

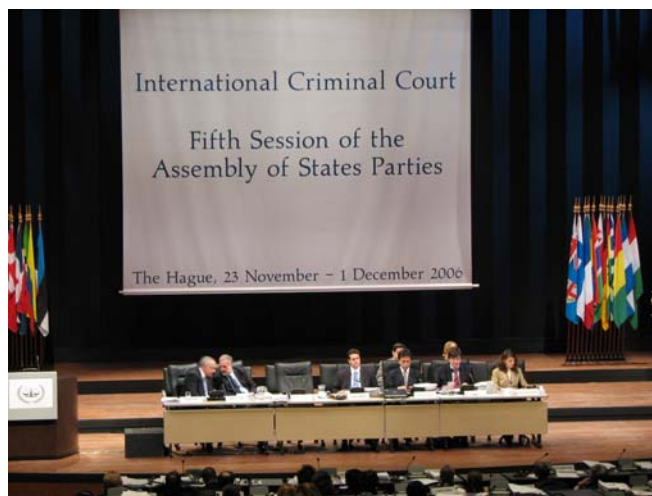


COALITION
FOR THE
INTERNATIONAL CRIMINAL COURT

**CICC REPORT
ON
THE FIFTH SESSION OF
THE ASSEMBLY OF STATES PARTIES**

**23 November – 1 December 2006
29 January – 1 February 2007**

27 MARCH 2007



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.

**COALITION FOR THE
INTERNATIONAL CRIMINAL COURT**

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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 Alison Smith (NPWJ), 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 Frontières), Lars van Troost (Amnesty International Netherlands) and Brigid Inder (Women's Initiative for Gender Justice);¹ all members of the teams who made the production of team reports and the Coalition's report possible; and 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 Regular Fifth Session of the Assembly of States Parties (ASP) was held in The Hague, the Netherlands, at the World Forum Convention Centre. 82 States Parties out of 103 registered for the ASP, as did 39 non-States Parties (including Chad who had ratified but has not yet become a State Party). Next year's regular session will take place in New York on 30 November - 14 December.
3. The Resumed Fifth Session of the ASP was held in New York, the US, at the UN Headquarters, on January 29 – February 1, 2007. At least 88 States Parties out of 104 participated, as did at least 35 non-States Parties.
4. The ASP is mandated to deal 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.
5. More than 230 representatives from non-governmental organisations from all parts of the world attended the fifth session of the ASP in The Hague. 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, was constructive and informative. Various States Parties continued to invest time and resources in crucial side events, with the intention of building capacity, seeking dialogues and exchanging information. Around 50 representatives from 17 NGOs participated in the New York session.



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 organisations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organised 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.

6. The Assembly of States Parties met for the fifth session in an atmosphere of anticipation and intense activity at the Court on its first cases and against a background of the advanced maturation of the ICC. Hearings on confirmation of charges against Thomas Lubanga were underway as the session started and arrangements were in place for participants to attend. A series of decisions and appeals in that case had begun to resolve, among others, questions about the participation of victims and the roles of counsel. The Prosecutor had already announced that he had more than enough evidence to ask by February for arrest warrants in the Darfur situation. This atmosphere heightened the sense of the advanced development of the Court given by the preparations for the session. The creation of the proposed budget had been much more systematic and less far less improvised than for previous sessions. Advance information described the filling out and stabilization of the Court's structure and administration so that the ICC had begun to look like an established international organization. Many issues remained for the Court and the ASP to work on: much more had still to be done on effective outreach both in the countries of ICC operations and worldwide; the final decision on the permanent premises for the Court remained to be made; the ASP had yet to organize itself fully and to decide on its subordinate bodies; and preparations for the Review Conference were pending. However, many in the Assembly felt on the first day that ASP would be to able deal more easily and completely with these and other profoundly important questions now that they were framed by the settled structure and processes of a Court now in full operation. During the fifth resumed session in New York, the Pre Trial Chamber dealing with the "Lubanga case" confirmed the charges against Mr. Lubanga and passed the case over to the Trial Chamber.
7. The fifth session continued to demonstrate an increased readiness of States Parties to engage in issues beyond the Court's most urgent operational issues, 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 trend set by the fourth session. As will be demonstrated below in this report, the ASP also indicated its commitment to remain seized of a number of political and strategic issues of key concern both to the Court and to the Rome Statute system. Such issues include cooperation, review conference, strategic planning and outreach. Some of this progress was however somewhat clouded by the different perceptions among delegates as to how and where the ASP, and in particular the Bureau, should perform its duty outside of the ASP sessions.

II. AGENDA, PROCEEDINGS AND METHODOLOGY

8. 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).



ICC President Philippe Kirsch, President of the Assembly Ambassador Bruno Stagno Ugarte and interim Director of the Assembly's Secretariat Renan Villacis, Fifth ASP opening plenary, 23 November 2006

9. The Bureau and the Working Groups may also appoint Coordinators and Facilitators to prepare issues in advance of meetings. 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. The same persons, for the most part, also acted as formal or informal coordinators during the ASP session. Other coordinators were appointed for the purpose of the meeting only. Under each relevant Chapter below, you will find reference to these coordinators.

10. The fact that this session took place over a period of eight working days enabled States to avoid too many parallel meetings behind closed doors. This change had two significant consequences: States represented by smaller delegations could follow all working groups and discussions; and non-anglophone delegations could participate more constructively since interpretation was provided at most meetings. These advantages were indeed reflected in a number of States' closing statements on the last day of meetings.

11. The meeting began with Minister Bruno Stagno Ugarte from Costa Rica, President of the ASP, opening the session. The President explained that the ASP would continue to organise itself into three Working Groups, specifically the Special Working Group on the Crime of Aggression (coordinated by Liechtenstein), the Working Group on the Budget (coordinated by Switzerland), and the Working Group on the Permanent Premises (coordinated by Canada). In addition, Mr. Rolf Fife from Norway would continue to act as focal point on the Review Conference and Mr. Jurg Lauber from Switzerland would once again coordinate the drafting of the *Omnibus* Resolution.

12. The President of the ICC, Judge Philippe Kirsch, provided a report on the Court's activities since the last ASP session, highlighting the Court's role and impact, the issue of cooperation, the international justice system in a more broad sense, as well as specific matters before this ASP including the budget and issues related to the Host State. The Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, also presented a report on the activities of the Office of the Prosecutor. The Director of the Board of Directors for the Victims Trust Fund (VTF), Madame Simone Veil, presented a report in which she gave a briefing on the recent third meeting of the VTF Board. She pointed to the Board's planned activities in 2007, which consist of setting guidelines for the Board's work as well as determining funding strategies. ASP President Stagno Ugarte then presented a report on the work of the ASP Bureau and its Working Groups.

13. The reports of the various organs and bodies were followed by the General Debate (see below). CICC reports of each day's events during the fifth session can be found at:

http://www.iccnw.org/documents/DailyReport_23November2006.pdf
http://www.iccnw.org/documents/ASPDailyReport_24Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_25Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_27Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_28Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_29Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_30Nov06.pdf
http://www.iccnw.org/documents/ASPDailyReport_01Dec06.pdf

14. The resumed fifth session in New York was mainly allocated to the Special Working Group on the Crime of Aggression. Another important item on the agenda was the election of the fifth member of the Board of the Trust Fund for Victims. Further, the ASP used the opportunity to take a number of procedural decisions, including deciding on how to deal with the judicial vacancy as a result of Judge Clark's resignation. CICC reports of each day's events during the fifth session can be found at:

http://www.iccnw.org/documents/CICC_ASP5report_29jan07.pdf
http://www.iccnw.org/documents/ASP5_DailyReport_30Jan07.pdf
http://www.iccnw.org/documents/ASP5_DailyReport_31Jan07.pdf
http://www.iccnw.org/documents/ASP5_DailyReport_1Feb07.pdf



Stephen Lamony, Richard Dicker and Brigid Inder, CICC Press Briefing, 23 November 2006.

15. As in previous years, the NGOs coordinated their activities through the Coalition and a number of side-events were held. All the CICC teams, caucuses and working groups took advantage of the diverse participation and met (around Budget and Finance, Communications and Outreach, Gender Justice, Recruitment, Review Conference, Trust Fund for Victims, Faith and Ethics, Victims issues, Premises, Legal Representation, Strategic Plan, ASP Work and Structures, Children, etc) with a frequency depending on the issues before them. There were also daily regional NGO meetings with governments on ratification and implementation, as well as on developments in the situation countries. NGOs also shared (sometimes with governments) information and

strategy on: a number of victims' issues; outreach and communication; US issues; universal jurisdiction etc. There were also a number of meetings with ICC officials and a press briefing. During the press briefing, which was presided by William Pace (CICC), statements were given by Brigid Inder (Women's Initiatives for Gender Justice), Richard Dicker (Human Rights Watch) and Stephen Lamony (Ugandan Coalition for the ICC) on the topics of, among others, gender-based crimes, the investigations in Darfur, and outreach to the affected communities, respectively. Furthermore, the Women's Initiatives for Gender Justice launched its annual Gender Report Card, which assesses the ICC's implementation of gender mandates contained in the Rome Statute and related instruments of the Court. The Hague Filmhuis screened two related movies in connection with the ASP, (*In search of international justice* and *A Duty to Protect: Justice for Child Soldiers in the DRC*).

