

**Part II**  
**Resolutions adopted by the Assembly of States Parties**

## **Resolution ICC-ASP/8/Res.1**

*Adopted at the 7<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### **ICC-ASP/8/Res.1**

#### **Establishment of an independent oversight mechanism**

*The Assembly of States Parties,*

*Recalling* the Rome Statute of the International Criminal Court and, in particular article 112, paragraphs 2(b) and 4, of the Rome Statute,

*Welcoming* the report of the Bureau on an independent oversight mechanism,<sup>1</sup> as well as the comments contained in the Report of the Committee on Budget and Finance on the work of its thirteenth session,<sup>2</sup>

1. *Decides* to establish an independent oversight mechanism in accordance with article 112, paragraph 4, of the Rome Statute and the terms of reference set out in the annex to the present resolution;
2. *Decides further* that the Bureau, in coordination with the Court, shall prepare a report on the operation of the inspection and evaluation functions within the oversight mechanism, including the terms of reference and related financial implications, with a view to a decision on its adoption at the next session of the Assembly.
3. *Decides* to establish a new major programme (Independent oversight mechanism) with a budget of €341,600 to cover the start-up and continuing maintenance costs of the aforementioned oversight mechanism.

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<sup>1</sup> Report of the Bureau on the establishment of an independent oversight mechanism (ICC-ASP/8/2, Add. 1, 2 and 3).

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.2, paras. 120 - 121.

## Annex

1. The Assembly of States Parties establishes, in accordance with the present resolution, an independent oversight mechanism.
2. The independent oversight mechanism itself will be expected to draft the rules governing its work, for final adoption by the Assembly, in accordance with the recommendations set out hereunder.

### Setting up the independent oversight mechanism

3. Although in its initial set-up phase one P-5 staff member would be seconded from the United Nations Office of Internal Oversight, the oversight mechanism will consist of two staff members, i.e. one staff member who will head the office at the P-4 level and one further support staff member at the P-2 level. These staffing levels and grades may be reviewed again by the Assembly once the oversight mechanism has been fully operational for a reasonable period of time. These individuals will begin work six months before the oversight mechanism becomes officially operational so as to develop all its functions, regulations, rules, protocols and procedures and submit them to the Assembly for approval. The recruitment process for the position of head of the oversight mechanism shall be conducted by the Bureau in co-ordination with the Court.
4. The current Rules of Procedure and Evidence, together with the relevant Staff Regulations, Staff Rules and Regulations of the Court, insofar as they relate to the disciplinary regime of the Court, shall remain in force until such time as modifications and/or amendments thereto are approved by the Assembly or, as appropriate, the Court.

### Location of the independent oversight mechanism

5. The independent oversight mechanism shall be co-located (but not integrated or subordinated to) with the Office of Internal Audit at the seat of the Court in The Hague.

### Scope of the independent oversight mechanism

6. As regards the scope of the independent oversight mechanism, the following parameters shall apply:
  - a) The scope of the independent oversight mechanism, as envisaged under article 112, paragraph 4, of the Rome Statute includes investigation, evaluation and inspection. The independent professional investigative capacity will be implemented immediately, subject to paragraph 3 of the present annex. The additional elements of oversight, as provided for in the Statute, such as inspection and evaluation, will be brought into operation, subject to a decision of the Assembly at its next session.
  - b) It is envisaged that the investigative unit of the newly established independent oversight mechanism will have proprio motu investigative powers and incorporate whistle-blower procedures and protections.
  - c) It is envisaged that the individuals covered by the oversight mechanism will include all elected officials of the International Criminal Court and all staff subject to the Staff Rules and Regulations of the International Criminal Court. It is also envisaged that the investigative unit of the oversight mechanism will be utilized for the conduct of investigations of any allegations of misconduct made against contractors retained by the Court and working on its behalf. Such investigations should be carried out in accordance with the terms of the contract. In circumstances where a contract is silent on the manner and/or the modalities of any investigation, the oversight mechanism

will conduct its investigation in accordance with its own established procedures and recognized best practice. The findings of any investigation will be used to determine the applicable sanctions, if any, under the existing contractual regime between the Court and the contractor. Within this context, it is recommended that the Court develop and incorporate into its procurement contracts a code of conduct and also appropriate disciplinary procedures to be followed in circumstances of alleged misconduct.

- d) In all cases, if criminal activity is suspected in the course of an investigation, the oversight mechanism must notify the relevant national authorities, such as the State where the suspected crime was committed, the State of the suspect's nationality, the State of the victim's nationality, and where applicable, the host State of the seat of the Court.
- e) With regard to the investigation of elected officials, it is recommended that the relevant provisions of the Rules of Procedure and Evidence and the Regulations of the Court be amended to remove this function from the judges and to transfer it to the independent oversight mechanism.

### **Functions of the independent oversight mechanism**

7. The professional investigative unit will operate in support of the existing disciplinary structures of the Court to conduct investigations on allegations of misconduct and to ensuring effective and meaningful oversight thereof. Such investigations and oversight shall exclude staff management issues, such as staff underperformance of duties, as distinct from staff misconduct. If a complaint which seems, prima facie, to pertain to staff management issues is launched, it shall be considered not to fall within the remit of the oversight mechanism and be referred to management. Management shall, however, refer to the oversight mechanism cases brought to its attention that fall within the latter's competence.

