

COALITION FOR THE INTERNATIONAL CRIMINAL COURT



CICC REPORT ON THE FOURTH SESSION OF THE ASSEMBLY OF STATES PARTIES

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and

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This document was compiled by the CICC Secretariat, based on reports from CICC caucuses, teams and experts, as well as on official ASP documents on each respective subject and should not be taken to represent the views of all Coalition members.

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I. INTRODUCTION

1. This summary was written by the Coalition Secretariat. The Coalition Secretariat would like to thank: the teams of students from the European Law Students Association and the The Council for American Students in International Negotiations for their production of daily minutes of the formal plenary and working group meetings of the ASP, which are also available through the Coalition; Team leaders Jutta Bertram Nothnagel (Union Internationale des Avocats), Karine Bonneau (Federation Internationale des Droits de l'homme), Jonathan O'Donohue (Amnesty International), Marie Pierre Poulain (Avocats sans Frontieres), and Brigid Inder (Women's Initiative for Gender Justice)¹; All the members of the teams who made the production of team reports and the Coalition's report possible; The Secretariat of the Assembly of States Parties for the summary proceedings and the list of documents. The Coalition Secretariat takes all care to ensure accuracy. Corrections and additions are welcome.

2. The fourth session of the Assembly of States Parties (ASP) was held in The Hague, the Netherlands, at the World Forum Convention Centre (previously called the Netherlands Congress Centre). 82 States Parties out of 99 registered for the ASP, as did 38 non-States Parties (including Mexico who has ratified but had not yet become a State Party). It was the second session of the ASP held in The Hague instead of in New York. The ASP then reconvened for a Resumed Session in New York from 26 to 27 January 2006. In this meetings all of the, by then, 100 States Parties participated. NGOs and States were pleased to note this full participation in the Resumed Session.

3. The ASP has been dealing with a number of issues, including but not limited to: provision of management oversight regarding the administration of the Court; consideration and adoption of the reports and activities of its Bureau and of the Court's budget; states' non-cooperation with the ICC; and performance of any other function consistent with the Rome Statute or the Rules of Procedure and Evidence.²

4. The work of the ASP is governed by the Bureau, which comprises a President, two Vice-Presidents and 18 members elected by the ASP for three-year terms (for the members of the Bureau, see below). The work of the ASP is also facilitated by various formal and informal subsidiary mechanisms active in between the meetings of the Assembly, including the Committee on Budget and Finance, the two Working Groups of the Bureau (one in New York and one in The Hague) and the "Friends of the ICC" (informal groupings both in New York and The Hague). The Bureau and the Working Groups may also appoint Coordinators and Task Forces to prepare issues in advance of meetings.

5. Prior to the fourth ASP session, the Bureau appointed coordinators in order to hold consultations and facilitate work on some subjects within the ASP's mandate *prior to* the meeting. These coordinators were, in general, also acted as Coordinators during the ASP session. Others coordinators were appointed for the purpose of the meeting only. Under each relevant Chapter below, you will find reference to these coordinators.

¹ While the work of the teams reflects the positions of those Coalition members most active on particular issues, their work 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.

² Article 112(2)(a) also provides that ASP responsibilities include consideration and adoption of the recommendations of the Preparatory Commission, which the ASP completed at its first session. As the Preparatory Commission has come to an end after completing its work, this sub-article is no longer a functional area of work for the ASP.

6. More than 260 representatives from non-governmental organisations from all parts of the world attended this session of the ASP (the attendance was however lower at the Resumed meeting in January 2006). The continued commitment of NGOs to invest time and resources in the ASP is a clear indication of the sustained support for the Rome Statute system. Although not always of the same opinion, the dialogue between the participating NGOs, on the one hand, and Court, ASP Secretariat and States Parties officials, on the other hand, was constructive and informative.

7. The fourth session demonstrated an increased readiness of States Parties to engage in issues beyond the Court's most urgent operational issues before them, as well as a willingness to think more long-term and to accept the responsibility of the ASP and States Parties for the implementation of the Rome Statute in general. This was a welcome change from past sessions where lack of time and priority, as well as uncertainties about the ASP mandate, had been used as justification for not doing so. This trend was demonstrated in various ways:

- The incoming President and the new Bureau agreed to find time in the agenda for general statements, giving states the opportunity to make statements about their views on, and concerns about the ICC and the Rome Statute system. These declarations elevated the debate at the ASP and provided the Court and the Assembly with guidance about its general direction as well as set the framework for the discussions to follow on various future agenda items. This was a welcome addition to the agenda that many CICC members had been advocating for prior to the meeting.
- A large number of States Parties did contribute to the general debate, in spite of short notice, and addressed a broad number of issues beyond the immediate agenda of the ASP, including issues of cooperation, implementation and relationship agreements (see section XIX below).
- Various States Parties invested time and resources in crucial side events, with the intention of building capacity, seeking dialogues and exchanging information. These side events introduced key ICC/ASP issues to the ASP forum (including implementation legislation, outreach, UN – ICC relationship, etc) that had previously been addressed only in the format of NGO meetings and added enormous value to the ASP schedule.
- The “Omnibus resolution” (see below) was strengthened by the inclusion of a number of essential paragraphs addressing the broader responsibility of the ASP (regarding universal ratification, implementation legislation, oversight mechanisms, etc).
- On a number of issues, but in particular with respect to the Trust Fund for Victims, the delegates demonstrated a real and impressive commitment to reach a final product at this very session to prevent any further delays for the Court (and the TFV) through unnecessary postponement of key decisions.

8. The overall positive atmosphere and commitment of ASP delegates reflected in the paragraphs above, was however tainted by problems with an overwhelming agenda (even for the larger delegations), a rather non-transparent decision making process on the 2006 budget, and an absence of 17 States Parties at the meeting in November/December 2005 (see section XV below). These are challenges that, to a certain extent, are addressed below in this report, and to which we are convinced that the ASP will seek to find future solutions.

II. AGENDA, PROCEEDINGS AND METHODOLOGY

9. The fourth session started off, on 28 November, with the outgoing President, H.R.H. Prince Zeid Ra'ad Al-Husseini (Jordan) passing over the Presidency to the incoming President, Ambassador Bruno Stagno Ugarte (Costa Rica). The outgoing President was given warm thanks from the entire ASP.

Ambassador Stagno Ugarte, in his first speech as the President, referred to the progress made by the Court since the third session of the ASP, the 100th ratification, the intersessional work by the Working Groups of the Bureau, as well the work done by NGOs. The first plenary meeting also included invitations to observer states, elections of Vice-Presidents and other Bureau members as well as the appointment of the credentials committee (chaired by Jordan).

10. After the first meeting of the new Bureau, a number of NGOs that had not previously participated were invited to attend the ASP and the Bureau presented the work programme and the various Working Groups and coordinators. Thereafter, the outgoing President reported on the Bureau's work since the third session. The President and the Prosecutor of the ICC spoke. Further, the UK gave a statement on behalf of the EU, Madame Simone Veil spoke on behalf of the Board of Directors of the Trust Fund for Victims and the Netherlands spoke in its capacity as host State.

11. The *Journals* outlining the programme of each day of the session (in November/December) can be found on:

- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_28_OCT_2005.pdf;
- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_29_Nov_2005.pdf
- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_30_Nov2005-Rev1.pdf;
- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_01Dec2005REV2.pdf;
- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_02_Dec_2005_Rev1.pdf
- http://www.icc-cpi.int/library/asp/4TH_SESSION_JOURNAL_03_December_2005.pdf.

12. **ASP General Debate:** On the first day of the fourth session, the President of the ASP announced that if the ASP concluded its work in time, a general debate would be organized later during the week. Indeed, many delegations had requested that some time be allocated to give them the opportunity to express their views about the Court in a broader framework than the working groups which were considering specific issues. The general debate took place on Friday afternoon and Saturday morning. Statements were made by the representatives of Afghanistan, Argentina, Brazil, Canada (on behalf of Canada, Australia and New Zealand), Colombia, Cuba, Democratic Republic of Congo, Ecuador, Finland, France, Germany, Kenya, Lao People's Democratic Republic, Liechtenstein, Malta, Mexico, Namibia, Nigeria, Norway, Peru, Poland, Republic of Korea, Samoa, Sierra Leone, Switzerland, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland and the United Republic of Tanzania. Nigeria made a statement on behalf of the African Union while the United Kingdom of Great Britain and Northern Ireland made a statement on behalf of the European Union (with which Bosnia-Herzegovina, Croatia, Iceland, Norway, Republic of Moldova, Serbia and Montenegro, and The former Yugoslav Republic of Macedonia aligned themselves). Statements were also made by the representatives of the following non-governmental organisations: Coalition for the International Criminal Court, Darfur Consortium – Sudan Organisation against Torture, Human Rights Watch, International Federation for Human Rights, and Women's Initiatives for Gender Justice.

13. In their statements, countries raised a number of issues, including:

- The progress made by the Court which is now in the judicial phase of its operations;
- The need and obligation of states parties to fully cooperate with the ICC;
- The significance of the first arrest warrants;
- The satisfaction of having finalised the regulations for the Trust Fund for Victims;
- The importance of outreach;

- Their interest in the ongoing strategic planning process of the Court;
- The achievement of having already reached 100 ratifications and the need to promote further ratifications;
- The need to pay attention to geographical representation and gender representation when recruiting ICC staff;
- The interest in the Court holding in situ trials; and
- Protection of the integrity of the Rome Statute for the ICC.

Many of these statements are available on the CICC website:

<http://www.iccnw.org/documents/asp/asp4.html>

III. BUDGET AND FINANCES

A. Adoption of the ICC Budget for 2006

Background

14. The ASP considered the Proposed ICC Budget 2006, as proposed by the Court. The discussions were primarily based on the report of the Committee on Budget and Finance, a subsidiary mechanism to the ASP, who met to consider the Proposed Budget on 10-14 October 2005

15. Both the Proposed 2006 ICC Budget and the report of the Committee on Budget and Finance had been the subject of discussion at various meetings in the period leading up to the Assembly of States Parties. The Registrar had given presentations to States Parties both in New York and The Hague; the States Parties with the highest financial contributions had met in advance of the session to consider their approach; and the EU states considered the issue in COJUR³.

Timetable and participants

16. Ambassador Ryan of Ireland chaired the Working Group on the 2006 Budget. Instead of going through the report of the CBF in its entirety – which was the practice in previous years, the Working Group considered three ‘clusters’ of issues. The Chair presented a document for “Cluster 1” and “Cluster 2” respectively, which included issues that had been identified in consultation with states in advance of the session as well as some of the reflections of the Court. “Cluster 3” contained the issues initially dealt with by other Working Groups, but which had financial implications to be integrated into the budget discussion.

17. The first readings of Cluster 1, 2 and 3 took place in formal meetings. Based on these discussions, a draft report was produced which was discussed informally. Subsequently, a formal reading took place of the draft report before it was submitted to the Plenary for adoption.