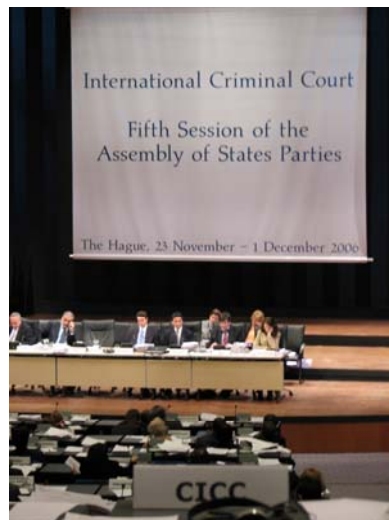
Relevant documents

Women's Initiatives for Gender Justice: The Gender Report Card:

http://www.iccnw.org/publications/resources/docs/Gender_Report_Card_2006.pdf

III. ASP GENERAL DEBATE

16. The first formal General Debate took place during the first two days of the fifth session in The Hague. This provided an opportunity for States Parties, observer States, NGOs and international organisations to express their concerns and priorities, but also their commitment vis-à-vis the Rome Statute system including, but far from limited to, issues included in the ASP agenda. These statements elevated the debate at the ASP and provided the Court and the Assembly with guidance about its general direction as well as setting 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 since its introduction at the last moment during the fourth session. A large number of States Parties (44) did contribute to the general debate, and addressed a broad number of areas beyond the immediate agenda of the ASP, including issues of cooperation, budget, strategic plan, outreach, the peace and justice debate, ratification and implementation, recruitment, gender issues, review conference and the Trust Fund for Victims. The CICC has compiled a chart of the statements according to these particular issues. This chart is available upon request from the CICC Secretariat.



17. Statements were made by the representatives of: Argentina, Australia (on behalf of Canada, Australia and New Zealand), Austria, Barbados, Belgium, Benin, Brazil, Colombia, Comoros, Croatia, Democratic Republic of the Congo, Denmark, Ecuador, Finland (on behalf of the European Union and associated States), France, Germany, Ghana, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Jordan, Lesotho, Liechtenstein, Mexico, Mongolia, Namibia, the Netherlands, Norway, Paraguay, Peru, Poland, Portugal, Republic of Korea, Serbia, Sierra Leone, South Africa, Spain, Sudan, Switzerland, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of) and Yemen.²

The statements are available on the CICC website:

<http://www.iccnw.org/?mod=browserdoc&type=13&module=994>

18. Statements were also made by the CICC and by representatives of the following non-governmental organisations: the DRC National Coalition for the International Criminal Court, Parliamentarians for Global Action, Darfur Consortium, Human Rights Watch, International Criminal Bar, International Federation for Human Rights and International Society for Traumatic Stress Studies.

The statements are available on the CICC website:

<http://www.iccnw.org/?mod=browserdoc&type=21&module=994>

² Panama circulated a written statement but did not deliver a speech.

IV. OUTREACH

Background

19. Although not officially on the agenda, Outreach became one of the key issues of this ASP session.
20. During the General Debate, many States raised the issue, and emphasized their commitment to outreach and underlined that justice not only needs to be done but also needs to be seen to be done.
21. In the budget discussions, States had to prove how far their commitment to Outreach went: In its recent report, the Committee of Budget and Finance (CBF), an advisory body of the ASP, recommended reducing, by half, the resources requested by the Court for Outreach activities in 2007. These cuts would have affected several outreach positions in ICC field offices as well as outreach materials such as leaflets in local languages. After a long night debate, States finally decided not to endorse the recommendations of the CBF, but to provide the Court with all the resources it had requested. Together with victim protection and translation issues, Outreach was the only area where States decided to open up the CBF package. (Cf. more details under Chapter IX: Budget and Finance)
22. NGOs, and in a leading role the CICC Communication Team and the CICC Budget Team, have actively contributed to this positive outcome. Prior to, and during, the ASP session, NGOs were active in raising greater awareness amongst States regarding the need for adequate outreach through diplomatic briefings and team papers.



Ms. Sonia Robla Uceda, ICC Registrar Bruno Cathala and H.E. Allieu Ibrahim Kanu, *Informal Hearing on Outreach*, 27 November 2006.

23. Amongst other activities, NGOs participated in an informal hearing, organised by the government of Sierra Leone and which took place during the ASP. In this hearing, Government officials, Court officials, the former Registrar of the Special Court for Sierra Leone and NGO representatives advocated for efficient outreach strategies and adequate resources to this end. Many felt that this informal hearing had a valuable impact on the budget negotiations. The Sierra Leone delegation requested the assistance of the CICC Communications Team in organising the informal hearing, both in terms of identifying (and coordinating) NGO and other expert speakers and in encouraging participation in the meeting itself.
24. In the *Omnibus* Resolution (paragraph 20), States Parties made reference to the importance of outreach to affected communities and consequently encouraged the Court to, yet again, “intensify” its outreach activities, including through the implementation of the Strategic Plan for Outreach. While some States had initially sought to replace “intensify” with “maintain”, due to possible financial implications, other States resisted this substitution and the language remained.

Relevant documents

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus Resolution*), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Resolution ICC-ASP/5/Res.4 “Programme budget for 2007, the Working Capital Fund for 2007, scale of assessments for the apportionment of expenses of the International Criminal Court and financing appropriations for the year 2007”: pages 383 – 384; in ICC-ASP/5/32 Part III, Resolutions adopted by the Assembly of States Parties:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strategic Plan for Outreach of the ICC: http://www.icc-cpi.int/library/asp/ICC-ASP-5-12_English.pdf

V. OMNIBUS RESOLUTION

Background

25. For the fourth consecutive time, the ASP adopted an ‘*Omnibus* Resolution’, more formally titled ‘Strengthening the International Criminal Court and the Assembly of States Parties’. The Resolution addresses a number of issues related to ratification and implementation of the Rome Statute, cooperation, outreach, recruitment, the Review Conference, the participation of States Parties in the ASP, an independent oversight mechanism, 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.
26. The Resolution was again coordinated by Mr. Jurg Lauber (Switzerland). A first draft of the *Omnibus* Resolution was distributed on 30 October to the Friends of the ICC. The Friends first met in New York on 8 November to discuss the draft Resolution. A second revised draft was sent on 17 November.
27. States Parties met in informal plenary sessions on Saturday 25 November, Tuesday 28 November and Wednesday 29 December. The Resolution was adopted on Friday 1 December by consensus.

Issues

28. The *Omnibus* Resolution addresses a large number of substantive issues that are discussed throughout this report. The ASP Structures and Functions team had recommended that the ASP should try to avoid relying on the *Omnibus* Resolution to cover all issues, particularly those that warrant separate resolutions and formal discussions (which indeed was the case with the discussion on the Strategic Plan). Members were, however, very encouraged that interpretation facilities were available in the informal discussions, which provided transparency and allowed non-anglophone and small delegations to follow the discussions with greater ease and allowed all States to participate on a more equal basis.

Relevant documents

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/4/Res.4, 3 December 2005: http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf

Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/3/Res.3., 10 September 2004: http://www.icc-cpi.int/library/asp/ICC-ASP-3-25-III_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/2/Res.7., 12 September 2003: http://www.un.org/law/icc/asp/2ndsession/report/english/part_iv_res_7_e.pdf

VI. STRATEGIC PLAN

Background

29. Following a request of the Committee on Budget and Finance at its third session, the Court developed a Strategic Plan setting out the overarching objectives and priorities of the Court's work. The Plan provides for a ten-year framework, with particular emphasis on the next three years.
30. In May 2006, the ICC presented a first draft of the Plan and began consultations with States Parties and NGOs. Although the Strategic Plan is non negotiable by States Parties, they, along with other key actors such as NGOs, were invited to present comments. The ASP Bureau also mandated the Hague Working Group to provide feedback on the Plan and the Working Group assigned this issue to be coordinated by Ms Michèle Dubrocard (France). A more detailed plan, by the Court, was made public in August 2006 and presented to the CBF in October 2006.