8. The functions of the oversight mechanism shall not affect those described in paragraph (a) of regulation 10.2 of the Staff Regulations of the Court which provides that "[t]he Registrar or the Prosecutor, as appropriate, may impose disciplinary measures on staff members whose conduct is unsatisfactory". As the purpose of the oversight mechanism is not to perform any staff management, the above provision shall continue to apply to all disciplinary measures that fall under an administrative ambit, without prejudice to the oversight's mechanism's investigative capacity in respect of:

- a) Internal misconduct warranting disciplinary measures; and
- b) Investigating external penal misconduct.

9. The functions of the oversight mechanism shall not affect those described in paragraph (b) of regulation 10.2 of the Staff Regulations of the Court which provides that "[t]he Registrar or the Prosecutor, as appropriate, may summarily dismiss a member of staff for serious misconduct, including breach of confidentiality".

10. The functions of the independent oversight mechanism shall replace the investigative role of the Presidency in respect of complaints received against elected officials, namely, a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar. The factual findings of the investigation carried out by the independent oversight mechanism shall be transmitted to the Presidency, which will convene a panel of three judges to consider making recommendations, as

appropriate, in respect of any further action that should be taken in accordance with article 46<sup>1</sup> and/or article 47<sup>2</sup> of the Rome Statute.

11. In relation to the initiation of complaints made in respect of an elected official, all complaints shall be submitted to the independent oversight mechanism. The complainant may also, at the time of filing, elect to submit a copy to the Presidency, for information purposes only. The independent oversight mechanism may also initiate investigations against elected officials proprio motu. The complaint concerning any misconduct described in rules 24<sup>3</sup> and 25<sup>4</sup> of the Rules of Procedure and Evidence, shall include the grounds on which it is based, the identity of the complainant and, if available, any relevant evidence. The complaint shall remain confidential.

12. The procedure identified in paragraph 11 shall apply *mutatis mutandis* to complaints made by staff members against other staff members, except that the complainant may elect to submit a copy of the complaint to the Prosecutor or Registrar, as appropriate.

### **Jurisdiction**

13. There should be no impunity for criminal misconduct. However, it is an accepted general principle of international law that only States can prosecute for ordinary criminal misconduct, not international organizations which, in principle, lack such competence. The oversight mechanism must focus on developing a notification mechanism so as to inform national authorities of suspected criminal misconduct, together with developing co-operation procedures with national authorities so as to facilitate the possibility of national prosecutions where investigations conducted by the oversight mechanism reveal suspected criminal misconduct.

### **Immunities**

14. The work of the oversight mechanism will be without prejudice to the privileges and immunities enjoyed by Court staff and elected officials in the exercise of their functions, but should be guided by the principle that privileges and immunities may not be invoked to justify unlawful acts. In cases where prosecutorial function is to be exercised against individuals with immunity, the oversight mechanism may recommend immunity waivers to Court management as it deems appropriate and advisable, according to established standards and practice. In determining whether to waive immunity, the Court must have regard to its duty to ensure that prior to any official being made subject to national prosecution he/she will be afforded a minimum standard of due process. The above applies to privileges and immunities of the Court and its material, including evidentiary material, from legal process and any measure of execution.

### **Accountability of the oversight mechanism**

15. The independent oversight mechanism will be accountable to the Assembly. The oversight mechanism will submit quarterly activity reports directly to the Bureau of the Assembly of States and will also submit on an annual basis a consolidated report of its activities to the Assembly via the Bureau (all reports shall be copied to the Presidency, the Office of the Prosecutor, the Registrar and the Committee on Budget and Finance). The Court will have a reasonable opportunity to respond in writing to the reports submitted by the oversight mechanism. Such written responses made by the Court shall be transmitted to the Bureau and the Assembly and copied to the head of the oversight mechanism and the Committee on Budget and Finance.

<sup>1</sup> Article 46 is entitled "Removal from office".

<sup>2</sup> Article 47 is entitled "Disciplinary measures".

<sup>3</sup> Rule 24 is entitled "Definition of serious misconduct and serious breach of conduct".

<sup>4</sup> Rule 25 is entitled "Definition of misconduct of a less serious nature".

**Follow-up by the Court**

16. The Court shall provide the oversight mechanism biannually with written updates regarding the follow-up of disciplinary procedures involving cases previously investigated by the oversight mechanism, together with any information, if any, on the application of sanctions made in individual cases.

**Memorandum of Understanding with the United Nations Office of Internal Oversight Services**

17. The Registrar shall, for an initial period of one year, enter into a memorandum of understanding with the United Nations Office of Internal Oversight Services to provide support services on a cost recovery basis for the operationalization of the oversight mechanism. Any subsequent renewal would be subject to a decision of the Assembly of States Parties.

**Budget**

18. The Assembly establishes a major programme budget to cover the start-up and continuing maintenance costs of the aforementioned oversight mechanism.

## Resolution ICC-ASP/8/Res.2

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.2 Cooperation

*The Assembly of States Parties,*

*Stressing* the importance of effective and comprehensive cooperation and assistance by States, international and regional organizations, so that the Court can properly fulfil its mandate,

*Recalling* that at its seventh session the Assembly encouraged the Bureau to continue to work on cooperation in close coordination with the Court and to report on significant developments to the Assembly at its eighth session<sup>1</sup>,

