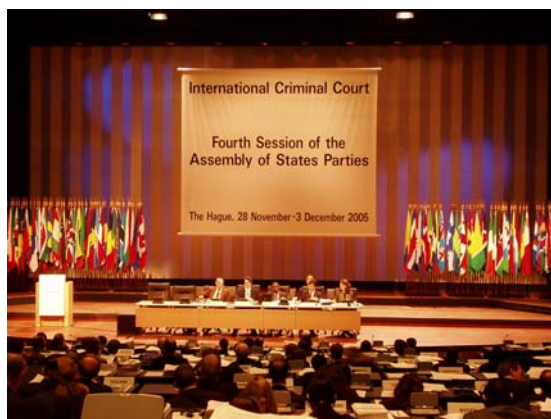


**The ASP Structure and Functions Team of the
Coalition for the International Criminal Court (CICC)**

**Recommendations to the Fifth Session of the Assembly of States Parties
from 23 to 25 November and 27 November to 1 December 2006**

[10 Novembre 2006]

- DRAFT -



PREFACE

While the work of the ASP Structure and Functions Team reflects the positions of those Coalition members most active on these particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

Since the last Assembly of States Parties meeting in 2005, the Bureau has dealt with a number of important issues. These include developing terms of reference for the two Bureau Working Groups; organizing a resumed session in which judges' elections were held; discussing the secondment of Serge Brammertz to the UN Independent Investigation Commission in Lebanon; deciding on vacancies in the Committee on Budget and Finance (CBF), Victims' Trust Fund and the Working Groups of the Bureau; discussing issues of interim premises; beginning logistical preparations for the ASP in New York in 2007; and reviewing the reports of numerous Bureau subsidiary bodies.

Over time, the ASP has improved its working methods, which has enhanced the Bureau's ability to carry out essential tasks. There are several areas, however, where we believe the ASP should develop more detailed strategies and strengthen procedures, including in relation to the Bureau Working Groups; cooperation; ratification, implementation and participation; the omnibus resolution; oversight; and the review conference.

Strengthening ASP Bureau Working Groups

So far, the ASP has taken the approach of organizing itself into two working groups based in New York and The Hague and sub-working groups on a number of critical issues.¹ This has led to significant improvement for intersessional work and preparations for the ASP meetings. Nevertheless, the Bureau and CBF continue to carry a heavy share of the ASP's work. In addition, with the sub-working groups coordinated by volunteer facilitators, missions and embassies with greater resources have been at an advantage in advancing the substantive work of the groups.

Team Recommendations:

- The Team would like to encourage the Bureau to conduct an internal assessment of its work so far and establish how the system can be improved to meet future challenges. As part of this assessment, we urge the Bureau to review the transparency of its work including ensuring that meetings are open to non-governmental organizations and other observers, unless there is a specific need to conduct closed meetings.
- During sessions, the ASP should develop and provide clearer mandates to the Bureau, and to the sub-working group facilitators. This should include an indication of what is expected, timelines for reporting, which should perhaps include interim reports, and clear instructions to how facilitators may rely on the ASP Secretariat for support. We believe this will contribute to greater consistency and quality among the work of all working groups.
- Early appointment of facilitators by the Bureau, preferably already at the ASP session, would prevent undue delays of the work due to late appointments and enable the facilitators to seek timely advice and instructions.
- Working groups should be provided with adequate support, from the ASP Secretariat and from experts in relevant areas, to adequately fulfill their functions. The ASP should request that the Secretariat provide appropriate support and provide the Secretariat sufficient resources to do so.

¹ Oversight; arrears; strategic plan; ratification, implementation and participation; premises, etc.

- Bureau Working Groups should not be seen as the structural solution for all intersessional ASP work, with the risk of creating an overwhelming mandate. The ASP should assess each issue individually to conclude whether another subsidiary mechanism or expert support is appropriate, and what the required involvement and resources from the ASP Secretariat should be.
- While NGOs welcome the Bureau’s efforts to make its meeting notes public, we would encourage the Bureau to include greater detail on discussions and participation. We would also encourage their translation into French to allow greater accessibility. If available, NGOs would also encourage the Bureau to make earlier reports available retroactively.
- The Team urges the Assembly to ensure that sufficient time will be allocated during the fifth session to review the work of the Bureau allowing for open discussion, including all states parties and observers and non-governmental organizations.