Issues

31. In the ASP General Debate, many States mentioned the ICC Strategic Plan, generally appreciating the Plan's elaboration and highlighting their interest in a continued dialogue between the Court and the Bureau.
32. The ASP adopted a separate resolution on the "Strategic Planning Process of the Court" in which States Parties mainly: welcomed the efforts made by the Court so far; invited the Court to further develop dialogue already initiated with the Bureau; recommended that such a dialogue should focus on concrete implementation and should include issues such as: location of the Court activities, position of victims, outreach and communication activities and the relationship between the Strategic Plan and the budget. In the Resolution, States invited the Court to submit an update to the next session of the ASP. The Assembly appointed Ms. Dubrocard as the ASP focal point on the strategic planning process of the Court.
33. The adoption of the Resolution was preceded by informal discussions, which centred much on the question as of whether the Strategic Planning Process should be dealt with in a separate resolution or within the *Omnibus* Resolution. Although some States feared a "proliferation of resolutions", States finally opted for a separate resolution underlining the importance of the Strategic Plan as the Court's vision for the next 10 years.
34. As a result of the discussion, and following a proposal from Australia, the Resolution incorporated a broadened language making reference not only to the Strategic Plan but also to the Strategic Plan for Outreach, the Strategy on Information and Communication Technologies and the Prosecutorial Strategy. During the informal discussions a number of delegations stressed the importance of "in-situ hearings".
35. Prior to the ASP session, the CICC Team on the Strategic Plan, developed a Team Paper which also welcomed the Court's efforts made so far but, among other things, urged for an adequate reflection of issues regarding victims, outreach and positive complementarity in the Plan. The Paper further encouraged elaborating concrete evaluation methods to regularly assess the progress made.
36. Overall, NGOs were satisfied with the ASP outcome since a number of the team's recommendations were reflected in the ASP decision.

Relevant documents

Resolution ICC – ASP/5/Res.2, p.340 (“Strategic planning process of the Court”):
http://www.icc-cpi.int/library/asp/docs/OR_Part_III_pages_337-411_English.pdf

Strategic Plan of the International Court: http://www.icc-cpi.int/library/asp/ICC-ASP-5-6_English.pdf

VII. TRUST FUND FOR VICTIMS

Background

37. On the agenda of this ASP were the second elections of the Board of Directors of the Trust Fund for Victims. The Assembly, during its session in December, re-elected, by acclamation, four out of five members of the Board, who have already served as directors in the previous board:
- His Excellency Mr. Tadeusz Mazowiecki, Poland (Group of Eastern European States),
 - Madame Minister Simone Veil, France (Group of Western European and Other States,
 - His Eminence Archbishop Emeritus Desmond Tutu, South Africa (from the Group of African States) and;
 - His Excellency A.N.R. Robinson, Trinidad and Tobago (Group of Latin American and Caribbean States).
38. Queen Rania who held the Asian seat in the last term of the Board had resigned and did not re-run for elections. By the time of the December session of the ASP, no alternative candidate from the Asian region was found, although the nomination period had been extended four times. Therefore, the ASP decided to defer the election of the fifth Director until the resumed session in New York.
39. On the last day of the resumed session, States Parties elected Mr Bulgaa Altangerel from Mongolia as the fifth Director of the Board. By the time of the election the ASP Secretariat had received only one nomination. Mr. Altangerel was elected by consensus.
40. The three-year term of office for all five directors was set to begin running on 1 December 2006.
41. During the general debate a number of states took the opportunity to make reference to the Trust Fund. They mentioned contributions that they had made in the past year (Germany, Namibia, Poland, Spain, Trinidad & Tobago, UK) or intended to make in the next (Belgium). In general, States welcomed the work of the Board and confirmed their commitment to the Trust Fund.
42. The CICC Team on the Trust Fund had developed a team paper, which contained a call to States to donate to the Fund and to intensify efforts to find an Asian candidate for the Board. It also expressed concerns regarding the recommendations of the Committee of Budget and Finance. The CBF had suggested cutting travel resources for the Secretariat of the Trust Fund and to incorporate the Secretariat's future budget proposals and reports in those of the Court. The ASP approved these recommendations. Since NGOs were concerned with the outcome, the CICC Teams will try to follow up on this in 2007.

Relevant documents

Second election of members of the Board of Directors of the Trust Fund for Victims”

http://www.icc-cpi.int/library/asp/ICC-ASP-5-28_English.pdf

http://www.icc-cpi.int/library/asp/ICC-ASP-5-28-Add1_English.pdf

Official Records, 5th ASP session (paragraphs 33 – 37):

http://www.icc-cpi.int/library/asp/docs/ICC-ASP-5OfficialRecordsPart_I_-CORRECTED-clean-29_Dec_06_1100.pdf

Note Verbale: 5th Extension of the Nomination Period until 28 January 2007-01-03;

<http://www.icc-cpi.int/library/asp/EnglishBDTFV.pdf>

VIII. GENDER ISSUES

Background

43. In the General Debate a few States, mainly Latin American countries, highlighted the need for gender balance in the recruitment of ICC staff. One state (Paraguay) mentioned gender based crimes as a matter that deserves special attention, also in the context of the Review Conference.
44. Within the *Omnibus* Resolution, the ASP reminded the Court of its obligation under the Statute to seek gender balance among staff and to seek expertise on specific issues, including, but not limited to, violence against women or children. Considering the role that States can play in reaching out to counsel, NGOs were supportive of the initial draft recommendation in the *Omnibus* Resolution inviting States to encourage applications to the list of counsel to ensure gender balance. Unfortunately, the paragraph was weakened during the discussions by removing the reference to *States*, which left that paragraph of the Resolution with an unspecified and rather passive encouragement of applications (paragraph 11).
45. In the *Omnibus* Resolution, States welcomed the dialogue initiated between the Court and the ASP Bureau with regard to ensuring gender balance (and geographical representation). However, NGOs were disappointed that the request from the fourth ASP to the Bureau to submit proposals to improve equitable geographical representation and gender balance had not been met. Instead, the request to the Bureau was renewed, and slightly modified to present a detailed report to the 6th session on the status thereof, including, if necessary, any proposals to further improve gender (and geographical) balance in the recruitment process (paragraph 22).
46. While States only marginally touched on gender related questions, NGOs were more focused on the issue. During the ASP the CICC Team on Gender Justice developed a paper to which interested NGOs could sign on. The paper contained recommendations to States on how to bring a greater gender perspective to issues such as Legal Representation, ASP Structures, Recruitment, the Trust Fund for Victims and Outreach and Participation. Gender Justice Team members met with the ICC Prosecutor and raised their concerns regarding, for example, gender based crimes and the absence of the position of Gender Legal Adviser.

Relevant documents

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

The Gender Justice Team of the Coalition for the International Criminal Court (CICC), Recommendations to the Fifth Session of the Assembly of States Parties from 23 to 25 November and 27 November to 1 December 2006: http://www.iccnw.org/documents/GenderJustice_ASP5_TeamPaper_26Nov06_eng.pdf

IX. BUDGET AND FINANCE

A. Adoption of the ICC Budget for 2007

Background

47. The ASP considered the ICC Budget, as proposed by the Court, for 2007. The discussions were primarily based on the report of the Committee on Budget and Finance (CBF), a subsidiary mechanism to the ASP whose role is to provide expert and impartial advice to States Parties on budgetary matters, and who met to consider the Proposed Budget from 9 to 13 October 2006.
48. Both the Proposed 2007 ICC Budget and the report of the CBF had been the subject of discussions 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 and the EU States considered the issue at the EU Council Working Group on Public International Law (COJUR). This was reflected during the general debate of the ASP in which a high number of States Parties raised their different concerns and views on the budget and its process in a well-informed and comprehensive manner.
49. Additionally, members of the CICC Team on Budget and Finance had the opportunity to give input to the CBF during its sixth and seventh sessions in April and October 2006 respectively. NGOs were also able to consider, and give input to, the budget discussions in different instances throughout the year with the Court, and, after the CBF had issued its report, members of the CICC Team on Budget and Finance met with Court officials in order to better understand the implications that such recommendations would have on the Court's work. Moreover, during a series of meetings with the diplomatic community in The Hague, Brussels and New York leading up to the ASP, CICC members had the opportunity to further discuss, and analyse, budget issues with representatives from a number of delegations.

Timetable and Participants

50. The Budget discussions within the Working Group, which were chaired by Jurg Lindenmann (Switzerland), opened with reports to the ASP from the Registrar of the Court and from the Rapporteur of the CBF. These reports were followed by questions and requests for clarifications from some of the delegations which focused on a range of issues, such as, the basis for the use and the recommendation of GTA positions, adequacy of resources for Outreach activities, and the sufficiency of the contingency fund to cover unforeseen trial activities.
51. The work programme for the discussions of the Working Group on Budget based its discussions on the recommendations presented by the CBF and structured its work on the basis of a thematic list of clusters which represented the concerns of a number of delegations, the Court and NGOs. The list of issues, as proposed by the Chair, included such matters as the pension scheme for Judges, inflation, the reclassification exercise, resources for outreach activities, cooperation, detention costs, victims and witnesses' protection, costs for translation, among others. The discussions, for the most part, benefited from the presence of the Registrar and the CBF Rapporteur who answered the questions, and responded to the concerns, expressed by States.
52. The Budget and Finance Team welcomed this approach taken by the Working Group, which demonstrated an intention to consider major issues arising from the Committee's report. The Team appreciated the fact that the list of issues to be discussed not only reflected a particular support from

States for Outreach and Victims' and Witness Protection, but also for other issues such as translation costs, which, although not included among the Team recommendations for this ASP session, had been topics of concern brought before the CBF in its October 2006 session.

