

ICC

THE SECRETARY-GENERAL

24 July 2009

Excellency,

I have the honour to inform you that the President of the Assembly of States Parties has conveyed to me by a letter, dated 30 June 2009, that the Assembly of States Parties to the Rome Statute of the International Criminal Court has decided to hold the Review Conference in Kampala, Uganda, between 31 May and 11 June 2010, and that a decision on the exact duration of the Conference would be taken at a later stage.

In accordance with article 123, paragraph 1 of the Rome Statute of the International Criminal Court, I therefore have the honour to convene the Review Conference to consider any amendments to the Statute between 31 May and 11 June 2010 in Kampala, Uganda, and to invite your Government to attend. The Conference will be open to those participating in the Assembly of States Parties to the Rome Statute of the International Criminal Court and on the same conditions.

I further wish to inform you that the Conference will be serviced by the Secretariat of the Assembly of States Parties (e-mail: asp@icc-cpi.int), which will in due course provide information regarding the submission of credentials, participation of observers, the provisional agenda, draft rules of procedure and related organizational matters.

His/Her Excellency

Mr./Ms. ...

Head of State/Prime Minister of ... [Name of country]

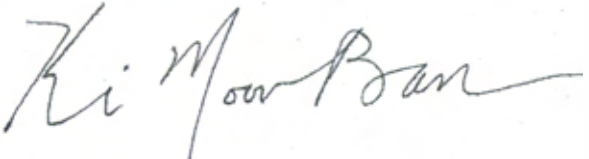
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29-07638

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 United Nations is proud of its relationship with the Court. Our Organization provided crucial assistance and support to United Nations Member States that created the Court, and maintains close relations with the Court under the Relationship Agreement. 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.

I strongly encourage you to attend this important conference and will make every effort to participate personally.

Please accept, Excellency, the assurances of my highest consideration.



BAN Ki-moon

LE SECRÉTAIRE GÉNÉRAL

Le 24 juillet 2009

[Monsieur le Président, Madame la Présidente, Monsieur le Premier Ministre, Madame le Premier Ministre],

J'ai l'honneur de vous informer que le Président de l'Assemblée des États Parties m'a fait savoir par lettre datée du 30 juin 2009 que l'Assemblée des États Parties au Statut de Rome de la Cour pénale internationale a décidé de tenir la Conférence de révision à Kampala (Ouganda) entre le 31 mai et le 11 juin 2010, et que la durée exacte de cette conférence serait décidée plus tard.

Conformément au paragraphe 1 de l'article 123 du Statut de Rome de la Cour pénale internationale, il me revient donc de convoquer la Conférence de révision qui sera chargée d'examiner tout amendement au Statut entre le 31 mai et le 11 juin 2010 à Kampala (Ouganda) et d'inviter votre gouvernement à y assister. La Conférence sera ouverte aux participants à l'Assemblée des États Parties au Statut de Rome de la Cour pénale internationale, et dans les mêmes conditions.

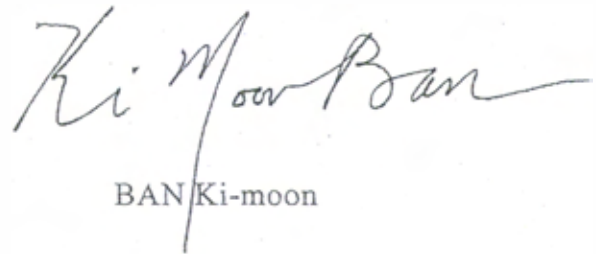
Je tiens à vous faire savoir en outre que le soutien de la Conférence sera assuré par le secrétariat de l'Assemblée des États Parties (courrier électronique: asp@icc-cpi.int), qui communiquera en temps utile des informations sur la présentation des **pouvoirs**, la participation d'**observateurs**, l'ordre du jour provisoire, le projet de règlement intérieur et les questions d'organisation connexes.

