



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Second meeting (open meeting)

The Hague, 18 April 2016 (morning)

Agenda and decisions

The meeting was chaired by the President of the Assembly, H.E. Mr. Sidiki Kaba (Senegal)

1. Permanent premises

Pursuant to resolution ICC-ASP/13/Res.6, operative paragraphs 10 and 13, the Bureau held a meeting open to all States Parties, to discuss the audit report on the project accounts of the permanent premises project¹, with the participation of the Chair of the Oversight Committee (“the Committee”), the Director of the Permanent Premises Project and the External Auditor.

a) Briefing by the Oversight Committee

The Chair, H.E. Ms. Sabine Nölke (Canada), informed the Bureau that the project was exceeding the unified budget envelope of €204 million. The Chair recalled that the unified project budget could only be increased through an explicit decision of the Assembly, that therefore the decisions on the budget ceilings remained binding² and that any costs above the expected expenditure level of €204 million may not be financed through the unified project budget. The Chair informed the Bureau that on 11 March 2016 the Committee had sent a letter to the Principals of the Court, highlighting the above decisions and stressing that the possibility of absorbing the new cost overrun through the regular budget of the Court should be considered, as this would amount to approximately 0.5 – 1 per cent of the Court’s budget.

The Chair further informed the Bureau about the Committee’s consideration of the External Auditor’s report and that while Assembly resolution ICC-ASP/13/Res.6, paragraph 13, referred to the issue of responsibility and accountability, it was her opinion that States Parties should recognize that the project was an overall success, and rather than assigning blame, States Parties should focus on ironing out the open issues. The Chair underlined the importance the Committee attached to transparency and encouraged States Parties to attend the meetings of the Committee as observers.

States expressed their concern over the new cost overrun and inquired when the total costs of the project would be known or what final figure was estimated at the moment. The Project Director, Mr. Philip Dubbeling, informed States that his office was in discussion with the general contractor on a variety of compensation events and that the contractor was not ready to accept the delay penalty of €600,000. Under the contract, the contractor was bound to pay a penalty of €10,000 per day to

¹ ICC-ASP/15/4. The report of the External Auditor on the project accounts, with emphasis on the cost overruns, was submitted to States Parties in its original French version on 18 March 2016 and in its English translation on 29 March 2016.

² ICC-ASP/13/Res.6 ; ICC-ASP/14/Res.1 ; ICC-ASP/14/Res.5.

compensate the extra costs incurred by the Court due to the delay in the handover of the premises from 1 September to 2 November 2015. The Project Director highlighted that his office tried to close out the project as soon as possible but that time was needed to sort out these issues and to be able to investigate on which grounds the constructor rejected the delay penalty. The Project Director estimated a final figure for the permanent premises between €205.7 and €206 million.

States shared the view that only the Assembly could authorize a budget increase to finance the cost overrun and that the Court should absorb the cost overrun within its annual budget. However, it was also pointed out that any absorption of the costs within the regular budget of the Court would most probably lead to future financial obligations for State Parties, most likely by having to replenish the Contingency Fund and other precautionary reserves.

The Court informed States that it had not replied to the Committee's letter yet, as it was looking into the implication of the suggested cost absorption and had identified a possible compliance issue in this regard. The budget, as approved by the Assembly, had to be used for the purpose budgeted for, and costs connected to the construction of the permanent premises should not be absorbed through the regular budget unless authorized by the Assembly. The Court therefore suggested that once the final costs were known the Assembly should decide on how to fund the overrun.

The External Auditor, Mr. Richard Bellin, also added his voice to this discussion, stressing that funds should be used for the purposes for which they were created.

b) External Auditor's report on permanent premises cost overrun

The External Auditor gave a brief introduction of the report to the Bureau. He highlighted that while he understood that States wanted to see the project delivered within the approved budget envelope, the cost overrun was minor by reference to the overruns commonly observed in construction projects of similar size.

The External Auditor highlighted the three weaknesses of the permanent premises project identified by the audit and outlined in the report:

- 1) The late decision of States Parties to merge the transition and construction budgets, partly absorbing the transition costs in the financial envelope through a reduction in the construction budget following the tender invitation.
- 2) The lack of a clear information sharing mechanism between the project manager, the Project Director's Office and the Oversight Committee, outlined in the governance structure.
- 3) A lack of budgetary prudence regarding the contingency reserve.

On inquiry, the External Auditor clarified that the audit report was based on the accounts as they stood as at 2 February 2016.