53. At the end of the first session, the CICC Team on Budget and Finance was allowed to make a short statement to the Working Group. The statement reflected the recommendations made by the Team in its paper submitted to the ASP, and during previous diplomatic briefings. The Team emphasised the fundamental importance of outreach activities and victims' and witness protection in the Court's mandate, and requested that States not endorse the CBF recommendations for reductions in the Public Information and Documentation Section (PIDS) of two posts for outreach and of €238,000 for contractual services for printing; as well as the recommended reductions for travel expenses, the cut of one post for operational support and the conversion of two protection posts into GTA in the Victims and Witnesses Unit (VWU).
54. The ASP, following the Report of the Working Group, decided to approve a total budget of €88,871,800 for 2007, which represents an increase of around 10.5% compared to the 2006 budget. Although the ASP based its decision by and large on the expert recommendations submitted by the CBF, the decision to open the recommendations up for discussion and not to endorse the recommended reductions for Outreach, evidenced not only a high support for this core activity but also an acknowledgement by the ASP of its responsibility to consider and decide the budget for Court. At the same time, the ASP decided to retain existing flexibility allowing the Court to move funds within major programmes, and instructed the Court to use this flexibility to allocate the requested funds for victims' and witness protection and translation costs.
55. Although there was a consensus on the importance of outreach activities and its direct link with the implementation of the Court's mandate, the discussions of the Working Group on Outreach were mainly focused on whether or not to accept the CBF recommendations. Some States, like Sierra Leone, France and Uganda, were of the view that the reasons given by the CBF for the recommended cuts were neither clear nor sufficient, especially since the ASP in its last session had instructed the Court to elaborate its outreach strategy. In this sense, Spain raised the point that the lack of adequate performance indicators was not a reason to cut resources, but rather to engage in a dialogue with the Court to define them. States such as the UK and Australia, on the other hand, saw the CBF recommendations, not as a cut, but as a sufficient increase and were of the view that the Court could use its flexibility to allocate more resources.
56. In discussing the CBF recommendations for VWU, States were mainly focused on whether or not having GTA positions for such sensitive and important posts would actually be a satisfactory solution. In this regard, States including Belgium, Uganda, Trinidad and Tobago, Spain and France, did not see any real budgetary advantages in having GTA instead of permanent positions and, on the other hand, were of the view that having adequate expertise presents an important advantage.
57. The final compromise, based on the discussions on the CBF recommendations for outreach, victims' and witness protection and translation costs, was reached at a late night session. The text on the compromise, as discussed by the Working Group and decided upon by the ASP involved the full restoration of the resources as requested by the Court for outreach. As for VWU and translation costs, the compromise text instructed the Court to absorb these costs through the existing flexibility.
58. The ASP also decided to implement a ceiling to the scale of assessment for the apportionment of the Court's budget based on the UN scale, by which any maximum assessment rate for the largest contributors of the UN will apply to the largest contributors of the ICC. It was underlined that this decision, proposed by Australia, Canada and New Zealand, would facilitate Japan's accession to the Rome Statute following expressed concerns for the budgetary burden that would be imposed on the country if they were to accede.

59. The ASP requested its Secretariat to make arrangements to ensure that in the next ASP sessions, the CBF is represented at all stages of the deliberations of the ASP where documents with financial or budgetary implications are under consideration.

60. Also, the ASP decided to add a fourth day to the spring session of the CBF, which should be held in The Hague from 23 to 26 April 2007, and to hold a further five day session to be determined at a later date, by the CBF.

Relevant documents

Proposed Programme Budget for 2007 in ICC-ASP/5/32 Part II External audit, internal audit, programme budget 2007 and related documents:

http://www.icc-cpi.int/library/asp/Part_II_Incl_D5_ADVANCE_COPY_13-12-06_English.pdf

Team Commentary on the Proposed 2007 Budget of the ICC, to the Committee on Budget and Finance (for its seventh session, 9 – 13 October, 2006), CICC Budget and Finance Team:

http://www.iccnw.org/documents/Commentary_on_2007_Budget.pdf

Reports of the Committee on Budget and Finance:

http://www.icc-cpi.int/library/asp/Part_II_D6InclE2_ADVANCE_COPY_13-12-06_English.pdf

Team Commentary on the Report of the Committee on Budget and Finance, submission to the Assembly of States Parties (for its fifth session, 23 November to 1 December 2006), CICC Budget and Finance Team: http://www.iccnw.org/documents/Budget_and_Finance_Team_Paper_5ASP_en.pdf

Resolution ICC-ASP/5/Res.3 “Strengthening the International Criminal Court and the Assembly of States Parties”, and Resolution ICC-ASP/5/Res.4 “Programme budget for 2007, the Working Capital Fund for 2007, scale of assessments for the apportionment of expenses of the International Criminal Court and financing appropriations for the year 2007”, in ICC-ASP/5/32 Part III, Resolutions adopted by the Assembly of States Parties:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

B. Non-Payment of Contributions

Background

61. The budget of the Court is financed by way of contributions by States Parties, according to the scale of assessment of the United Nations, based on a number of criteria, e.g. gross national product, conversion rates, debt burden and per capita income. Naturally, since not all UN Member States are States Parties to the Rome Statute, the scale for contributions to the ICC is adjusted accordingly.

62. Article 112(8) of the Rome Statute 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 Assembly or in the Bureau. However, the Assembly may permit the vote if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

Issues

63. The issue of non-payment arose at the fifth session and may reappear at the resumed session in January 2007, considering that some States have not paid their dues for over two years. Due to past years’ under-spending in the Court’s operations, this has not yet severely impacted on the Court’s ability to implement its mandate and activities. However, it is foreseen that the future under-spending

will be significantly less if not non-existent, which will result in non-payments seriously hampering the functioning of the Court. NGOs have consistently raised concerns about the status of non-payment of assessed contributions by States Parties and reiterate the call for all States Parties to pay overdue contributions without delay and to address the causes of non-payment to prevent future delays.

64. On the first day of the Regular Session in The Hague, the President of the Assembly took note that four States were in arrears. It was later confirmed that three States had lost their voting rights: Guinea, Malawi, and Niger. The President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The President also appealed to all States Parties to pay their assessed contributions for 2007 in a timely manner.
65. On the first day of the Resumed Session in New York, the President noted that thirteen States were in arrears.
66. In April 2006, the Coordinator of the Bureau Working Group in New York, H.E. Ambassador Allioaiga Feturi Elisaia (Samoa), appointed facilitator Marko Rakovec (Slovenia) to address the issue. The facilitator produced a report that was adopted by both the Bureau and the Assembly. The report stated that as of 7 August 2006, total outstanding contributions amounted to €4.871 million, which was 30 percent of the €2.46 million budget approved for 2006. As of 31 July 2006, six States Parties had not made payments for the preceding two full years, i.e. 6 percent of the membership was under threat of losing their vote. The number of States ineligible to vote may be much higher at the beginning of 2007, since by then, outstanding contributions for 2005 and 2006 will qualify as arrears.
67. The ASP decided (paragraph 40 – 43 of the *Omnibus* Resolution and Annex III) to endorse the recommendations provided by the facilitator's report and decided that the Bureau review, on a regular basis, the status of payments received throughout the Court's financial year and to consider additional measures to promote payments by States Parties as appropriate. The ASP also requested that the ASP Secretariat inform States Parties periodically of States that have recovered their voting rights following payment of their arrears. The recommendations addressed, among other things, the increased information sharing and updates between the Court and States Parties and the mechanisms for requesting, and assessing, exemptions from the loss of voting rights.

Relevant documents

Report of the Bureau on the Arrears of States Parties, ICC-ASP/5/27, 17 November 2006:
http://www.icc-cpi.int/library/asp/ICC-ASP-5-27_English.pdf

Report of the Bureau on the Arrears of States Parties, ICC-ASP/4/14, 29 August 2005:
http://www.icc-cpi.int/library/asp/ICC-ASP-4-14_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:
http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/4/Res.4, 2 December 2005: http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf

Report of the Committee on Budget and Finance on the work of its 7th session, ICC-ASP/5/23:
http://www.icc-cpi.int/library/asp/ICC-ASP-5-23_English.pdf

X. THE CRIME OF AGGRESSION

Background

68. While Article 5(1) of the Rome Statute lists the Crime of Aggression as one of the crimes under the jurisdiction of the Court, the Court cannot yet exercise jurisdiction over this crime because the Rome Diplomatic Conference did not reach an agreement on the definition and the jurisdictional conditions. Consequently, Resolution F of the Final Act of the Rome Conference requested that the subsequently established Preparatory Commission prepare proposals for a provision on aggression to be presented to the Assembly of States Parties for consideration at the first Review Conference. The provision on aggression shall enter into force in accordance with the relevant provisions of Articles 5(2), 121 and 123 of the Rome Statute.
69. The Preparatory Commission concluded its work in the form of a Coordinator's Discussion Paper. At its first session in September 2002, the ASP adopted a resolution that established a Special Working Group on the Crime of Aggression (SWGCA) to continue the work on a provision on aggression, and to meet during ASP sessions or at any other time that the Assembly deems appropriate and feasible.
70. The ASP Bureau appointed Ambassador Christian Wenaweser of Liechtenstein to chair the Special Working Group. The SWGCA is open to all States on an equal basis, and both States Parties and non-States Parties participate in the meetings. The Special Working Group has met during the second, third, fourth and fifth ASP sessions from 2003 through 2006. In addition, inter-sessional meetings were held in June 2004, 2005 and 2006.
71. The 2002 Coordinator's Discussion Paper has served as basis for the deliberations until now. Since 2005, the work has been further structured with the help of three additional discussion papers produced by three sub-coordinators. At the fifth session of the ASP in The Hague delegations stated that the time had come to update the 2002 Coordinator's paper to reflect progress achieved. A new Discussion Paper was produced by the Chair in January 2007 and served as basis for the negotiations starting at the resumed session of the fifth ASP.
72. The new paper continues to cover the draft provision for the crime of aggression in Section I and the Elements of Crime in section II. It also indicates where amendments might have to be made to other parts of the Statute in order to allow for a smooth incorporation of the provisions on the crime of aggression into the Statute. The revised paper is more streamlined, while continuing to include a variety of views with lists of options in square brackets and footnotes. The new paper does not however, contain any changes to the Elements of Crimes in Section II because they have not been discussed since 2002.