Son Excellence
Monsieur/Madame...
Chef d'État/Premier Ministre de [nom du pays]
[nom de la capitale]

La création de la Cour pénale internationale a couronné les efforts de la communauté internationale pour rendre effectivement applicable et faire respecter le droit international humanitaire, et assumer le progrès à l'échelle universelle la cause de la justice et de l'état de droit. L'Organisation des Nations Unies est fière de ses relations avec la Cour. Notre organisation a assuré une aide et un soutien essentiels aux États Membres de l'Organisation qui ont créé la Cour, et entretient avec elle des rapports étroits en vertu de l'Accord sur les relations. La Conférence de révision vient donc à point nommé pour offrir aux États l'occasion de faire le bilan de ce qui a été accompli et de réfléchir aux orientations futures de la Cour.

Je vous encourage vivement à assister à cette importante Conférence et ferai tout mon possible pour y participer personnellement.

Je vous prie d'agréer, [Monsieur le Président, Madame la Présidente, Monsieur le Premier Ministre, Madame le Premier Ministre], les assurances de ma très haute considération.



BAN Ki-moon

EL SECRETARIO GENERAL

24 de julio de 2009

Excelentísimo(a) Señor(a):

Tengo el honor de informarle que, según me ha comunicado el Presidente de la Asamblea de los Estados Partes en su carta de fecha 30 de junio de 2009, la Asamblea de los Estados Partes en el Estatuto de Roma de la Corte Penal Internacional ha decidido celebrar la Conferencia de Revisión en Kampala (Uganda), del 31 de mayo al 11 junio de 2010, y en una etapa ulterior se decidirá la duración exacta de la Conferencia.

Por consiguiente, de conformidad con el párrafo 1 del artículo 123 del Estatuto de Roma de la Corte Penal Internacional, tengo el honor de convocar la Conferencia de Revisión para examinar las enmiendas al Estatuto, en Kampala (Uganda), del 31 de mayo al 11 junio de 2010, y de invitar a su Gobierno a que participe. La Conferencia estará abierta a todos los participantes en la Asamblea de los Estados Partes en el Estatuto de Roma de la Corte Penal Internacional, y en idénticas condiciones.

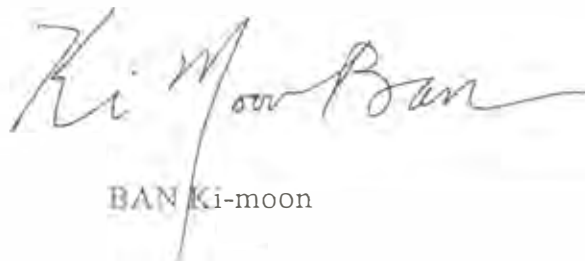
Asimismo informarle que la secretaría de la Asamblea de los Estados Partes (correo electrónico: asp@icc-cpi.int) prestará servicios a la Conferencia y proporcionará oportunamente información acerca de la presentación de credenciales, la participación de observadores, el programa provisional, el proyecto de reglamento y cuestiones de organización conexas.

Excelentísimo(a) Señor(a)
Jefe de Estado/Primer Ministro de ... [Nombre del país]
[Capital]

El establecimiento de la Corte Penal Internacional coronó los esfuerzos de la comunidad internacional para consolidar la aplicabilidad del derecho internacional humanitario y promover la causa de la justicia y el estado de derecho a escala universal. Las Naciones Unidas están orgullosas de su relación con la Corte. Nuestra Organización proporcionó la ayuda crucial y el apoyo necesario a los Estados Miembros de las Naciones Unidas que crearon la Corte, y mantiene estrechas relaciones con ésta en virtud del Acuerdo de Relación. Por lo tanto, la Conferencia de Revisión es una ocasión oportuna para que los Estados pasen revista a lo que se ha logrado y reflexionen sobre el curso futuro de la Corte.

Le encarezco que asista a esta importante Conferencia y haga todo lo posible por participar en ella personalmente.

Aprovecho la oportunidad para reiterar a Vuestra Excelencia las seguridades de mi consideración más distinguida.



BAN Ki-moon

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

ICC REVIEW CONFERENCE

To: Mr. KIM, *7w*

Further to your query regarding the addressees of the letters inviting Heads of States and Governments to the ICC Review Conference, we have enquired with OLA, which advises the following:

The letters will be addressed to the Heads of States and Governments currently on the list that Protocol puts together. The letter for Honduras will be sent to President Zelaya, while the letter for Madagascar and Guinea will be sent to the new Governments, since they were accredited by the GA Credentials Committee. Mauritania just held elections, and the letter will therefore be addressed to the new President.

