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**ASSEMBLY OF STATES PARTIES TO
THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

Third Session
The Hague, 6-10 September 2004

OFFICIAL RECORDS (ICC-ASP/3/25)

**Part I
Proceedings**

A. Introduction

1. In accordance with the decision taken at its 5th meeting, on 12 September 2003,¹ the Assembly of States Parties (hereinafter “the Assembly”) to the Rome Statute of the International Criminal Court held its third session in The Hague from 6 to 10 September 2004.
2. In accordance with the Rules of Procedure of the Assembly,² the President of the Assembly invited all States Parties to the Rome Statute to participate in the session. Other States that had signed the Statute or the Final Act were also invited to participate in the session as observers.
3. In accordance with rule 92 of the Rules of Procedure of the Assembly, invitations to participate in the session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly pursuant to its relevant resolutions³ as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.
4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court or in consultative status with the Economic and Social Council of the United Nations whose activities were relevant to the activities of the Court or that had been invited by the Assembly of States Parties⁴ attended and participated in the work of the Assembly.
5. In accordance with rule 94 of the Rules of Procedure, the following States were invited to be present during the work of the Assembly: Bhutan, Cook Islands, Democratic People’s Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People’s Democratic Republic, Lebanon, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.
6. The list of delegations to the session is contained in document ICC-ASP/3/INF/1.
7. The session was opened by the President of the Assembly of States Parties, H.R.H. Prince Zeid Ra’ad Zeid Al-Husseini (Jordan). The Minister for Foreign Affairs of the Netherlands, Mr. Bernard Bot, delivered welcoming remarks at the opening of the session.
8. The Bureau of the Assembly that had been elected at the first session, for a term of three years, continued during the third session, as follows:

President:

H.R.H. Prince Zeid Ra’ad Zeid Al-Husseini (Jordan)

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003* (United Nations publication, Sales No. E.03.V.13), part I, para. 64.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.C.

³ General Assembly resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31 and 57/32 and Assembly decision 56/475.

⁴ At its 1st meeting, on 6 September 2004, the Assembly decided to invite the following non-governmental organizations: Altus Global Alliance, Christian Community Development Programme, Institute for International Criminal Investigations/Institute for International Criminal Investigations Foundation and Liu Institute for Global Issues.

Vice-Presidents:

Mr. Allieu Ibrahim Kanu (Sierra Leone)
Mr. Felipe Paolillo (Uruguay)

Rapporteur:

Mr. Alexander Marschik (Austria)

Other members of the Bureau:

Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Malta, Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Serbia and Montenegro, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland

9. At its 1st meeting, on 6 September 2004, in accordance with rule 25 of the Rules of Procedure, the following States were appointed to serve on the Credentials Committee: Benin, Fiji, France, Honduras, Ireland, Paraguay, Serbia and Montenegro, Slovenia and Uganda. The Assembly considered it useful, for purposes of continuity, that the States appointed to the Credentials Committee at the first and second sessions of the Assembly of States Parties should continue to serve in that capacity during the term of office of the current Bureau.

10. The Director of the Secretariat of the Assembly, Mr. Medard Rwelamira, acted as Secretary of the Assembly. The Assembly was serviced by the Secretariat.

11. At its 1st meeting, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure.

12. At its 1st meeting, the Assembly adopted the following agenda (ICC-ASP/3/1):

1. Opening of the session by the President.
2. Silent prayer or meditation.
3. Adoption of the agenda.
4. Credentials of representatives of States Parties at the third session:
 - (a) Appointment of the Credentials Committee and its nine members;
 - (b) Report of the Credentials Committee.
5. Organization of work.
6. Report on the activities of the Bureau.
7. Report on the activities of the Court.
8. Consideration and adoption of the budget for the third financial year.
9. Consideration of the audit reports.
10. Election of the Deputy Prosecutor.
11. Election of members of the Committee on Budget and Finance.
12. Report of the Registrar on activities regarding defence counsel, including the legal representation of victims, and the process of consultation followed.
13. Report of the Registrar on the participation of and reparations to victims.
14. Report of the Board of Directors of the Trust Fund for Victims.
15. Report of the Special Working Group on the Crime of Aggression.

16. Decisions concerning the dates and venue of the next meeting of the Assembly of States Parties.
17. Decisions concerning the dates and venue of the next meeting of the Committee on Budget and Finance.
18. Other matters.