A. Discussions at the Fifth Session of the ASP in The Hague

Substantive Issues

73. The Chairperson of the Special Working Group asked States to comment on the report of the inter-sessional meeting held in Princeton in June 2006. The inter-sessional report focused on:
- The "act" of aggression – defining the act of the State
 - The conditions for the exercise of jurisdiction
 - The "crime" of aggression – defining the individual's conduct
 - Future work of the Special Working Group on the Crime of Aggression

74. Members of the Special Working Group widely agreed that the discussions had moved on to a new phase. Delegations stated that the time had come to update the 2002 Coordinator's paper in view of recent discussions and requested that the Chairperson submit a revised version that would reflect the progress achieved since 2002 and serve as a more current basis for discussion during the resumed fifth session of the ASP. The Chairperson agreed to the mandate and announced that the revision would be available in sufficient time prior to the resumed session.
75. Despite the short meeting times in The Hague, States offered opinions on the definition and the jurisdictional conditions. Most importantly at the fifth session, a new oral proposal was presented by Belgium to filter out politicized recourse to the Court. In the case of State referrals and proceedings initiated by the Prosecutor, an expanded Pre-Trial Chamber of nine Judges would make a preliminary decision. With the opportunity to appeal this decision, fourteen Judges would be engaged in this pre-trial safeguard. The filter would be purely judicial.

Timetable: The 'Roadmap'

76. During the fourth session of the Assembly of States Parties, it had been decided that from 2006 to 2008 the Special Working Group should be allocated at least 10 days of meetings in New York during resumed sessions and hold inter-sessional meetings as appropriate. The Working Group had also been allotted three days during the resumed fifth session of the Assembly of States Parties. The remaining days for resumed sessions within the relevant time period had still to be allocated. The CICC Team on Aggression expressed its interest that the Assembly should fully allocate the remaining days.
77. During the fifth session, the Special Working Group met three times for one and a half hour each, on Monday 27 November, Tuesday 28 November, and Wednesday 29 November.
78. At the fifth session, the ASP (paragraphs 37-38 of the *Omnibus* Resolution) recalled its earlier decision and decided to hold a resumed session of four days for the Special Working Group in the first half of 2008 in New York, and requested that the Bureau to fix specific dates.
79. In addition, (paragraph 50 of the *Omnibus* Resolution), the ASP reiterated that the 2007 resumed session in New York would have not less than three days (now four days) for the Special Working Group and 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.
80. As it had already done in its previous session, the Assembly recognized again that the Special Working Group needs to conclude its work at the latest 12 months prior to the Review Conference to be held in accordance with Article 123, paragraph 1, in order to be in a position to submit proposals for a provision on aggression, in accordance with article 5, paragraph 2, of the Statute and with Resolution ICC-ASP/1/Res.1.
81. Given that the Rome Statute provides for the Review Conference to be convened in 2009, the Special Working Group had already in 2005 decided to conclude its work in 2008. During the fifth session of the ASP, the Special Working Group was alerted to the possibility that the Review Conference might be held in 2010. Continued support was expressed for the idea of maintaining the existing timetable. However, a number of States thought that the work of the Special Working Group should also be extended beyond 2008 if the Review Conference were to be held in 2010.
82. The Special Working Group adopted its report on the fifth session, ICC-ASP/5/SWGCA/1, on 29 November 2006. On 30 November, the Assembly took note of it and decided that the earlier report of the inter-sessional meeting in Princeton, ICC-ASP/5/SWGCA/INF.1, should be annexed to the proceedings of the fifth session of the Assembly.

B. Discussions at the Resumed Fifth Session in New York

83. During the resumed fifth session of the ASP, the Special Working Group met for several meetings from 29 January to 1 February 2007. The Chairman recalled that the Special Working Group had decided to conclude its work 12 months prior to the Review Conference; that the Group was entering a new phase in its work; and that future discussion should narrow existing difference of opinion.
84. For the definition of the crime of aggression, States are examining three elements of the crime: the leadership requirement, the conduct element and the State act of aggression.

The Crime of Aggression: Defining the Individual's Conduct

85. In the discussion regarding the conduct element presented in two variants in the new Discussion Paper, more support was expressed for the differentiated approach in Variant (a). Countries appreciated the fact that this option, in contrast to the monistic approach in Variant (b), would treat the crime of aggression like other crimes under the jurisdiction of the Court with regard to the General Principles of Criminal Law in Article 25, paragraph 3(a)-(d). In addition, countries stated that Variant (a) better reflected the nature of aggression as a leadership crime. A clarifying paragraph should be added to Article 25, paragraph 3 in order to ensure that the General Principles on commission and participation would not extend the reach of the Court beyond the leadership circle.
86. Based on suggestions given during these and earlier discussions, the Chairman presented an alternative proposal on the definition of the individual's conduct that was discussed in informal consultations. This text reflected the differentiated approach and hence allowed Article 25, paragraph 3(a)-(d) to apply. The definition of the crime in the new text patterned the structure used for the other three crimes, particularly as the leadership clause is placed into a separate chapeau similar to Article 8 of the Statute. States continued to agree that the leadership requirement applies also to Article 25, paragraph 3 and asked either for a slight rewording of the chapeau or again for the addition of a leadership clause to Article 25 paragraph 3, the latter which was the preferred choice. Altogether, the discussions revealed a broad preference for the alternative text while some other countries expressed the need for more time to reflect.
87. Several objections were raised with regard to paragraph 3 insofar as it provides for the non-applicability of Article 25, paragraph 3(f) (attempt) and Article 28 (command responsibility). While it was clear that the provision would rarely fit with the character of the crime of aggression, an express exclusion would be unwise. In unusual circumstances where the application of Article 28 would make sense, no reason existed for a treatment differently from genocide or the other crimes.

The Act of Aggression: Defining the Conduct of the State

88. For the act of aggression, the debate continues as to whether the definition should be generic or specific, with some states considering a combined approach to constitute a third option. In general, a generic definition does not include a list of acts of aggression while a specific definition is accompanied by a list such as the one contained in Article 3 of UN General Assembly resolution 3314 of 14 December 1974. Yet not all States agree on these meanings for all variations. The combination of a generic definition with a non-exhaustive list has been named differently by different States, i.e. either a generic or a specific or a combined definition.
89. At the resumed session, broad support was expressed for the term "act of aggression", which relates for many, but not all, States to the specific definition. However, a few countries felt that the notion of "armed attack," should be retained, especially since it reflected that only act giving rise to self-defence under Article 51 of the UN Charter would be covered. The preference for "armed attack" has

typically been tied with a preference for a generic definition but proposals were also made for a combined approach.

Qualifying the nature or object and result of the State act of aggression

90. Two bracketed texts at the end of paragraph 1 in the new Discussion Paper centred on the possibility of adding a threshold on the nature or object of the State act of aggression, and that the result of a State's act would exclude borderline cases from the Court's jurisdiction. The first bracketed text required that the act "by its character, gravity and scale, constitutes a manifest violation" of the UN Charter. The second bracketed text reintroduces specific markers as threshold guidelines, i.e. "war of aggression" or the "object or result" of occupation or annexation.

91. While broad support was reflected in the need for a threshold, where the first bracketed text was much preferred over the second, there were some delegations that felt there was no such need. They felt that the use of language qualifying the State's act as a "manifest violation of the Charter of the UN" was unnecessary since the threshold was inherent in the limited jurisdiction of the Court to the most serious crimes of international concern. Countries continued to express varying views about the retention of "war of aggression."

Reference to GA resolution 3314

92. Paragraph 2 of the new Discussion Paper reshaped the definition of the "act of aggression", one of the elements of the crime as already set out in paragraph 1. The definition is now separated from the jurisdictional conditions, responding to concerns under the principle of legality. Two options are offered for the definition of the "act of aggression" itself. The definition would consist either of a reference to GA resolution 3314 as a whole or a reference to Articles 1 and 3 of that resolution.

