

**Fifth session**

The Hague

23 November to 1 December 2006

**Report of the Bureau on the permanent premises of the Court**

**Note by the Secretariat**

Pursuant to operative paragraph 5 of resolution ICC-ASP/4/Res.2, of 3 December 2005, the Bureau of the Assembly of States Parties hereby submits its report on the permanent premises of the Court for consideration by the Assembly. The report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau, as well as the recommendations on the issue contained in the report of the Committee on Budget and Finance on the work of its seventh session.

## **Report of the Bureau on the permanent premises of the Court**

1. In December 2004, the Bureau of the Assembly of States Parties to the Rome Statute of the International Criminal Court (“the Bureau”) decided to establish two standing working groups, one in New York and the other in The Hague, in accordance with resolution ICC-ASP/3/Res.8.

2. On 14 February 2006, the Bureau reconstituted its two Working Groups and adopted their terms of reference. The mandate of The Hague Working Group included, inter alia, the issue of permanent premises of the Court.

3. As regards the issue of permanent premises of the Court, in operative paragraph 5 of resolution ICC-ASP/4/Res.2, the Assembly recommended that the Bureau of the Assembly and the Committee on Budget and Finance should “remain seized of the matter and report to the fifth session of the Assembly of States Parties.”

4. Between 23 February and 8 November 2006, The Hague Working Group held 13 meetings. At seven of those meetings the Working Group discussed, inter alia, the issue of permanent premises. Representatives of the host State and of the Court took part in the meetings.

5. The Facilitators on the issue of permanent premises have been Ambassador Gilberto Vergne Saboia (Brazil), from 5 April to 15 August, and Mr. Masud Husain (Canada) as of 23 October. Furthermore, the two Vice-Presidents of the Assembly, Ambassador Erwin Kubesch (Austria) and Ambassador Hlengiwe Mkhize (South Africa), as well as the Coordinators of The Hague Working Group, Ambassador Colleen Swords (Canada) and Ambassador Sandra Fuentes-Berain (Mexico), also helped to guide the discussions on this issue.

6. The Hague Working Group organized a two-day meeting with experts from capitals on the issue of permanent premises. The meeting, which was open to all States Parties, took place on 21 and 22 September 2006 at the Ministry of Foreign Affairs of the Netherlands. The Court and the host State had arranged for all interested delegates and experts to visit the Arc building (“the Arc”), the premises of the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the site of the Alexanderkazerne.

7. The Working Group reviewed a substantial number of documents and informal papers, as well as presentations by the Court and the host State on the issue of permanent premises. Most of this information has been consolidated in the comprehensive progress report on the future permanent premises of the International Criminal Court (ICC-ASP/5/16).

8. On 5 October 2006, the Coordinator of The Hague Working Group conveyed to the Bureau an informal interim report on the permanent premises, which consisted of the following:

(a) A report prepared by Ambassador Colleen Swords and Ambassador Gilberto Vergne Saboia, in their former capacities as Coordinator of the Working Group and Facilitator on permanent premises, respectively, and adopted by the Working Group at its 10<sup>th</sup> meeting on 4 October; and,

(b) The informal summary by the Vice-Presidents of the Assembly of States Parties of the meeting of experts on the issue of permanent premises, which was convened by the Working Group on 21 and 22 September.

9. The present report and the draft resolution contained in the annex are submitted for the consideration of the Assembly of States Parties.

## Annex

### Draft resolution on permanent premises

*The Assembly of States Parties,*

*Recalling* resolution ICC-ASP/4/Res.2 which emphasized that “the Court is a permanent judicial institution and as such requires functional permanent premises to enable the Court to discharge its duties effectively and to reflect the significance of the Court for the fight against impunity”, and recommended, “bearing in mind the recommendation of the Committee contained in paragraph 86 of its report on the work of its fifth session (ICC-ASP/4/27), that the Bureau of the Assembly and the Committee remain seized of the matter and report to the fifth session of the Assembly of States Parties on the issue of permanent premises of the Court”;

*Recalling* that three options for permanently housing the Court have been under consideration, namely: (1) remaining in the current location (Arc Building); (2) moving to the premises of the International Criminal Tribunal for the Former Yugoslavia; and (3) building purpose-built premises on the Alexanderkazerne site;

*Further recalling* the original host State bid that provided premises free of charge until 2012, and the further host State bid as provided in the letter dated 25 January 2006 from the Minister for Foreign Affairs of the host State to the President of the Assembly of States Parties;<sup>1</sup>

*Noting* the report of the Bureau on the permanent premises of the Court (ICC-ASP/5/...) that refers to the informal interim report on permanent premises, which tends to conclude that the third option would probably offer the greatest flexibility in terms of planning and costs;

*Underscoring* that the premises of the Court must respond to the needs of the different stakeholders as to functionality, flexibility (both in construction terms and in the application of costs), scalability, security, character and identity and that the design should reflect these requirements;

*Mindful* of the reports of the Committee on Budget and Finance on the work of its sixth<sup>2</sup> and seventh<sup>3</sup> sessions;

1. *Requests* that, without prejudice to the prerogative of the Assembly to make a final decision on where to permanently house the Court, the International Criminal Court now focus on option 3 only, purpose-built premises on the Alexanderkazerne site, with a view to allowing the Assembly to take an informed decision at its next session;

2. *Requests* the Court, in order to allow a review by the Committee on Budget and Finance at its eighth session in 2007:

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<sup>1</sup> *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), annex IV.

<sup>2</sup> ICC-ASP/5/1, paras. 31-45.

<sup>3</sup> ICC-ASP/5/23 and Add.1, paras. 106-113.

- a) To finish preparing in the shortest possible time a detailed functional brief that would include its user and security requirements reflecting scalability in terms of staffing levels;
  - b) To prepare, in consultation with the host State, cost estimates for the project;
  - c) To prepare, in consultation with the host State, a provisional timetable with key decision points, a summary of planning and permit issues and a planning strategy for the site showing possible modular approaches to scalability;
3. *Requests* the host State, in order to allow a review by the Committee on Budget and Finance at its eighth session in 2007, to provide further information on the financial and land offers contained in the further host State bid, including the possible options and methods for managing the proposed loan, any legal issues concerning the separation of ownership of the land and the proposed buildings and other issues that would be subject to a contract between the host State and the Court;
  4. *Requests* the Bureau to review the information requested in paragraphs 2 and 3 and to identify any gaps or other concerns to the Court and the host State so that the information is completed to the required level;
  5. *Requests* the host State, in consultation with the Bureau and the Court, to propose the framework, criteria, legal parameters and modalities for an international architectural concept design competition, including any pre-selection criteria and process;
  6. *Mandates* the Bureau, if it is satisfied with the information provided under paragraphs 2, 3 and 5, to authorize the commencement of an international pre-selection process for architects to be conducted by the host State;
  7. *Requests* the Bureau, in consultation with the Court and the host State, to prepare options for a governance structure for the project that would specify the respective roles and responsibilities of the Assembly, the Court and the host State;
  8. *Requests* the Bureau to prepare options for effective participation by the Assembly of States Parties in the project governance and oversight structures;
  9. *Requests* the Court to establish and staff a project management structure within the Court as per programme 5200 of the proposed programme budget for 2007;<sup>4</sup>
  10. *Encourages* the Bureau to make use of experts from States Parties in fulfilling its mandate under this resolution.

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<sup>4</sup> ICC-ASP/5/9, Corr.1 (English only) and Corr.2.