A Committee member highlighted the Committee's surprise that it had not been invited by the External Auditor to comment on the draft of the report, and that it would have appreciated if the External Auditor would have recognized the utility of receiving the Committee's comments. The Bureau therefore decided to hear from the former Chair of the Committee, Mr. Roberto Bellelli (Italy).

Mr. Bellelli concurred with the scope and the details of the External Auditor's report. However, he also outlined the reasons behind the budget unification, clarified that while the Committee had not always received all relevant information from other stakeholders, that it had

extensive discussion on the information received, and that the Committee had been assured by the Project Director that the contingency reserve was sufficient at the time when it was reduced.

Mr. Bellelli further highlighted that the budget overrun was caused by programme changes in the amount of €8.3 million. The Committee had discussed many of these changes extensively at its meetings. While they should have been approved beforehand by the Assembly, this was not possible as the Assembly only met once a year while the project had its own timelines.

The Project Director concurred with the audit's findings as well as with Mr. Bellelli's comment on the challenges of reconciling the Assembly's decision-making with the project's timelines.

2. Activities of the President

At the outset the President expressed his appreciation for Vice-President Alvaro Moerzinger's remarkable work in the framework of The Hague Working Group.

The President welcomed El Salvador's accession to the Rome Statute and indicated that he would return to The Hague on 2 June for a ceremony to welcome the newest State Party.

The President expressed his appreciation for the work done by the Coalition for the International Criminal Court and other civil society organizations with regards to universality. He informed the Bureau about his high-level dialogue with State authorities, especially on the African continent, to raise awareness about the Court and its activities.

Second meeting

The Hague, 18 April 2016 (afternoon)

Agenda and decisions

The meeting was chaired by the President of the Assembly, H.E. Mr. Sidiki Kaba (Senegal)

With regard to the issue of reform of working methods, the President requested the Vice-President to take stock of all proposals of a technical and organizational nature, which would then be considered at the third meeting of the Bureau, tentatively scheduled to take place on 2 June.

In order to allow for an early identification of the incoming President who would assume office at the end of the sixteenth session of the Assembly in December 2017, and bearing in mind that all the five regional groups had already presided the Assembly, the Bureau recommended that the next President be from the Asia-Pacific region. The members of that regional group would thus be encouraged to begin the consultations thereon.

1. Mandates from the Assembly to the Bureau

The Bureau began its consideration on how to proceed with the mandates entrusted to it by the Assembly and decided to revert to their consideration at its next meeting.

2. Appointment of facilitators and focal points of The Hague Working Group

On the basis of the letter of Vice-President Alvaro Moerzinger to the President, dated 15 April 2016, the Bureau decided to appoint the following focal points and the Co-Chairperson of the Study Group on Governance:

Study Group on Governance: H.E. Mr. Hiroshi Inomata (Japan) as Co-Chairperson. Ambassador Inomata will replace Ambassador Masaru Tsuji who concluded his posting in The Hague in March.

Cluster I: Ms. Erica Lucero (Argentina) as co-focal point

Reform of Working Methods: Mr. Carlos Garcia (Guatemala) as special adviser

Legal aid: Mr. Carlos Garcia (Guatemala) as focal point

3. Fifteenth session of the Assembly

The Bureau began its consideration of the provisional agenda for the fifteenth session of the Assembly and decided to revert to the matter at its next meeting.

4. Other matters

a) Independent Oversight Mechanism

The Bureau took note of the quarterly reports of the Independent Oversight Mechanism for the period October to December 2015, and the period January to March 2016, as submitted by the Head of the IOM.

b) Legal aid

The Bureau took note of the Registry's biannual report on legal aid, contained in document CBF/26/2, dated 5 February 2016, for the period July – December 2015, submitted pursuant to the request of the Committee on Budget and Finance at its twenty-second session.

c) Other matters

i) APIC

The President informed the Bureau that on 8 April 2016 Samoa became the 75th State to ratify the Agreement on the Privileges and Immunities of the International Criminal Court (APIC). The President also called upon all States that have not done so yet, to ratify the agreement.

ii) Permanent premises

Before closing the meeting, the President expressed his content to have held the meeting at the new premises of the Court. He highlighted that the premises were much more than a building, but a symbol for the permanent character of the Court, representing a significant economic investment of the members of the Rome Statute. In this connection, he thanked all States Parties for their considerable financial contribution in this regard, with special gratitude to the host State, that had made the site at this prime location available free of charge. He also thanked all those States that made artwork donations.