93. There was broad support for the retention of a reference to GA resolution 3314 in some form. There was increasing endorsement for references to Article 1 and 3 of the resolution mainly due to the impact of Article 4 of the resolution which would allow references to unspecified acts may violate the principle of legality. There were however, some who favoured reference to the resolution in its entirety, others which asked for the insertion of text from the resolution instead of a reference. Others who preferred a generic or a combined definition independently of or less closely tied to the resolution, while others doubted the need to reference the resolution all together.

Conditions for the exercise of jurisdiction

94. Discussions during the resumed fifth session continued with the question on whether the exercise of jurisdiction over the individual crime of aggression should require a prior determination of the State act of aggression by the Security Council and what the consequences of the absence of this determination should be (2007 Discussion Paper, Paragraphs 4 and 5).

95. A small number of States continued to argue that Article 39 of the UN Charter gives exclusive authority of this determination to the Security Council. The vast majority of States did not agree and supported the idea that the Prosecutor should be able to proceed with an investigation without the Security Council's prior determination on the State act primarily since the involvement of a political body may undermine the Court's independence. Within that majority, different approaches were offered.

96. Some States were of the opinion that the authority of the Security Council to make a determination is unrelated to the area of international criminal law. More States argued that the Security Council has a primary, but not exclusive, authority to make a determination of the act of aggression. Many were advocating that the Court could proceed if the Security Council had not made a determination. It was

repeatedly argued that the Statute addressed the relationship with the Security Council already sufficiently.

97. Some States required involvement of the UN General Assembly (GA) or the International Court of Justice (ICJ) before the Court could proceed in the absence of a Security Council determination. The SWGCA focused in particular on the continuing viability of Options 3 and 4 in the new Discussion Paper. The new Option 4 requires a decision by the ICJ under Chapter 2 of its Statute. The former Option 4 requiring an advisory opinion of the ICJ, combined with two sub-options, was deleted. Support for these options diminished but did not disappear. New Zealand and Romania, who had originated together with Bosnia-Herzegovina one of the sub-options, expressed their objection to the deletion.
98. In addition, many States felt that in order to safeguard the rights of the defendant, the Court should in any event not be bound by a determination on the act of aggression by the Security Council. It was generally agreed that the existence of a prior determination of the act of aggression by another institution may not be relied upon in violation of due process rights of the accused.
99. The Netherlands, the originator of the second sub-option, pointed out that the deletion did not solve the problem, namely what to do in the case of a situation where the international community as a whole would want the ICC to proceed but would be blocked due to the veto power in the Security Council. The Netherlands thus proposed a new option in the absence of a Security Council determination, combining and moving beyond elements of Options 2, 3 and 4: “[T]he Court may not proceed with the case, unless it ascertains that the General Assembly or the International Court of Justice has made a determination of an act of aggression committed by the State concerned.”
100. There were a number of new proposals submitted in the course of the resumed fifth session. Belgium officially tabled its proposal mentioned during the regular fifth ASP session to find a compromise on the jurisdictional conditions element. In the case of State referrals and proceedings initiated by the Prosecutor, an expanded Pre-Trial Chamber of six Judges would be responsible for the authorization of the investigation either through a qualified majority or unanimously. The decision could be appealed. While some States welcomed the proposal, others saw it purely in procedural terms and found it premature. It was suggested to streamline the structure and to give further thought to the number and type of expertise of the Judges. Belgium announced that it would revise the proposal taking into account the comments.
101. Norway presented a proposal to redraft Paragraph 4 of the Discussion Paper, expressing the idea that the Court may exercise its jurisdiction in respect to the crime of aggression where a prior Security Council determination existed. Norway felt that there would be agreement to this extent and not preclude agreement on further jurisdictional options in Paragraph 5. While some delegations supported the proposal, others felt that proposed formulation prejudged the outcome under Paragraph 5, namely lead to the conclusion that the Court could not proceed in the absence of a Security Council determination. Still others thought that it was difficult to evaluate the proposal without looking at the inter-linkage with the options under Paragraph 5.
102. Sweden provided a proposal with two types of amendments to Paragraph 4, and hence having a consequence to Paragraph 5. The first amendment idea incorporated the possibility that the Security Council give the Court a “green light” to proceed without having determined that an act of aggression occurred. The jurisdictional consequences would follow only if neither a determination nor a declaration has been made within the time frame spelled out in that provision. The second amendment requires the Court to provide information and evaluation to the Security Council which might assist its deliberations. It required the Court to notify the Council of a situation before it when neither such a declaration nor a determination of an act of aggression was made.

103. The idea of a “green light” declaration by the Security Council received mixed reactions. Negative responses were often due to the belief that the proposal would give the Security Council more authority and increase the Court’s subordination to the Council. The amendment on the provision of information received likewise divergent responses. While many States have moved behind the idea of a dialogue between the Court and the Security Council, several saw again an undue increase of the Court’s subordination to the Council.
104. The Special Working Group adopted its report about the session in New York, ICC-ASP/5/SWGCA/3, on 1 February 2007.

Relevant documents

Discussion Paper Proposed by the Chairman, 16 January 2007, ICC-ASP/5/SWGCA/2:
http://www.icc-cpi.int/library/asp/ICC-ASP-5-SWGCA-2_English.pdf

Report of the Special Working Group on the Crime of Aggression, 29 November 2006, ICC-ASP/5/SWGCA/1: http://www.icc-cpi.int/library/asp/ICC-ASP-5-SWGCA-1_English.pdf

Informal Inter-sessional Meeting of the Special Working Group on the Crime of Aggression, 5 September 2006, ICC-ASP/5/SWGCA/INF.1:
http://www.icc-cpi.int/library/asp/ICC-ASP-5-SWGCA-INF1_English.pdf

Report of the CICC Team on the Crime of Aggression on the 2006 Inter-sessional meeting, August 2006:
http://www.iccnw.org/documents/TeamReportOnIntersessionalMeeting_26Aug06.pdf

Discussion paper on the definition and elements of the crime of aggression prepared by the Coordinator of the Working Group on the Crime of Aggression during the Preparatory Commission of the International Criminal Court, PCNICC/2002/2/Add.2, also ICC-ASP/2/10, Annex II:
http://www.un.org/law/icc/asp/2ndsession/report/english/annex_ii_e.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>

Resolution ICC-ASP/5/Res.3 “Strengthening the International Criminal Court and the Assembly of States Parties”, in Official Records, Assembly of States Parties, Fifth Session, The Hague, 23 November-1 December, 2006, ICC-ASP/5/32, Part III, Resolutions adopted by the Assembly of States Parties:
http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

XI. REVIEW CONFERENCE

Background

105. Mr. Rolf Fife, the appointed Focal Point to the ASP on the Review Conference, issued a report that was presented to the States Parties attending the ASP during informal consultations at the ASP. The report, which reflects the views of the States with which the Focal Point had established contact, explores the nature and purpose of the Review Conference, and presents options and scenarios for the consideration of the ASP.
106. Although, as reflected by the Focal Point's report, the approaches proposed by States had been few and limited in scope, Mr Fife attributes this to a 'caution that reflects a deep commitment to the aims and integrity of the Statute'. Some States, nevertheless, have had previous discussions on the matter at conference in Salzburg between 25 and 27 May 2006. A report from this retreat was also distributed among the different delegations at the ASP.
107. On 18 and 19 September 2006, the CICC, in cooperation with Amnesty International, organised a meeting in Amsterdam with a number of its most active members in order to strategise on the role of NGOs leading up to the Review Conference. This meeting helped the CICC Team on the Review Conference to discuss a number of legal, substantive and procedural issues and to identify general concerns and define positions, at this stage, on the procedural aspects that ought to be dealt with in preparation for a successful Review Conference.

Timetable and Participants

108. During the informal consultations, the Focal Point distinguished between the technical issues that ought to be dealt with leading up to the Review Conference, such as, the rules of procedure; financial and timing issues; and the more substantive matters, which Mr. Fife defined as the scope of the Review Conference, and ultimately, the agenda for such a Conference. The Focal Point suggested assigning to one of the Bureau Working Groups (preferably the one in New York so as to assure broad participation) the task of dealing with the technical issues as a preliminary phase of the preparations for the Review Conference. At the same time, he suggested that the ASP Secretariat prepares some basic documents, such as draft rules of procedures and an illustrative document on budgetary implications, of different hypothetical scenarios on scope, length and venue. This last document ought to be submitted to the Committee on Budget and Finance before its meeting in April 2006.
109. The CICC Review Conference Team, which had issued a paper recommending the ASP to start planning for this Conference in order to ensure that procedures, structures and an adequate budget are available in time, welcomed the approach taken by the Focal Point as an important first step to the success of the Review Conference. This concern was shared by a number of delegations during the General Debate. The openness of this mechanism for liaising and consulting with civil society, as suggested by the Focal Point, was seen with especial satisfaction by the team.
110. The informal discussions benefited from a presentation by the Austrian delegation on the dialogue held at Salzburg. According to Austria, the Review Conference should be an opportunity for stock-taking and not necessarily one for amending the Statute and referred to the Conference as a chance to bring together academics, NGOs, Government experts in informal sessions and hence establish a symbiotic relation.