Issues

18. The ASP decided (based on the CBF recommendations) to approve a total budget of €80,417,200 for 2006. This increase of around 20% compared to the 2005 budget demonstrated a significant level of confidence in the Court’s budgetary predictions in spite of past years’ under-spending. At the same time, the ASP decided to retain existing flexibility allowing the Court to move funds within major programmes, provided that transparency by the Court is provided by reporting in full, both to the CBF and States Parties. This decision was the exception to the Working Group’s policy to adopt the CBF’s recommendations unchanged.

³ EU Council Working Group on Public International Law.

19. The Budget and Finance Team of the CICC had welcomed, among other, the recommendations of the CBF: to allow resources for an increase in the size of investigation teams; to approve the budget for the Trust Fund for Victims Secretariat; and to establish an ICC Liaison Office at the UN in New York. These recommendations were approved by the ASP.

20. Based on its concerns on specific areas of the Programme Budget submitted by the Court, the Budget and Finance Team had hoped that the ASP would not approve the following recommendations of the CBF: the reduction of two proposed posts of the Victims and Witnesses Unit (VWU); the reduction of three proposed posts within the Public Information and Documentation Section (PIDS) in the field offices; and the reduction of the suggested contractual services budget, including legal aid, of the Division of Victims and Counsel by 10%.

21. In the formal meeting of the Working Group, many states voiced the need for effective outreach to be conducted by the Court and for adequate funding. Some states opposed cutting the proposed posts within the PIDS. Still, in its report, the Working Group recommended approval of the reductions without adequate explanations, while requesting “the Registrar to give priority within Major Programme III to ensuring that the outreach activities foreseen for 2006 are accomplished [...] and] to prepare a detailed strategic plan, including performance indicators, in relation to its outreach activities for consideration by the Committee on Budget and Finance and the States Parties, in advance of the fifth session of the ASP [...].”

22. The CBF recommendation of 10% reduction of legal aid was, unfortunately, only addressed once in formal discussions but after 18.00 (which meant that no translation was provided). During this discussion, Nigeria opposed this reduction. However, in its final report, the Working Group expressed that this was possibly based on what the CBF considered were overly ambitious targets for 2006 and noted that the Court could use the Contingency Fund should proceedings progress more quickly than projected.

23. The CBF recommendation regarding reduction of two proposed posts of the VWU was approved without any formal discussion by the Working Group.

24. The ASP also requested the Court: to provide the full year costs of new posts (in future budgets); to examine the organizational nature of the Court to assess the efficiency of the existing structures; to provide more clarity regarding the use of General Temporary Assistance and Interns; to reinforce the important and independent role of the Internal Auditor; and to use the Strategic Plan as the starting point for future budget planning and to prepare multi-year projections.

25. While discussing the date of the next sessions of the ASP, in the context of the discussions on the *Omnibus Resolution*, States Parties raised the issue of the financial period of the Court and considered the possibility of changing it from the current period (January to December) to a different one (July to June for example). Aware of the many consequences of such a decision, the ASP did not make a final decision but requested the Registrar to present a report to the Committee on Budget and Finance ‘on the implications of changing the financial period of the Court to establish the most efficient financial period for the Court.’ (paragraph 49)

26. The ASP also responded to the recent resignation of one member of the Committee on Budget and Finance by giving a mandate to the Bureau to elect a member to serve for the remainder of the predecessor’s term. (*ICC-ASP/4/Res.6*)

27. The ASP decided that the Committee will meet in The Hague for 3 days in April 2006 and a further five-day session to be determined by the Committee.

Relevant documents

- Proposed Programme budget for 2006: http://www.icc-cpi.int/library/asp/Part_II_-_External_audit_and_programme_budget_for_2006.pdf; http://www.icc-cpi.int/library/asp/Part_II_-_Proposed_Programme_Budget_for_2006.pdf

- Commentary on the Report of the Committee on Budget and Finance, CICC Budget and Finance Team, <http://www.iccnw.org/documents/asp/asp4.html>
- Team Commentary on the Proposed 2006 Budget of the ICC, to the Committee on Budget and Finance (for its fifth session, 10-14 October, 2005), CICC Budget and Finance Team , <http://www.iccnw.org/documents/asp/asp4.html>
- Reports of the Committee on Budget and Finance http://www.icc-cpi.int/library/asp/Part_II_-_CBF_Reports.pdf
- Transfer of funds from Major Programme III to Major Programme V under the 2005 programme budget, ICC – ASP/4/Res.11
- Resolution ICC-ASP/4/Res. 4 “Strengthening the International Criminal Court and the Assembly of States Parties”, In: ICC-ASP/4/L.32 Part III, Resolutions adopted by the Assembly of States Parties www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- Team Commentary on the Proposed 2006 Budget of the ICC, to the Committee on Budget and Finance (for its fifth session, 10-14 October, 2005)CICC Budget and Finance Team: Submission to the International Criminal Court on the preparation of its draft 2006 budget, June2005 http://www.iccnw.org/buildingthecourtnew/issues_campaigns/budget_finance/Budget200613June05en.pdf

B. Non-Payment of Contributions

Background

28. The budget of the Court is financed by way of contributions of States Parties. A number of States Parties continue to fail to pay their financial contributions to the International Criminal Court. Due to underspending of the ICC in its first year’s of operations, this has not yet impacted severely on the Court’s ability to implement its mandate and activities. However, it is foreseen that the future underspending will be significantly less or probably non-existent, which will involve non-payments seriously hampering the functioning of the Court. The CICC Team on Budget and Finance had welcomed the Report of the Bureau on the arrears of States Parties and urged the Assembly to fully implement its recommendations. Furthermore, the Team had urged the Assembly to monitor the status of outstanding contributions closely and to include this issue as a permanent agenda item for its sessions.

29. The Rome Statute (article 112(8)) provides that a State Party that fails to pay its financial contribution at or beyond the level of its total owed contribution for the last two years shall have no vote in the ASP and in the Bureau. However, it further states that the ASP may permit the vote if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

30. In February 2005, the Coordinator of the Bureau’s Working Group in New York, H.E. Ambassador Allieu Ibrahim Kanu (Sierra Leone), appointed a facilitator regarding the issue of "Arrears of States Parties to the Court": Mr. Jurg Lauber (Switzerland) who, in the summer of 2005, produced a report that was considered by the Bureau and then the Committee on Budget and Finance (CBF) at its meeting in October.

Timetable and participants

31. This issue was dealt with within the context of the informal working group on the ‘Omnibus Resolution’, coordinated also by Jurg Lauber (Switzerland). A draft text had been prepared in advance, implementing the recommendations in the Bureau’s report mentioned above.

Issues

32. Next steps: The ASP decided (paragraph 40 – 47 of the *Omnibus* Resolution) to invite the Bureau to report back to the fifth session on the status of arrears with any suggestions of measures to improve the situation.

33. Loss of vote: Based on the Rome Statute, States Parties in arrears will lose their vote, but can apply for exemption based on various financial information supporting a State's claim that failure to pay is due to factors beyond the control of the State. The request should be submitted before the CBF session so that the CBF can review the request and advise the ASP before the ASP decides to grant an exemption.

34. Time-frame: Since this procedure was only adopted at this session, it was further decided during the meeting in November/December that it would start applying at the fifth session and that for the resumed fourth session in January 2006, States could be granted exemption without the above-mentioned information (see below, Section XXI, how the ASP dealt with arrears during the resumed session).

Relevant documents

- Strengthening the International Criminal Court and the Assembly of States Parties, ICC – ASP/4/Res.4, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- Addendum, Report of the Committee on Budget and Finance, Annex V, Status of contributions, ICC-ASP/3/18/Add.1
http://www.icc-cpi.int/library/statesparties/ICC-ASP-3-18-Add1-Addendum_English.pdf
- Report of the Bureau on the arrears of States parties, ICC-ASP/4/14,
http://www.icc-cpi.int/library/asp/ICC-ASP-4-14_English.pdf

IV. REGULATIONS OF THE TRUST FUND FOR VICTIMS

Background

35. After the 3rd Assembly of States Parties in September 2004, and at the request of the ASP, the Bureau established a Task Force to examine the Draft Regulations of the Trust Fund for Victims submitted to the ASP by the Board of Directors of the Trust Fund and amend them as they deemed appropriate before recommending their adoption to the 4th ASP in November 2005. The draft Regulations explained how the Board of Directors would operate and set out in detail how the Board would deal with the receipt, management and use of funds. They also provided for a Trust Fund Secretariat to assist and support the Board with the day-to-day operation of the Trust Fund.

36. As noted by, for example, FIDH in its Recommendations to the Fourth Session of the ASP, the approval of the Victims Trust Fund Regulations was absolutely necessary in order for the Board of Directors to be able to proceed with the planning of concrete activities and projects for 2006.⁴ However, although the working group, led by the ambassador of Trinidad and Tobago, met several times in New York between the 3rd and the 4th ASP, States failed to reach a compromise on the Regulations prior to the 4th ASP. States remained divided on the issue of earmarking, with some States opposed to any form of earmarking in principle. On the question of the trigger mechanism, a debate continued amongst States as to the scope of the mandate the Trust Fund. While some States (including France, Belgium and the DRC) believed it should also have an assistance component that could intervene before convictions and independently of the Court, others (including the UK and Canada) firmly believed that the Trust Fund should have a reparative function only and act solely upon an order of the Court.

Timetable and participants:

⁴ http://www.iccnw.org/documents/asp/aspdocs/2005/FIDHRapport_depositionASP2005.pdf

37. Ambassador Juan Manuel Gomez Robledo (Mexico) chaired the Working Group on the Trust Fund for Victims (TFV). On Tuesday the 29th of November, the Working Group held its first formal meeting. Madame Simone Veil, Chairperson of the Board of Directors of the TFV addressed the working group and emphasized the importance of adopting the TFV draft Regulations as soon as possible and preserving the independence of the TFV and allowing it to reach out to a broad scope of victims of crimes within the jurisdiction of the ICC. States expressed their positions vis-à-vis the TFV, and most declared they were willing to discuss on the basis of the compromise proposal put forward by Trinidad and Tobago in August.

38. On Tuesday 29th of November in the afternoon, States held an informal meeting to discuss the compromise set forward by Trinidad and Tobago. On Wednesday the 30th of November, States held two informal meetings in the morning and in the afternoon to discuss three compromise options developed by the coordinator of the working group on the basis of the Trinidad and Tobago proposal.

39. On Thursday, it had become apparent that the third option developed by the Ambassador of Mexico was the most accepted one and had become the basis for negotiations. States held two informal meetings in the morning and in the afternoon to work towards reaching a compromise on the basis of this option. The formal meeting of the working group, which was supposed to take place on Thursday, was cancelled. On Friday, States held informal meetings in the morning and the afternoon to finalize the compromise. The Working group formally met on Saturday morning and adopted the draft resolution, as well as the amended Regulations of the TFV.