*Noting* the report of the Court on the issue of cooperation,

1. *Recalls* the adoption of the resolution of the Assembly on Strengthening the International Criminal Court and the Assembly of States Parties, at its sixth session on 14 December 2007, and *strongly encourages* States Parties to continue to intensify their cooperation with the Court, inter alia, by implementing the full-range of recommendations contained in annex II of the resolution;
2. *Encourages* national prosecuting authorities to cooperate and exchange information and best practices on the prosecution of international crimes;
3. *Encourages* the Court to continue its efforts to foster cooperation with States, international and regional organizations and civil society and *recalls* that effective cooperation remains essential for the Court to carry out its activities;
4. *Appreciates* the efforts of the Court and the United Nations to strengthen their cooperation and to promote the full implementation of the Relationship Agreement between the International Criminal Court and the United Nations;
5. *Expresses its gratitude* for the Secretary-General's efforts to strengthen cooperation between the United Nations and the Court;
6. *Acknowledges with appreciation* the continued cooperation between the Court and the United Nations system, as evidenced by the hosting of a trial by the Special Court for Sierra Leone, and by several supplementary arrangements established within the framework provided by the Relationship Agreement between the Court and the United Nations;
7. *Welcomes* the implementation of the Agreement between the International Criminal Court and the European Union on Cooperation and Assistance, as well of the other agreements of the Court and the Office of the Prosecutor, *encourages* the Court to conclude as early as possible an agreement with the African Union, and *invites* other relevant regional organizations to consider concluding such agreements with the Court;

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 42.

8. *Appeals* to all States in which personnel of the Court are deployed and to all others on which such personnel may rely to ensure the safety of, and to prevent attacks against, personnel of the Court and to provide cooperation and judicial assistance aimed at facilitating the conduct and fulfilling of their mandate;
9. *Acknowledges* the crucial role played by journalists, media professionals and associated personnel to inform the international community on the Court's activities, and *stresses* the necessity for States and other parties to an armed conflict to protect such persons as civilians, provided that they enjoy such status under international humanitarian law;
10. *Takes note* of the ongoing activities of international organizations and agencies, as well as other organizations, including non-governmental organizations, in the promotion of international criminal justice, and the support provided to the Court;
11. *Notes* the potential contribution that inter-governmental cooperative initiatives can, upon request and when legally feasible, play in the effective enforcement of international criminal justice through, for example, the rapid identification, collection and preservation of the most perishable type of information relating to crimes under international law, including the International Humanitarian Fact-Finding Commission and other similar institutions;
12. *Further takes note* of the initial operational readiness of Justice Rapid Response as an inter-governmental cooperative mechanism to support international criminal justice, through the creation of a stand-by facility of expertise in order to assist in the rapid identification, collection and preservation of information relating to crimes under international law, and also *takes note* of the continued development and operability of this mechanism;
13. *Emphasizes* the need for States Parties and those States under an obligation to do so to cooperate with the Court in such areas as preserving and providing evidence, sharing information, securing the arrest and surrender to the Court of persons for whom arrest warrants have been issued and protecting victims and witnesses, and *strongly encourages* States, international and regional organizations, as well as civil society, to intensify their support to the Court in its efforts to that end, as appropriate;
14. *Encourages* States Parties to continue to express diplomatic and political support for the Court and for cooperation with the Court;
15. *Calls upon* States to enter into arrangements with the Court concerning, inter alia, protective measures for witnesses, including witness relocation, victims, their families, and others who are at risk on account of testimony given by witnesses and sentence enforcement;
16. *Requests* the Bureau to appoint a new facilitator of the Assembly of States Parties for cooperation for a period of two years, and further *recommends* that, in close consultation with States Parties, the Court and non-governmental organizations, as well as via liaising with other interested States and relevant organizations, the following issues be dealt with as a matter of priority by such facilitation:
  - a) Exploring ways to continue enhancing public and diplomatic support to the Court;
  - b) Exploring ways to continue enhancing the enforcement of Court decisions;
  - c) Undertaking an assessment of other forms of assistance not specifically listed in the Rome Statute, but necessary for the functioning of the Court;
  - d) Developing a framework of action for the adoption of national legislation pursuant to article 88 of the Rome Statute, which could include the development of a mechanism to collect the records and best practices of States Parties in respect to implementing legislation;



- e) Promoting the conclusion of agreements, or other arrangements, for protection or relocation of witnesses, as well as other formula such as trilateral agreements and/or sponsoring agreements for local or regional protection of victims or witnesses, including by giving appropriate consideration to completion strategies of other international jurisdictions;
- f) Exploring ways of cooperation with States Parties and international organizations for the provision of technical assistance in view of setting up national protection programs in situation countries and the examination thereof;
- g) Exploring ways to facilitate the use of new types of evidence, including financial information;
- h) Exploring possibilities for the Court to conclude agreements, or other arrangements, with States Parties on the issue of provisional release under article 60, paragraph 2, of the Rome Statute, including the possibility for the Court of concluding agreements with States Parties on this issue;
- i) Promoting the conclusion of agreements or other arrangements on the enforcement of sentences, including the possibility of concluding trilateral agreements with States Parties that are willing to consider funding requests for the enforcement of the sentence of a convicted person on the territory of another State Party or with international or regional organizations relevant to facilitate sentence enforcement;
- j) Exploring synergies between the Court, States and multilateral organizations working in the wider area of the rule of law, so that domestic capacities can be strengthened to prosecute serious crimes of international concern;
- k) Preparing the issue of cooperation for the Review Conference, such as examining ways in which the 2007 Report of the Bureau on cooperation<sup>2</sup>, the 2009 Report of the Court on cooperation and the implementation of this resolution, can be used for “stocktaking”;

17. *Encourages* the Bureau to continue to work on cooperation in close coordination with the Court, including the identification of other specific issues that need to be fully explored in the context of cooperation and assistance, *requests* the Bureau to report on significant developments to the Assembly of States Parties at its ninth session and *further requests* the Court to submit an updated report on cooperation to the Bureau in advance of the Review Conference and to the Assembly at its tenth session.

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<sup>2</sup> Report of the Bureau on cooperation (ICC-ASP/6/21).

