

Assembly of States Parties

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The Hague
14-22 November 2008

Annotated list of items included in the provisional agenda

Note by the Secretariat

The following annotated list of the items contained in the provisional agenda for the seventh session of the Assembly of States Parties (“the Assembly”) to the Rome Statute of the International Criminal Court (ICC-ASP/7/1) has been prepared to assist the Assembly in its consideration of issues before it at its seventh session, which will be convened in The Hague, on Friday, 14 November 2008, at 10 a.m. The status of the documentation reflected herein is current as of 13 November 2008.

Annotated list of items included in the provisional agenda

1. Opening of the session by the President

In accordance with article 112, paragraph 6, of the Rome Statute, the Assembly of States Parties (“the Assembly”) meets once a year in regular session. In accordance with rule 5 of the Rules of Procedure of the Assembly of States Parties (“Rules of Procedure”),¹ the Assembly, at the 7th meeting of its fifth session, on 1 December 2006, decided to convene its seventh session in The Hague, for not less than 8 days. At the 7th meeting of its sixth session, on 14 December 2007, the Assembly decided that the seventh session will be held from 14 to 22 November 2008.

At the 6th meeting of its sixth session, on 13 December 2007, the Assembly elected Mr. Christian Wenaweser (Liechtenstein) President of the Assembly for the seventh to ninth sessions.² Rule 30 of the Rules of Procedure provides that the President shall declare the opening of each plenary meeting of the session.

2. Silent prayer or meditation

Pursuant to rule 43 of the Rules of Procedure, immediately after the opening of the first plenary meeting and immediately preceding the closing of the final plenary meeting, the President shall invite the representatives to observe one minute of silence dedicated to prayer or meditation.

3. Adoption of the agenda

Rules 10 to 13 and 18 to 22 of the Rules of Procedure concerning the agenda are applicable to regular sessions.

In accordance with rules 10 and 11 of the Rules of Procedure, the provisional agenda for the seventh session (ICC-ASP/7/1) was issued on 13 March 2008. In accordance with rule 19 of the Rules of Procedure, the agenda has to be submitted to the Assembly for approval.

Documentation

Provisional agenda (ICC-ASP/7/1)

4. States in arrears

According to article 112, paragraph 8, of the Rome Statute, "A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years."

At its fourth session, the Assembly took note of the report of the Bureau on the arrears of States Parties³ and the recommendations therein and invited the Bureau to report

¹ *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.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part I.B, para. 22. In accordance with rule 29 of the Rules of Procedure, the President is elected for a three-year term.

³ ICC-ASP/4/14.

back to the fifth session of the Assembly on the status of arrears, including on suggestions, if necessary, of measures to promote the timely, full and unconditional payment of assessed contributions and advances towards the costs of the Court. Furthermore, the Assembly decided that requests for exemption under article 112, paragraph 8, of the Rome Statute, should be submitted by States Parties to the Secretariat of the Assembly at least one month before the session of the Committee on Budget and Finance (“the Committee”), so as to facilitate the Committee’s review of the requests and that the Committee should advise the Assembly of States Parties before the Assembly decided on any requests for exemption under article 112, paragraph 8, of the Rome Statute.⁴

At its fifth session, the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. In this connection, the Assembly adopted resolution ICC-ASP/5/Res.3 containing recommendations setting out a specific procedure for requesting exemptions from the loss of voting rights⁵ and decided that the Bureau should review on a regular basis the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate.⁶

At its sixth session, the Assembly called upon States Parties to fully and without further delay implement the recommendations contained in resolution ICC-ASP/5/Res.3, annex III.⁷

Documentation

Report of the Bureau on the arrears of States Parties (ICC-ASP/7/26)

5. Election of two Vice-Presidents and 18 members of the Bureau

In accordance with article 112, paragraphs 3 (a) and (b), of the Rome Statute, the Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms. Furthermore, the Bureau shall have a representative character, taking account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

Pursuant to rule 29 of the Rules of Procedure, as amended by resolution ICC-ASP/3/Res.2, at the 5th meeting of its third session, the Assembly agreed on the future composition of the Bureau:

- Group of Western European and other States: 5 seats;
- Group of African States: 5 seats;
- Group of Latin American and Caribbean States: 4 seats;
- Group of Eastern European States: 4 seats;

⁴ *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 III, resolution ICC-ASP/4/Res.4, paras. 40, 43 and 44.

⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, annex III.

⁶ *Ibid.*, part III, resolution ICC-ASP/5/Res.3, para. 42.

⁷ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III.A, resolution ICC-ASP/6/Res.2, annex III.

- 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 Bureau that was elected for a three-year term at the 1st meeting of the fourth session, on 28 November 2005.

At the 6th meeting of its sixth session, on 13 December 2007, the Assembly elected Mr. Christian Wenaweser (Liechtenstein) President of the Assembly for the seventh to ninth sessions.⁸

No documentation

6. Credentials of representatives of States at the seventh session

(a) Appointment of the Credentials Committee

(b) Report of the Credentials Committee

Representation and credentials are regulated by rules 23 to 28 of the Rules of Procedure. In accordance with rule 24, the credentials of representatives of States Parties and the names of alternates and advisers shall be submitted to the Secretariat if possible not later than 24 hours after the opening of the session. The credentials shall be issued by the Head of State or Government or by the Minister for Foreign Affairs or by a person authorized by either of them.

Under rule 25, a Credentials Committee, consisting of representatives of nine States Parties to be appointed at the beginning of each session by the Assembly on the proposal of the President, shall examine the credentials of representatives of States Parties and report to the Assembly without delay.

7. Organization of work

The Assembly will consider and adopt a programme of work at the beginning of the session on the basis of a proposal by the Bureau.

8. General debate

No documentation

9. Report on the activities of the Bureau

In accordance with article 112, paragraph 2(c), of the Rome Statute, the Assembly shall consider the reports and activities of the Bureau and take appropriate action in regard thereto.

⁸ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part I.B, para. 22. In accordance with rule 29 of the Rules of Procedure, the President is elected for a three-year term.

Documentation

Report of the Bureau on cooperation (ICC-ASP/7/18)

Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/7/19)

Report of the Bureau on geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/7/21)

Report of the Bureau on an independent oversight mechanism (ICC-ASP/7/28)

Report of the Bureau on the strategic planning process of the International Criminal Court (ICC-ASP/7/29)

Report of the Bureau on the assessment of the Regulations of the Trust Fund for Victims (ICC-ASP/7/32)

10. Report on the activities of the Court

Under article 112, paragraph 2(b), of the Rome Statute, the Assembly shall provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court. In accordance with article 112, paragraph 5, of the Rome Statute, the President of the Court, the Prosecutor and the Registrar or their representatives may participate in meetings of the Assembly. As provided in rule 34 of the Rules of Procedure, they may make oral or written statements and provide information on any question under consideration. Accordingly, the President of the Court will present a report on the activities of the Court since the previous session of the Assembly.

Documentation

Report on the activities of the Court (ICC-ASP/7/25)

11. Consideration and adoption of the budget for the seventh financial year

In accordance with article 112, paragraph 2(d), of the Rome Statute, the Assembly shall consider and decide on the budget of the Court.

Regulation 3 of the Financial Regulations and Rules of the Court provides that the Registrar shall prepare the proposed programme budget for each financial period and submit it to the States Parties as well as to the Committee on Budget and Finance for consideration. The Committee on Budget and Finance shall make the relevant recommendations to the Assembly.