Issues

40. The contentious issues were at the beginning of the ASP the following: the timing of the TFV's interventions, the scope of victims, the independence of the Fund and the issue of the earmarking of contributions. The Victims Rights Working Group and the CICC's Trust Fund for Victims Team expressed their position on these issues in positions papers and through direct lobbying. The VRWG and the TFV Team felt that the TFV should be able to act as soon as an investigations starts, to assist all victims of a situation before the Court as it deems necessary, independently of Court orders or decisions in the management of voluntary contributions. As for earmarking, civil society groups felt that allowing some sort of earmarking would make it easier to raise funds for the TFV, provided there would be appropriate safeguards to avoid discriminatory use of resources.

41. The first compromise proposal examined by States during their informal meetings was the one put forward by Trinidad and Tobago last August. This proposal involved the Board of Directors of the Trust Fund requesting the Court's authorization prior to using the fund's voluntary contributions outside a reparations award. Although welcoming the efforts made by Trinidad and Tobago in trying to gather consensus, the TFV team of the CICC had concerns about this proposal as it denied in effect any independence of the Trust Fund from the judicial capacity of the Court, with regards to the allocation of voluntary contributions. In this regard, the TFV Team was of the opinion that, in order to reach a compromise, in case that States Parties agreed that the intervention of one of the Chambers was necessary, it should be emphasized that such an intervention should be made on the form of a consultation by the Board of Directors, which would then consider and take notes of the Chamber's concerns.

42. As some States opposed the complete control of the Court in the Trinidad and Tobago proposal, the coordinator of the working group drafted three compromise options for the States to consider in their informal meetings. The first and second options, though slightly different, had the Board requesting the Court for authorization to act. The third option was the one favored by most States. It involved the Board notifying the Court of its intention to undertake action and be able to do so should the Court not respond. NGOs also favored this last option, out of the three options presented, as the most suitable way to reach a compromise. However, some changes to the original version were suggested, especially with regards to lowering the period of time that the relevant Chamber had to present its concerns to the decision of the Board of Directors. NGOs also opposed to the inclusion of a clause that

would have resulted in an obligation to Review Regulations 51 to 53 in the Seventh regular session of the ASP.

43. On the basis of discussions on option 3, States finally agreed to the following compromise: the TFV Board was empowered to “provide physical or psychological rehabilitation or material support for the benefit of victims and their families” provided that the Board has “formally notified the relevant Chamber of the Court of its conclusion to undertake specified activities...and the relevant Chamber of the Court has responded and has not, within a period of 45 days of receiving such notification, informed the Board in writing that a specific activity or project...would pre-determine any issue to be determined by the Court...or violate the presumption of innocence...or be prejudicial to or inconsistent with the rights of the accused and fair and impartial trial”. There is also a provision to extend the period of 45 days if needed by the Chamber in consultation with the Board. Should the Court and the Board not reach such agreement, the period of extension is 30 days.

44. To reassure the States that were worried about no money being left for reparations orders, the regulations of the TFV were amended to include the following safeguard in regulation 56: “without prejudice to its activities under 50(1) [*assistance to victims*] the Board of Directors shall make all reasonable endeavors to manage the Fund taking into consideration the need to provide adequate resources to complement payments for awards under 98 (3) and (4) of the Rules of Procedure and Evidence and taking particular account of ongoing legal proceedings that may give rise to such awards”

45. Regarding the issue of earmarking, it was decided that States cannot earmark contributions to the TFV but that non-State contributors will be allowed to earmark up to 1/3 of their donation while respecting some criteria to ensure that there is no discrimination in the way funds are used to assist victims.

46. During the meeting in November/December, the following States announced their contributions to the TFV:

- A. Belgium €150.000
- B. Poland €10.000
- C. Finland €200.000
- D. United Kingdom €73 000

47. France also expressed its will to continue donating to the TFV in 2006, but didn't specify an exact amount. In the last year though, that amount was €150.000.

48. The ASP also responded to the recent resignation of one member of the Board of Directors by giving a mandate to the Bureau to elect a member to serve for the remainder of the predecessor's term.

Relevant Documents

- Regulations of the Trust Fund for Victims ICC-ASP/4/Res.3 <http://www.icc-cpi.int/library/asp/PartIII - Resolutions.pdf>
- Draft Regulations for the ICC Trust Fund for Victims: Comments on the Proposals Submitted by Australia, Canada, Croatia, Japan, The Netherlands, New Zealand, Norway, and the United Kingdom, Victims Rights Working Group, <http://www.iccnw.org/documents/asp/asp4.html>
- Procedure for filling vacancies in the Board of Directors of the Trust Fund for Victims ICC-ASP/4/Res.5 <http://www.icc-cpi.int/library/asp/PartIII - Resolutions.pdf>
- Establishment of a Fund for the Benefit of Victims of Crimes Within the Jurisdiction of the Court, and of the Families of Such Victims, U.N. Doc. ICC-ASP/1/Res.6 http://www.un.org/law/icc/asp/1stsession/report/english/part_iv_res_6_e.pdf
- Establishment of a Fund for the Benefit of Victims of Crimes within the Jurisdiction of the Court, and of the Families of Such Victims, U.N. Doc. ICC-ASP/1/Res.6. Report to the ASP on the

Activities and Projects of the Board of Directors of the Trust Fund for Victims 2003-2004 with Draft Regulations of the Trust Fund for Victims annexed, U.N. Doc. ICC-ASP/3/14.

<http://www.icc-cpi.int/library/statesparties/ICC-ASP-3-14-Rev.1-English.pdf>

- The Establishment of the Secretariat of the Trust Fund for Victims, ICC-ASP/3/Res.7,p.38
http://www.icc-cpi.int/library/statesparties/ICC-ASP-3-25-III_English.pdf
- Draft Report of the Working Group on the Trust Fund for Victims, ICC-ASP/4/WGTFV/CRP.1
- Regulations for the Trust Fund for Victims, ICC-ASP/4/Res.3,
http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

V. PREMISES

Background

49. The ICC is currently located in *Interim Premises* that the Host State, the Netherlands, provides free of charge until 2012. These interim premises have not previously been used for judicial purposes, so adjustments and improvements have been made in order for the interim premises to meet the requirements of an international court. As the interim premises will reach maximum capacity at the end of 2005, the Host State, in cooperation with the ICC, will have to find additional office space as of 2006.

50. Meanwhile, steps are being taken toward the establishment of the *Permanent Premises* of the Court. The Host State has provided three alternatives for the Court's future premises: staying in the current building and making more adjustments; moving to the building(s) of the ICTY; and building purpose-built premises on the site of army barracks the Alexanderkazerne in the outskirts of The Hague. The Host State, the Court and the CBF in principle agree that a purpose-built court is the best option (please see below: "Report to the ASP: Housing Options").

51. In addition to an ASP decision that new purpose built premises would be the direction to take, the CICC Team on Premises had identified the following priorities for the meeting in November/December;

- *Interim Premises*: An urgent and satisfactory solution to solve the ICC's short term office space problem.
- *Subsidiary mechanisms*: The President of the ASP should set up an expert committee on Court Premises to discuss the housing options and financing methods, that will, in further consultation with the CBF, make recommendations on options advancing the provision for permanent purpose-built premises by 2012; the committee shall be supported by the ASP Secretariat, with appropriate financial and other resources.

Timetable and Participants

52. The discussion on the *Interim Premises* was addressed in the Working Group on the Budget, chaired by Mr. Richard Ryan (Ireland) on , inter alia, Thursday 1 December

53. Ambassador Mr. Gilberto Vergne Saboia of Brazil to the Netherlands chaired the Working Group on the *Permanent Premises* of the Court and prepared the resolution in formal sessions on Wednesday 30 November and on Thursday 1 December and during an informal session.

Issues

54. **Interim Premises**: The President of the Court, Philippe Kirsch, mentioned the following in his statement introducing the Report on the activities of the Court: "A more immediate concern for the Court is the question of interim premises. Until recently, the Court was of the understanding that a satisfactory

solution had been identified to address the question of accommodating planned increases in the number of employees, through occupation of the B Wing of the Arc building where the Court is currently located. This solution is now under review. It is important that any alternative solution proposed satisfy some basic requirements in order to safeguard proper coordination within the Court and quality of the Court's work. There will also be financial implications which have not yet been considered should the Court have to move part of its headquarter operations into a new building, including those which will arise from the need for the building to be fitted in order to meet security and other requirements. These implications need to be addressed now.”⁵

55. During the formal session of the Working Group on the Budget on Thursday 1 December, it was agreed that the EU Troika, chaired by the United Kingdom would approach Eurojust to see if there would be a solution for alternative housing for Eurojust that would enable the Court to also move into the adjacent wing of its interim premises. It was also agreed that the UK would report to the States Parties at the resumed session in New York in January and that the item of interim premises would be added to the resumed session's agenda.

56. **Permanent Premises:** The Host State announced an additional financial bid at the first formal session of the Working Group on Wednesday 30 November. The Host State introduced the bid during the plenary session of the ASP on Friday 2 December. The additional bid only applies to purpose-built premises on the site of the Alexanderkaserne. The Host State will bear the costs of the land of the site, of preparing the land for construction to start, and of the selection of an architect. In addition, the Host State will provide a 2.5% interest rate for a loan to a maximum of 200 million Euro, to be paid back over 30 years. According to the Host State, this arrangement will reduce costs with 40%.