The list used by Protocol is a technical document, not a political one. Protocol changes the list if so requested by a State unless there is an indication of a political will by the UN political organs to the contrary. For example, in the Mauritania case, Protocol initially denied requests of the de facto Government to change the list based on the PRST adopted by the Security Council condemning the coup. Subsequently, the GA Credential Committee accepted the credentials of the new Government. On the basis of this, Protocol changed the list to include the de facto Government.

Nicholas Haysom

27 July 2009

Cc: VN
29-07638

Copy to LT please

KWS: I would like to review all procedures in this regard in due course.

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

ICC Review Conference

To: Mr. KIM, *7h*

Please find attached for your approval and SG signature the letters of invitation to the ICC Review Conference that will be sent out to all Heads of States and Governments.

As noted previously, one of the letters will be addressed to President Bashir. We have sought clarification from OLA and received a note also attached which examines alternative options. There does not seem to be one. We would therefore concur with USG O'Brien and recommend that a letter be sent, as a technical matter and in compliance ^{with} art. 123 of the ICC Statute, to all Heads of States and Governments.

Nicholas Haysom

24 July 2009

Cc: VN

29-07638

*How about Honduras,
Madagascar and other
countries of similar problems?
Who'll be addressed?*

24/7/09

7h

**ACTION
COPY**

Note to Mr. Nambiar



International Criminal Court – Convening of the Review Conference 2010 ✓

Previous #
C29-07545
C29-069

1. Further to previous exchanges in the above matter, please find attached the English, French and Spanish versions of the invitation to the Review Conference for your approval. The letters will be sent to all States. A copy of the list of those States is attached.
2. In the event of your approval, we would be grateful if the Secretary-General could sign the invitations. This Office would then forward the invitations to the Correspondence Unit for dispatch.

Patricia O'Brien
22 July 2009

cc.: Mr. Kim
Mr. Haysom

Note to Mr. Haysom

Interpretation of Art 123(1) of the Rome Statute

I refer to our **discussion** yesterday evening regarding our request for the SG's signature to the letters concerning the Review Conference of the ICC in Kampala in 2010. The following is a detailed assessment of the position as well as possible alternative approaches to the question of the interpretation of Article 123(1) of the Rome Statute. It is necessarily detailed in view of the implications and because we wanted to capture every angle to this complicated and sensitive issue.

1. Background

- Art. 123(1) of the Rome Statute tasks the SG with convening the Review Conference. Convening necessarily entails sending out invitations.
- The provision stipulates in its last sentence "[t]he Conference shall be open to those participating in the Assembly of States Parties and on the same conditions."
- OLA has extensively consulted with the President of the Assembly of States Parties to the ICC (PASP) and the Secretariat of the ICC ASP (SASP) and has agreed on what is set forth below in paragraph 2 as the recommended option.

2. Recommended option: invitation by the SG to all States

- The ASP is open to the participation by all States Parties and by observers. Rules 6, 34 et seq. and 92 et seq. of the Rules of Procedure of the ASP determine the details.
- A literal interpretation of Art 123(1) of the Rome Statute would require the SG to invite all States Parties and all observers. This would include, for example, all NGOs in consultative status with ECOSOC. Currently, there are around 3000 of such entities, some of a questionable nature. ECOSOC even has IGO observers of a highly questionable nature (OLA's Note of 6 May on IIMSAM refers). It was agreed with the PASP and the SASP that the SG should not be required to invite all possible observers.
- Observer status in the ASP is eventually determined on a permanent or ad hoc basis by the ASP itself. The group of observers are therefore subject to constant changes. Given the fact that the ASP Secretariat (and not the UN Secretariat) will service the Review Conference, the UN has neither knowledge nor influence over all current and possible future observers to the Review Conference. Therefore, it was agreed to leave it to the ASP Secretariat to invite non-State observers as a technical matter in the overall framework of the SASP's technical servicing of the Review Conference.
- The agreed and recommended solution was for the SG to invite all States Parties to the Rome Statute and all current and potential non-State Parties/State observers to the Conference. This group is relatively easy to determine. It consists of: (1) all Members of the United Nations, (2) the Holy See, and (3) all States not Members of the UN, such as the Cook Islands and Niue.
- The disadvantage is that the SG will have to invite President Bashir as Head of State of the Sudan against whom the ICC has issued an arrest warrant.
- On the other hand, Bashir is the Head of State of a Member of the United Nations. It would contravene long-established and deeply rooted practice if the Secretary-General were to address the invitation to anybody other than the Head of State. In fact, not

sending the invitation to Bashir could constitute an even bigger provocation as it could be interpreted as a call by the SG that Bashir be replaced.

