

**Informal and Unofficial Verbatim Notes from Working Group on Permanent Premises
25 November 2006, Afternoon Session**

These notes are not an official transcript of the meetings, but may serve as an informal and general overview of the proceedings. Please do not use these notes for official purposes.

Chair: Good afternoon. This afternoon we will discuss how we will organize our work. First order is whether there are any objections to NGOs staying. No? So let me start by talking about how we will organize our work. We will cover the issue of permanent premises. There will be an overview of the background report and the Draft Resolution in front of you. I now open the floor to general comments and to introduce the Draft Resolution.

Over the course of this discussion, there will be a few issues: one is time pressures, as with other WGs, we need time. We must work as expeditiously as possible, since there are less than four sessions. Are delegations comfortable with what we are doing?

The main document we are working from is ICC-ASP/5/29, Report of the Bureau with Draft Resolution. Other important documents include the Report of the Committee on Budget and Finance at its 7th Session, ICC-ASP/5/16.

Let me provide some background:

- Permanent premises are important for both the ASP and the Court;
- Rent free period goes up until 2012, and then the Court will need to permanently housed. We are mandated to look at the last few years.
- There are a large number of documents compiled in this report.
- It is difficult, dealing with unfamiliar terminology.

We have been looking at three options for the permanent premises:

- Remain at the “Arc” building;
- Move to ICTY building across street from the Congress Center;
- Build purpose-built premises at the site of Alexanderkazerne.

The host State made a further bid last year, with a low interest loan and proposing the site at Alexanderkarzerne. The problem the last two years was trying to evaluate different objectives, including unknown elements like how big the Court will be by 2012 and its office space needs. We have been so far unable to make decision that the Court needs to focus on one option. There will be longer delays the closer we get to 2012. The impasse was broken after the Expert Meeting in September with Hungary, Germany, the UK, Canada, the host State and the Court.

Experts and the community in Hague looked at different sites and came to the same conclusion: that a new building offers the best solution for flexibility. Flexibility has two meanings:

- Add more people within existing walls;
- Within this structure, how flexible the process is for construction of this structure.

For scalability outside of the existing space in a building annex, we look at two needs. Alexanderkarzerne is best for flexibility. There is more room and space for offices. Could close down pod or module, which should not require that much room after initial period.

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Could build campus style, adding building wing. A new building could have flexibility inside, could move walls, readjust things that you do not find in pre-existing building. There is also flexibility in the process and design construction. The conclusion is that this is best for flexibility in terms of costs. Not too sure of actual size.

This is reflected in the Committee of Budget and Finance Report. There is lots of information that we don't have. This is the best option for flexibility and scalability. We don't have detailed idea of user requirements of the Court. For the constructional project, functional brief is going to tell us what the size of the Court should be. It is much more detailed: how parts should relate to each other; what it needs in courtroom, for judges, representatives, translators, a secure public area; how do you move an accused person from one part to another; room for the media, waiting for documents from the Court. This is functionality for the Court. We don't know the size. There are different scenarios: vaults, informatics, evidence, holding area, full user brief what construction required. More than functional, we need a better idea of cost estimates. Host state to provide further offer and information: how will loan offer be managed, issue of ownership of land staying with state contractual arrangement.

The third big issue is the architectural process and how to proceed with criteria for selection of architect.

Regarding a governance structure, the Committee of Budget and Finance is important. The Court must finalize then governance issue within the Court. How can States participate in the project? What is the structure? How do the ASP, the host State, and the Court interact? We must rely on expert advice. All information was developed over course of the year. The Hague Working Group still needs information for this ASP and 2007 in light of all collected information assessment.

The draft resolution will reflect this – that it is not a final decision. But it does give clear indication that we are no longer looking at the other two options. It provides a clear roadmap of the work that should be achieved over the next year in order for us to make a final decision.

In the Draft Resolution, para 6 provides for an interim decision to be made, which would allow the Bureau to plan for the commencement of the pre-selection of architects. Satisfied? We'll talk about this later. This Assembly or the next, should we go forward, will be part of governance structure that is set up.

