

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

**Fourth session
The Hague, 28 November to 3 December 2005**

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”.

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Part I
Proceedings

A. Introduction

1. In accordance with the decision taken at its 6th meeting, on 10 September 2004,¹ the Assembly of States Parties (hereinafter “the Assembly”) to the Rome Statute of the International Criminal Court held its fourth session in The Hague from 28 November to 3 December 2005.

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/4/INF.1/Rev.1.

¹ *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. 52.

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 At its 1st meeting, on 28 November 2005, the Assembly decided to invite the following non-governmental organizations: the Centre for Justice and Reconciliation, the Consejo General de la Abogacía Española and the International Criminal Bar.

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.⁵ Mr. Edmond Wellenstein, Director General, ICC Task Force, Ministry of Foreign Affairs of the Netherlands, delivered welcoming remarks at the opening of the session.

8. At its 1st meeting, on 28 November, the Assembly elected the other members of its Bureau, which, consequently, is composed as follows:

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 Congo, Denmark, Estonia, France, Gambia, Jordan, Kenya, Netherlands, New Zealand, Niger, Peru, Republic of Korea, Romania, Samoa and Serbia and Montenegro.

9. At its 1st meeting, on 28 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 and Montenegro, Slovenia and Uganda.

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 of the Assembly.

12. At its 1st meeting, the Assembly adopted the following agenda (ICC-ASP/4/18):

1. Opening of the session by the President.
2. Silent prayer or meditation.
3. Adoption of the agenda.
4. States in arrears.
5. Election of two Vice-Presidents and 18 members of the Bureau.
6. Credentials of representatives of States at the fourth session:
 - (a) Appointment of the Credentials Committee and its nine members;
 - (b) Report of the Credentials Committee.

⁵ *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.

7. Organization of work.
8. Report on the activities of the Bureau.
9. Report on the activities of the Court.
10. Consideration and adoption of the budget for the fourth financial year.
11. Consideration of the audit reports.
12. Term of office of the members of the Board of Directors of the Trust Fund for Victims.
13. Report of the Board of Directors of the Trust Fund for Victims.
14. Report of the Special Working Group on the Crime of Aggression.
15. Draft Code of Professional Conduct for counsel.
16. Trust Fund for Victims:
 - (a) Draft Regulations of the Trust Fund for Victims;
 - (b) Criteria for the management of the Trust Fund for Victims.
17. Long term budgetary consequences of the pension scheme regulations for judges.
18. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors.
19. Draft guidelines on gratis personnel.
20. New York Liaison Office of the International Criminal Court.
21. Permanent premises.
22. Decisions concerning dates and venue of the next session of the Assembly of States Parties.
23. Decisions concerning dates and venue of the next session of the Committee on Budget and Finance.
24. Other matters.

13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/4/18/Add.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 2003.⁶ 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 2006, a Working Group on the Trust Fund for Victims, a Working Group on a Draft Code of Professional Conduct for counsel, a Working Group on the New York Liaison Office of the International Criminal Court, and a Working Group on the Permanent Premises.

⁶ *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 2004* (United Nations publication, Sales No. E.03.V.8), part I, paras. 38 and 39.

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. Richard Ryan (Ireland) to chair the Working Group on the Programme Budget for 2006; Mr. Juan Manuel Gómez-Robledo (Mexico) to chair the Working Group on the Trust Fund for Victims; Ms. Michèle Dubrocard (France) to chair the Working Group on the Draft Code of Professional Conduct for counsel; Mr. Sivu Maqungo (South Africa) to chair the Working Group on the New York Liaison Office for the International Criminal Court and Mr. Gilberto Vergne Saboia (Brazil) to chair the Working Group on the Permanent Premises.