At its third session, the Assembly endorsed the recommendation of the Committee on Budget and Finance that the Court should include in future performance reports data on financial performance and results achieved rather than outputs. This information should be submitted annually to the Assembly through the Committee either in the draft programme budget or in a separate performance report.⁹

At its third session, the Assembly established a Contingency Fund and decided that the Fund shall be limited to a period of 4 years and that it would decide at its session in 2008

⁹ *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 II.A.8(b), para. 50, and part II.A.1, para. 4.

on the extension or possible discontinuation of the Fund and on any other question related to the Fund that it deems necessary in the light of experience.¹⁰ The Assembly would, taking into account the comments and recommendations of the Committee on Budget and Finance,¹¹ take a decision on the extension or discontinuation of the Contingency Fund.

At its sixth session, the Assembly invited the Court, taking into the comments of the Committee on Budget and Finance, to present to the Assembly at its next session an updated report on the different mechanisms for legal aid existing before international criminal jurisdictions in order to assess, inter alia, the different budgetary impact of the various mechanisms.¹² The Assembly would consider the financial and policy implications of the provision of legal aid.

Documentation

Report of the Committee on Budget and Finance on the work of its tenth session (ICC-ASP/7/3)

Report on appropriate resources for financial investigations under the Court's legal aid programme (ICC-ASP/7/4)

Report of the Court on options for outsourcing translation work (ICC-ASP/7/5)

Report of the Court on Human Resources - Development of a Human resources Strategy: Progress Report (ICC-ASP/7/6)

Report on budget performance of the International Criminal Court as at 31 March 2008 (ICC-ASP/7/7)

Report on programme performance of the International Criminal Court for the year 2007 (ICC-ASP/7/8 and Add.1 and Add.2)

Proposed Programme Budget for 2009 of the International Criminal Court (ICC-ASP/7/9 and Corr.1, Corr.2* (English only) and Corr.3)

Interim report on different legal aid mechanisms before international criminal jurisdictions (ICC-ASP/7/12)

Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2007 to 30 June 2008 (ICC-ASP/7/13)

Report on budget performance of the International Criminal Court as at 31 August 2008 (ICC-ASP/7/14)

Report of the Committee on Budget and Finance on the work of its eleventh session (ICC-ASP/7/15 and Add.1)

Report on the Court's use of the Contingency Fund (ICC-ASP/7/16)

Proposed supplementary budget - preparatory trial activities - *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-ASP/7/17)

Report on different legal aid mechanisms before international criminal jurisdictions (ICC-ASP/7/23)

Report of the Court on family visits to indigent detained persons (ICC-ASP/7/24)

¹⁰ Ibid., part III, resolution ICC-ASP/3/Res.4, section B, para. 6.

¹¹ ICC-ASP/7/15, paras. 134-141.

¹² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.2, para. 13.

Report of the Bureau on family visits for detainees (ICC-ASP/7/30)

Report of the Bureau on the different mechanisms for legal aid existing before international criminal jurisdictions (ICC-ASP/7/31)

12. Consideration of the audit reports

Regulation 12 of the Financial Regulations and Rules provides that the Assembly shall appoint an Auditor to conduct audits in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly and in accordance with the additional terms of reference set out in the annex to the Financial Regulations and Rules. At the 11th meeting of its first session, on 22 April 2003, the Assembly was informed that the Bureau, acting under the delegated authority of the Assembly,¹³ had appointed the National Audit Office of the United Kingdom of Great Britain and Northern Ireland as Auditor for the Court for a period of four years.¹⁴

At its fifth session, the Assembly reappointed as External Auditor for a second quadrennium (2007 - 2010) the National Audit Office of the United Kingdom of Great Britain and Northern Ireland.¹⁵

In accordance with regulation 12.7, the Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period. In accordance with regulations 12.8 and 12.9, audit reports, before their submission to the Assembly, are subject to examination by the Registrar and the Committee on Budget and Finance. The Assembly considers and approves the financial statements and audit reports forwarded to it by the Committee on Budget and Finance.