There are some overarching principles. We need movement on this issue. This is fast coming upon us. Housing the Court, as noted by the Committee of Budget and Finance, is cautious due to potential expenditures this could create for State Parties. There is a need to develop more information. We are not experts, so we need to ensure that we rely on expert advice.

- Sense of urgency, since after 2012 no longer rent free. We must ensure that what we do is right;
- Proper maintenance;
- Oversight;
- Properly developed.

I have provided a brief introduction and now open the floor for general comments.

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UK: Thank you. I just wanted to say, thank you for the past few months. The UK has been part of the most cautious camp on this issue. Since September, we have moved forward. The Draft Resolution sets a good, solid, concrete way ahead. In essence, the approach recommended will help in concluding an agreement before the end of next week.

Germany: Thank you Mr. President for your introduction of this very complicated subject. The idea from my delegation and our building expert is to speed up the situation and development. There may be several options to explore in regard to permanent premises. We should not focus on other options than Alexanderkazerne because this exploration of other options will cost money.

Chair: Thank you Germany. Your concerns are reflected in para 1 of the Draft Resolution.

Brazil: Thank you on behalf of Brazil. This issue has been under consideration at the Assembly and by the Hague Working Group. A lot of work has been applied into this study and review of numerous papers, considering different scenarios. The Expert Meeting was very instrumental in helping us to have a better idea and set out what we can do. So much progress has been achieved in the last few months. The result of all this process is a very well-balanced Draft Resolution in which each element was carefully considered. We wish to support the draft and hope that it will be considered in favourable light.

South Africa: Thank you Mr. Chairman. We would like to express a few views. We add our voice to the appreciation for your efforts. For the current resolution, we welcome the way forward. We think the Experts Meeting provided a lot of clarity for understanding the benefits of the current language as a fair way of proceeding; it is not final but we move forward. It's a catch 22 - breaking the cycle of questions and answers as highlighted at UK meeting. We can support the resolution for the most part.

New Zealand: We join with others thanking you for your Chairmanship and lucid introduction. It is certainly useful for the definitions of terms. The Hague WG has made real progress. The Experts Meeting clarified issues in our mind. We like the idea of a purpose-built campus style or modular units that can be added to or subtracted from depending the number and size of the Court at the time, providing for flexibility and scalability. We must look at the number of areas, user requirements, finance, and governance. We can reach some conclusion on these issues with the help of expert input and financing experts. Construction should focus on the Alexanderkazerne. There was some mention of the 2012 deadline at the Expert Meeting. To adopt the modular approach would still be possible to meet this deadline. It should not be regarded as better. Must we make an informed decision on the basis of 2012 as an absolute deadline? If we pay rent for extra year, we can live with it. We have no problem with the Resolution and support it being adopted in its present form.

Switzerland: Thank you. Let me address my congratulations in French. You led us to a breakthrough in this situation in the group of Experts Meeting. Many positive forces came out of that. Also, you summarized a very balanced situation. There has been a long discussion on the premises. You also mentioned the fact that, thanks to Experts Meeting, there is a favourable climate from our British and German colleagues. People had started to talk about issues with some misunderstandings prior to that. The text proposed is the result of discussions, which sometimes may have not seemed very lively but have made possible to

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negotiate so far. Let's move to Alexanderkazerne. This is a very good statement which is clear. If we open it now, I expect it will open up to a lot of discussion.

On a general point, the Swiss are host to a number of international organizations, and thus are aware of all the issues faced as a host State and are open to any parties stakeholder interested in these issues. Thank you.

Chair: Norway you have the floor.

Norway: Thank you for your useful introduction. It put light on the many complicated issues we are discussing today. On behalf of my delegation, I would like to express my gratitude to you having steered the Working Group through these discussion prior to the meeting. Norway is happy to proceed as outlined. It is important to focus on the Alexanderkazerne solution. It will ensure progress without time running out. On the whole, the Draft Resolution that you have presented is a balanced approach and excellent point of departure.

