

**Assembly of States Parties to
the Rome Statute of the
International Criminal Court**

**Fifth session
The Hague, 23 November-1 December 2006**

Official Records

Note

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Decision”.

Secretariat, Assembly of States Parties
International Criminal Court
P.O. Box 19519
2500 CM The Hague
The Netherlands

asp@asp.icc-cpi.int
www.icc-cpi.int

Tel: (31) 70 515 8097
Fax: (31) 70 515 8376

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Part I
Proceedings

A. Introduction

1. In accordance with the decision taken at its 4th meeting, on 3 December 2005,¹ the Assembly of States Parties (hereinafter “the Assembly”) to the Rome Statute of the International Criminal Court held its fifth session in The Hague from 23 November to 1 December 2006.
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 of the United Nations 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 Parties 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, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.
6. The list of delegations to the session is contained in document ICC-ASP/5/INF.3/Rev.1.
7. The session was opened by the President of the Assembly of States Parties, Mr. Bruno Stagno Ugarte (Costa Rica), who had been elected, by acclamation, President of the Assembly for the fourth to sixth sessions during the third session of the Assembly.⁴
8. The Bureau of the Assembly that had been elected at the fourth session, for a term of three years, continued during the fifth session, as follows:

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November to 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part I, para. 40.

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, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53 and decision 56/475.

⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part I, para. 45.

President:

Mr. Bruno Stagno Ugarte (Costa Rica)

Vice-Presidents:

Mr. Erwin Kubesch (Austria)

Ms. Hlengiwe Mkhize (South Africa)

Rapporteur:

Ms. Alina Orosan (Romania)

Other members of the Bureau:

Belize, Bolivia, Croatia, Cyprus, Democratic Republic of the Congo, Denmark, Estonia, France, Gambia, Kenya, Netherlands, New Zealand, Niger, Peru, Republic of Korea, Romania, Samoa and Serbia.

9. At its 1st meeting, on 23 November, in accordance with rule 25 of the Rules of Procedure, the following States were appointed to serve on the Credentials Committee:

Benin, France, Honduras, Ireland, Jordan, Paraguay, Serbia, Slovenia and Uganda.

10. The *ad interim* Director of the Secretariat of the Assembly, Mr. Renan Villacis, 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 of the Assembly.

12. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/5/11):

1. Opening of the session by the President.
2. Silent prayer or meditation.
3. Adoption of the agenda.
4. States in arrears.
5. Credentials of representatives of States at the fifth session:
 - (a) Appointment of the Credentials Committee;
 - (b) Report of the Credentials Committee.
6. Organization of work.
7. General debate.
8. Election of the members of the Board of Directors of the Trust Fund for Victims.
9. Report on the activities of the Bureau.
10. Report on the activities of the Court.
11. Consideration and adoption of the budget for the fifth financial year.
12. Consideration of the audit reports.
13. Appointment of the External Auditor.
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. Long-term budgetary consequences of the pension scheme regulations for judges.
17. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors.

18. Premises of the Court.
 19. Staffing estimation and Strategic Plan of the Court.
 20. Decisions concerning dates of the next session of the Assembly of States Parties.
 21. Decisions concerning dates and venue of the next session of the Committee on Budget and Finance.
 22. Other matters.
13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/5/11/Add.1/Rev.1).
14. 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 2003.⁵ 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.
15. In addition, the Assembly established a Working Group on the Programme Budget for 2007 and a Working Group on the Permanent Premises.
16. The President, following consultations with the Bureau, re-appointed Mr. Christian Wenaweser (Liechtenstein) to continue to chair the Special Working Group on the Crime of Aggression; Mr. Jürg Lindenmann (Switzerland) to chair the Working Group on the Programme Budget for 2007; and Mr. Masud Husain (Canada) to chair the Working Group on the Permanent Premises.
17. The Assembly appointed Ms. Michèle Dubrocard (France) as the focal point on the strategic planning process of the Court and, in addition, re-appointed Mr. Rolf Fife (Norway) as the focal point on the review of the Rome Statute.

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

1. States in arrears

18. At the 1st meeting, on 23 November 2006, 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.⁶

2. Credentials of representatives of States Parties at the fifth session

19. At its 7th meeting, on 1 December 2006, the Assembly adopted the report of the Credentials Committee (see annex I to this report).

⁵ *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.

⁶ See also resolution ICC-ASP/5/Res.3, annex III, part III of this report.

3. General debate

20. At the first three meetings, on 23 and 24 November 2006, 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. Statements were also made by the representatives of the following intergovernmental organizations: ICPO-Interpol, International Humanitarian Fact-Finding Commission and the United Nations Office on Drugs and Crime. Furthermore, statements were made by the representatives of the following non-governmental organizations: Coalition for the International Criminal Court, Democratic Republic of the Congo 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.

4. Report on the activities of the Bureau

21. At its 1st meeting, on 23 November 2006, the Assembly took note of the oral report of its President, Mr. Bruno Stagno Ugarte (Costa Rica), on the activities of the Bureau. In his report, the President noted that during the period between the end of the resumed fourth session of the Assembly in January and 20 November 2006, the Bureau had held nine meetings in order to assist the Assembly in carrying out its activities under the Rome Statute. The President indicated that in December 2005, the Bureau had re-established its two Working Groups in The Hague and in New York, which had allowed for their active involvement in areas relating to the Court.

