and restoring peace. The means of realizing justice should be left to the people and government of the country concerned.

78. Regarding the crime of aggression, the delegate said that the negotiations regarding the Provisions of the Crime of Aggression had finished, yet no consensus had been reached. Sharp divergence on conditions for the ICC to exercise jurisdiction in particular remained. In view of the delegation, the key point was to carefully handle and properly resolve the question of relationship between the Court and the Security Council. And ensure that the provisions drafted should accord with terms and articles of the Rome Statute and should respect the collective security mechanism established by the Charter of the United Nations. She hoped that the problem would be solved in a spirit of collaboration and flexibility by all countries and believed that the primary task was not to expand the jurisdiction of the Court but to further build up its prestige through judicial activities and win wide support of the international community.

79. Finally the delegate said that the government of the People's Republic of China supported the positive efforts made by the ICC to punish and deter the most grievous international crimes and hoped that the Court would effectively address the concerns of countries in Asia-Africa, operate impartially and independently, promote sustainable peace building in conflict regions and win wider trust and support from all countries. She sincerely hoped that the work of the Court would better serve the interests of countries in Asia and Africa and other developing countries in pursuing peace and development.

80. The **Delegate of the Republic of Korea** mentioned that presently 110 States parties had ratified the Rome Statute, and this was a very encouraging development. However, he noted that only 14 countries from the Asian region were parties to the Statute, in this regard he agreed with the Delegate of Japan and strongly urged Asian states within AALCO to ratify the Rome Statute at the earliest.

81. The **Delegate of the State of Kuwait**¹⁵ stated one of the most important facts relating to the International Criminal Court was that it was complementary to national jurisdiction. However, the idea of having a fully functional ICC would be defeated if the court cannot exercise jurisdiction over the crime of aggression. He noted that efforts of the international community at arriving at a definition of the crime of aggression had

¹⁵ Statement delivered in Arabic. Unofficial translation from interpreter's version.

taken a somewhat new turn during the resumed session of the VII ASP that was held from 9-13 February 2009 in New York. He hoped that this issue would be discussed threadbare at the forthcoming Review Conference in 2010. The ICC as mentioned in Article 5 of the Rome Statute was created to prosecute individuals who had committed the gravest crimes, thus it was very essential that the Court should be an independent and impartial body, not subordinate to any United Nations organ, even if a case were to be referred to it by the Security Council. Furthermore, there should be clear criteria to be followed either by the Court itself or the Security Council in arriving at a decision as to which case would qualify as aggression. Finally the State of Kuwait proposed that the definition of the Crime of Aggression should be drafted in a Protocol to be annexed to the Rome Statute.

82. The **Delegate of the Arab Republic of Egypt**¹⁶ generally agreed with Japan, Islamic Republic of Iran, Malaysia, and People's Republic of China regarding matters related to the International Criminal Court in general and supported the position of the State of Kuwait in particular regarding the future course of action relating to the Crime of Aggression. His first observation was, that the International Criminal Court was established to end impunity for the perpetrators of the most serious international crimes, however, the present functioning of the Court has made a sharp distinction between the signatories to the Rome Statute and non-signatories. Secondly, there should be a clear criteria as to when the Security Council could refer a case to the ICC and when Member States themselves could refer a case to the Court as well as the relationship between the Court and the Security Council. This would lead one to ask a very pertinent question whether the decisions of the ICC were applicable to non-state parties. He emphasized that in the Preamble to the Rome Statute it was clearly written that the ICC is complementary to national courts, and this principle should be followed in letter and spirit, meaning that the provisions of the Rome Statute were not applicable to non-state parties. Here again he supported all the Member States that had called for the independence and impartiality of the ICC. He also mentioned that the Court was not a part of the United Nations system and it is very important that there should be a clear distinction between national sovereignty and the the ICC.