13. At the same meeting, the Assembly also decided to include in its agenda two supplementary items submitted by the Court on “Tax reimbursement of staff and officials of the International Criminal Court”⁵ and on “Protection of the name of the International Criminal Court”.⁶ Furthermore, the Assembly decided to include two additional items in its agenda, namely the “Proposal on the Procedure for the nomination and election of judges of the International Criminal Court”⁷ and the “Proposal on the election of a President of the Assembly and on the future composition of the Bureau”.⁸ These supplementary and additional items were subsumed under agenda item 18, “Other matters”.

14. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/3/1/Add.1).

15. Also at its 1st meeting, the Assembly agreed on a programme of work and decided to meet in plenary session as well as in the working group format. The Special Working Group on the Crime of Aggression, established pursuant to Assembly resolution ICC-ASP/1/Res.1 of 9 September 2002, met in accordance with the arrangements reached by the Assembly at the 8th meeting of its first session, on 7 February 2003.⁹ In accordance with paragraph 2 of the above-mentioned resolution, the Special Working Group was open on an equal footing to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. In addition, the Assembly established a Working Group on the Draft Programme Budget for 2005, a Working Group on the Procedure for the Election of Judges and a Working Group on the Trust Fund for Victims.

16. The President, following consultations with the Bureau, appointed Mr. Christian Wenaweser (Liechtenstein) to chair the Special Working Group on the Crime of Aggression; Mr. Patricio Ruedas (Spain) to chair the Working Group on the Draft Programme Budget for 2005; Ms. Rossette Nyirinkindi Katungye (Uganda) to chair the Working Group on the Procedure for the Election of Judges and Ms. Gaile Ann Ramoutar (Trinidad and Tobago) to chair the Working Group on the Trust Fund for Victims.

17. The Assembly also appointed Mr. Rolf Fife (Norway) as the focal point on the review of the Rome Statute and Mr. Christian Much (Germany) as the focal point on the proposal regarding the election of a President of the Assembly and on the future composition of the Bureau.

⁵ ICC-ASP/3/19.

⁶ ICC-ASP/3/20.

⁷ ICC-ASP/3/WGEJ/L.1.

⁸ ICC-ASP/3/24.

⁹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session (First and second resumptions), New York, 3-7 February and 21-23 April 2003* (United Nations publication, Sales No. E.03.V.8), part I, paras. 38 and 39.

B. Consideration of issues on the agenda of the Assembly at its third session

1. Credentials of representatives of States Parties at the third session

18. At its 4th meeting, on 8 September 2004, the Chairperson of the Credentials Committee presented an oral interim report to the Assembly. At its 6th meeting, on 10 September 2004, the Assembly adopted the report of the Credentials Committee (see annex I to the present report).

2. Report on the activities of the Bureau

19. At its 1st meeting, on 6 September 2004, the Assembly took note of the oral report of the President on the activities of the Bureau. In his report, the President noted that during the second year, the Bureau had held formal and informal meetings aimed at assisting the Assembly in carrying out its activities under the Statute. Between 13 September 2003 and 6 September 2004 inclusive, the Bureau had held eight meetings. In addition, the Bureau had often arranged ad hoc meetings to facilitate consultations on various issues relevant to the work of the Assembly and the Court, such as the election of the Deputy Prosecutor (Prosecutions). The Bureau had also convened a meeting on the morning of the opening day of the session to consider the organization and programme of work, to discuss issues on the agenda and to take decisions or make recommendations, as appropriate, for consideration by the Assembly.

20. Between the regular sessions, the Bureau had considered procedural and substantive issues on behalf of the Assembly and had taken decisions when mandated previously to do so by the Assembly; where required, it had deferred decisions to the Assembly. The President had been in continuous contact with the Court, the Secretariat and the host country on matters requiring input from the Bureau to ensure that the operations of the Court and the work of the Assembly proceeded smoothly. Individual members of the Bureau had on many occasions undertaken specific tasks, often in the context of subcommittees, or had acted as liaisons for the Bureau with their respective regional groups.

21. With regard to the appointment of the Director of the Secretariat of the Assembly, the Bureau, in accordance with the Assembly's decision, had reviewed a list of 59 potential candidates for the post submitted to it by the Registrar. After careful consideration of the applicants, a selection subcommittee established by the Bureau and chaired by the Rapporteur had produced a shortlist of the three most qualified candidates. The latter were interviewed by a subcommittee chaired by the President. On the recommendation of that subcommittee, the Bureau, on 4 December 2003, decided to appoint, on behalf of the Assembly, Mr. Medard Rwelamira as Director of the Secretariat of the Assembly.