57. The ASP adopted the Resolution on the Permanent Premises (ICC-ASP/4/Res.2) on 3 December 2005, by consensus, in which the “Assembly, inter alia, emphasized that the Court, as a permanent judicial institution, requires functional permanent premises; recognized further that a purpose-built building on the premises of the Alexanderkaserne would probably offer the most flexible solution in matching the requirements of a permanent court”; welcomed the additional financial bid made by the representative of the host State, and invited the Court to complete its staffing estimation and strategy planning and to continue its work on the detailed requirements of the permanent premises. Furthermore, the ASP recommended that the Bureau and the Committee on Budget and Finance remain seized of the matter and report to its fifth session. (Proceedings of the Fourth Session of the ASP: ICC-ASP/4/L.32, p. 16)

58. In addition, Nigeria, on behalf of the African States Parties, said the following with regard to the premises issue in its general statement delivered on 3 December 2005: “*Furthermore, the strategy of the Court should ensure that justice is actually done. What we mean by this is that justice has to be seen to be done by the affected communities. Consequently, trials should, as much as possible be carried out in the localities or region where the crime took place. The ICC Statute specifically contemplated this vision when it provided that the Court may also sit elsewhere. [...] We invite the Court to engage in discussion with these respective governments to explore bringing to reality the vision contained in the ICC Statute. This would leave a legacy of lasting respect for the enforcement of international justice directly to communities suffering the break down of the respect of the rule of law.*”⁶

Relevant Documents

- Resolution ICC-ASP/4/Res. 2 “Permanent Premises”, In: ICC-ASP/4/L.32 Part III, Resolutions adopted by the Assembly of States Parties
www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

⁵ http://www.iccnw.org/documents/asp/statements/PresKirsch_Opening_28Nov05.pdf

⁶ http://www.iccnw.org/documents/asp/statements/NigeriaAfricanSPs_GeneralDebate_3Dec05.pdf

- Report to the Assembly of States Parties on the Future Permanent Premises of the International Criminal Court: Housing Options, ICC-ASP/4/1, 9 March 2005
www.icc-cpi.int/library/asp/ICC-ASP-4-1_English.pdf
- Report of the Committee on Budget and Finance on the work of its fourth session, ICC-ASP/4/2, 15 April 2005,
www.icc-cpi.int/library/asp/ICC-ASP-4-2_English.pdf
- Report on the future permanent premises of the International Criminal Court – Financial Comparison of Housing Options, ICC-ASP/4/23
http://www.icc-cpi.int/library/asp/ICC-ASP-4-23_English.pdf
- Report on the future permanent premises of the International Criminal Court – Interim Report on the Composition of Estimated Staffing Levels
http://www.icc-cpi.int/library/asp/ICC-ASP-4-24_English.pdf
- Report on the future permanent premises of the International Criminal Court – Financing Methods Used for the Premises of other International Organizations, ICC-ASP/4/25
http://www.icc-cpi.int/library/asp/ICC-ASP-4-25_English.pdf

Documents produced by the CICC Secretariat

- Compilation of Extracts of Statements, Reports, Articles and Papers on the Permanent Premises of the ICC – various sources, June 2005
- Research on the Host Country Policies vis-à-vis International Organizations in Austria, Switzerland and Germany, December 2004

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VI. CODE OF PROFESSIONAL CONDUCT FOR COUNSEL AND OTHER LEGAL REPRESENTATION ISSUES

Background

59. The ASP adopted the Code of Professional Conduct for Counsel. At its third session in September 2004, the ASP took note of the proposal of the Code submitted by the Registrar and decided that the provisions of the draft Code would apply provisionally until the end of its fourth session. It also requested that the Bureau prepare an amended draft Code for adoption by the ASP at its fourth session and invited States Parties to submit their comments on the current draft Code to the Bureau by December 31 2004.

60. In the context of the Working Group of the Bureau established in the Hague, a Task Force, headed by the French Embassy Legal advisor, Michele Dubrocard, was created to review the draft Code and propose an amended version to the ASP at its fourth session. The Task Force, composed of more than 20 States held several meetings before coming to agree on a text they presented to the Bureau in September 2005. During the course of these discussions, the Task Force invited representatives of the Registry, as well as members of bar associations, NGOs and organizations of counsel, to present them with their views on the draft Code and their suggestions for the new one.

Timetable and Participants

61. On Tuesday the 29th of November, the Working Group on the Code of Conduct, chaired by Michele Dubrocard, held its first formal meeting to review the different provisions of the Code. During

this meeting, the chair went through the entire Code and gave States the chance to submit their comments. States were satisfied with the text as a whole and, besides a small change in the format of article 12 of the Code, expressed concern on one provision only, article 22 of the Draft Code which was also the one point of concern for the CICC's Legal Representation Team.

62. On Wednesday the 30th of November, States held an informal meeting to discuss draft article 22 which imposed an obligation on counsel to report their client to the registry should the client attempt to engage counsel in a fee-splitting agreement. The basis of the discussion was an alternative text proposed to the Working Group by the Italian delegation.

63. On Thursday, the Working Group held its second formal meeting, and adopted the amended version of the Code of Conduct, as well as the draft resolution on the Code of Conduct. States also discussed the organization of the disciplinary process as well as the budgetary implications the Code would have for the Court.

Issues

64. The draft Code was welcomed by the Working Group, who appreciated the spirit of consensus underlying the work of the Task Force, as well as the general text of the Code. The only contentious issue that was raised during the first formal meeting of the Working Group was draft article 22 and the consequences of this article on the right to confidentiality as defined by article 67 of the Rome Statute and the impact such a provision would have on the counsel/client relationship. The CICC Legal Representation Team shared these concerns and had previously expressed them in a team paper that was submitted to States Parties in The Hague. This paper suggested an alternate solution issued after consulting NGOs, bar associations and organizations of counsel, and consisting of an undertaking not to engage in fee splitting combined with the reminder of severe sanctions in case of a violation of this undertaking.

65. During the formal meeting on the Tuesday, States raised these concerns and suggested an alternative text. Some States felt that draft article 22 as it stood was an effective way of combating fee-splitting, and did not violate the principle of confidentiality. The suggested amendment left article 22 (1) and (2) untouched (the prohibition to engage in fee-splitting activities) but replaced the remaining part of the provision (obligation for the counsel to denounce their client) by an obligation for counsels and clients to sign an undertaking affirming they would not engage in fee-splitting activities.

66. During the informal meeting on the Wednesday, States reviewed the new proposal and decided that since a Code of Conduct can not bind clients, the undertaking should only be signed by counsel. On Thursday, the Working Group adopted the Code of Conduct, with a new article 22 agreed to on the basis of the Italian compromise. The new provision provides that the counsel shall sign an undertaking and that the counsel will advise the client of the prohibition of such conduct should the suggestion be made by a client. Article 22 also reminds counsel that a breach of their obligations under this article shall be subject to disciplinary procedure.

67. On the Thursday, the Working Group also adopted the draft resolution on the Code of Conduct, and agreed to recommend to the Working Group on the Budget their conclusions with respect to the costs associated with the disciplinary procedures set forward by the new Code.

Relevant Documents

- Code of Professional Conduct for counsel, ICC-ASP/4/Res.1, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- Report of the Working Group on the draft Code of Professional Conduct for counsel, ICC-ASP/4/WGPC/1
- Comments on Article 22 of the Draft Code of Professional Conduct for Counsel acting before the ICC, CICC Legal Representation Team, <http://www.iccnw.org/documents/asp/asp4.html>

- Comments on Organization and Resources of Legal Representation for Victims and Defendants at the ICC, CICC Legal Representation Team, <http://www.iccnw.org/documents/asp/asp4.html>
- Overview of the efforts of the Registrar in relation to the defence, the participation of victims and the consultation process followed - Report pursuant to paragraph 4 of the focal point on the establishment of an International Criminal Bar.
http://www.icc-cpi.int/library/statesparties/ICC-ASP-3-7_Overview_of_the_efforts_of_the_registrar_English.pdf
- Report of the Bureau on the draft Code for Professional Conduct for counsel, ICC-ASP/4/21, http://www.icc-cpi.int/library/asp/ICC-ASP-4-21_English.pdf
- Proposal for a draft Code of Professional Conduct for Counsel before the International Criminal Court.
<http://www.icc-cpi.int/library/statesparties/ICC-ASP-3-11-Rev-English.pdf>

VII. ELECTION OF THE BUREAU OF THE ASP

Background

68. The Rome Statute provides that the ASP shall have a Bureau, consisting of a President, two Vice Presidents and 18 members elected by the ASP for three year terms, to assist the ASP in the discharge of its responsibilities.

69. The first Bureau of the ASP was elected on 3 September 2002⁷.

70. During its third session in 2004, the ASP elected Ambassador Bruno Stagno Ugarte (Costa Rica) as President of the ASP for the fourth to the sixth session⁸. During its third session in 2004, the ASP also agreed that the future composition of the Bureau should be as follows:

- Group of African States: 5 seats;
- Group of Asian States: 3 seats⁹
- Group of Eastern European States: 4 seats;
- Group of Latin American and Caribbean States: 4 seats;
- Group of Western European and other States: 5 seats.

71. The Bureau conducted discussions within regional groups in advance of the ASP to find out which countries would be candidates for the election to the next Bureau. The new Bureau was agreed on before the ASP and was formally elected on Monday 28 November 2005.

72. The second Bureau of the ASP for 2005-2008 will be composed of:

- Group of African States: Democratic Republic of Congo, Gambia, Kenya, Niger, South Africa

⁷ The first Bureau of the ASP (2002-2005) included: President: H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), Vice-Presidents: Mr. Allieu Ibrahim Kanu (Sierra Leone) and Mr. Felipe Paolillo (Uruguay) as well as members from Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Germany (later replaced by Malta), Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and Serbia and Montenegro.

⁸ The President was elected in advance by virtue of an amendment to rule 29 of the Rules of Procedure of the ASP adopted at the same session.

⁹ On the understanding that: (a) the next Chair of the Credentials Committee would be elected from a State Party that belonged to the Asian Group and was not a Bureau member; and (b) the Bureau would extend to her/him a standing invitation to participate in Bureau meetings without the right to vote;

- Group of Asian States: Cyprus, Republic of Korea, Samoa
- Group of Eastern European States: Croatia, Estonia, Romania and Serbia and Montenegro
- Group of Latin American and Caribbean States: Belize, Bolivia, Costa Rica, and Peru
- Group of Western European and other States: Austria, Denmark, France, Netherlands, and New Zealand

73. It was also agreed that the two Vice Presidents, who are elected as individuals, will be the Austrian Ambassador in The Hague, Mr. Erwin Kubesch and the South African Ambassador in The Hague, Ms. Hlengiwe Mkhize.

74. Romania will serve as Rapporteur. Jordan will chair the Credential Committee and attend Bureau meetings as an observer.

Relevant Documents

- Official Records - 4th session, Proceedings of the ASP (ICC-ASP/4/L.32), Part I (Advance copy), paragraphs 7 to 9.

VIII. ESTABLISHMENT OF AN ICC LIAISON OFFICE AT THE UN (NEW YORK)

Background

75. After the third ASP session, the Bureau of the ASP established two working groups, one based in New York and the other in The Hague. The working group based in New York was tasked with, inter alia, discussing the issue of the establishment of an ICC liaison office at the UN and with preparing an option paper. Mr Sivu Maqungo from South Africa was appointed as the facilitator on this issue and organised several meetings between April and July 2005, which led to the ‘Option paper by the Bureau on the establishment of a New York Liaison Office’ (ICC-ASP/4/6). During its meeting in October 2005, the Committee on Budget and Finance considered this option paper and had an exchange of views with Court officials on this issue. The CBF supported the proposal presented to them stating “that the proposal was modest and generally acceptable.” The CBF also remarked that such an office would meet genuine needs of the Court and that the cost associated with its establishment appeared reasonable.

Timetable and participants

76. The ASP established a working group to consider the ‘Option paper by the Bureau on the establishment of a New York Liaison Office’ ((ICC-ASP/4/6).

77. The working group, chaired by Mr. Sivu Maqungo, met once on Wednesday 30 November morning. The formal session started with a presentation from the chairman on the process leading to the option paper and another presentation from Mr Valentin Zellwegger from the Presidency. After a brief discussion, the working group concluded its work.