83. The **Delegate of the Republic of Indonesia** said that his country took great interest in the work of the International Criminal Court (ICC). They closely followed closely the developments of the ICC and attached importance to the fundamental principles of the work of the ICC, namely impartiality and the rule of law. Several cases were under consideration of the Court and this certainly reflected the diligent work of the Court to promote justice and to hold those liable for heinous crimes of genocide, crime against humanity responsible.

84. He believed that the application of the principle of complementarity was the key to the success of the ICC in further promoting criminal accountability for the culprits of the heinous crimes in the future. In this respect, National courts should be given the primary role in the prosecution of human rights violations. The ICC could in no way

¹⁶ Statement delivered in Arabic. Unofficial translation from interpreter's version.

replace national courts to prosecute the human rights offenders on those core crimes. According to him, the ICC does not have priority jurisdiction over such crimes.

85. The delegate informed that the ratification to the Rome Statute has been included in the National Plan of Action on the Human Rights. Whilst the process had been initiated, Indonesia established Ad-hoc Human Rights Courts through Law Number 26 Year 2000. This was a genuine reflection of Indonesia's commitment to promote the protection of human rights.

86. It was worth mentioning that the Rome standards had been used to promote law reform at the national level in Indonesia, as well as to provide redress to victims before national Courts. These examples were consistent with the principle of complementarity governing the jurisdiction of the ICC. Unlike the ICC, the Ad-hoc Court had also jurisdiction to address the violation of human rights in the past. Hence, they were applicable retroactively.

87. He added that off the four core crimes of the Statute, a binding definition and the conditions under which the Court is to exercise jurisdiction on the crime of aggression were outstanding issues. On this, there was a need to conclude an agreement as soon as possible. The review process, to be held later this year, would be the opportune time to meet this objective. The conclusion of this residual core crime is off equal important to reflect the promotion of justice and to end impunity in the case of heinous crimes.

88. The delegate believed that definition of aggression adopted by the General Assembly in its resolution 3314 / 1974 could be a sound basis and the point of departure for both general definition and for the selection of acts for inclusion in the definition. The definition should be specific so as not to give rise to contentious interpretation which may lead to political motivation; thus avoiding difficulties in the burden of proof for the elements of what many consider as leader crime.

89. The delegate noted that the relationship between the Security Council and the Court was an important element for successful working of the latter. Indonesia was fully aware of the primary role of the Security Council in the determination of an act of aggression, as mandated by the Charter of the United Nations. He added that the Security Council had discharged its task in bringing a case, other than the crime of aggression before the Court. In light of prompt response of the Security Council in that case, it was prudent to expect that the Council would also be responsive to determine the situation of aggression. However, conversely, a mechanism should be developed so as to allow the Court to proceed by initiating legal action to the alleged offenders of the crime of aggression in case of lack of a determination by the Security Council. As such, it shall not impede the exercise of the jurisdiction of the Court with respect to the crime of aggression.

90. Finally the delegate mentioned that throughout the process, it was seen that the Non-Align Movement had played a significant role in the process of drafting the Rome Statute. Since most of members of AALCO, if it not all, were also members of the NAM

it was sensible to expect that they could once again formulate a common position on the matter. With a bigger membership and inclusion of countries beyond the two regions of Asia and Africa, he believed that they would be able to promote shared interests in the resumed session on the negotiation of the crime of aggression with a stronger voice, and in a more effective manner.

VII. GENERAL COMMENTS

91. The establishment of the International Criminal Court capped the efforts of the international community to enforce the applicability of international humanitarian law, and advance the cause of justice and the rule of law on a universal scale. The year 2008 marked the Tenth Anniversary of the adoption of the Rome Statute that established the International Criminal Court (ICC). Eleven years later the Court is an independent, fully functional Organization, based in The Hague. 110 States Parties have ratified the Rome Statute in its short existence, but the number is obviously not enough for a Court with universal aspirations. One of the pillars of the Rome Statute is the principle of complementarity. Thus, there is the fundamental principle that persons who committed the most serious crimes underlined in the Rome Statute would, first of all, be punished by a national court in the State Party itself, and if this can be done there is no obligation to hand over a suspect to the ICC. In other words the ICC is the Court of last resort.