## **Resolution ICC-ASP/8/Res.3**

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### **ICC-ASP/8/Res.3**

#### **Strengthening the International Criminal Court and the Assembly of States Parties**

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent the most serious crimes of concern to the international community, and to put an end to the impunity of the perpetrators of such crimes, is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

*Convinced further* that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court's central role as the only permanent international criminal court within an evolving system of international criminal justice,

*Noting* the principal responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

*Underscoring* its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of its judicial decisions,

*Taking note with appreciation* of United Nations General Assembly resolution A/RES/64/9 of 2 November 2009, concerning the Court, and previous relevant United Nations General Assembly resolutions,

*Welcoming* the establishment of the representation of the Court at the African Union Headquarters in Addis Ababa,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Conscious* of the importance of equitable geographical representation and gender balance in the organs of the Court,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly of States Parties and to ensure the broadest visibility of the Court and the Assembly,

*Conscious* of the risks faced by personnel of the Court in the field,

*Recalling* that at its seventh session the Assembly invited the Court, taking into account the comments of the Committee on Budget and Finance, to present to the Assembly at its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court,<sup>1</sup>

*Noting* the views of the Committee on Budget and Finance on the issue of legal aid for victims' legal representation,<sup>2</sup>

*Recalling* that the Court acts within the constraints of an annual programme budget approved by the Assembly of States Parties,

#### **A. Rome Statute of the International Criminal Court and other agreements**

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the seventh regular session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;
2. *Decides* to keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia, with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;
3. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and judicial cooperation with the Court, and in this regard *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;
4. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes, and to ensure effective enforcement of those laws;
5. *Recognising* that treaty obligations arising from the Rome Statute must be adhered to, *encourages* cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged;
6. *Encourages* States Parties to further discuss issues related to the principle of complementarity and to explore proposals by States Parties introduced as "positive complementarity";
7. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,<sup>3</sup> *endorses* the recommendations of the report, and *requests* the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its ninth session;

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 16.

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.2., para. 126.

<sup>3</sup> 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/8/23).

8. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court, and *calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to incorporate it in their national legislation as appropriate;

9. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

10. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes, and *appeals* to all States which are not party to the Agreement on the Privileges and Immunities of the International Criminal Court in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

## **B. Institution-building**

11. *Takes note* of the statements presented to the Assembly of States Parties by the heads of the organs of the Court, including the President, the Prosecutor and the Registrar, as well as the Board of Directors of the Trust Fund for Victims, the Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;

12. *Notes* with satisfaction the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's analyses, investigations and judicial proceedings in various situations which were referred to the Court by States Parties and the United Nations Security Council;<sup>4</sup>

13. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to take note of best practices of other relevant international organizations and tribunals;

14. *Encourages* the Court to continue the dialogue with other international courts and tribunals to assist with their planning on residual issues and to report to the Assembly of States Parties on this dialogue;

15. *Emphasizes* the importance of electing the most highly qualified judges in accordance with article 36 of the Rome Statute;

16. *Recalls* under article 53(1)(c) that the Prosecutor, in initiating an investigation, is to take into account the gravity of the crime and the interests of victims, as well as to consider whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice;

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<sup>4</sup> United Nations Security Council resolution 1593 (2005).

17. *Notes* the consultations held by the Office of the Prosecutor on the Prosecutorial Strategy with States, international organizations and civil society, and *encourages* the Office of the Prosecutor to continue to carry out such consultations on its policy papers and guidelines, as a continuing sign of its transparency, and to keep the Assembly of States Parties informed in this regard;
18. *Notes with appreciation* the efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance field operations with a view to increasing their efficiency<sup>5</sup>, and *encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in countries in which it carries out its work;
19. *Recognizes* the important work done by the field based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;
20. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel, and thus *continues to encourage* applications to the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;
21. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;
22. *Takes note* of the report, "Legal Aid: Alternate Methods for the Assessment of Indigence",<sup>6</sup> submitted by the Court to the Assembly of States Parties, *endorses* the recommendations contained therein, and *invites* the Court to report to the Assembly of States Parties at its tenth session on the desirability of introducing absolute thresholds of asset holdings beyond which legal aid would not be provided;
23. *Welcomes* the constructive dialogue between the Court and States Parties on the issue of legal aid for victims' legal representation; and *takes note* of the "Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court",<sup>7</sup> submitted by the Court to the Assembly of States Parties, and the conclusions drawn therein, *mindful* that a full judicial cycle, including the reparations phase, is yet to be completed and that the development of policy toward legal aid for victims' legal representation before the Court is ongoing;
24. *Notes* the Court's interpretation of the legal basis for funding legal representation of victims, and *agrees* that it is necessary to fund legal representation for indigent victims in order to give effect to their rights to participate and *endorses* the current assessment of indigence for victims;
25. *Affirms* the position taken in the Court's report to as far as possible appoint one legal team per case in the trial phase;
26. *Invites* the Court to engage in a dialogue with States Parties on the utilization of internal and external counsel and the revised costs analysis of the two options, taking into consideration the comments of the Committee on Budget and Finance at its thirteenth session, and *requests* the Court to present to the Assembly at its ninth session an updated report on the comparison between internal and external counsel, including the revised cost analysis;

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<sup>5</sup> Report of the Court on the enhancement of the Registry's field operations for 2010 (ICC-ASP/8/33).

<sup>6</sup> ICC-ASP/8/24.

<sup>7</sup> ICC-ASP/8/25.

27. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as the New York Working Group, *expresses* its full support for the work of the New York Liaison Office, and *welcomes* the comprehensive and detailed information provided by the Court on the functioning of the New York Liaison Office as a part of the report on the activities of the Court;

28. *Decides* to establish a Liaison Office for the Court at the Headquarters of the African Union in Addis Ababa and *requests* the Court to report to the Assembly of States Parties on the implementation of this decision at its next session;

29. *Welcomes* the presentation of the fifth report of the Court to the General Assembly of the United Nations;<sup>8</sup>

30. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties, *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat of the Assembly of States Parties participates in the meetings of the Coordination Council when matters of mutual concern are considered;

31. *Welcomes* the efforts undertaken by the Court to implement the One Court principle, including by coordinating the activities of the Court among its organs at all levels, while respecting their necessary independence under the Statute, and *encourages* the Court to undertake all necessary efforts to fully implement the One Court principle, inter alia, with a view to ensure full transparency, good governance, and sound management;

32. *Welcomes* the Report of the Bureau on the Strategic Plan<sup>9</sup>, *welcomes also* the efforts of the Court to implement a strategic approach based on the document entitled “Revised strategic goals and objectives of the International Criminal Court for 2009-2018”<sup>10</sup> and the substantial progress made by the Court in the implementation of the strategic goals and objectives, and *underlines* the importance of a credible process of strategic planning, that has a guiding impact on the definition of the Court’s annual priorities and work programmes as well as on budgetary allocations;

33. *Reiterates* the need to continue to improve and adapt outreach activities, and *encourages* the Court to further develop and implement the Strategic Plan for Outreach<sup>11</sup> in affected countries;

34. *Considers* that the issue of wider communication on the Court and its activities is of strategic nature and that an adequate mix of policies, means and methods is needed to meet this significant challenge, hence *encourages* the Court, taking into account the distinct responsibilities and mandates of its organs, to report on a Court-wide plan on public information to the ninth session of the Assembly of States Parties as well as to reinforce the Court’s internal coordination of communications activities to maximize their impact;

35. *Takes note* of the recent presentation by the Court on victims’ strategy<sup>12</sup> and *considers* that the implementation of this strategy constitutes a priority of major importance for the Court in the years to come;

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<sup>8</sup> United Nations document A/64/356.

<sup>9</sup> Report of the Bureau on the strategic planning process of the International Criminal Court (ICC-ASP/8/46).

<sup>10</sup> Report on the activities of the Court (ICC-ASP/7/25), annex.

<sup>11</sup> Strategic Plan for Outreach of the International Criminal Court (ICC-ASP/5/12).

<sup>12</sup> Report of the Court on the strategy in relation to victims (ICC-ASP/8/45).

36. *Reiterates* the importance of the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach, *decides* to keep the issue of the location of Court activities under active review with a view to assisting the Court in due time in formulating a strategy based on adequate preparation and empirical experience, *requests* that adequate attention being given to changing circumstances and significant emerging issues to be considered in adapting the Strategic Plan in order to enable the Court to meet new challenges, *recommends* that the Court continue the constructive dialogue with the Bureau on the strategic planning process, including the victims' strategy, and its different priority dimensions, and *requests* the Court to submit to the ninth session of the Assembly an update on all activities related to the strategic planning process and its components;

37. *Welcomes* the Court's continued efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma and violence against women or children;

38. *Stresses* the importance of the dialogue between the Court and the Bureau of the Assembly of States Parties with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, *welcomes* the report of the Bureau,<sup>13</sup> and *recommends* the Bureau to continue to engage with the Court to identify ways to improve equitable geographical representation and increase the recruitment and retention of women in higher level professional posts, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the ninth session of the Assembly;

39. *Welcomes* activities aiming at strengthening complementarity and the international justice system, such as the Court's Internship and Visiting Professionals Programme as well as the Legal Tools Project, which by aiming at equipping users with the legal information, digests and software required to work effectively in the field of international criminal law, contributes significantly to the promotion of international criminal law and justice and thus to combating impunity, *encourages* States to contribute actively in support of these activities and *encourages further* the Court to keep its database updated;

40. *Welcomes* Resolution A/RES/63/259 whereby the United Nations General Assembly decided to amend article 1 paragraph 7 of the Pension Scheme Regulations for members of the International Court of Justice, and article 1 paragraph 5 of the Pension Scheme Regulations for judges of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to include a specific reference to the International Criminal Court so as to ensure that no former judge of any of these courts receives a pension while also serving as a judge of the International Criminal Court;

### **C. Assembly of States Parties**

41. *Expresses its appreciation* to the Secretary-General of the United Nations for facilitating the first and second resumptions of the seventh session of the Assembly of States Parties, held at United Nations Headquarters, and *looks forward* to continuing such assistance to the Court in accordance with the Relationship Agreement between the United Nations and the Court;

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<sup>13</sup> Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/8/47).

42. *Takes note* of the latest report on the activities of the Court to the Assembly of States Parties;<sup>14</sup>
43. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute timely and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly of States Parties, and *expresses its appreciation* to those that have done so;
44. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, and *expresses its appreciation* to those that have done so;
45. *Expresses its appreciation* to the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims for their continuing commitment towards easing the suffering of victims, and *encourages* the Secretariat to continue to strengthen its ongoing dialogue with the Registry and the international community, including donors as well as civil society, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure the highest standards of transparency and visibility in respect of the procedures and activities of the Trust Fund;
46. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions, or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly of States Parties;
47. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court, and *expresses its appreciation* to those that have done so;
48. *Takes note* of the Report of the Bureau on the arrears of States Parties<sup>15</sup> and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;
49. *Requests* the Secretariat of the Assembly of States Parties to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;
50. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly of States Parties on the result of their work;
51. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;
52. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;
53. *Welcomes* the request of the Committee on Budget and Finance that the Court submit a report for consideration at its fourteenth session on the measures the Court is taking to increase clarity on the responsibilities of its different organs, with a view to continued dialogue between the Court and States Parties on this issue;

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<sup>14</sup> ICC-ASP/8/40.