111. Some delegations, like Liechtenstein, expressed their concern about the timing of the Conference and thought that it should be taken into consideration that the Special Working Group on the Crime of Aggression has a mandate to finish its work 12 months in advance of the Review Conference.
112. Finally a decision was made by the ASP in its *Omnibus* Resolution, along the lines of the suggestions presented by the Focal Point. By virtue of this decision, the ASP took note of the preliminary report presented by the Focal Point and requested the Bureau to start preparation of the Review Conference focusing on issues of procedure and on practical and organisational issues such as dates and venue. Mr. Fife was re-appointed as the focal point.

Relevant Documents

Salzburg Retreat, The Future of the International Criminal Court, 25 – 27 May 2006:

<http://www.sbg.ac.at/salzburglawschool/Retreat.pdf>

Recommendations to the Fifth Session of the Assembly of States Parties (23 November to 1 December 2006), CICC Team on Review Conference:

<http://www.iccnw.org/documents/Review%20Conference%205%20ASP-CICC%20Team%20Paper.pdf>

Review Conference: scenarios and options - Preliminary paper by Mr. Rolf Einar Fife:

http://www.icc-cpi.int/library/asp/ICC-ASP-5-INF2_English.pdf

Resolution ICC-ASP/5/Res.3 “Strengthening the International Criminal Court and the Assembly of States Parties”, in ICC-ASP/5/32 Part III, Resolutions adopted by the Assembly of States Parties:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

XII. COOPERATION

Background

113. In various forms, NGOs have advocated for a more active role by 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 during the General Debate.

Issues

114. With the Court now in the judicial phase of its activities and having four outstanding arrest warrants, the issue of cooperation has become much more pressing for the Court and States Parties.

115. The *Omnibus* Resolution coordinator introduced a new section (paragraphs 30-36) in the Resolution entitled “Cooperation and Implementation” which pulled prior cooperation language from the fourth session’s *Omnibus* Resolution.

116. The section also introduced new language (paragraphs 30, 33 and 35) that welcomed the efforts undertaken by the Court to foster cooperation with States, international and regional organisations and civil society and stressed that effective cooperation remains essential for the Court to carry out its activities; encouraged States to include the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws and to ensure effective enforcement of those laws; and called upon States to enter into arrangements with the Court concerning witness relocation and sentence enforcement.

117. The ASP requested (paragraph 36 of the *Omnibus* Resolution) that the Bureau address the issue of cooperation and report back at the next regular session. The *Omnibus* Resolution coordinator introduced this language due to supporting statements by countries during the General Debate.

Relevant documents

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/4/Res.4, 3 December 2005: http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf

XIII. OVERSIGHT MECHANISM

Background

118. During the fourth session, H.E. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) called for proposals to be made on Article 12 paragraph 4, stating that “the potential damage to the Court arising from allegations, could, as we have seen amongst other organisations, 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.”
119. The ASP decided (Resolution ICC-ASP/4/Res.4) “to invite the Court, in consultation with the Bureau, to submit proposals about an independent oversight mechanism.” While the Court currently has external financial oversight mechanisms and internal structures to deal with misconduct by staff, no independent, investigative capabilities exist. In addition, under Article 112(4) the Assembly “may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.”
120. The Assembly appointed Prince Zeid as the New York Bureau Working Group facilitator on oversight.

Issues

121. During the fifth session, the Court (Registry) provided an oral interim report on the establishment of an independent oversight mechanism. The Court decided to postpone submitting its report to the ASP for one year. A comprehensive report on oversight will be submitted at the sixth session. The Court is awaiting the outcome of discussion in the UN Sixth Committee (Legal) this year which may influence the development of the Court’s own mechanism. A convention is expected to be adopted.
122. The ASP decided (paragraph 23 of the *Omnibus* Resolution) to take note of the interim Court report and invite the Court, in consultation with the Bureau, to submit concrete proposals for the establishment of an independent oversight mechanism to the next regular ASP session.

Relevant Documents

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/4/Res.4, 3 December 2005: http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf

XIV. RATIFICATION, IMPLEMENTATION & PARTICIPATION

Background

123. At its fourth session, the ASP decided (Resolution ICC-ASP/4/Res.4) to “keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto”. The ASP also requested the 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.
124. Additionally, the ASP decided to make a provisional change to the terms of the least developing countries (LDC) Trust Fund to allow other developing States to access the fund, thereby increasing participation by such States in Assembly of States Parties meetings and activities. The ASP requested the Bureau to review the terms of the Trust Fund and make recommendations on application criteria to the fifth session of the ASP and called on States to make increased contributions to the Fund.
125. The Bureau reported on these issues at the fifth session. Jennifer McIver (New Zealand) was appointed facilitator for the New York Bureau Working Group. The facilitator’s report and annexed Plan of Action for achieving universality and full implementation of the Rome Statute was submitted to the Assembly.

Issues

126. Based on the facilitator’s recommendations, the ASP Structures and Functions team requested that the ASP Secretariat should be granted sufficient resources to adequately support the ASP ratification and implementation efforts, including implementing the Bureau Working Group’s Plan of Action. In addition, at each session, the team recommended that the ASP consider the report prepared by the Secretariat on the implementation of the Plan of Action and any other relevant submissions.

Ratification and Implementation

127. The ASP decided (paragraph 1-5, 32 and Annex I of the *Omnibus* Resolution) to endorse the recommendations provided by the facilitator’s report and to adopt and implement the Plan of Action. The ASP further requested that the Bureau review implementation of the Plan of Action and progress towards its objectives and to report thereon to the Assembly in advance of its sixth session.

Participation

128. The Assembly noted that 22 delegations had made use of the Trust Fund to attend the fifth session of the Assembly.
129. The ASP (paragraph 39 of the *Omnibus* Resolution) requested that the Registrar of the Court revise the terms of the Trust Fund to allow other developing States to draw on the Fund and requested that the Secretariat ensure that information regarding the availability of assistance from the Trust Fund is widely disseminated among developing States prior to the annual session of the ASP and also that States Parties, in particular the least developed countries, are accorded priority access to the Fund.

The ASP also reiterated its call upon States, international organisations, individuals, corporations and other entities to contribute to the Fund.

Relevant Documents

Report of the New York Working Group on Ratification and Implementation of the Rome Statute and on Participation in the Assembly of States Parties, ICC-ASP/5/26, 17 November 2006:

http://www.icc-cpi.int/library/asp/ICC-ASP-5-26_English.pdf

Establishment of a trust fund for the participation of the least developed countries in the activities of the Assembly of States Parties, ICC-ASP/2/Res.6:

http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/ICCASP2_EN.pdf

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/5/Res.3, 1 December 2006:

http://www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Strengthening the International Criminal Court and the Assembly of States Parties (*Omnibus* Resolution), ICC-ASP/4/Res.4, 2 December 2005: http://www.icc-cpi.int/library/asp/PartIII_-_Resolutions.pdf

XV. ICC PREMISES

Background

130. 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 that they meet the requirements of an international court. The interim premises have reached their maximum capacity and additional office space has been sought in the Hoftoren, a high-riser building in the centre of The Hague. As of 2008, the Court will also move into half of the Haagsche Veste, a still to be constructed building around the corner from the Court's main building the ARC. The option of a prefabricated building as discussed at earlier occasions is off the table.
131. Meanwhile, steps are being taken toward the establishment of permanent premises of the Court. The Host State has provided three alternatives for the Court's future premises: staying in the current building, the ARC, and making more adjustments; moving to the building(s) of the ICTY after it closes; or building purpose-built premises on the army barracks site of the Alexanderkazerne, a former military building in the outskirts of The Hague.
132. Most actors involved, including the Host State, the Court and many States Parties, have always considered the Alexanderkazerne option as the most favourable one. It provides for the most flexibility and scalability constructing secure, representative and effective Court premises. With a view on making this option more attractive to the States Parties, the Host State introduced an additional financial bid at the ASP session in 2005 with regard to the Alexanderkazerne option, providing for a loan of €200 million at a fixed interest rate, the land of the site and the organisation of an architectural competition.
133. The discussion of the permanent premises by the ASP Bureau was assigned to the Working Group in The Hague led initially by Ambassador Gilberto Saboia (Brazil) and later succeeded by Mr. Masud Husain (Canada). In September 2006, a meeting was organised with architectural/building experts from Austria, Germany, Hungary and the UK to evaluate the different options. According to those States in attendance, the meeting answered many questions, put the discussion into perspective and created momentum within the HWG to make progress on the issue and prepare the draft resolution discussed at the ASP.

Timetable and Participants

134. Mr. Masud Husain (Canada) chaired the Working Group on the Permanent Premises and discussed the draft resolution as prepared by The Hague Working Group in formal sessions on Saturday 25 November, Monday 27 November, and Wednesday 29 November as well as in one informal session on Tuesday 28 November.
135. Initially, much more time was scheduled to discuss the draft resolution (4 slots of 1.5 hours) than was, in the end, required to come to a consensus.
136. In the context of the discussion on the Programme Budget 2007, the budgetary implications of additional interim office space was addressed. The Working Group on the Budget was chaired by Ambassador Jürg Lindenmann (Switzerland).