17. The Assembly also appointed Mr. Rolf Fife (Norway) as the focal point on the review of the Rome Statute.

18. At the 1st and 4th meetings on 28 November and 3 December, statements were made by the representatives of Afghanistan, Argentina, Brazil, Canada (on behalf of Canada, Australia and New Zealand), Colombia, Cuba, Democratic Republic of Congo, Ecuador, Finland, France, Germany, Kenya, Lao People's Democratic Republic, Liechtenstein, Malta, Mexico, Namibia, Nigeria, Norway, Peru, Poland, Republic of Korea, Samoa, Sierra Leone, Switzerland, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland and the United Republic of Tanzania. Nigeria made a statement on behalf of the African Union while the United Kingdom of Great Britain and Northern Ireland made a statement on behalf of the European Union, with which Bosnia-Herzegovina, Croatia, Iceland, Norway, Republic of Moldova, Serbia and Montenegro, and The former Yugoslav Republic of Macedonia aligned themselves. Statements were also made by the representatives of the following non-governmental organisations: Coalition for the International Criminal Court, Darfur Consortium – Sudan Organisation against Torture, Human Rights Watch, International Federation for Human Rights, and Women's Initiatives for Gender Justice.

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

1. States in arrears

19. At the 1st meeting, on 28 November 2005, 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 2006 in a timely manner.⁷

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

20. At its 4th meeting, on 3 December 2005, the Assembly adopted the report of the Credentials Committee (see annex I to this report).

⁷ See also operative paragraphs 18 and 40 to 47 of resolution ICC-ASP/4/Res.4 in part III of this report.

3. Report on the activities of the Bureau

21. At its 1st meeting, on 28 November 2005, the Assembly took note of the oral report of its outgoing President, Prince Zeid Ra'ad Zeid Al'Hussein (Jordan), on the activities of the Bureau. In his report, the President noted that between 11 September 2004 and 28 November 2005, the Bureau had met 19 times in order to assess the Court's progress, take decisions consistent with its recognized obligations, and to review the issues entrusted to it by the Assembly. The President indicated that, pursuant to resolution ICC-ASP/3/Resolution 8, the Bureau had established, on 1 December 2004, two informal Working Groups, of equal standing, one based in The Hague and the other in New York. The Working Group of the Bureau in New York had been asked to consider issues related to the Relationship with the United Nations (including the matter of an ICC liaison office at the United Nations), the draft Regulations of the Trust Fund for Victims and the arrears of States Parties to the Court. The Bureau had invited The Hague Working Group to consider the following issues: the permanent premises of the Court; host country issues including the Headquarters Agreement where it related to the Assembly and the draft Code of Professional Conduct for counsel.

22. As regards the host country issues, the Bureau had been informed that negotiations were still on-going and no final agreement had been reached on a few outstanding issues. Further, the Bureau had felt inclined to make a number of specific recommendations to Assembly. The Bureau had considered it appropriate and timely for the Assembly to invite the Court to submit proposals on the establishment of an independent oversight mechanism, as envisaged in article 112, paragraph 4. The Bureau had recommended that the Assembly adopt a mechanism whereby the filling of vacancies in the subsidiary bodies of the Assembly would be delegated to the Bureau, which would carry out the election on its behalf, and the person so elected would fill the vacancy for the remainder of the predecessor's term. Finally, the Bureau had seen some merit in the elaboration of guidelines for submission of documentation and editorial directives of Assembly related documents.

4. Report on the activities of the Court

23. At its 1st meeting, on 28 November 2005, the Assembly heard statements from Judge Philippe Kirsch, President of the Court, and Mr. Luis Moreno-Ocampo, Prosecutor of the Court. At the same meeting, the Assembly took note of the report of the International Criminal Court to the Assembly (ICC-ASP/4/16).

5. Consideration and adoption of the budget for the fourth financial year

24. The Assembly, through its Working Group, considered the programme budget for 2006 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.

25. At its 4th meeting, on 3 December 2005, the Assembly considered and approved, by consensus, the programme budget for 2006 (see part II of this report).

26. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/4/Res.8, concerning the programme budget in relation to the:

- (a) Programme budget for the year 2006, including appropriations totalling € 80,417,200 for the major programmes and staffing tables for each of the major programmes;
- (b) Working Capital Fund for 2006;

- (c) Scale of assessments for the apportionment of expenses of the International Criminal Court; and
- (d) Financing of appropriations for the year 2006 (see part III of this report).

27. Also at that meeting, the Assembly adopted resolution ICC-ASP/4/Res.11, regarding the Transfer of Funds from Major Programme III to Major Programme V under the 2005 Programme Budget (see part III of this report).