Argentina: Thank you Mr. Chairman. I would like to thank you for the work carried out for several months. I shall not repeat Switzerland. We appreciate all your efforts. We join with Brazil, who stated the product of months of negotiation. We are happy with the text at present. I'd like to take up again what was mentioned by the delegate of New Zealand: we need more information to reach a well-informed decision and, as in the case of the interim premises, there may be other new elements which may have changed things. Therefore, any decision must entail conditionality. We need full information on time and space for any future events. We have accepted beginning work on the building of the Alexanderkazerne - open again due to in-depth analysis for months. The text is balanced with what contains. We accept the text as it stands.

Belgium: Thank you for your dynamism that has been brought into this text. We have been focusing on this for a long time. We need the final definition on the precise needs of the Court. We have made serious progress. We could now follow through with the Draft Resolution. However, in order to bring it to fruition, there are two essential things:

- Firstly, respect for timing;
- Secondly, a clear definition among ourselves of the procedure for decision-making in this regard. The Project Management elements come into the text.

We support your bringing this to fruition.

Chair: Sweden next, Sweden.

Sweden: Thank you very much. We welcome you as the Chair. There is a clear signal that the focus of our work should be on the Alexanderkazerne site as the necessary site. We should be prepared at the next ASP to take an informed decision. We stress the importance of governance and transparency in the size of the project. We support the Draft Resolution.

Chair: Greece?

Greece: Excellent. We believe that the permanent premises need to find a solution. This ASP Draft Resolution is an excellent roadmap toward that solution.

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Finland: Thank you Mr. Chairman. The major project time scale is 5-7 years. This means 1.5 year of construction. Architects must be selection. Focusing on Alexanderkazerne is the best option. We were struck by these words in several documents. A decision needs to taken now, but it should not be final. What does it mean if is not final – that we don't waiver or step aside?

Chair: Thank you, Finland.

Australia: We would like to add our voice to the gratitude for your valuable work. We welcome this breakthrough and the focus of the group of experts. We look forward to receiving information to make a fully informed decision. I would like to echo previous speakers. This is a very complex undertaking. We need further clarity on financing and appropriate governance.

Chair: Thank you, Australia.

France: It is bit difficult to be original, considering the remarkable results of the coordinator. There is a consensus around the draft drawn up with the delegation of the Hague WG, which we share entirely. The Draft Resolution's aim provides a framework with precisions that can be brought on which we can have a draft for next year. The intermediary decision is en route. We need to focus on this in the work next sessions.

Mexico: We congratulate on your work and achievements. Thanks to Brazil. The long and difficult negotiations will lead to decision in the future. We feel that the draft resolution contains a route which is clearly defined and which will enable us to achieve this. There were many meetings, and the Expert Meeting in September was the best for consensus. We support the text. It opens the door to use our time well in a timely manner for a decision.

Italy: Thank you. We join previous speakers on your impressive intersessional work, which led to a result and to a transparent process. We all appreciate this. We are ready for additional information referred to by the Committee on Budget and Finance in its report which it deemed necessary to understand the implications of this project. Time is not wasted – this an important project. Major financial implications are foreseen to lead to the building of premises, which should last forever as nature of the Court is permanent. We are ready to support the general thrust of the Draft Resolution.

Liechtenstein: The Alexanderkazerne option needs more information, while other options do not need more information. The decision must be as clear as possible. We do not need to pursue other options. We can agree with the Draft Resolution.

Senegal: Thank you Mr. Chairman. Like my predecessors, we thank you for your excellent work and balanced text. We are ready to support this good text now with regard to the choice of Alexanderkazerne. This is a good option with several unknowns. We need full additional information - any definitive choice must be based on this. Another important aspect is the issue of cost. Another aspect is the fact that the property premises will belong to the host country. We should take all precautions to avoid problems with this.

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Namibia: Thank you for your useful introduction. It is very much appreciated. Namibia congratulates you on the excellent job done by Hague Working Group on this issue. We have not been able to appreciate the thrust. Like Senegal, we request full information and the final cost.