Issues

137. As the discussion on interim premises has evolved into a managerial discussion between the Court and the Host State, the Coalition has fewer opportunities to make substantive contributions and was not as much involved in following the issue as it had previously been. The Assembly learnt from the Host State that the additional costs for the interim premises in 2007 would not be more than what was anticipated initially for the prefabricated buildings and which was foreseen in the Court's proposed draft budget.
138. The Premises Team of the Coalition focused on permanent premises throughout the ASP session. The draft resolution as it was prepared by The Hague Working Group in the fall of 2006 was discussed and adopted at the ASP, largely in line with the recommendations that the Coalition had issued. There was a broad consensus on the draft resolution among the States that had participated in the HWG discussions.
139. The Resolution proposes to focus only on the Alexanderkazerne option, without this decision being definite, and invites the Court to prepare a functional brief, and the Host State to submit detailed information with regard to the additional financial bid it made at the ASP session in 2005. If the ASP Bureau, in spring 2007, deems the information to be sufficient, it can request the Host State to conduct a pre-selection of architects.
140. The UK delegation insisted on language in the Resolution that if the Host State is allowed to organise the pre-selection of the architect, this decision does not necessarily mean a final decision on the Alexanderkazerne site. This language was discussed during the informal meeting on 28 November and the relevant operative paragraph 6 now reads: "Mandates the Bureau, if it is satisfied with the information provided under operative paragraphs 2, 3 and 5 above, to invite the host State to commence provisionally an international pre-selection process for architects, in accordance with the host State offer to organise and fund such a process, without prejudice to the prerogative of the Assembly of States Parties to respond to the remaining elements of the further host State bid of 25 January 2006". This Resolution is widely seen as progressive and positive.
141. During the general debate, mention of the permanent premises was made by a number of States Parties mainly pressing for progress on the issue.
142. During preparatory NGO meetings, concerns were raised about the suitability of the Alexanderkazerne as a site for the ICC where victims and witnesses, often with prior traumatic experiences with military sites and symbols, would come to participate in trials. Taking advantage of many NGO members from the regions being present, the Coalition, together with the Host State, organised a tour for a selected group of NGO representatives to the Alexanderkazerne to assess the suitability of the site from a victim's perspective.
143. The conclusion was that, although few symbols of military presence are visible or would remain in place, concerns remain nonetheless with the military barracks that will stay at the other side of the street as well as with the reference to the site as former 'barracks'. The NGOs recommended that these concerns should be taken into account when developing an option for the future permanent premises of the Court.

Relevant Documents

Resolution “Permanent Premises”, In: ICC-ASP/5/32 Part III:

www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.pdf

Report on the future permanent premises of the International Criminal Court - Comprehensive progress report: www.icc-cpi.int/library/asp/ICC-ASP-5-16_English.pdf

Report on the governance arrangements for the permanent premises of the International Criminal Court:

www.icc-cpi.int/library/asp/ICC-ASP-5-17_English.pdf

Report of Seventh Session of the Committee on Budget and Finance:

www.icc-cpi.int/library/asp/ICC-ASP-5-23_English.pdf

Proposed programme budget for 2007 of the ICC (section on premises):

www.icc-cpi.int/library/asp/ICC-ASP-5-9_English.pdf

Report of the Sixth Session of the Committee on Budget and Finance:

www.icc-cpi.int/library/asp/ICC-ASP-5-1_English.pdf

Documents produced by the CICC Secretariat: Compilation of Documents on Premises – upon request:

vanderveen@iccnw.org

XVI. ICC RECRUITMENT

Background

144. The recruitment of permanent professional staff (contracts of at least one year) at most international organisations, and also at the ICC, is subject to a policy of “equitable geographical representation”, requiring the organisation to recruit a certain percentage of its staff from each member state. This percentage is calculated on the basis of a number of factors, mirroring the UN system. As a result, States Parties that pay higher contributions have an advantage in terms of the number of nationals that can work for the organisation. Triggered by research produced by the Coalition, equitable geographical representation and gender balance of ICC staff was addressed in the *Omnibus* Resolution adopted at the ASP session in 2005, inviting the ASP Bureau to submit proposals on improving geographical representation and gender balance.

Timetable and Participants

145. The ASP Bureau assigned this task to the Hague Working Group, and in the summer of 2006, Ambassador Mworira (Kenya) was appointed facilitator for this issue. The Coalition presented research introducing ways of improving geographical representation at the ICC to the facilitator in August 2006. In November 2006, the CICC Secretariat and the Women’s Initiatives delivered presentations on geographical representation and gender balance to The Hague Working Group

146. The facilitator did not prepare proposals on geographical representation and gender balance for the Fifth Session of the ASP and it was not officially included as an item on the agenda. However, the relevant language in the *Omnibus* Resolution was changed. The Working Group on the *Omnibus* Resolution was chaired by Mr. Jürg Lauber.

Issues

147. NGOs were disappointed that the request from the fourth ASP to the Bureau to submit proposals to improve equitable geographical representation and gender balance had not been met. Instead, the request to the Bureau was renewed, and slightly modified to present a detailed report to the 6th session on the status thereof, including, if necessary, any proposals to further the recruitment process (paragraph 22).

148. The Resolution also repeated the language of the *Omnibus* resolution from the fourth session in terms of recruitment: “Reminds the Court of its obligation under the Statute, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, violence against women or children” (paragraph 21).

149. The Coalition advocated for official meeting times to get a sense of what States Parties’ positions were regarding geographical representation and gender balance. However, a number of States did not think it was the right time for such a meeting. The Coalition organised a meeting with the Acting Head of Human Resources, Mr. Massimiliano Casciana, which was open to interested NGOs and a number of issues relevant to the ICC’s recruitment procedures, dissemination of vacancies and related matters were discussed.

150. A number of States addressed geographical representation and gender balance briefly in their statements in the general debate, underscoring the importance of the issue.

Relevant Documents

Resolution ICC-ASP/5/Res.3 “Strengthening the International Criminal Court and the Assembly of States Parties”, in: ICC-ASP/5/32 Part III, Resolutions adopted by the Assembly of States Parties:
www.icc-cpi.int/library/asp/PartIII_Resolutions_ADVANCE_COPY_English.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

For statistics on gender and geographical representation at the Court, see:
http://www.iccwomen.org/publications/resources/docs/Gender_Report_Card_2006.pdf

Internal CICC draft policy paper on geographical representation; upon request: vanderveen@iccnw.org

XVII. HEADQUARTERS AGREEMENT

Background and issues

151. The Headquarters Agreement between the ICC and the Netherlands regulate privileges, immunities, facilities and other relevant issues to apply to the Court on the territory of the Netherlands. Negotiations on the text of the Headquarters Agreement between the two parties began in January 2003. During the negotiation process, the State Parties to the Rome Statute were guided by the ‘Basic principles governing a headquarters agreement to be adopted between the Court and the Host Country’³, which had been adopted by the Assembly of State Parties. In 2006, the negotiations on the draft agreement were completed and at the fifth session, it was presented to, and approved by, the Assembly of State Parties.

152. The Headquarters Agreement will enter into force upon approval by the Dutch Parliament, which is expected to take at least a year. The Agreement will not apply provisionally. However, in November 2002, pending the entry into force of the permanent Headquarters Agreement, it was agreed that the provisions of the Headquarters Agreement with the Yugoslavia Tribunal would apply, *mutatis mutandis*, to the ICC. Further, at the fifth session, the host State also “expressed a willingness, should the need arise and to the extent compatible with existing legislation, to consider the possibility of applying the provisions of the draft headquarters agreement as fully as possible in advance, even without the express provision on its provisional application.”

Relevant Documents

Report on the draft headquarters agreement between the International Criminal Court and the host State:
http://www.icc-cpi.int/library/asp/ICC-ASP-5-25_English.pdf

³ Drafted by the ICC Preparatory Commission and adopted by the Assembly in September 2002

XVIII. JUDICIAL VACANCIES

Background

153. The resignation of Judge Clark was effective as of 10 December 2006. According to the procedures adopted by the ASP (Res ICC-ASP/3/Res. 6) the Bureau shall fix the venue and date of the election to be held not later than 20 weeks after the occurrence of the vacancy (i.e. before 30 April 2007). In case of a vacancy, the nomination period should open 12 weeks before the elections and shall last 6 weeks.

Issues

154. During the Resumed fifth session, the Bureau mentioned two alternatives; first, to call for an additional resumed session to hold the elections, which would have financial consequences; or second, to postpone the elections until the sixth session and to amend Res ICC-ASP/3/Res. 6 accordingly. The ASP decided for the second option, i.e. to hold the election of a one ICC judge (to replace Judge Clark) during the sixth session on 30 November – 14 December 2007. The nomination period was set to run from 1 June to 24 August 2007.

155. Operational paragraph 27(a) of ASP Resolution 3/6 was amended and now reads (addition in square brackets): “Within one month of the occurrence of the judicial vacancy, the Bureau of the Assembly of States Parties shall fix the venue and date of the election, which should not be later than 20 weeks after the occurrence of the vacancy [unless the Bureau decides otherwise after consulting the Court].”