22. The Working Group in The Hague had made considerable progress on issues such as the permanent premises of the Court and the Strategic Plan of the Court. Furthermore, it had been actively involved with advancing the consideration of the interim premises of the Court, the political dialogue at ambassadorial level, the issuance of visas for Assembly participants and the draft headquarters agreement between the Court and the host State.

23. The Working Group in New York had been particularly engaged with increasing the number of ratifications of the Rome Statute and its implementation, increasing the participation of developing countries in the activities of the Assembly, considering the question of the arrears of States Parties, and setting up the New York Liaison Office.

24. The Secretariat of the Assembly had provided The Hague Working Group and the Committee on Budget and Finance with independent substantive servicing, had assisted in organizing the intersessional meeting of the Special Working Group on the Crime of Aggression held in Princeton, New Jersey, United States of America, and had organized the resumed fourth session of the Assembly at United Nations Headquarters at the end of January 2006 devoted to the election of judges. In addition, the Secretariat had formed part of the Court team involved in negotiating with the host State the draft headquarters agreement, in which important provisions had been included regarding the Assembly and the representatives of States.

5. Report on the activities of the Court

25. At its 1st meeting, on 23 November 2006, the Assembly heard statements from Judge Philippe Kirsch, President of the Court, and from Mr. Luis Moreno-Ocampo, Prosecutor of the Court. At the same meeting, the Assembly took note of the report on the activities of the Court (ICC-ASP/5/15).

6. Consideration and adoption of the budget for the fifth financial year

26. The Assembly, through its Working Group, considered the proposed programme budget for 2007 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.

27. At its 7th meeting, on 1 December 2006, the Assembly considered and approved, by consensus, the programme budget for 2007 (see part II of this report).

28. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/5/Res.4, concerning the programme budget in relation to the following:

- (a) Programme budget for the year 2007, including appropriations totalling € 88,871,800 for the major programmes and staffing tables for each of the major programmes;
- (b) Working Capital Fund for 2007;
- (c) Scale of assessments for the apportionment of the expenses of the International Criminal Court; and
- (d) Financing of appropriations for the year 2007 (see part III of this report).

7. Consideration of audit reports

29. At its 6th meeting, on 30 November 2006, the Assembly took note of the report of the Working Group on the Programme Budget for 2007 (ICC-ASP/5/WGPB/1 and Corr.1 (French only) and Corr.2) which, inter alia:

- (a) Noted, with appreciation, the reports of the External Auditor contained in documents ICC-ASP/5/2 and ICC-ASP/5/3 and the related comments of the Committee on Budget and Finance, contained in paragraphs 22 to 24 of the report of the Committee on Budget and Finance on the work of its seventh session;
- (b) Noted that the Committee had endorsed the External Auditor's recommendations and suggested that the Court should ensure their full implementation (see part II of this report, para. 1);
- (c) Noted with appreciation the report of the Office of Internal Audit on the activities of the Office contained in document ICC-ASP/5/5 (see part II of this report, para. 3).

30. On the recommendation of the Working Group, the Assembly:

- (a) Endorsed the recommendations contained in paragraphs 23 and 24 of the report of the Committee on Budget and Finance on the work of its seventh session referring, in general, to the recommendations of the External Auditor and, in particular, on the need to establish and strengthen the Audit Committee of the Court through the appointment of a majority of external independent members and on the inclusion of a table in future reports

setting out the progress made towards the implementation of previous recommendations (see part II of this report, para. 2);

(b) As regards the internal audit, took note of the recommendations contained in paragraph 27 of the report of the Committee on Budget and Finance on the work of its seventh session (see part II of this report, para. 3).

8. Appointment of the External Auditor

31. At its 7th meeting, on 1 December 2006, the Assembly endorsed the recommendation contained in paragraph 122 of the report of the Committee on Budget and Finance to appoint as External Auditor for a second quadrennium (2007 – 2010) the National Audit Office of the United Kingdom of Great Britain and Northern Ireland (see part II of this report, para. 43).

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

32. At its 1st meeting, on 23 November 2006, the Assembly heard a statement by Ms. Simone Veil in her capacity as Chair of the Board of Directors of the Trust Fund for Victims. The Assembly considered the report on the activities and projects of the Board of Directors of the Trust Fund for Victims, for the period 16 August 2005 to 30 June 2006 (ICC-ASP/5/8 and Corr.1 (French only)), and took note of the report.

10. Election of the members of the Board of Directors of the Trust Fund for Victims

33. At its 15th meeting, held on 16 May 2006, the Bureau of the Assembly of States Parties decided to open the period for nomination for the second election of members of the Board of Directors of the Trust Fund for Victims, to run from 5 June to 27 August 2006 (ICC-ASP/5/28).

34. At the end of this period, the minimum requirements for the nomination of members had not been met. In accordance with paragraph 4 of resolution ICC-ASP/1/Res.7, the nomination period was extended four times to 19 November 2006.