<sup>15</sup> ICC-ASP/8/41.



54. *Recalls* that, according to its Rules of Procedure,<sup>16</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly of States Parties at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;

55. *Decides* that the Committee on Budget and Finance shall hold its fourteenth session from 19 to 23 April 2010 and its fifteenth session from 23 to 31 August 2010;

56. *Decides* that the Assembly of States Parties shall hold its resumed eighth session in New York for a period of three working days between 22 and 25 March 2010;

57. *Recalls* that, according to paragraph 63 of resolution ICC-ASP/6/Res.2, the Assembly of States Parties shall hold its ninth session in New York and *decides* that it will meet for a period of five working days as early as possible in December 2010 with the specific dates to be fixed by the Bureau;

58. *Recalls* that, according to paragraph 63 of resolution ICC-ASP/6/Res.2, the Assembly of States Parties shall hold its tenth session in The Hague and *decides* to hold its resumed tenth session in New York in order to elect six judges and to fill the post of Chief Prosecutor.

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<sup>16</sup> *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* (International Criminal Court publication, ICC-ASP/2/10), annex III.

## Resolution ICC-ASP/8/Res.4

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.4 Family visits for indigent detainees

*The Assembly of States Parties,*

*Recalling* that, at its seventh session, the Assembly had noted that further discussions were necessary in order to facilitate a policy decision on the issue of financial assistance for family visits to indigent detainees, including, but not limited to, consideration of the substantial and long-term financial implications of this question,<sup>1</sup>

*Further recalling* that the Assembly had also recognized that detained persons are entitled to receive visits and that specific attention should be given to visits by family members,<sup>2</sup> while, according to existing law and standards<sup>3</sup>, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority,<sup>4</sup>

*Welcoming* the dialogue between the Court and States Parties on the issue of family visits,

*Noting* the views of the Committee on Budget and Finance on the issue,<sup>5</sup> and the report of the Court on family visits to indigent detained persons,<sup>6</sup>

*Noting* the decision of the Presidency of 10 March 2009 on "Mr. Mathieu Ngudjolo's Complaint under Regulation 221(1) of the Regulations of the Registry against the Registrar's Decision of 18 November 2008" in relation to the funding of family visits to an indigent detainee,

*Stressing* the management oversight role of the Assembly as enshrined in article 112, paragraph (2)(b), of the Rome Statute, together with its decision-making role in respect of the Court's budget enshrined in article 112, paragraph (2)(d) of the Rome Statute,

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 18, and part II, E, 1b), which set out the following caveats:

- a) The funding of family visits by the Court in 2009 should be implemented solely in accordance with the priority needs of the current indigent detainees; and
- b) The decision to fund family visits in 2009 has been taken on an exceptional basis and does not in anyway create or maintain a status quo; nor establish any legal precedent in respect of those States that have already or will enter into sentence enforcement agreements with the Court; nor does it create any legal precedent in respect of current or future detainees at a national or international level; nor does the Assembly's decision prejudice or prejudge in any way the future outcome of discussions on the issue of funding family visits for indigent detainees.

<sup>2</sup> *Ibid.*, part III, resolution ICC-ASP/7/Res.3, para. 17.

<sup>3</sup> Such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977); the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; and, at regional level, Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006; Committee for the Prevention of Torture Imprisonment Standards (CPT/Inf/E(2002)1-Rev.2006).

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, paras. 17 and 18.

<sup>5</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.1, paras. 86-97 and part B.2., para. 127.

<sup>6</sup> ICC-ASP/7/24.

*Mindful* of the overall responsibility of the Registrar to manage the detention center and to ensure that the detainees are treated with humanity<sup>7</sup> in the course of the detention in different phases of the trial arising from the *sui generis* nature of the Court;

1. *Takes note* of the report of the Bureau on family visits for indigent detainees and of the recommendations contained therein;<sup>8</sup>
2. *Reaffirms* that according to existing law and standards, the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority or any other authority;
3. *Invites* the Court to continue to address the well-being of the detainees under its custody, paying particular attention to the maintenance of family contacts. In this light and in the particular circumstances of each detainee, alternative and complementary measures to family visits should be fully explored by the Court in order to ensure the maintenance of contacts;
4. *Acknowledges* that various mechanisms could usefully be implemented in order to support family links and, in that regard, as a matter of priority, *invites* the Court to report to the Assembly on the feasibility and the conditions for the establishment of a voluntary system of funding family visits, with a view to its establishment by the Assembly at its ninth session;
5. *Decides* that, pending the establishment of such system, in the case of an indigent detainee, while no legal obligation exists for the detaining authority or any other authority to fund family visits, on purely humanitarian grounds and following the application of clear criteria determining:
  - full or partial indigence as determined by the procedure established by the Court to ascertain the status of indigence,
  - family relation to the detainee, and
  - equal treatment of detainees;

the Court may, on a temporary basis, partly or fully subsidize family visits for indigent detainees up to an amount to be determined by the Assembly in the context of the approval of the programme budget;

6. The temporary budgetary funding shall be subject to re-evaluation upon the establishment of such a mechanism of voluntary funding, no later than at the tenth session of the Assembly;
7. *Underlines* that such assistance is applicable exclusively in the case of an indigent detainee in the Court's custody and is not applicable in any other circumstance, such as but not limited to the case of a detainee under temporary release in a third country, a convicted person serving sentence of imprisonment in the host State pending the designation of a State of enforcement by the Court and until its implementation, or a convicted person serving sentence in a third country;
8. *Invites* the Court to review the relevant parts of the Regulations of the Registry in light of this resolution and the above-mentioned report of the Bureau, and *invites* the Registrar to continue the dialogue with States Parties;
9. *Invites* the Court to report to the Assembly on the measures undertaken pursuant to this resolution and their financial implications;
10. *Requests* the Bureau to remain seized of the matter.