3. Statements by the President and Prosecutor of the Court, and general and other statements

22. At its 1st meeting, on 6 September 2004, the Assembly heard statements from Judge Philippe Kirsch, President of the Court, and Mr. Luis Moreno-Ocampo, Prosecutor of the Court. The Assembly also heard a statement by Ms. Simone Veil on behalf of the Board of Directors of the Trust Fund for Victims. A statement was also made by the representative of the host country, the Netherlands. At the 3rd and 5th meeting, on 7 and 9 September, statements were made by the Netherlands, on behalf of the European Union, and by Mexico, respectively.

4. Report on the activities of the Court

23. At its 1st meeting, on 6 September 2004, the Assembly took note of the report of the International Criminal Court to the Assembly (ICC-ASP/3/10).

5. Deputy Prosecutor (Prosecutions) of the International Criminal Court

(a) Election

24. In a letter dated 15 July 2004 (ICC-ASP/3/8, annex), the Prosecutor of the International Criminal Court submitted to the President of the Assembly three nominations for election to the post of Deputy Prosecutor (Prosecutions), in accordance with article 42, paragraph 4, of the Rome Statute.

25. At its 4th meeting, on 8 September 2004, the Assembly proceeded to elect the Deputy Prosecutor (Prosecutions) of the International Criminal Court on the basis of the nominations submitted by the Prosecutor (ICC-ASP/3/8). Having obtained an absolute majority of the votes cast by the members of the Assembly, Ms. Fatou Bensouda (the Gambia) was elected Deputy Prosecutor (Prosecutions) of the International Criminal Court.

26. Seventy-eight ballots were cast, of which none was invalid and 78 were valid. The number of States Parties voting was 78; the required absolute majority was 48; and the number of votes obtained by the candidates was as follows: Ms. Fatou Bensouda (the Gambia), 58, Ms. Nicola Crutchley (New Zealand), 16, and Mr. Josaia Naigulevu (Fiji), 4.

(b) Term of office and commencement of the term of office

27. Also at its 4th meeting, prior to the election, the Assembly, upon the recommendation of the Bureau, decided that the term of office of the Deputy Prosecutor (Prosecutions) of the International Criminal Court should be nine years and that it should begin to run from 1 November 2004.

6. Election of members of the Committee on Budget and Finance

28. In a note dated 9 July 2004, the Secretariat submitted to the Assembly a list of seven candidates nominated by regional groups for election to the Committee on Budget and Finance (ICC-ASP/3/9, annex).

29. At its 4th meeting, on 8 September 2004, the Assembly was informed of the withdrawal of the candidature of Mr. Mamadou Diarra (Senegal).

30. At the same meeting, the Assembly proceeded to elect the following six members of the Committee on Budget and Finance, in accordance with resolution ICC-ASP/1/Res.5 of 12 September 2003:

Mr. Eduardo Gallardo Aparicio (Bolivia)
Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)
Mr. John F.S. Muwanga (Uganda)
Mr. Karl Paschke (Germany)
Ms. Inna Šteinbuka (Latvia)
Mr. Michel-Etienne Tilemans (Belgium)

31. In accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, the Assembly dispensed with a secret ballot and elected the six members of the Committee on Budget and Finance by acclamation. The term of office of the six members shall begin to run on 21 April 2005.

7. Consideration and adoption of the budget for the third financial year

32. The Assembly, through its Working Group, considered the programme budget for 2005 on the basis of the draft proposal submitted by the Registrar, the reports of the Committee on Budget and Finance and the reports of the External Auditor.

33. At its 6th meeting, on 10 September 2004, the Assembly considered and approved, by consensus, the programme budget for 2005 (see part II.A.1, 2, 4 and 7 of the present report).

34. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.4, concerning the programme budget in relation to the:

- (a) Programme budget for the year 2005, including appropriations totalling 66,784,200 euros for the major programmes and staffing tables for each of the major programmes;
- (b) Establishment of a Contingency Fund, including provisional approval of amendments to the Financial Regulations and Rules which entail amendments to financial regulations 4.7 and 5.8 and the insertion of new financial regulations 6.6 to 6.10, as set forth in the annex to the resolution;
- (c) Working Capital Fund for 2005;
- (d) Scale of assessments for the apportionment of expenses of the International Criminal Court;
- (e) Financing of appropriations for the year 2005 (see part I.B.14, part II.A.6, and part III of the present report).