Republic of Korea: The ICC Registry and Hague Working Group to solve this important issue. We believe it is important to satisfy the requirements to reduce related costs. I'd like to point out the need for enough time to discuss and review this issue. The construction of new ICC buildings would be the best option - the option of construction with flexibility and scalability for this purpose, making long term plans based on scale of quote, the Court Capacity Model, and scaling in accordance with the Strategic Plan.

Congratulations on your coordination. There is a good disposition to the States requesting it. I'd like to join others in stating that we are very satisfied. There were lots of meetings over the course of the year. We express our enthusiasm for the progress on paper. It is not the aim of the WG to take a decision. It will be Resolution adopted separately from the Omnibus Resolution.

Guinea: Thank you, Mr. Chairman, for all the work that has been accomplished. Guinea, like other countries, supports the decision of Alexanderkazerne and the need to have costs and time scale for achieving this project. We would also like this project to be open to a broad competition. We await additional information on the broad scale of the project.

Chair: We are at the end of the list and we can move to the resolution. I would like to congratulate delegations for their collaborative effort and the Court for the documents produced, and the host country for this collaborative and collective effort. Did Namibia want the floor?

With no further delay - this is ICC-ASP/5/29. The preamble laid out the background and mandate. We brought in the conclusions on functionality, scalability and the Committee on Budget and Finance reports. Then, we have the operational paragraphs. First, the host State's information required for the next ASP. The following paragraphs provide functional brief and timetable planning strategies, including: homework for host State; review the function of the Bureau, normally assigned to the Hague WG, relying on expert advice and assistance. Paragraph 5 refers to the architectural design competition. Paragraph 6 we will discuss later. Paragraphs 7-9 refer to the governance structure, and paragraph 10 deals with interim activities, the architectural design, and selection process.

That is the basic structure of the Resolution. May I suggest that we start with the preamble. We have less than half an hour. There are no brackets in this text - nothing is final. This is a draft. Are you satisfied with text as it stands?

On the Preamble and background: any comments on para 1? No comments. I'll accept that. Paragraph 2 on the three options, any comments? No. Preambular paragraph 3, "Further recalling the host State bid." Ok. Paragraph 4 - no comments. Paragraph 5, "Underscoring functionality scalability, security" - no comments. Next, "Mindful of the reports of the CBF at its sixth and seventh sessions." No comments or questions

Operational clause 1: Any comments? Namibia.

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Namibia: We would like to suggest a slight amendment - to take a “fully informed” decision at the next session be favourably considered.

Chair: Any comments from State Parties?

Germany: I’m not sure if this is going to bit too far. The Hague WG has said which kind of information we need, that is what experts told us. We will need information. We will need information to take a decision when we take a decision, for example how we want to make this building. “Fully informed” would mean we need all the information by 2007. There is no way we will have that.

Chair: Any other State Parties who would like to take the floor? Colombia.

Colombia: We support the German proposition.

Chair: Senegal.

Senegal: Thank you, we would like to support what was just said, because “fully important” is the most optimal.

Chair: South Africa.

South Africa: While we can appreciate the concern about “full information,” we have to be realistic. We won’t have at the end all the information. It depends to what extent it is developed. What does “fully” mean? It is open for interpretation.

Switzerland: We fully share the views of German and South Africa.

Austria: We could live with “informed.”

Estonia: We would like to support Germany’s position

Italy: Thank you, we are sympathetic to having “fully” before informed. The Assembly must take well thought-out decisions. In the paragraph, there is a list of items where information will be required before a further step is taken.

Chair: To summarize statements by a couple of delegations: I see “fully” as matter of a semantic debate rather than a substantive one. What is “fully” in any case? It may be a reason to delay a decision, as we could argue that we not “fully” enough informed. It is difficult to debate “fully” informed. Given that concern and risk, it does not add much else to “informed.” May I ask Namibia to withdraw its suggestion?

Namibia: Withdrawn.

Chair: We accept paragraph 1 as it stands. Paragraph 2: “Finish preparing detailed, functional brief reflecting scalability in staffing.”