Issues

78. The CICC Team on the UN-ICC Relationship Agreement and ICC liaison office at the UN, expressed before and during the ASP its belief that the Court’s cooperation with the UN and with UN member states would be greatly facilitated by a Liaison Office in New York, and urged the ASP to establish the office in 2006.

79. During the session, many states expressed support for the establishment of the ICC liaison office in New York, including the Democratic Republic of the Congo, France, Norway, Austria, Germany, Netherlands, Switzerland, Nigeria, Finland, Sierra Leone, Ghana, Niger, Spain, Tanzania, the Republic of

Korea, United Kingdom, Australia, Canada, Mexico, Kenya and Guinea. Italy and New Zealand explained they had reservations last year but could go with the consensus this year. Some questions were posed to the representative of the Presidency about the costs of the office and the level of the representative. Some states explained they would expect the office to grow in the future.

80. The report of the working group provides that a New York Liaison office will be established to serve the purpose, and have the essential functions and structure set out in the option paper, for instance: the office will provide ‘support to the Court’s investigations, field operations and general functions through facilitating interaction between the organs of the Court and the Secretariat of the Assembly of State Parties on the one hand and the United Nations and its agencies on the other’. It will also facilitate the ‘successful implementation of the Relationship Agreement between the ICC and the UN’, as cooperation between both institutions is vital for the ICC.

81. The ASP decided that the office will provide ‘practical administrative, logistical and operational support’ to the Court and the Secretariat of the ASP, although it will be under the authority of the Registry. The ASP agreed that the office will be staffed by two people (a professional high level position and an administrative one).

82. The ASP urged the Court to keep the costs associated with the Liaison Office to a minimum and requested the Court to report on the operation of the office next year.

Relevant Documents

- Option paper by the Bureau on the establishment of a New York Liaison Office’ (ICC-ASP/4/6). http://www.icc-cpi.int/library/asp/ICC-ASP-4-6_English.pdf
- Comments on the Bureau Option Paper on a New York ICC liaison office, CICC Team on the UN-ICC Relationship Agreement and ICC liaison office at the UN (http://www.iccnw.org/documents/asp/aspdocs/2005/NYoffice_TeamPaper.pdf)
- Strengthening the International Criminal Court and the Assembly of States Parties (ICC-ASP/4/Res.4), paragraph 25 http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

IX. THE CRIME OF AGGRESSION

Background

83. The crime of aggression appears in the Rome Statute in the Article 5 list of crimes, but the Court cannot yet exercise jurisdiction over this crime for lack of a definition and clarification of the conditions that would govern the Court’s exercise of jurisdiction. Although the Rome Diplomatic Conference did not reach an agreement on a definition and jurisdictional conditions, Resolution F of the Final Act requests that the subsequent Preparatory Commission should prepare draft provisions on aggression to be presented to the Assembly of States Parties for consideration at the first Review Conference.¹⁰ The provisions relating to the crime of aggression shall enter into force in accordance with the relevant provisions of Articles 5(2), 121 and 123 of the Rome Statute.

84. At its first session in September 2002, the ASP adopted a resolution, which established an ASP Special Working Group on the Crime of Aggression to continue with the outstanding work on the definition, the elements of the definition and the jurisdictional conditions for the crime of aggression and to meet during ASP sessions or at any other time that the Assembly deems appropriate and feasible. The Special Working Group, chaired by Ambassador Christian Wenaweser (Liechtenstein), is open to all

¹⁰ Final Act of the UN Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court, <http://www.un.org/law/icc/statute/finalfra.htm>.

States on an equal footing and both States Parties and non- parties participate in the meetings. The working group met during the second and third ASP sessions in September 2003 and 2004 and twice in intersessional meetings in June 2004 and June 2005 at Princeton, New Jersey.

Timetable and participants

85. During the fourth session of the ASP, the Special Working Group met three times, on Wednesday 30 November in the morning and afternoon for one and a half hour each and shortly on 1 December for the adoption of the SWG report.

Issues

Time devoted to meetings of the Special Working Group and roadmap

86. The ASP had decided during its third session that it would meet for at least one full day on Aggression. However, due to a packed agenda, the ASP was only able to devote three hours to the issue, with other meetings taking place at the same time.

87. The CICC Team on the Crime of Aggression expressed its concern during the ASP that the current pattern of time allocation was unrealistic considering the many outstanding questions on the definition, the threshold, the jurisdictional conditions and the effective inter-linkage with several of the provisions in the Statute. Many states also raised their concern about the lack of time devoted to discussing the Crime of Aggression during ASP sessions.

88. During the inter-sessional meeting in Princeton in 2005, it had been agreed that the Special Working Group should conclude its work at least 12 months prior to the Review Conference. During the fourth session of the ASP, the Special Working Group considered a roadmap allocating to the Special Working Group 10 full days during the second part of ASP sessions in February 2007 and 2008 in New York, and seven and a half days distributed among inter-sessional meetings in 2006, 2007 and 2008. After some discussion, the roadmap found general agreement.

89. As a result, the ASP recognized that the Special Working Group needed to conclude its work at least 12 months before the Review Conference and decided that the Special Working Group shall be allocated at least 10 exclusive days of meetings in the years 2006-2008 during resumed sessions, and hold inter-sessional meetings as appropriate. A further decision by the ASP provides for a resumed fifth session of the ASP in 2007 in New York with not less than three days for the Special Working Group, and a sixth session, likewise in 2007 in New York, also with not less than three days for the Special Working Group. The decisions are not without contradictions. According to the CICC Team on the Crime of Aggression, care would have to be taken that the Special Working Group does not loose out in the interplay of regular and resumed sessions, especially since no resumed sixth session is mentioned for the spring of 2008.

Report of the intersessional meeting in Princeton

90. The Special Working Group considered and adopted the report of the inter-sessional meeting held in Princeton, USA, in June 2005. The Working Group evaluated as well and expressed general support for a virtual working group established to exchange views informally by e-mail in preparation for future meetings. Three discussion papers produced in the virtual working group by sub-coordinators Claus Kress (Germany), Pål Wrange (Sweden) and Phani Daskalopoulou-Livada (Greece) were introduced and informally distributed. Despite the limitations in time, both the report of the inter-sessional meeting and the discussion papers occasioned comments on substance which highlighted again the general determination of the Special Working Group to succeed in its mandate. In line with the decisions of the Special Working Group, the ASP decided to annex the Princeton report as well as the three discussion papers to its proceedings.

Relevant Documents

- Report of the Informal Intersessional Meeting of the Special Working Group on the Crime of Aggression (13 to 15 June 2005) at the Princeton University (USA), ICC-ASP/4/SWGCA/INF.1 of 29 June 2005, also in Official Records, Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, The Hague, 28 November to 2 December 2005, ICC-ASP/4/32, Annex II.A, <http://www.icc-cpi.int/library/asp/Annexes.pdf>
- Report of the Special Working Group on the Crime of Aggression, ICC-ASP/4/SWGCA/1
- Strengthening the International Criminal Court and the Assembly of States Parties (ICC-ASP/4/Res.4), paragraph 37 and 53, in Official Records, Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, The Hague, 28 November to 3 December 2005, Part III: Resolutions, p. 334, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- Discussion Paper 1, The Crime of Aggression and Article 25, paragraph 3, of the Statute, in Official Records, Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, The Hague, 28 November to 3 December 2005, ICC-ASP/4/32, Annex II.B, <http://www.icc-cpi.int/library/asp/Annexes.pdf>
- Discussion Paper 2, The conditions for the exercise of jurisdiction with respect to the crime of aggression, in Official Records, Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, The Hague, 28 November to 3 December 2005, ICC-ASP/4/32, Annex II.C, <http://www.icc-cpi.int/library/asp/Annexes.pdf>
- Discussion Paper 3, Definition of Aggression in the Context of the Statute of the ICC, in Official Records, Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, The Hague, 28 November to 3 December 2005, ICC-ASP/4/32, Annex II.D, <http://www.icc-cpi.int/library/asp/Annexes.pdf>

X. HEADQUARTERS AGREEMENT

Background

91. The Headquarters Agreement was not presented by the Host State and the Court to the ASP for adoption.

92. President Kirsch reported in his official statement: “We continue our discussions with the host State on the headquarters agreement. The Court is negotiating on the basis of the basic principles as adopted by States. It has not yet been possible to reach an agreement on all issues with the Host State on this basis. In particular, we have not yet found a solution for the most-favoured organization clause that satisfies the intent of the basic principles. For the time being, we continue to apply principles adapted from the ICTY agreement on an interim basis.”

93. The Host State said: “Progress on the negotiations has not been as fast as initially anticipated, due to the complexity of some of the issues, and the requirement for internal consultations on both side... A few outstanding issues need to be settled. Host state will make every effort to finalise the negotiations with the Court as soon as possible.”

94. In the *Omnibus* Resolution (paragraph 36) the ASP *urges* the host country and the Court to finalize negotiations on this agreement.

Relevant documents

- Q&A: The Headquarters Agreement between the ICC and the Netherlands Government. <http://www.iccnw.org/pressroom/factsheets/FS-CICC-HQA.pdf>

- Basic principles governing a headquarters agreement to be negotiated between the Court and the host country.
http://www.un.org/law/icc/asp/1stsession/report/english/part_ii_f_e.pdf

XI. STAFF RULES

Background

95. Staff Rules deal with the concrete aspects of the personnel policy as e.g. salary and related allowances, appointment and promotion, social security, travel expenses etc, while the Staff Regulations deal with the broad principles of personnel policy of the ICC and the Secretariat of the ASP.

96. Through the *Omnibus* Resolution “Strengthening the International Criminal Court and the Assembly of States Parties” the ASP took note of the Staff Rules proposed by the Registrar pursuant to Staff Regulation 12.2.

97. The Staff Rules will apply to staff members of the Court holding a fixed-term appointment. Staff members holding a short-term appointment will be governed by separate rules. The Staff Rules will apply as well for the staff members of the ICC as for the staff members within the Secretary of the ASP.

Relevant Documents

- Staff rules of the International Criminal Court (Annex to ICC/AI/2005/003)
ICC-ASP/4/3
http://www.icc-cpi.int/library/asp/ICC-ASP-4-3_English.pdf
- Resolution ICC-ASP/4/Res.4, ‘Strengthening the International Criminal Court and the Assembly of States Parties’, para. 32, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

XII. GRATIS PERSONNEL

Background

98. At the last day of the meeting in November/December the Assembly adopted the proposed Guidelines for the selection and engagement of gratis personnel at the International Criminal Court.

99. Gratis personnel may, according to the guidelines, only be recruited on an exceptional basis. According to section 2 of the Guidelines, the Court can only accept gratis personnel when: a) the expertise is not available within the organ or b) when a certain highly specialized expertise is not needed on a continuous basis. The recruiting organ will have to justify each instance of a requirement for such personnel. The gratis personnel may furthermore only be accepted for an initial period of up to one year or a specified period of time. It is also forbidden to seek or accept gratis personnel as a substitute for staff. The Court will have to periodically report to the ASP concerning the use of gratis personnel.