35. At its 6th meeting, on 30 November 2006, the Assembly proceeded to elect four members of the Board of Directors of the Trust Fund for Victims, in accordance with its resolution ICC-ASP/1/Res.7, of 9 September 2002:

Archbishop Desmond Tutu (South Africa)
Mr. Tadeusz Mazowiecki (Poland)
Mr. Arthur N.R. Robinson (Trinidad and Tobago)
Ms. Simone Veil (France)

36. In accordance with paragraph 10 of resolution ICC-ASP/1/Res.7, the Assembly dispensed with a secret ballot and elected by acclamation one member each from the Group of African States, the Group of Eastern European States, the Group of Latin American and Caribbean States, and the Group of Western European and Other States. The term of office of three years began to run for each member of the Board from 1 December 2006.

37. At the end of the nomination period, no candidate had been nominated for the Group of Asian States. At its 6th meeting, the Assembly decided to defer the election for the seat allocated to the Group of Asian States to the resumed fifth session of the Assembly, to be held at the end of January 2007.

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

38. At its 6th meeting, on 30 November 2006, the Assembly took note of the report of the Special Working Group on the Crime of Aggression (ICC-ASP/5/SWGCA/1) and decided that the report of the intersessional meeting contained in document ICC-ASP/5/SWGCA/INF.1 should be annexed to the proceedings of the fifth session of the Assembly (see annex II to this report).

12. Long-term budgetary consequences of the pension scheme regulations for judges

39. At its 7th meeting, on 1 December 2006, the Assembly took decisions regarding the long-term budgetary consequences of the pension scheme regulations for judges, which are reflected in part II of the present report (see part II, paras. 30 to 35).⁷

13. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors

40. At its 7th meeting, on 1 December 2006, the Assembly took decisions regarding the conditions of service and compensation for the Prosecutor and Deputy Prosecutors, which are reflected in part II of the present report (see part II, paras. 37 to 40).⁸

14. Premises of the Court

41. At its 6th meeting, on 30 November 2006, the Assembly took note of the report of the Working Group on the Permanent Premises (ICC-ASP/5/WGPP/1). At its 7th meeting, on 1 December 2006, the Assembly adopted resolution ICC-ASP/5/Res.1 whereby it, inter alia, recalled resolution ICC-ASP/4/Res.2, which emphasized that the Court, as a permanent judicial institution, requires functional permanent premises, and requested the Court, without prejudice to the prerogative of the Assembly to make a final decision in this matter, to focus only on purpose-built premises on the Alexanderkazerne site, with a view to allowing the Assembly to take an informed decision at its next session (resolution ICC-ASP/5/Res.1, para.1, in part III of this report).

42. In this connection, the Assembly requested the Bureau, the host State and the Court to take additional steps and to provide further information (resolution ICC-ASP/5/Res.1, para.1, in part III of this report).

43. The consideration by the Court of the question of interim premises and the decisions thereon are reflected in part II of this report (see part II, paras. 41 and 42).

15. Staffing estimation and Strategic Plan of the Court

44. At its 7th meeting, on 1 December 2006, the Assembly decided to, inter alia, invite the Court to engage with the Bureau on the strategic planning process of the Court and to further develop the dialogue initiated with the Bureau on the Strategic Plan. The Assembly recommended that such a dialogue should focus on the concrete implementation of the Strategic Plan and should include, but not be specifically limited to, cross-cutting issues such as location of the activities of the Court, position of victims, outreach and communication activities of the Court, and the relationship between the Strategic Plan and the budget (resolution ICC-ASP/5/Res.2, in part III of this report).

⁷ See also, in part III of this report, resolution ICC-ASP/5/Res.3, paras. 27 and 28.

⁸ See also, in part III of this report, resolution ICC-ASP/5/Res.3, para. 29.

16. Decision concerning dates of the next session of the Assembly of States Parties

45. The Assembly requested the Bureau to fix specific dates and to inform States Parties accordingly (ICC-ASP/5/Res.3, para. 51, in part III of this report).

17. Decisions concerning dates and venue of the next session of the Committee on Budget and Finance

46. At its 7th meeting, on 1 December 2006, the Assembly decided that the Committee on Budget and Finance would hold its eighth session in The Hague from 23 to 26 April 2007, and a further five-day session on dates to be determined by the Committee (resolution ICC-ASP/5/Res.3, para. 48, in part III of this report).

18. Other matters**(a) Headquarters Agreement between the International Criminal Court and the host State**

47. The Assembly approved the Headquarters Agreement between the Court and the host State and called upon the President of the Court to conclude the Agreement on behalf of the Court as soon as possible (resolution ICC-ASP/5/Res.3, annex II, see part III of this report).

(b) Conditions of service of judges: relocation upon completion of service

48. The Assembly took decisions regarding the above-mentioned matter, which are reflected in part II of the present report (see part II of this report, para. 36).

(c) Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly

49. The Assembly expressed its appreciation to Norway and the United Kingdom of Great Britain and Northern Ireland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly.

50. The Assembly noted with satisfaction that 22 delegations had made use of the Trust Fund to attend the fifth session of the Assembly.