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Belgium: We have two suggestions. First of all, it requests a number of actions by the Court in order to allow the Committee on Budget and Finance to do work. We are very pleased with it, but we would like to see somewhere an obligation of the Committee on Budget and Finance to do work timely on the budget. The CBF report was published only on November 1. We got the French text 16 days later. We would suggest that just allowing that review would be an obligation to terminate that review.

My second remark: I think it might be useful not just to request the Court to facilitate the work of the Committee of Budget and Finance, but to do another thing that could facilitate decision-making by ASP and what could be done. The Court should be requested to study the relevant legal procedure for execution of the future project and to submit to the ASP. Thank you very much, Mr. Chairman.

Chair: Thank you Belgium. Comments by other State Parties on paragraph 2? The Netherlands.

The Netherlands: Thank you Chairman. Good to see you as the chair. There is a good result with regards to the permanent premises issue. We are grateful for the comments of Belgium. The first point is covered by the fact that operative paragraph refers to the CBF's eighth session. So, the report should be ready by the beginning of May 2. In regard to the suggestion to be covered, the first sentence of operational paragraph 2 - Committee on Budget and Finance and ASP, because 8 is already covered.

For Paragraph 4 on reviewing information to be included in 2 or 3 - any gaps or concerns. We would wonder if those two clarifications are okay with Belgium?

Chair: Belgium

Belgium: Certainly can live with this - indeed the 8th Session is mentioned as the moment in which such a review should be undertaken. Our only hope is that this also means it will be completed.

Secondly, we fully agree that the Bureau could look into eventually important information, but we believe, for sake of transparency, that it would be a good idea to ask specifically the Court – this is linked to questions of ownership – to prepare for us a study, let's say, of all legal requirements to execute the project mentioned. It is a sound basis for project management. That is my only concern. If the Bureau wants to take upon him – I think it should be clearly mentioned what it is about. Thank you.

Chair: I have Germany.

Germany: I am sorry. Operational paragraph 2 meant to provide for information in April 2007, not for info of ASP 2007. Operational is only one part. As to the details on operational 2, letter c is just an aside - we feel that the wording "summary planning" and "permit" might not be necessary. We feel that we could also get information for the next ASP. This is not a very important point – we don't want to overload short time we have.

On the comment of our Belgian colleague, I think it is more for the host State, the Court or both together to provide more information on the whole legal process.

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Korea: Thank you Mr. Chairman. For operational 2, we are very happy as is, except for one thing. There is a lot of possibility made in engagement in private development in building of premises. My delegation would like to add a subparagraph d, “engage private developers on building premises.” Thank you.

Chair: UK?

UK: Colleagues, these are important points. Our view is that they are all adequately covered in paragraph 4. We ask the Bureau, the Hague WG, in paragraphs 2 and 3, to try to ensure that all relevant gaps are filled for the building planning. There are relations to the private sector. The Hague Working Group is engaging experts on absolute relevant information for us to proceed. The resolution adequately covers this.

Mexico: The UK covers the concerns expressed by Belgium and Korea quite satisfactorily. This is a perfectly good text.

Brazil: Thank you, we would also like to share the views expressed by our UK and Mexican colleagues. There are legal issues concerning separation of ownership. Also, we support trying to leave the text as it stands.

Chair: Can we finish on operational 2 and how we end up with language. There will be an amount of information produced over the coming year. There are four or five pages long with specific details with clear explanations. We decided against including this. It is too prescriptive and it was desired that it be left out. So, we grabbed broad categories of information, request to develop this information, and that it be reviewed in April or by the following CBF review. We still have a number of months to develop and review information. With that, would delegates be satisfied? Information that needs to be developed will be developed – direct our concerns to the Hague WG if it mandated to carry on with this work. Once again ask, I ask if there are any objections to 2 with those explanations?

Chair: Belgium.

Belgium: I can live with your proposal.

Italy: We would like a clarification on operational paragraph 2 - definite choice to leave out flexibility. The Court would be putting forward different scenarios. We don't have a final decision. Staffing issues are important issues. There should be some different scenarios on staffing levels - scalability on staffing level, maybe 3 different scenarios.

Chair: We can agree to adopt paragraph 2. With that, we finish our session for the day. We will pick up on Monday.