Relevant Documents

- Report on draft guidelines for the selection and engagement of gratis personnel at the International Criminal Court, http://www.icc-cpi.int/library/asp/ICC-ASP-4-15_English.pdf

- Resolution ICC-ASP/4/Res.4, ‘Strengthening the International Criminal Court and the Assembly of States Parties’, para. 33,
http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

XIII. GEOGRAPHICAL REPRESENTATION AND GENDER BALANCE OF ICC STAFF

Background

100. Recruitment of staff at the ICC was initially not on the agenda of the Fourth Session of the ASP, but language on geographical representation and gender balance were discussed in the context of the Omnibus Resolution.

101. The recruitment of permanent (contracts of at least one year) professional staff at most international organizations, and also at the ICC, is subject to a policy of “equitable geographical representation”, requiring the organization to recruit a certain percentage of its staff from each member state. This percentage is calculated on the basis of a number of factors, copying the UN system. As a result, States Parties that pay higher contributions and, to a much lesser extent, those with large populations have an advantage in terms of the number of nationals that can work for the organization.

Timetable and Participants

102. The Working Group on the Omnibus Resolution was chaired by Mr. Jurg Lauber. States Parties met in informal sessions on Tuesday 29 November, Wednesday 30 November and Thursday 1 December mornings and afternoons, and held a formal session on Thursday 1 December in the evening. A smaller group of interested delegations met on Friday. The resolution was adopted on Saturday 3 December by consensus.

103. During the discussions there was some confusion about whether the language should be read to mean that the implementation of the existing rules should be improved, or whether the rules themselves, as set by the ASP, should be improved. Some states preferred ambiguous language to be interpreted by the Bureau, while others preferred to request the Court to prepare new proposals and not the Bureau.

104. In the general statements delivered on Friday 2 December and Saturday 3 December, reference was made to geographical representation and gender balance among the staff of the ICC.

105. Uganda stated: *“We are of the considered opinion that the use of the UN system in determining the allocation of jobs that has resulted in the Court employing over 70% of its staff from the West and a paltry 12% and 3% for Africa and Asia respectively needs serious revisiting. This should also apply to the appointments by the Registrar from the list of legal counsel. As it stands now there [are] five times more men than women on the approved list and the West again is regrettably predominant... Such revision must not only look at equitable geographical distribution but also at the question of the category of employment especially for senior and midlevel staffing positions as well as the need for gender balance.”*¹¹

106. Nigeria said, on behalf of the African States Parties, : *“On the issue of employment, we wish to emphasize the need for equitable geographical representation in the Court. This in our view would enhance the sense of belonging, fairness and justice for which the court stands.”*¹²

Issues

¹¹ http://www.iccnw.org/documents/asp/statements/Uganda_GeneralDebate_2Dec05.pdf

¹² http://www.iccnw.org/documents/asp/statements/NigeriaAfricanSPs_GeneralDebate_3Dec05.pdf

107. The *Omnibus Resolution* contained one paragraph (23) on the recruitment of staff of the Court, addressing geographical representation and gender balance. Through this resolution, the ASP reminds the Court of its obligation to seek equitable geographical representation and gender balance in the recruitment of staff. The ASP also invites the Bureau, in cooperation with the Court, to submit proposals to improve equitable geographical representation and gender balance and report to the Assembly at its fifth session. The CICC secretariat had in advance of the fourth session circulated, to delegations, a draft research papers, as well as given a presentation to Hague diplomats, outlining different possible models to calculate targets for geographical representation at the Court. The CICC Team on recruitment and the Gender Team also expressed concern about the current 16% gender gap in the appointment of to professional posts across the Court.

108. The ASP also adopted an amendment to paragraph 4 of Resolution 10 of the First Session of the ASP (2002) that governs the system of geographical representation as implemented by the Court (Annex 1 to ICC-ASP/4/Res.4). The amendment, introduced by Italy, adds that nationals of more than one state should be considered only as nationals from the state, in which they ordinarily exercise their civil and political rights.

109. Paragraph 23 of the *Omnibus Resolution* also reminded the Court to “seek expertise on specific issues, including, but not limited to, violence against women or children”. Indeed, it was a concern of the CICC Team on Recruitment and the Gender Team that despite explicit mandate within the Rome Statute for legal expertise in relation to sexual and gender violence and expertise in trauma also related to sexual and gender violence, not a single position has been recruited by the Court with this expertise as the primary criteria.

Relevant documents

- Resolution ICC-ASP/4/Res. 4 “Strengthening the International Criminal Court and the Assembly of States Parties”, In: ICC-ASP/4/L.32 Part III, Resolutions adopted by the Assembly of States Parties www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- ICC-ASP Resolution on Selection of the staff of the ICC: ICC-ASP/1/Res.10 www.un.org/law/icc/asp/1stsession/report/english/part_iv_res_10_e.pdf
- Report of the UN Secretary General on Human Resources at the UN Secretariat www.un.org/documents/ga/docs/56/a56512.pdf
- Internal CICC draft policy paper on geographical representation; upon request: vanderveen@iccnw.org

XIV. DATE AND LOCATION OF FIFTH ASP SESSION

Decisions concerning dates and venue of the next session of the Assembly of States Parties

110. The ASP was to decide where and when to hold its next session.

111. Since the first session of the ASP, the Coalition has been advocating for longer sessions as well as the possibility of intersessional meetings, considering that a meeting of five-six days would not allow the Assembly to attend to all its responsibilities meaningfully. Prior to, and during the fourth session, this was an important issue for the NGOs involved in the work of the ASP. During the session, the CICC Team on ASP Structures advocated for a solution whereby the ASP sessions should be longer than 5 or 6 working days and last at least two weeks in total. Should the ASP decide to organize resumed sessions, these resumed sessions should last at least five days, since meetings of three days offer insufficient time for substantive

work. In addition, many countries may have difficulties with financial and human resources in sending expert delegates to short meetings.

112. The CICC Team on the Crime of Aggression has also expressed that the time allocation for this issue had been unrealistic considering the many outstanding questions on the definition, the threshold, the jurisdictional conditions and the effective inter-linkage with several of the provisions in the Statute. It submitted that the Special Working Group for the Crime of Aggression would require at least three full days, without parallel meetings, during regular sessions of the ASP and twice a year intersessional meetings.

113. At the beginning of the session, the Bureau of the ASP presented an informal paper with two options for the ASP to consider:

- Option 1: That the ASP convene annually, in regular session, for a period of no less than nine days, with the venue alternating year to year between The Hague and New York.
- Option 2: That the ASP meet annually, in regular session, in The Hague, for a period greater than six days, and then convene in resumed session, a few months later, in New York, for a period lasting two/three days’.

114. Option 1 has been discussed in New York and was supported by the group of African states and the group of Latin American and Caribbean states there.

115. These options were discussed and debated during several hours. Arguments about the need for dialogue with the ICC and for the ASP to be visible in New York and in The Hague, as well as about the lack of diplomatic representation of some regional groups in The Hague and the practical or political difficulties in having a meeting in The Hague or in New York were raised by proponents of having all sessions in New York on the one hand, or all sessions in The Hague on the other hand.

116. The need for longer ASP sessions in general, and more time for the Special Working group on the Crime of Aggression in particular was widely agreed by all delegations.

117. In the end, the ASP agreed on the next three sessions as follows (paragraph 53 of the Omnibus resolution):

- eight days in November/December 2006 in The Hague for its fifth session and a resumed session of not less than three days of the Special Working Group on the Crime of Aggression in 2007 in New York;
- not less than eleven days in 2007 in New York for its sixth session, including not less than three days exclusively for the Special Working Group on the Crime of Aggression;
- not less than eight days in 2008 in The Hague for its seventh session and not less than two days in 2009 in New York for a resumed session for elections;’

118. The ASP also requested the Bureau ‘to fix specific dates and inform all States Parties accordingly.’

Relevant Documents

- Resolution ICC-ASP/4/Res.4, ‘Strengthening the International Criminal Court and the Assembly of States Parties’, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf
- Proposals of the Bureau for improving the work of the Assembly (27 November 2005)

XV. OMNIBUS RESOLUTION

Background

119. For the third consecutive time, the ASP adopted an ‘Omnibus resolution’, more formally titled ‘Strengthening the International Criminal Court and the Assembly of States Parties’ (Resolution ICC-ASP/4/Res.4).

120. The resolution addresses a number of issues related to ratification and implementation of the Rome Statute, cooperation, outreach, recruitment, the participation of states parties in the ASP, working groups of the Bureau as well as the dates and venue of the next sessions of the ASP and the Committee on Budget and Finance. It also introduces a proposal for an independent oversight mechanism and for a possible change in the financial period of the Court.

Timetable and participants

121. The resolution was coordinated by Mr. Jurg Lauber (Legal Adviser to the Switzerland mission to the United Nations). A first draft of the Omnibus resolution was distributed on 15 November to the Friends of the ICC. The Friends first met in New York on 21 November to discuss the draft resolution. A second revised draft was sent on 22 November.

122. States Parties met in informal sessions on Tuesday 29 November, Wednesday 30 November and Thursday 1 December mornings and afternoons, and held a formal session on Thursday 1 December in the evening. A smaller group of interested delegations met on Friday. The resolution was adopted on Saturday 3 December by consensus.

Issues

123. The Omnibus resolution addresses a large number of substantive issues (Many additional issues are addressed elsewhere in this report). In this respect, CICC members continued to raise their concerns about the number of important issues being clustered together in one resolution, when they each deserve separate discussion. This resolution is also discussed mostly in informal settings, which makes it difficult for small delegations to follow (as concurrent formal meetings are taking place) and for non English speakers to understand and participate in (as informal meetings are only conducted in English).

Ratification and implementation of the Rome Statute (paragraph 4)

124. In its paper prepared for the 4th Session (“Concerns at the Fourth Session of the Assembly of States Parties”, Amnesty International expressed that the Assembly should address the concerning decline in the rate of ratifications of the Rome Statute and the need for more states to enact effective implementation legislation.¹³

125. While past Omnibus resolutions have called for monitoring the status of ratification and implementation of the Rome Statute, the resolution adopted this year goes further in requesting the ASP Bureau to ‘consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties 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.’

