

Fifth Session of the Assembly of States Parties to the
Rome Statute of the International Criminal Court
27 November 2006, 11:30-13:00pm
Budget and Finance and Permanent Premises Working Groups

Informal and Unofficial Verbatim Notes from the ASP
27 November 2006, morning session

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Chair: We proceed with our deliberations. On the question of detention. Delegates, please sit down or leave the room and have your conversations outside.

Registrar: It is a very important question. We need to take into account the experience of the ad hoc UN tribunals, including the ICTY, and currently we co-operate with the SCSL on this matter. I've decided to have a second night guard at the detention centre. With one guard you can't adequately respond to emergencies; 5 minutes response time is just too late.

Chair: Does the Host State wish to add something from its side?

The Netherlands: Corr.1 of ICC-ASP/5/23 also mentions the wisdom of having 12 cells. We think it is possible to count on the minimum level of 6 cells, instead of 12 cells. We'll make the necessary calculations and provide them to the Registrar. Then we could proceed as such, we are responsible for the security and health of the detainees.

Chair: Thank you very much for this initiative which is certainly very relevant and welcomed.

France: I would like to thank the delegation of The Netherlands for their information which fully meets the expectations of the authorities of France. It is with great interest that we follow this discussion. Particularly, we are interested in the assessment of cost reduction by the reduction of cells.

Chair: I think that we shall take note of the CBF's recommendation contained in para.73 bis and 73 ter.

South Africa: Thank you very much, Registrar and Host State, for your explanations. My delegation wishes to wage in the discussion. Most diplomats here have never been incarcerated, and we're interested in details on detention. I appreciate that there is a possibility to reduce a quantity of cells to 6. But why not reduce them to 3 or 2, which are currently not utilised? But, again, I am not very experienced in this issue, but the detention centre is like a luxury hotel, like the Sheraton, but it is a holding cell! Why must we pay for cells held in reservation? If The Hague charges so much for holding a cell, why should other region or country authorities charge any different. Why is there a difference between charges with the ICTY detention costs, although there is no generally accepted market in this regard. I just wanted to mention it. Thank you, Chair.

Chair: I have asked the Registrar and Ambassador Wellenstein on this matter this morning. It is my understanding that it is not a question of reserving cells, but a question of opening a separate wing at the detention centre, with all the relevant personnel, that is why it is 6 or 12 cells. I pass your questions also to the Registrar and to the Host State.

Registrar: The crucial question is who is responsible for the detention. Just look at what happened with the ICTY, unfortunately, with the deaths of several detainees. Will the Court

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accept this liability? It is a crucial question. That is why the question of who is in charge for the detention is paramount; and this question was raised by the Red Cross when they visited. The ICRC told us what is important: that there should be one person in charge, which is fundamental question.

As for the detention regime, if you have a woman with child, she can be accommodated in our detention regime, which is not the case now. It was always the case that the costs of detention for the ICTY was 216 euros per cell, but it was before re-negotiations with the Dutch authorities, and it is my understanding that this rate has been increased to more or less the level of the ICC.

Netherlands: Chair, thank you very much. This is how our head of delegation is becoming an expert in detention issues. The question of the South African delegate deserves to be answered. The main element of the tariff is the personnel costs, and the labour costs in The Netherlands might be different in comparison with the labour costs in countries in other parts of the world. The ICTY tariff of 216 euros was concluded by the ICTY with Dutch prison authorities 10 years ago, and this tariff is now under re-negotiation, and the tariff for ICTY will be exactly the same as the tariff for the ICC.

As to why not reserve 2 or 3 cells, the chairman very adequately explained why this is not a way which works. Reservation of cells means that you need to have well-trained personnel, in accordance with international standards, who speak languages, other than Dutch. I think personally that the number of 6 cells is a reasonable number.

Chair: We have to close the debate on this issue. We have to come back to this issue again. See you this afternoon and thank you. This meeting is adjourned.