- Moreover, the invitation is not one that is limited to the person of the Head of State. It is within the discretion of the Head of State to decide whether to attend personally or whether to dispatch a delegation led by somebody else than the Head of State.
- In fact, the Sudan may very well wish to send a delegation that does not include any indicted individuals to politically influence an amendment of the Rome Statute in a manner which it believes is in its favour. While Sudan has never made a good faith effort to engage judicially with the Court, it very much engages politically at every possible level in every possible forum. The Review Conference is essentially a political forum in which the Sudan may actually wish to engage.
- A variation of this option would be for the SG to only invite UN Members which would have the disadvantage of snubbing the Holy See which would not be covered.

3. **Alternative 1: Invitation by SG to all States Parties to the Rome Statute and current and potential observers to the ASP**

This would be a literal interpretation of Art. 123(1) but would pose the practical problems outlined in paragraph 2 above.

4. **Alternative 2: Invitation by SG to States Parties of the Rome Statute only**

- This alternative would have the advantage that the SG would not have to send an invitation to President Bashir. Inviting President Bashir and other participants could be left to the ASP Secretariat as a “technical matter”.
- The disadvantage of this alternative is the perception that there would be “first class” (signed by the SG) and “second class” invitations (signed by the Director of the SASP). States may find it offensive to be put on a par with unknown or dubious NGOs. The US, China and Russia - not State Parties - for example, would be invited at the same level as any NGO in consultative status with ECOSOC.
- While the purpose of the Review Conference is to consider amendments to the Rome Statute (which will be decided by the States Parties only), it is also an opportunity to gather views and contributions from important observers that may accede to the Rome Statute at a later stage.
 - The prime example are the three P-5 members of the Security Council that are not Parties to the Rome Statute (China, Russia, US). Their input on questions such as the definition of the crime of aggression is vital for the success of the Review Conference.
 - Moreover, it would leave States that are actively considering acceding to the Rome Statute with a “second class” initiation at a time where encouragement to take that step can be a decisive factor. This is especially true for the Group of Asian States where the Court is still very low on membership.
- In this connection, you will be aware of the discussion of the role of the Security Council with regard to the crime of aggression. As the ultimate objective is universal application of the Rome Statute and universal jurisdiction of the Court (an objective the SG has supported on numerous occasions), sending out invitations at two “levels” might be counterproductive to this objective. In our opinion and on balance it would be preferable

to invite Al-Bashir and not run the risk of antagonizing important States not yet Parties to the Rome Statute.

- Eventually, a decision to only send the invitations to the States Parties would mean that we would have to rethink our common interpretation of Article 123(1) with the President of the ASP, the Secretariat of the ASP and eventually also the President of the Court. All this entails a real risk of offending them, too.

5. Alternative 3: delegating the dispatch of the invitations entirely to the ASP Secretariat

- In light of the clear wording of Art. 123(1) it is doubtful whether the SG can legally delegate this duty to a non-UN entity.
- Moreover, this alternative has the disadvantage that it may be perceived as the SG distancing himself from the ICC.
- Also this alternative would call into question whether the SG should/could then also delegate his obligation under Art. 121 (1) of the Rome Statute to circulate proposed amendments (to the State Parties).

6. Alternative 4: Delegating the dispatch of the invitations to the Legal Counsel or sending the invitations to the Permanent Representatives rather than to the Heads of State

- This alternative could again be perceived as a distancing of the SG from the ICC.
- Moreover, it would contravene the long-established practice and fundamental protocol of the SG inviting Heads of State to fully-fledged conferences.
- In fact, it could be seen as reducing the Review Conference to a technical meeting at the working level.

7. Conclusion

- After reconsidering this issue from all possible angles, we arrived at the same conclusion, namely that the SG should send out the invitation to all States. We reiterate our recommendation of this option.



Patricia O'Brien

22 July 2009

cc.: Mr. Kim