Independent oversight mechanism (paragraph 24)

126. The resolution introduces a new idea by inviting the Court to submit proposals about an independent oversight mechanism. This proposal was introduced by the outgoing President of the ASP, H.E. Prince Zeid Ra’ad Zeid Al-Hussein, who acted recently as the UN Secretary-General’s Special Envoy on sexual abuses in the peacekeeping mission in the Democratic Republic of the Congo. Prince Zeid called for proposals to be made on Article 12 paragraph 4 of the Rome Statute, stating that ‘the

¹³ http://www.iccnw.org/documents/asp/aspdocs/2005/AI_ConcernsFourthASP.pdf

potential damage to the Court arising from allegations, could, as we have seen amongst other organizations, be grave. The Court must be able to call upon independent authorities in the case where waivers of immunity, criminal behaviour, and jurisdiction need to be dealt with.’ This proposal was discussed during informal sessions during which many states raised the need for such a mechanism before any allegations occurred. It was agreed to invite the Court, in consultation with the Bureau, to submit proposals about an independent oversight mechanism.

Participation of States Parties in the Assembly of States Parties: Trust Fund for least developed countries and developing countries (paragraph 38)

127. During informal sessions, several countries expressed concern about the increasing number of states parties not participating in recent ASP sessions. Indeed, 12 states parties did not attend the third ASP session in 2004, while 17 states parties are believed not to have attended this fourth session¹⁴. Concern was also expressed about the use of the Trust Fund for the participation of the least developed countries, as it can be used for only one representative per country, and about the fact that developing countries do not receive financial assistance even though some of them are struggling to send representatives to The Hague, Netherlands. (most of the 17 states parties who did not attend this session are not on the list of Least Developed Countries¹⁵ and therefore do not benefit from the fund).

128. As a result, the resolution provides that the Trust Fund will be amended to ‘allow other developing States to draw on the fund so as to enhance the possibility of such States to participate in the activities of the Assembly’. The resolution also ‘requests the Bureau to review the terms of the trust fund and make recommendations on application criteria for accessing the fund to the fifth session of the Assembly of States Parties’.

Working groups of the Bureau (paragraph 49)

129. During its third session, the ASP mandated the Bureau to create working groups on a number of issues. This year, the mandates of the working groups were extended in the Omnibus resolution, which requests the Bureau ‘to continue to focus upon those priority issues which the Bureau considers most appropriate’ and which authorizes the Bureau to create such mechanisms as it considers appropriate in whichever location it views as most appropriate’.

Working methods of the Bureau (paragraph 50)

130. Some states raised during the session the need for increased dialogue between the Bureau and states parties not on the Bureau, and between states representatives in capitals, New York and The Hague. As a result, the resolution ‘invites the Bureau to explore ways to further improve communication and coordination with its subsidiary components.’

Relevant Documents

- Resolution ICC-ASP/4/Res.4, ‘Strengthening the International Criminal Court and the Assembly of States Parties’, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

¹⁴ According to our information, the 17 states parties who have not attended the session would be: Antigua & Barbuda, Barbados, Botswana, Gabon, Georgia, Guyana, Liberia, Malawi, Marshall Islands, Mauritius, Nauru, Panama, Paraguay, San Marino, St Vincent & Grenadines, Tajikistan and Timor-Leste.

¹⁵ The official UN list of Least Developed Countries includes the following 50 countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People’s Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen, Zambia. See <http://www.un.org/special-rep/ohrlls/ldc/list.htm>

XVII. ICC STRATEGIC PLAN AND “COURT CAPACITY MODEL”

131. Although not on the ASP agenda, the fourth session of the ASP made several references to an ICC Strategic Plan in various documents and statements. The first reference was in the statement of ICC President Kirsch in which he stated: *“In order to ensure effective, integrated development of the Court, the Coordination Council instituted a strategic planning process. A Strategic Planning Project Group is defining strategic goals for the Court and a strategy for achieving these goals. In this context, the Court is developing a “Court Capacity Model” that will assist the coordinated planning of resource needs. The strategic planning process has already contributed to the structural cohesion of the proposed programme budget for 2006 and to the identification and development of common policies on issues such as the establishment of field offices. The Strategic Plan is a priority for the Court’s leadership and the aim is to have it completed by Spring.”*¹⁶

132. States Parties expressed much interest during this session about the strategic plan of the Court. The Omnibus Resolution (paragraph 12) reflects this interest by welcoming ‘the initiation of the strategic planning process of the Court’ and inviting the Court ‘to engage with the Bureau on this process.’ The Report of the WG on the budget concluded: *“The Working Group reviewed the recommendations of the External Auditor and the Committee on Budget and Finance [...] in respect of linking the budget of the Court’s strategic goals. The Working Group agreed with these recommendations and requested the Court to use the forthcoming Strategic Plan as the starting point for future budget planning. The Working Group welcomed the Court’s decision to develop a Court Capacity Model and looked forward to future consideration of it by the States Parties.”*

133. Also, a number of official statements addressed this issue, for example the EU (delivered by the UK) submitted: *“We would also like to congratulate the Court on its work on the Strategic Plan which has been requested by the States Parties. We understand that we can expect to see the Plan in the first quarter of next year and we are convinced that it will contribute to further enhancing the quality of our debate on issues related to the management of the Court.”*¹⁷

Relevant Documents

- Resolution ICC-ASP/4/Res.4, ‘Strengthening the International Criminal Court and the Assembly of States Parties’, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

XVIII. OUTREACH

134. NGOs, in particular the CICC Communications Team, were tremendously active before and during the ASP session, advocating for a number of crucial issues in relation to outreach and communication, through various papers, presentations and briefings for the delegations. Some of these issues were:

- ***Implementation of and support for an ICC communications and outreach strategy:*** Communicating with its different audiences and for different purposes is one of the core functions of the ICC, which needs to be carried out on the basis of a coherent strategy and needs to be reflected in the ICC’s day-to-day work, and therefore supported by specific budgetary allocations.

¹⁶ http://www.iccnw.org/documents/asp/aspdocs/2005/AI_ConcernsFourthASP.pdf

¹⁷ http://www.iccnw.org/documents/asp/statements/EU%20Opening%20Statement_28Nov05.pdf

- ***Appropriateness of NGO involvement in ICC outreach and the need for independence:*** The involvement of NGOs and other possible partners of the Court in outreach strategies and activities is essential but limited.
- ***Primacy of the Registry in outreach and communications:*** The Registry bears primary responsibility for implementing the ICC’s outreach strategy, which can only be supplemented or complemented by the efforts of others, including NGOs.
- ***ICC 2006 Budget should reflect the anticipated information needs of the 3 current ICC situations and future hiring should focus on the need for communications specialists:*** In light of the anticipated high demand for accurate and targeted information from the Court in 2006, requiring sustained field-based outreach efforts, the budget should reflect an appropriate increase in both staff (particularly field staff) and non-staff costs.
- ***States Parties need to ensure that the ICC’s communications and outreach strategy is supported and fully implemented:*** States Parties have an important role in making outreach and communications a priority in their dealings with the ICC, in providing the ICC with the support and encouragement it needs to develop and implement an effective strategy, and in ensuring that the ICC is fulfilling its communications functions effectively, with sufficient budgetary resources and by.

135. The Omnibus Resolution ‘recognizes the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process’ and encourages the Court to intensify its outreach activities. It also requests the Court to present a detailed strategic plan in relation to its outreach activities to the ASP.

136. Sierra Leone said in its official statement: “*For the ICC to have an impact on peace, to achieve its mandate and potential in contributing to conflict resolution and prevention, and in the restoration of the rule of law, the ICC must undertake effective Outreach, it must ensure its mandate, mission and limitations are understood by its ultimate clients: the population affected by crimes falling within the Court’s jurisdiction*” and “*Engaging the population in interactive dialogue with and about the Court is not a luxury, it is absolutely essential for the system to work at all, and has yielded substantial returns for Sierra Leone’s investment in accountability as a path to sustainable peace.*”¹⁸ In the same statement, Sierra Leone suggested that the Bureau consider establishing a Focal Point on Outreach.

137. The representative from the Democratic Republic of Congo spoke on this issue: “*There is still a job to be done: to objectively inform and train the Congolese people in issues concerning the fundamental rules of the Rome Statute of the International Criminal Court and its Rules of Procedure and Evidence through public outreach campaigns, seminars and other scientific forums, so they can be allowed to limit their expectations through the knowledge of the precise rights that they can anticipate.*” http://www.iccnw.org/documents/asp/statements/EU%20Opening%20Statement_28Nov05.pdf

138. The Working Group on Budget requested the Registrar to ensure that the outreach activities foreseen for 2006 are accomplished and to prepare a detailed strategic plan, including performance indicators, in relation to its outreach activities for consideration by the Committee on Budget and Finance and the States Parties, in advance of the fifth session of the ASP. This followed a long debate on the importance of outreach in the Working Group, during which the UK, Germany, New Zealand, Nigeria, Niger, Senegal, Norway, Sierra Leone, South Africa and Sweden made strong statements regarding the importance of outreach for the success of the Court.

Relevant Documents

¹⁸ http://www.iccnw.org/documents/asp/statements/EU%20Opening%20Statement_28Nov05.pdf

- Comments And Recommendations For States Parties In Relation To The ICC And Communications
http://www.iccnw.org/documents/asp/aspdocs/2005/CommsTeam_ASPadvocacydoc24Nov05.pdf

XIX. COOPERATION WITH THE ICC

139. In various forms, NGOs have advocated for a more active role of the ASP with regards to promoting cooperation with the ICC. Cooperation was not on the official agenda of the ASP but ICC officials, States Parties and NGOs highlighted the responsibility of States to cooperate with the ICC and to ensure that International Organisations cooperate. Among other NGOs, Human Rights Watch addresses this issue in its Memorandum to State Members of the Assembly of States Parties: *“Cooperation by States is crucial to the success of the ICC. Because it has no police force and no enforcement mechanisms, it is unable to perform its most basic functions without State cooperation. In this regard, we note the obligation off States Parties under Article 93 of the Rome Statute to cooperate with the court in its functions.”*¹⁹

140. With the Court now in the judicial phase of its activities and having recently released five arrest warrants, the issue of cooperation has become much more pressing for the Court and States Parties. Cooperation was raised in the Omnibus resolution in several contexts, including states obligations (paragraph 16 urges states to ‘comply with their obligations to cooperate with the Court in such areas as preserving and providing evidence, sharing information, securing the arrest and surrender of persons to the Court and protecting victims and witnesses’), and more specifically financial obligations (paragraphs 40 to 47 deal with states parties in arrears, as well as cooperation agreements with regional organizations (paragraph 13 ‘looks forward to the early conclusion of cooperation agreements with the African Union and European Union’). Cooperation was also raised in a number of general statements.