Working Group on Permanent Premises

Chair: We made such good progress on Saturday, but we do need a formal meeting of the WG tomorrow. I have also reserved an hour tomorrow for the informal meeting if we should need it. We have draft resolution in ICC-ASP/5/29; we went through the preamble and operative paras.1-2 on Saturday.

We start with operative para.3 now. This paragraph is mirrored in the CBF report in para.110. The ownership of the land and the building will require some sort of contractual relations. Any comments on operative para.3? If you have comments, touch your button. No comments on 3?

Ok, then we'll move on to the operative para.4. It is a review function of the Bureau. Any comments on para.4? No comments on 4?

We move on to the operative para.5. One of the elements of the Host State bid is that The Netherlands run the architectural competition, and it is a framework for such a competition. Any comments on 5? No comments.

We move to the para.7. I should say, that paras.7, 8, and 9 are the governance paragraphs; they reflect the CBF conclusions to be found in its report. Any further questions on operative para.7? No comments on 7? Then we move to the operative para.8. Are there any comments

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on para.8? No comments on 8 and we move to 9. It is about the budget; any comments on operative para.9?

Italy: I would like to ask: what is the idea behind the establishment of the programme management structure? I am interested to know what is the urgency of appointing the P-5 person as soon as possible? I've seen that this position has been posted on the ICC website already. But we don't have a governance structure in place. What is really the urgency for such a decision?

Chair: I'll pass the mike to the Court.

Registrar: We currently we don't have specialist on this. I personally do the work. But it is very important that we have an expert person.

Chair: The language "as soon as possible" is not in the text of the draft resolution. We did not do anything new in para.9; it's just re-affirming what can be found elsewhere. Is Italy satisfied with para.9 as it now stands?

Italy: Ok, we're satisfied.

Chair: Thank you, we now go to para.10. Any comments on operative para.10?

If there are no comments on 10, we now return to operative para.6. A little bit of background on this paragraph. It is the only form of interim decision-making for 2007. It has been added in after the discussions with the Host State experts. It would be a shame to lose time and wait for the next ASP in December 2007. The pre-selection process could be done without liabilities for the Court and the ASP and, probably, for the Host State. With that explanation, I open the floor for discussion on para.6.

UK: We're generally cautious on the speed of moving forward, but we support the idea of the Host State who has offered to fund and host a competition for the architecture of the premises. I think it could be useful to add that this is without prejudice for the consideration of wider and other options. A second point to add: that this is without prejudice of the Assembly's right to decide on this matter. This addition would give us a comfort.

Austria: We would like to advise against the second proposal of the United Kingdom. We need to move forward quickly now.

Italy: Para.6 refers to the pre-selection process of architects. What is very important is the speed for both phases: the architectural phase and the execution of the project. Contractors should not raise issues during the execution phase which have not been raised at the project stage. It is a consistent, integrated approach.

Chair: These two processes were in the informal documents distributed by the Host State and they were not reviewed by The Hague Working Group. The state experts were not of the opinion that the integrated approach was the best option. Would anybody else like to take the floor? What we have is a proposal of principle by the UK, and Austria said that the second proposal was not necessary since "without prejudice" is in para.1 already. Are you, the UK, satisfied, that your second proposed principle is adequately covered in para.1?

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UK: We're still not entirely comfortable with the language which is currently drafted. The wording in para.1 is not a chapeau; it does not cover para.6. I think we can find language which accommodates all our concerns; we can talk with Austria and you.

Chair: I reserved an hour tomorrow for informal discussions. We can think today about the language, and we can finalise the language at this short informal meeting, and we will propose this at our next formal meeting on Wednesday. Any objections?

Germany: I don't want to raise an objection. But we have half an hour to go. Can we use it to close this discussion?

Chair: I really don't want to press the UK. We can use this half an hour for additional lunch. Is that acceptable? So, I close the session, but there is an announcement from the ASP Secretariat.

Secretary: There will be an informal hearing at 1p.m. on outreach.

Chair: The meeting is adjourned.