35. Also at that meeting, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.5, regarding travel of members of the Committee on Budget and Finance (see part III of the present report).

36. The representative of France made a statement following the adoption of the programme budget.

8. Consideration of audit reports

37. At its 6th meeting, on 10 September 2004, the Assembly, on the recommendation of the Working Group on the Draft Programme Budget for 2005, took note, with appreciation, of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 September 2002 to 31 December 2003 (ICC-ASP/3/4) and of the Victims Trust Fund financial statements for the same period (ICC-ASP/3/5), and requested the Court and the Auditor to follow up, as appropriate, the matters identified in paragraphs 15 and 16 of the report of the Committee on Budget and Finance on the work of its third session (see part II.B of the present report).

9. Report of the Registrar on activities regarding defence counsel, including the legal representation of victims, and the process of consultation followed

38. At the 3rd meeting of the Assembly, on 7 September 2004, the Registrar introduced the report on options to ensure adequate defence counsel for accused persons (ICC-ASP/3/16). He also presented an overview of his efforts in relation to the defence, the legal participation of victims, and the consultation process followed (ICC-ASP/3/7). The Assembly took note of the report and the overview.

10. Report of the Registrar on the participation of and reparations to victims

39. At the 3rd meeting of the Assembly, on 7 September 2004, the Registrar introduced the report on participation of and reparation to victims (ICC-ASP/3/21). The Assembly took note of the report.

11. Report of the Board of Directors of the Trust Fund for Victims

40. The Assembly, through its Working Group, considered the report on the activities and projects of the Board of Directors of the Trust Fund for Victims, 2003-2004, including the draft Regulations for the Trust Fund contained in annex A and the proposal for the establishment of a Secretariat for the Trust Fund for Victims contained in annex B to the report (ICC-ASP/3/14/Rev.1). At its 6th meeting, on 10 September 2004, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.7 concerning the establishment of the Secretariat of the Trust Fund for Victims (see part III of the present report). As regards the draft Regulations for the Trust Fund, the Assembly took the actions reflected in paragraphs 5 and 6 of resolution ICC-ASP/3/Res.7. Furthermore, the Assembly made other decisions reflected in part II.A.4 of the present report.

12. Report of the Special Working Group on the Crime of Aggression

41. At its 6th meeting, on 10 September 2004, the Assembly took note of the report of the Special Working Group on the Crime of Aggression (ICC-ASP/3/SWGCA/1) and decided to annex the report of the inter-sessional meeting of the Special Working Group, forwarded to it as a working document, to its report (see annex II to the present report).

13. Other matters

(a) Negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations

42. At its 3rd meeting, on 7 September 2004, the Assembly, in accordance with article 2 of the Rome Statute, considered and approved, by consensus, the negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations. It also decided to apply the Agreement provisionally pending its formal entry into force. It further called upon the General Assembly of the United Nations to adopt the Agreement as expeditiously as possible, and called upon the President of the Court to conclude the Agreement as soon as the General Assembly of the United Nations adopted the text (see ICC-ASP/3/Res.1 in part III of the present report).

(b) Proposal on the election of a President of the Assembly and on the future composition of the Bureau of the Assembly

43. The Assembly considered the proposal on the election of a President of the Assembly and on the future composition of the Bureau (ICC-ASP/3/24). At its 5th meeting, on 9 September 2004, the Assembly agreed on the following future composition of the Bureau:

- Group of Western European and other States and Group of African States: 5 seats each;
- Group of Latin American and Caribbean States and Group of Eastern European States: 4 seats each;
- Group of Asian States: 3 seats, on the understanding that: (a) the next Chair of the Credentials Committee would be elected from a State Party that belonged to the Asian Group and was not a Bureau member; and (b) the Bureau would extend to her/him a standing invitation to participate in Bureau meetings without the right to vote.

It was understood that this compromise should not automatically extend beyond the term of office of the next Bureau (2005-2008). The possibility was raised of revisiting the question of the composition of the Bureau at the Review Conference in 2009.

44. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.2 concerning an amendment to rule 29 of the Rules of Procedure of the Assembly of States Parties (see part III of the present report).

45. Pursuant to rule 29 of the Rules of Procedure of the Assembly, as amended by resolution ICC-ASP/3/Res.2, the Assembly elected by acclamation Mr. Bruno Stagno Ugarte (Costa Rica) President of the Assembly for the fourth to sixth sessions.

(c) Proposal on the procedure for the nomination and election of judges of the International Criminal Court

46. The Assembly, through its Working Group, considered the proposal submitted by the Bureau on the procedure for the nomination and election of judges of the International Criminal Court (ICC-ASP/3/WGEL/L.1 and Corr.1). At its 6th meeting, on 10 September 2004, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.6 on the procedure for the nomination and election of judges of the International Criminal Court (see part III of the present report). The procedure thus approved replaces resolution ICC-ASP/1/Res.3 and parts A, B, and C of resolution ICC-ASP/1/Res.2.

(d) Strengthening the International Criminal Court and the Assembly of States Parties

47. At its 6th meeting, on 10 September 2004, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.3. on Strengthening the International Criminal Court and the Assembly of States Parties (see part III of the present report). Under the terms of that resolution, the Assembly adopted, inter alia, the Conditions of service and compensation of judges annexed thereto, as well as decisions on tax reimbursement of staff and officials of the Court, the protection of the name of the Court, the Staff Pension Committee and the Code of professional conduct for counsel (see also part I.B.14 of the present report).

(e) Intensifying the dialogue between the Assembly of States Parties and the International Criminal Court

48. At its 6th meeting, on 10 September 2004, the Assembly adopted, by consensus, resolution ICC-ASP/3/Res.8 on intensifying the dialogue between the Assembly of States Parties and the Court (see part III of the present report).

(f) Establishment at United Nations Headquarters of a liaison office of the International Criminal Court

49. The Assembly endorsed the recommendation of the Working Group on the Programme Budget for 2005 that further consideration of the possibilities for direct liaison between the relevant organs of the Court and interlocutors in New York be undertaken at the next session of the Assembly, on the basis of the study of an option paper by the Bureau.

(g) Assessed contributions to the budget of the International Criminal Court

50. At the 1st and 6th meetings, on 6 and 10 September 2004, the President of the Assembly renewed his 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 2005 in a timely manner (see also para. 12 of resolution ICC-ASP/3/Res.3 in part III of the present report).

(h) Trust Fund for the participation of least developed countries

51. The Assembly welcomed the establishment of a Trust Fund for the participation of the least developed countries in the activities of the Assembly, and expressed its appreciation for contributions from Finland, Luxembourg, the Netherlands and the United Kingdom, as well as from the Coalition for the International Criminal Court. The Assembly also noted with satisfaction that, during the third session, a total of 27 delegates had made use of the Trust Fund. Those delegates had been provided with airline tickets. The John D. and Catherine T. MacArthur Foundation, through the International Human Rights Law Institute of DePaul University (United States of America), provided accommodation and per diem to 28 delegates and airline tickets to two delegates.

14. Next meeting of the Assembly of States Parties, including the dates and venue

52. At its 6th meeting, on 10 September 2004, the Assembly, whilst recalling article 112, paragraph 6, of the Rome Statute, decided that it would hold its next regular session for six days, of which at least one full day would be reserved for the Special Working Group on the Crime of Aggression, in November 2005 in The Hague, with the exception that the election of judges and the elections to the Committee on Budget and Finance would be held in New York during a separate two-day meeting, with both exact dates to be determined by the Bureau of the Assembly. Furthermore, at the same meeting, the Assembly also approved the additional costs of 107,000 euros resulting from the adoption of paragraph 37 of resolution ICC-ASP/3/Res.3 by which the Assembly endorsed having a sixth day of meetings in The Hague and holding a two-day meeting in New York. (see also part I.A.13 (d) and para. 37 of resolution ICC-ASP/3/Res.3 in part III of the present report).

15. Next meeting of the Committee on Budget and Finance, including the dates and venue

53. At its 6th meeting, on 10 September 2004, the Assembly decided that the Committee on Budget and Finance would meet in The Hague, from 4 to 6 April 2005 and for a further five-day session to be determined by the Committee (see also para. 36 of resolution ICC-ASP/3/Res.3 in part III of the present report).