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<sup>7</sup> Regulations 90 and 91 of the Regulations of the Court.

<sup>8</sup> ICC-ASP/8/42.

## Resolution ICC-ASP/8/Res.5

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.5 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 *reiterating* the importance of permanent premises to the future of the Court,

*Recalling* resolution ICC-ASP/6/Res.1, adopted on 14 December 2007 at the 7<sup>th</sup> plenary meeting of the sixth session of the Assembly, and resolution ICC-ASP/7/Res.1, adopted on 21 November 2008 at the 7<sup>th</sup> plenary meeting of the seventh session of the Assembly,

*Noting* the report of the Oversight Committee on the permanent premises, including the annexed explanatory note on the modalities for one-time payments,

*Expressing* its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, and *recognizing* the importance of effective and efficient decision-making, clear lines of authority, stringent risk identification and management, and strict control of design changes for ensuring that the project is delivered to cost,

*Mindful* of the reports of the Committee on Budget and Finance on the work of its twelfth and thirteenth sessions,<sup>1</sup>

*Reiterating* the important role of the Court throughout the process, and noting the Court’s wish for a good quality building that meets the security requirements and is within budget,

*Welcoming* the fact that 10 States Parties have committed to making a one-time payment in accordance with the principles contained in resolution ICC-ASP/7/Res.1, annex III,

*Reiterating* the important role of the Assembly’s Project Director in providing leadership and overall management of the project, and recalling his responsibility for meeting the project’s goals, timelines and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1,

*Recalling* the relevant provisions of the Rome Statute, and *noting* that the Financial Regulations and Rules and internal and external audit arrangements of the Court are applicable to the project,

1. *Takes note* of the decision of the Oversight Committee, outlined in the oral report by the Chairperson of the Committee, to request the Project Board to finalize the negotiations, including on the terms and conditions of the contract, with Schmidt Hammer Lassen Architects, and *notes* that in accordance with the procedures for awarding a contract as elaborated in ICC-ASP/7/Res.1 the final agreement of the Oversight Committee is required prior to the signing of the contract between the Court and the design team;
2. *Expresses* its appreciation to Ingenhoven Architects and Wiel Arets Architects, the other prize-winners of the architectural design competition for their hard work and cooperation during the selection process;

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.1. and B.2.

3. *Stresses* the importance of effective coordination between the members of the Project Board during the next stage of the project;
4. *Welcomes* the fact that legal and/or contractual agreements have been concluded between the Court and the host State on the loan agreement, the mortgage and the land lease, including the separation of ownership of the land from that of the building, thus allowing the building process to proceed and *further expresses* its appreciation to the host State for its ongoing cooperation;
5. *Expresses* its appreciation to the Project Board and the Oversight Committee for the progress made on the permanent premises project since the seventh session of the Assembly;
6. *Notes* that the completion date for the permanent premises has been delayed until 2015, *recognizes* the efforts of the Project Board and the Oversight Committee to mitigate this delay and associated consequences, and *encourages* the Project Board, in consultation with the Oversight Committee, to continue to identify ways to mitigate the delay and its consequences;
7. *Takes note* of the revised cash-flow scheme contained in annex I and requests the Project Director, in consultation with the Oversight Committee in accordance with ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, more detailed estimates of the final cost estimate for the project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;
8. *Requests* the Court to determine, in consultation with those States who commit to making a one-time payment, the schedule for receiving one-time payments and to submit this to the Committee for consideration as a matter of priority;
9. *Requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;
10. *Requests* the Court, in consultation with the Project Director, to identify and quantify the other costs related to the project but not directly related to the construction, such as the costs of relocating the Court from the temporary premises to the permanent premises, movable items such as furniture and ICT hardware, potted greenery and decorations, costs relating to communications and public relations for the project and costs relating to the interim premises, and to report on these annually to the Assembly, through the Oversight Committee;
11. *Endorses* the recommendation of the Bureau, in accordance with ICC-ASP/6/Res.1, annex II, that the membership of the Oversight Committee, for the next term, be comprised of those States referred to in annex II to this resolution;
12. *Requests* the Project Board to develop the project manual, which takes into account the provisions of resolution ICC-ASP/6/Res.1, annexes II, III and IV, including the risk management and governance arrangements for the project, in light of the selected architectural design and to submit it to the Oversight Committee for approval, and to inform the Oversight Committee of any subsequent relevant developments;
13. *Notes* that a trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established, and *invites* members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;
14. *Requests* the Oversight Committee to remain seized of this issue, and to continue to provide regular progress reports to the Bureau and to report back to the Assembly at its next session.