At its sixth session, the Assembly recommended that the Registry submit annually to the Assembly of States Parties a report summarizing the main activities undertaken by the Office of the Internal Auditor, to include the most relevant conclusions of its report and such guidance and recommendations that have been adopted. The report should also advise on the implementation rate of the above-mentioned guidance and recommendations.

The Assembly further recommended that the Internal Auditor should report annually and on an ad hoc basis, where appropriate, to the Committee on Budget and Finance through the Chair of the Audit Committee, and that the Committee would refer any matters to the Assembly that require its attention. The Assembly decided to amend rule 110.1 accordingly.¹⁶

At its eleventh session, the Committee on Budget and Finance noted that the Assembly had further, at its sixth session, agreed that the Registrar should take appropriate steps, as necessary, to ensure access at the Court to the information contained in any particular report

¹³ *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 I, para. 29.

¹⁴ *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, ICC-ASP/1/3/Add.1), part I, para. 40.

¹⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part II, para. 43.

¹⁶ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part II.C, paras. 4 and 6.

prepared by the Office of the Internal Auditor to any State Party if so requested, and in so doing, take appropriate measures to safeguard confidential or personal information.¹⁷

The Committee observed that this decision appeared not to be consistent with the decision of the Assembly¹⁸ to also amend rule 110.1 of the Financial Regulations and Rules. The Committee recommended that the Assembly consider these matters again with a view to ensuring clarity in the reporting lines.¹⁹

Documentation

Financial statements for the period 1 January to 31 December 2007 (ICC-ASP/7/10 and Corr.1)

Trust Fund for Victims financial statements for the period 1 January to 31 December 2007 (ICC-ASP/7/11)

Report of the Committee on Budget and Finance on the work of its eleventh session (ICC-ASP/7/15 and Add.1)

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

By its resolution ICC-ASP/1/Res.6, the Assembly established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, as well as a Board of Directors of the Trust Fund for the benefit of victims.

At the 5th meeting of its second session, on 12 September 2003, the Assembly elected the five members of the Board of Directors, whose terms of office commenced on the same date. In accordance with paragraph 11 of the resolution establishing the Trust Fund, the Board should submit an annual report to the Assembly on the activities and projects of the Fund.

Documentation

Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2007 to 30 June 2008 (ICC-ASP/7/13)

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

By its resolution ICC-ASP/1/Res.1, the Assembly decided to establish a Special Working Group on the Crime of Aggression, open on an equal footing to all States members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of elaborating proposals for a provision on aggression to be submitted to the Assembly for its consideration at a review conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the Statute in accordance with its relevant provisions. The Assembly decided further that the Special Working Group should meet during the regular sessions of the Assembly or at any other time that the Assembly deemed appropriate and feasible.

At the 8th meeting of its resumed first session, on 7 February 2003, the Assembly decided, inter alia, on the basis of a proposal of the Bureau, that the Special Working Group should meet during annual sessions of the Assembly, starting from its second session in 2003.

¹⁷ Ibid., para. 4.

¹⁸ Ibid., part III, resolution ICC-ASP/6/Res.5.

¹⁹ ICC-ASP/7/15, para. 34.

It also decided that two to three meetings of the Assembly should be allocated to the Special Working Group and that that pattern should be repeated, as necessary, each year.

At its sixth session, in 2007, the Assembly decided, inter alia, to devote at least two days of the seventh session to the work of the Special Working Group and to hold a resumed seventh session of five days, as necessary, in 2009 in New York to conclude the work of the Special Working Group, at a date to be determined by the Bureau.

Documentation

Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed sixth session, New York, 2-6 June 2008 (International Criminal Court publication, ICC-ASP/6/20/Add.1), annex II.

15. Premises of the Court

At its sixth session, the Assembly adopted resolution ICC-ASP/6/Res.1, whereby it, inter alia, decided that the permanent premises of the Court should be constructed on the Alexanderkazerne site and, in this connection, authorised the host State to launch the architectural design competition, while reserving the right of the Assembly to authorise the signing of contracts.