Cooperation / Non-cooperation

According to Articles 112(2)(f) and 87(5) and (7) of the Rome Statute, the ASP shall consider questions relating to cooperation/non-cooperation. To ensure an effective and supportive cooperation framework for the Court, the ASP needs to develop appropriate procedures to enable it to deal with issues in a timely and efficient fashion, particularly for urgent requests from the Court.

Team Recommendations:

- The ASP should develop appropriate procedures to enable it to deal with non-cooperation (according to Articles 87 and 112) in a timely and efficient fashion, particularly for urgent requests from the Court.
- The ASP should consider establishing a mechanism to address cooperation of States with the Court.

Ratification, Implementation, & Participation

In order for the Rome Statute to be implemented properly and for the Court to do its work effectively, the ASP must strengthen its efforts on participation, ratification and implementation. The Team therefore welcomed the ASP’s request to the Bureau at the fourth session, “to consider measures that could be taken by the [ASP], the [ASP] Secretariat or the States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute, and to report thereon to the Assembly in advance of its fifth session.”

The Team welcomes the important measures recommended by the facilitator in the report’s “Plan of Action” but notes that their effectiveness will be undermined unless there is adequate investment in the mechanisms to implement them.

Team Recommendations:

- The ASP Secretariat should be granted sufficient resources to:

- correspond regularly with states on their status and with intergovernmental organizations, states parties and other actors on their efforts to promote ratification and implementation;
 - develop and disseminate information to facilitate and support ratification and implementation;
 - liaise between states needing information, support and assistance and providers thereof;
 - report annually to the ASP on the implementation of its Plan of Action.
- At each session, the ASP should consider the report prepared by the Secretariat on the implementation of the Plan of Action and other relevant submissions.

Omnibus Resolution

An omnibus resolution, more formally titled “Strengthening the International Criminal Court and the Assembly of States Parties,” will be adopted again at this session. The resolution is an important tool to address a number of general issues. However, it should not cover issues that deserve separate resolutions, working groups and formal discussions.

Additionally, if the ASP follows the same procedure as in previous sessions, the resolution will be dealt with by completely in informal sessions. The nature of these discussions prevents non-English speaking delegates from participating fully in the substantive issues covered.

Team Recommendations:

- The ASP should avoid relying on the omnibus resolution to cover all issues, particularly those that warrant separate resolutions and formal discussions.
- The ASP should meet, at least once, in formal sessions on the omnibus resolution to allow all states to participate on a more equal basis.

Oversight

At the fourth session, the ASP decided “to invite the Court, in consultation with the Bureau, to submit proposals about an independent oversight mechanism.” Under Article 112(4) of the Rome Statute, the Assembly “may establish such subsidiary bodies... including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.” Any oversight mechanism must respect the independence of the Court as an institution.

This year, the Court, in consultation with the Bureau, decided to postpone submitting its oversight report to the ASP. A comprehensive report on oversight will be submitted at the sixth session in 2007. The team regrets this delay, which seems partly due to the unclear mandate from the ASP.

Team Recommendation:

- The Court and the ASP should ensure that a report will be submitted to the Bureau prior to the sixth session to ensure that there is not a significant gap in the implementation of an external oversight body.
- Briefings should be held on what has been done, what resources are needed, and a timetable of plans the Bureau and Court intends to take.

General Debate

The Team welcomes the decision to include in the ASP agenda a general segment. This will elevate the substantive debate at the ASP. Declarations about the Court's work provide the Court with overall guidance and set the framework for the deliberations to follow on various agenda items.

Team Recommendation:

- We encourage states to make interventions expressing their commitment to Court's work and areas they would like the Court to address, including issues of cooperation; planning for the review conference; implementation and improvements on the outreach strategy; allotting sufficient budgetary resources for the implementation of the Court's strategic plan; the need for the ASP to strengthen its efforts on participation, ratification and implementation of the Rome Statute and Agreement on Privileges and Immunities; and fulfilment of their obligations to the Rome Statute system.