6. Consideration of audit reports

28. At its 4th meeting, on 3 December 2005, the Assembly adopted the Report of the Working Group on the Programme Budget for 2006 (ICC-ASP/4/WGPB/1) which, inter alia,

- (a) 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 January to 31 December 2004 (ICC-ASP/4/9) and of the Victims Trust Fund for the same period (ICC-ASP/4/10);
- (b) recommended that the Assembly request the Auditor to follow up, as appropriate, the matters identified in paragraphs 13-14 of the report of the Committee on Budget and Finance on the work of its fifth session (see part II. A of this report) and
- (c) recommended that the Assembly endorse the recommendation contained in paragraph 20 of the Report of the Committee on Budget and Finance on the work of its fourth session (see part II.A of this report) regarding the inclusion of the Trust Fund for Victims and its Secretariat within the scope of the audit arrangements applicable to the Court.

7. Term of office of the members of the Board of Directors of the Trust Fund for Victims

29. At its 4th meeting on 3 December 2005 the Assembly, on the recommendation of the Bureau, decided that if the term of office of the members of the Board would otherwise expire before the date of the session when the Assembly would proceed with an election for members of the Board, the members shall continue to serve until the date of the election (Resolution ICC-ASP/4/Res.7, operative paragraph; see part III of this report).

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

30. At its 1st meeting on 28 November 2005, 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, through its Working Group on the Trust Fund for Victims, considered the report on the activities and projects of the Board of Directors of the Trust Fund for Victims, 2004-2005 (ICC-ASP/4/12 and Corr.1) and decided to take note of the Report (Resolution ICC-ASP/4/Res.3, third preambular paragraph; see part III of this report).

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

31. At its 3rd meeting on 2 December 2005, the Assembly took note of the report of the Special Working Group on the Crime of Aggression (ICC-ASP/4/SWGCA/1) and, on the recommendation of the Special Working Group, decided that the report of the intersessional meeting contained in document ICC-ASP/4/SWGCA/INF.1 be annexed to the proceedings of the fourth session of the Assembly, as well as the documents introduced in the Special Working Group during the fourth session of the Assembly, under the heading Discussion

Papers No. 1, No. 2 and No. 3. At its 4th meeting on 3 December 2005, the Assembly recognised that the Special Working Group needs to conclude its work at least 12 months prior to the Review Conference to be held according to article 123, paragraph 1 of the Rome Statute, 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, to the Assembly for its consideration at the Review Conference and decided that the Special Working Group in the years 2006 to 2008 shall be allocated at least 10 exclusive days of meetings in New York during resumed sessions, and hold intersessional meetings, as appropriate (Resolution ICC-ASP/4/Res.4, para. 37; see part III of this report).⁸

10. Draft Code of Professional Conduct for counsel

32. At its 4th meeting, on 3 December 2005, the Assembly took note of the report of the Working Group on the draft Code of Professional Conduct for counsel (ICC-ASP/4/WGCPC/1) and adopted the Code of Professional Conduct for counsel (Resolution ICC-ASP/4/Res.1; see part III of this report).

11. Trust Fund for Victims

33. At its 4th meeting, on 3 December 2005, the Assembly of States Parties took note of the report of the Working Group on the Trust Fund for Victims (ICC-ASP/4/WGTFV/1) and adopted the Regulations of the Trust Fund for Victims. It also decided to assess the implementation of the Regulations no later than at its seventh regular session. The Assembly also decided that, without prejudice to further evaluation by the Assembly of States Parties, expenses of the Board of Directors and its Secretariat shall be funded by the regular budget (Resolution ICC-ASP/4/Res.3, paras. 1 to 3 and annex; see part III of this report).

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

34. At its 4th meeting, on 3 December 2005, the Assembly took note of the Report of the Working Group on the Programme Budget and as regards the issue of the pension scheme for judges agreed, inter alia that: the pension scheme for judges be funded on an accrual basis; that the pension scheme be managed externally; that the Court report to the Committee on Budget and Finance on the most cost-effective option for management of the pension scheme, including the option of managing the fund via the United Nations Joint Staff Pension Fund; that the pension scheme applicable to currently serving judges should apply provisionally to the judges elected in 2006; that the issue of the pension terms applicable to judges be referred to the Committee on Budget and Finance for its consideration and report.