92. In order to carry on its functions effectively the Court has to cooperate with both the United Nations and other International Organizations as well as with States. The significance of the Rome Statute is building a network of cooperation between the States Parties and the ICC, in order to ensure that there is no safe haven anywhere in the world for persons who committed serious crimes such as war crimes, crimes against humanity and genocide. As Judge Saiga of the ICC¹⁷ said “Setting up a network in the international community for preventing these suspects from going unpunished will serve as the greatest deterrent for these horrendous crimes”.

93. Recent developments in the functioning of the ICC evoke mixed reactions from the world community. While on the one hand it seems the Court is making strides towards realizing its goals, in the form of indicting persons responsible for committing the gravest crimes, on the other hand one of the most important task of defining the mother of all crimes the “Crime of Aggression”, despite all efforts, remains elusive. As the Review Conference of the ICC is fast approaching, there are many tasks that need to be accomplished, including the “Definition of the Crime of Aggression”, and as a serious concern raised by one of the AALCO Member State “if we miss this opportunity in 2010, we might have to wait another ten years in fulfilling that mandate”.

94. The Review Conference is scheduled to be held in the year 2010. It is felt that the success of the Review Conference should not solely rely on amendments and that it should also be an opportunity for stocktaking, benchmarking and evaluating the work of

¹⁷ Inaugural address of Judge Saiga of the ICC “The ICC Today: Activities and Challenges” delivered at the seminar on International Criminal Court: Emerging Issues and Future Challenges”, jointly organized by AALCO and the Government of Japan, held in New Delhi on 18th March 2009.

the international criminal justice system established by the Rome Statute. As highlighted by the President of the Assembly of States Parties the preparatory process for this conference would be conducted in a transparent and inclusive manner. Some of the issues that would require substantive preparation, as highlighted in the non-paper on the scope of the Review Conference are: Review of article 124 of the Rome Statute, Crime of Aggression, consideration of the crimes of terrorism and drug crimes, consideration of other potential amendments and stocktaking of international criminal justice. The Review Conference, therefore, is a timely opportunity for States to take stock of what has been achieved and to reflect on the Court's future course. This would also be a good opportunity for AALCO Member States to put forward their views on issues of common concern.

95. On 14 July 2008 the ICC Prosecutor filed an Application under Article 58 of the Rome Statute, requesting the Pre-Trial Chamber I to issue a Warrant of Arrest for the President of Sudan. The warrant of arrest was issued on 4th March 2009. The ICC advocates applaud the precedent-setting charge against a sitting head of State; critics warn of over-reach and serious collateral damage. This argument can be substantiated from the statements made at the 21st Summit of Arab Leaders held in Doha, Qatar from 30th – 31st March 2009, wherein it was stated that the International Criminal Court was hindering the Arab and African efforts to resolve the Sudanese issue, calling on the Security Council to postpone the arrest warrant issued by the ICC against the Sudanese President. The Arab Leaders rejected the ICC warrant and declared that they would not execute it. A view expressed at the Summit was that there was an urgent need to review the functioning of the Security Council itself, and that justice did not lie in targeting the weak and turning a blind eye towards powerful criminals. It was also felt that international legitimacy should not prevail over sovereignty.

96. In view of the fact that all the four cases currently pending before the ICC are from the African Continent, a perception is firming up that the ICC is becoming Afro centric. This misconception was recently refuted by Judge Fumiko Saiga¹⁸ when she said that "It is certainly not correct to think that the Court is only interested in cases from the African continent". In this regard, the international community needs to remain vigilant against the possible misuse of indictment against African leaders. However, it is pertinent to note here that the office of the Prosecutor of the ICC is currently conducting preliminary analysis of situations in a number of countries including Chad, Cote D'Ivoire, Afghanistan, Georgia, Colombia and Palestine.

¹⁸ Ibid.