141. In its official statement, Mexico said: *“The initiation of the three investigations, the issuance of the arrest warrants for the leaders of the Lord Resistance Army in Uganda, and the soon to be initiated trials [...] Also remind us of the obstacles that the Court faces and the cooperation it requires in order to execute the arrest warrants and to guarantee the security of the personnel, victims and witnesses [...]”*²⁰ On the same line, Trinidad and Tobago contributed; *“The International Criminal Court in the fulfilment of its judicial mandate needs and requires the support and cooperation of all States Parties and we would therefore urge them to honour fully their obligations under the Rome Statute”*.²¹

Regarding cooperation, the EU stated: *“The issue of arrest warrants for the top leadership of the Lords Resistance Army poses us a common challenge. We must find a way to assist the Court with this difficult but vital task”*, as well as *“The important principle of complementarity places serious responsibility upon States Parties. We also look forward to the conclusion of further agreements between States Parties and the Court on such essential matters as information-cooperation, witness relocation and sentence enforcement.”*²²

XX. JUDGES PENSION

¹⁹ http://www.iccnw.org/documents/asp/aspdocs/2005/HRW_MemorandumFourthASP_Nov05.pdf

²⁰ http://www.iccnw.org/documents/asp/statements/Mexico_GeneralDebate_2Dec05_SP.pdf

²¹ http://www.iccnw.org/documents/asp/statements/T&T_GeneralDebate_2Dec05.pdf

²² http://www.iccnw.org/documents/asp/statements/EU%20Opening%20Statement_28Nov05.pdf

142. At its fourth session considered the long term budgetary consequences of the pension scheme regulations for judges. The ASP agreed that the pension scheme for judges be funded on an accrual basis. The estimated costs of the accrual for the period from 2003 to 31 December 2006 in the amount of up to 8 million euros shall be funded by applying the provisional savings of the 2005 budget.

143. The ASP also decided that the pension scheme be administered by an external party and requested the Court to report to the CBF on the most cost-effective option for the management of the pension scheme, including the option of the United Nations Joint Staff Pension Fund.

144. Thirdly, the ASP determined that the pension scheme applicable to the current serving judges apply provisionally to the judges be elected in 2006. In addition the ASP decided to refer the issue of the pension terms applicable to judges to the CBF. "The CBF should thereby have regard to paragraph 98 contained in the report on the work of its fifth session and to the pension regimes applicable to judges in other international courts, in order to provide the Assembly with the tools to make an informed decision on the pension terms to be applied to the judges."

145. Finally, the ASP requested the CBF to consider further the issue of whether existing pensions payable to individual judges should be taken into account in determining the pension's payable by the Court and to report its findings to the States Parties in advance of the fifth session of the ASP.

Relevant Documents

- Draft report of the Working Group on the Programme Budget for 2006 of the International Criminal Court, ICC-ASP/4/WGPB/CRP.1/Rev.2
- Pension scheme for judges, ICC-ASP/4/Res.9, http://www.icc-cpi.int/library/asp/Part_III_12dec05_1300.pdf

XXI. RESUMED SESSION: STATES IN ARREARS

146. On 26 January 2006, at the 5th meeting of its 4th session, the ASP informed that 17 State Parties were in arrears, as described by Article 112 paragraph 8 of the Rome Statute. All of them had submitted a request for exemption under the aforementioned Article of the Rome Statute.

147. In the same meeting, and in accordance with operative paragraph 45 of *Omnibus Resolution*, the ASP approved the requests for exemption from the following States Parties: Argentina, Bolivia, Burkina Faso, Central African Republic, Congo, Democratic Republic of the Congo, Dominica, Georgia, Guinea, Honduras, Liberia, Malawi, Niger, Paraguay, Tajikistan, United Republic of Tanzania and Uruguay.

148. The President of the ASP appealed to States in arrears to settle their accounts with the ICC and to all States Parties to pay their assessed contributions for 2006 in a timely manner.

Relevant Documents

- Report of the Bureau on the arrears of States parties, ICC-ASP/4/14, http://www.icc-cpi.int/library/asp/ICC-ASP-4-14_English.pdf

- Official Records of the Resumed fourth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/asp/ICC-ASP-4-37_English_07-03-06.pdf

XXII. RESUMED SESSION: ELECTION OF SIX JUDGES

Background

149. The first election of ICC judges took place in February 2003 at the First Session of the ASP. At that time, the Court's first eighteen judges were elected. In order to ensure for the continuity of the Court's work, lots were drawn to decide terms of office with six judges serving for nine years; six judges serving for six years; and six judges serving for three years. This last election, therefore, elected six new judges for a term of nine years in order to maintain the continuity process.

150. A total of ten candidates were running for election. Six of the candidates were currently sitting judges at the Court: Hans-Peter Kaul (Germany); Erkki Kourula (Finland); Akua Kuenyehia (Ghana); Tuiloma Neroni Slade (Samoa); Sang-hyun Song (Republic of Korea); and Anita Ušacka (Latvia). The four other candidates were: Károly Bard (Hungary); Haridiata Dakouré (Burkina Faso); Cheikh Tidiane Thiam (Senegal); and Ekaterina Trenafilova (Bulgaria).

151. Each of the ten candidates had to fulfil a number of requirements provided for in the Rome Statute. These categories include: established competence in criminal law and procedure versus established competence in relevant areas of international law; fair representation of female and male judges; equitable geographical representation; and balanced representation of the principal legal systems of the world. To ensure that these provisions are actually implemented in the election, the ASP has created an election procedure that is based on a system of minimum voting requirements. In light of the other twelve current ICC judges who remain in their positions, this means that in the last election, States Parties had to vote for *at least*:

- One candidate with established competence in criminal law
- One candidate with established competence in relevant areas of international law
- One candidate from the group of African States
- One candidate from the group of Asian States
- Two candidates from the group of Eastern European States
- One woman

152. Two days before the election, the CICC circulated a letter in which it reminded all States Parties that the election process and the decisions of governments to support certain candidates should be based on the highest principles, including the professional qualifications of candidates, legal and judicial expertise, representation of all legal systems, and regional and gender representation. In the same letter, the CICC encouraged States in arrears and at the risk of losing their voting rights to make the necessary arrangements to restore their voting rights.

Timetable and Participants

153. On 26 January 2006, at the 5th meeting of its 4th session, the ASP elected six new judges. For this purpose, the ASP decided that any meeting should continue until as many candidates as were required

for all seats to be filled had obtained, in one or more ballots, the highest number of votes and a two-third majority of the States Parties present and voting.

154. The ASP also recommended that all candidates should not be present in the conference room at all times during the voting procedure.

155. The ASP conducted one ballot in which 100 ballots, representing the 100 States voting, were cast. Out of those ballots 4 were found to be invalid and 96 valid. The required two-thirds majority was 67.

156. The following candidates were elected judges of the ICC:

- Hans-Peter Kaul (Germany) (67 votes)
- Erkki Kourula (Finland) (73 votes)
- Akua Kuenyehia (Ghana) (72 votes)
- Sang-hyun Song (Republic of Korea) (70 votes)
- Ekaterina Trendafilova (Bulgaria) (82 votes)
- Anita Ušacka (Latvia) (77 votes).

157. Of the ten candidates running for the new positions, five of the new appointees are currently sitting judges at the Court. The new appointee who has not yet served on the ICC bench is Ekaterina Trendafilova. William Pace, Convenor of the CICC, said, “Many NGOs attending the Assembly of ICC States Parties yesterday noted the many important contributions made by Judge Slade to the Court over the past three years. Many CICC members were pleased with the qualifications of Judge Trendafilova who will be replacing Judge Slade.”

Relevant Documents

- CICC Website, Links to Relevant Documents on the Election of Judges, <http://www.iccnw.org/?mod=electionjudges2006>
- Official Records of the Resumed fourth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/asp/ICC-ASP-4-37_English_07-03-06.pdf

XXIII. RESUMED SESSION: ELECTION OF SIX MEMBER OF THE COMMITTEE ON BUDGET AND FINANCES

Background

158. Six members of the Committee on Budget and Finance (CBF) were elected by the ASP during the resumed fourth session of the ASP.

159. The CBF was established by the ASP during its first session as a mechanism for the budgetary and financial review and monitoring of the resources of the ICC, including those of the ASP. Seats are distributed among regional groups: African States, 2 seats; Asian States, 2 seats; Eastern European States, 2 seats; Group of Latin American and Caribbean States, 2 seats; Western European and Other States, 4 seats.

160. As the term of office of 6 members of the CBF 5 will expire in April 2006, the ASP will seek to fill these 6 seats. The period for the nomination of candidates was opened on 18 July 2005 and closed on 9 October 2005.

161. Six CBF members were re-nominated: Mr Lambert Dah Kindji from Benin, Mr. David Dutton from Australia, Mr. Fawzi Gharaibeh from Jordan, Mr. Myung-jae Hahn from the Republic of Korea, Ms. Elena Sopkova from Slovakia, and Mr. Santiago Wins from Uruguay.

Timetable and Participants

162. On 26 January 2006, in New York, at the 6th meeting of its 4th session, the ASP conducted a secret ballot and elected by consensus the following as members of the Committee on Budget and Finance:

- Mr. Lambert Dah Kindji (Benin)
- Mr. David Dutton (Australia)
- Mr. Fawzi Gharaibeh (Jordan)
- Mr. Myung-jae Hahn (Republic of Korea)
- Ms. Elena Sopková (Slovakia) (EE)
- Mr. Santiago Wins-Arnábal (Uruguay)

163. The ASP also decided that the terms of office of the six members should begin to run as from 21 April 2006 following the date of their election.

Relevant Documents

- Official Records of the Resumed fourth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/asp/ICC-ASP-4-37_English_07-03-06.pdf

XXIV. RESUMED SESSION: INTERIM PREMISES

Background

164. With investigations ongoing in three situation countries, the ICC reports that it is in urgent need of additional office space. It is currently housed in the Arc building, which is suitable for 550 people (according to UN standards). The Court describes that as of January 2006, more than 600 people have been attached to the Court, and the Court plans to recruit another 200 persons in the course of the year.

165. The ICC occupies the A and C wings of the Arc building. Eurojust (an EU institution dealing with organized crime) occupies the B wing. Previously, the Host State had suggested that Eurojust would move out, which would provide ample space for the Court to expand. However, at the time of the resumed session, it seemed that Eurojust will not move out before 2010 and therefore the Court's need for additional space elsewhere had to be addressed urgently.

166. The CICC Premises Team had some concerns regarding the additional costs of splitting the Court between different buildings. In the team's opinion, these additional costs, which were estimated in about €6 million, should in no way be allowed to undercut the effectiveness of the Court's operations.

167. The Team called upon the ASP to come to an interim solution for the financing of the Court's additional office space that ensures the continuity of its activities without affecting the adopted budget or using the contingency funds to cover these expenses.

Timetable and Participants

168. On 27 January 2006, in New York, at the 7th meeting of its 4th session, the ASP adopted resolution ICC-ASP/4/Res.12; The ASP was not able to find a solution during the session. Instead it decided to refer the issue to the Bureau Working Group in The Hague and requested the Committee on Budget and Finance to address this issue before its sixth session at the end of April 2006. The ASP also decided that, if necessary, it would reconvene prior to its Fifth Session to address the matter.

Relevant Documents

- Official Records of the Resumed fourth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, http://www.icc-cpi.int/library/asp/ICC-ASP-4-37_English_07-03-06.pdf