35. In addition, the Assembly requested the Committee on Budget and Finance to consider further the issue of whether existing pensions payable to individual judges who have served at other international tribunals and organisations should be taken into account in determining the pensions payable by the Court and to report its findings to the States Parties in advance of the fifth session of the Assembly. Furthermore, the Assembly decided that the estimated costs of the accrual for the period from 2003 to 31 December 2006 in the amount of up to €8 million, be funded by applying the provisional savings of the 2005 budget (Resolution ICC-ASP/4/Res.9; see part III of this report).

⁸ See also paragraph 53 of the same resolution and paragraphs 40 and 41 below.

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

36. At its 4th meeting, on 3 December 2005, the Assembly took note of the report of the Office of the Prosecutor regarding conditions of service and compensation of the Prosecutor and Deputy Prosecutors (doc. ICC-ASP/3/12, annex II) as well as the request of the Committee on Budget and Finance to the Court to report on the matter, including some costed options, at its next session and requested the Committee to report thereon before the fifth session of the Assembly (Resolution ICC-ASP/4/Res.4, para. 34; see part III of this report).

14. Draft guidelines on gratis personnel

37. At its 4th meeting, on 3 December 2005, the Assembly of States Parties established the guidelines for the selection and engagement of gratis personnel at the Court in accordance with article 44, paragraph 4, of the Rome Statute (Resolution ICC-ASP/4/Res.4, para. 33 and annex II; see part III of this report).

15. New York Liaison Office of the International Criminal Court

38. At its 3rd meeting, on 2 December 2005, the Assembly took note of the report of the Working Group on the New York Liaison Office. At its 4th meeting, on 3 December, the Assembly decided to establish a New York Liaison Office to serve the purpose, and have the essential functions and structure set out in the report of the Bureau on the matter (Resolution ICC-ASP/4/Res.4, para. 25; see part III of this report).

16. Permanent premises

39. At its 3rd meeting, on 2 December 2005, the representative of the host State made a statement on the permanent premises of the Court. At its 4th meeting, on 3 December 2005, the Assembly took note of the report of the Working Group on the Permanent Premises (ICC-ASP/4/WGPP/1). The Assembly, inter alia, emphasized that the Court, as a permanent judicial institution, requires functional permanent premises; recognized further that a purpose-built building on the premises of the Alexanderkazerne would probably offer the most flexible solution in matching the requirements of a permanent court; welcomed the additional financial bid made by the representative of the host State, and invited the Court to complete its staffing estimation and strategy planning and to continue its work on the detailed requirements of the permanent premises. Furthermore, the Assembly recommended that the Bureau and the Committee on Budget and Finance remain seized of the matter and report to its fifth session (Resolution ICC-ASP/4/Res.2; see part III of this report).

17. Decisions concerning dates and venue of the next session of the Assembly of States Parties

40. At its 4th meeting, on 3 December 2005, the Assembly decided that it would hold its fifth session for eight days in November/December 2006 in The Hague with a resumption of not less than three days of the Special Working Group on the Crime of Aggression in 2007 in New York (Resolution ICC-ASP/4/Res.4, para. 53; see part III of this report).

41. In addition, after extensive consultations, the Assembly also decided to set the dates and venues for its sixth and seventh sessions as follows:

- 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 on the Crime of Aggression;
- not less than eight days in 2008 in The Hague for its seventh session and not less than two days in 2009 in New York for a resumed session for elections (Resolution ICC-ASP/4/Res.4, para. 53; see part III of this report).

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

42. At its 4th meeting, on 3 December 2005, the Assembly decided that the Committee on Budget and Finance would meet in The Hague, from 24 to 26 April 2006 and for a further five-day session to be determined by the Committee (Resolution ICC-ASP/4/Res.4, para. 51; see part III of this report).

19. Other matters

43. At its 4th meeting, on 3 December 2005, the Assembly adopted the amendments to the Financial Regulations and Rules as a result of the establishment of the Contingency Fund (Resolution ICC-ASP/4/Res.11; see part III of this report).