Furthermore, the Assembly established an Oversight Committee, composed of ten States Parties, to provide strategic oversight for the project in accordance with annex II of the resolution. In addition, the Assembly requested the Oversight Committee to:

- (a) Continue consideration of options for financing the construction of the permanent premises and related costs, including the compatibility of these options with the Financial Regulations and Rules of the Court, with a particular focus on the offer contained in the letter dated 25 January 2006 from the Minister of Foreign Affairs of the host State to the President of the Assembly of States Parties in order to provide recommendations to the Assembly at its next session;
- (b) Continue identifying and clarifying the estimated overall construction costs of the project with a view to providing recommendations on the cost envelope to the Assembly at its next session;
- (c) Continue identifying and quantifying the other costs related to the project; and
- (d) Continuously monitor the functioning and operations of the governance structure for the project and, if necessary, provide recommendations to the Assembly on any adjustments that may be required;

Furthermore, annex II provides that the Chairperson of the Oversight Committee shall report to the Assembly at its next session.

Documentation

Report of the Oversight Committee on the permanent premises (ICC-ASP/7/22 and Add.1/Rev.1)

16. Review Conference

In accordance with article 123 of the Rome Statute, seven years after the entry into force of the Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to the Statute. Such review may include, but is not

limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

At its fifth session, the Assembly requested the Bureau to start preparation of the Review Conference, in particular on the issues of the rules of procedure applicable to the Review Conference and on practical and organizational issues, especially as regards dates and venue of the Review Conference, and to report to the sixth session of the Assembly of States Parties on the status of such preparations.²⁰

At its sixth session, the Assembly endorsed the draft rules of procedure of the Review Conference and decided that a Review Conference shall be held in the first semester of 2010, with a duration of five to ten working days, and that proposals for amendments to be considered at the Review Conference should be discussed at the eighth session of the Assembly in 2009, with a view to promoting consensus and a well prepared Review Conference.²¹

Furthermore, the Assembly requested the Bureau and the focal point on the review of the Rome Statute to carry out consultations, on the basis of the discussions that had taken place at the sixth session of the Assembly, also taking into account the non-exhaustive list of objective criteria contained in the annex of the report of the Working Group on the Review Conference,²² with a view to submitting proposals as regards the venue of the Review Conference to the resumed sixth session of the Assembly in June 2008.²³

At the resumed sixth session, the Assembly adopted resolution ICC-ASP/6/Res.8,²⁴ wherein it, inter alia, emphasized the need to reach, without delay, a final decision on the venue at the seventh session of the Assembly.

Documentation

Interim report of the focal point on the review of the Rome Statute (ICC-ASP/7/WGRC/INF.1)

Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed sixth session, New York, 2-6 June 2008 (International Criminal Court publication, ICC-ASP/6/20/Add.1), part II, resolution ICC-ASP/6/Res.8 and annex III.

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

In accordance with rule 5 of the Rules of Procedure, the date of commencement and the duration of each session of the Assembly shall be decided by the Assembly at its previous session.

²⁰ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3.

²¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III.A, resolution ICC-ASP/6/Res.2, paras. 53-54.

²² ICC-ASP/6/WGRC/1.

²³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III.A, resolution ICC-ASP/6/Res.2, para. 56.

²⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed sixth session, New York, 2-6 June 2008* (International Criminal Court publication, ICC-ASP/6/20/Add.1), part II, resolution ICC-ASP/6/Res.8, para. 6.

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

In accordance with paragraph 4 of the annex to resolution ICC-ASP/1/Res.4, the Committee shall meet when required and at least once per year. At its eleventh session, the Committee on Budget and Finance decided, tentatively, to hold its twelfth session from 20 to 24 April 2009 and its thirteenth session from 14 to 22 September 2009 in The Hague.²⁵

19. Other matters

No documentation

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²⁵ ICC-ASP/7/15, para. 144.