## Annex I

## Cash-flow scheme

Totals (M€)	2008		2009		2010		2011		2012		2013		2014		2015	
	Year	year	Year	year	Year	year	Year	year	Year	year	Year	year	Year	year	Year	year
	Competition		Competition		Design & tendering		Design & tendering		Execution		Execution		Execution		Maint.	
100%	0%	0%	0%	0%	0%	0%	0%	0%	18%	20.7	34%	39.1	34%	39.1	14%	16.1
<b>€ 114.9</b>	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	20.7	39.1	39.1	39.1	39.1	16.1	16.1
<b>BOX 3; Other construction costs</b>	0.0	1.1	1.1	5.1	13.0	11.5	17.8	18.1	11.5	17.8	18.1	18.1	18.1	18.1	8.4	8.4
<u>Divided in:</u>																
15% Contingency	0%	0%	0%	0%	0%	0%	0%	0%	18%	3.1	34%	5.8	34%	5.8	14%	2.4
1% Integrated, specialized representational features	0%	0%	0%	0%	0%	0%	0%	0%	10%	0.1	20%	0.2	50%	0.6	20%	0.2
4% Fees project management	0%	0%	10%	25%	0.9	1.3	1.3	0.9	15%	0.8	14%	0.7	13%	0.7	6%	0.3
14% Fees designers, engineers, and consultants etc	0%	0%	3%	18%	0.6	3.3	3.3	9.3	13%	2.4	9%	1.7	4%	0.7	3%	0.6
4% Permits and dues	0%	0%	0%	0%	0%	0%	0%	1.5	29%	1.0	19%	0.7	7%	0.2	3%	0.1
Sum	0%	0%	0%	0%	0%	0%	0%	0%	0%	0.0	0%	0.0	90%	0.1	10%	0.0
Consultancy user permits	0.0	1.1	1.1	4.7	11.7	7.4	9.1	8.2	7.4	9.1	8.2	8.2	8.2	8.2	3.6	3.6
Total	2.8%	0.0	5.6%	8.6%	11.6%	14.7%	17.9%	21.1%	14.7%	4.1	8.6	10.0	21.1%	10.0	4.8	4.8
Escalation, estimated 3%	0.0	0.1	0.1	0.4	1.4	4.1	8.6	10.0	4.1	8.6	10.0	10.0	10.0	10.0	4.8	4.8
<b>Total</b>	0	0	1	5	13	32	57	57	32	51	108	165	165	165	25	190
	0	0	1	6	19	51	108	165	51	108	165	165	165	165	25	190

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## Annex II

### Members of the Oversight Committee\*

#### *African States*

1. Kenya

#### *Asian States*

2. Japan
3. Republic of Korea

#### *Eastern European States*

4. Romania

#### *Group of Latin American and Caribbean States*

5. Argentina
6. Mexico

#### *Western European and Other States*

7. Germany
8. Italy
9. Switzerland
10. United Kingdom

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\* As of 14 December 2009.

## Resolution ICC-ASP/8/Res.6

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.6 Review Conference

*The Assembly of States Parties,*

*Recalling* previous resolutions and reports on the Review Conference, and in particular resolution ICC-ASP/7/Res.2,

*Welcomes* the Report of the Bureau on the Review Conference,<sup>1</sup>

*Recalling further* the provisions on participation in the Review Conference already set out in the Rome Statute and in the draft Rules of Procedure for the Review Conference,<sup>2</sup>

*Recalling* that proposals for amendments to the Rome Statute to be considered at the Review Conference were to be discussed at the eighth session of the Assembly of States Parties, with a view to promoting consensus and a well prepared Review Conference,

*Recalling* the amendments proposed by States Parties in accordance with article 121, paragraph 1,<sup>3</sup>

*Recalling* article 124 of the Rome Statute, according to which the provisions of that article shall be reviewed at the Review Conference in order to enhance the work of the Court,

*Recalling* its decision to change the terms of reference of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 so as to allow least developed countries and other developing States to draw on the fund, with a view to facilitating the participation of such States in the activities of the Review Conference,

*Recalling further* that the Review Conference shall be open to participation by civil society, including non-governmental organizations and representatives of victims' organizations, and that their participation is key to successful outreach for the Court and the Review Conference,

1. *Takes note* of the Report of the Working Group on the Review Conference,<sup>4</sup> and submits that report for consideration by the Review Conference;

2. *Decides* that the Review Conference shall be held in Kampala, Uganda, from 31 May to 11 June 2010, for a period of ten working days;

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<sup>1</sup> ICC-ASP/8/43 and Add.1.

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

<sup>3</sup> C.N.713.2009.TREATIES-4 of 29 October 2009 (Proposal of amendment by Norway to the Statute); C.N.723.2009.TREATIES-5 of 29 October 2009 (Proposal of amendments by the Netherlands to the Statute); C.N.725.2009.TREATIES-6 of 29 October 2009 (Proposal of amendment by Mexico to the Statute); C.N.727.2009.TREATIES-7 of 29 October 2009 (Proposal of amendment by Liechtenstein to the Statute); C.N.733.2009.TREATIES-8 of 29 October 2009 (Proposal of amendments by Belgium to the Statute); C.N.737.2009.TREATIES-9 of 29 October 2009 (Proposal of amendments by Trinidad and Tobago to the Statute); C.N.851.2009.TREATIES-10 of 30 November 2009 (Proposal of amendment by South Africa). See also ICC-ASP/8/43/Add.1.

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. I, annex II



3. *Decides* to forward the proposals for amendments contained in annexes I, II and III to this resolution to the Review Conference for its consideration;
4. *Decides* to establish a Working Group of the Assembly of States Parties for the purpose of considering, as from its ninth session, amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute at its eighth session, as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties;
5. *Decides* to forward the topics contained in annex IV to this resolution to the Review Conference for its consideration in the context of stocktaking of international criminal justice, taking into account the need to include aspects regarding universality, implementation, and lessons learned, in order to enhance the work of the Court;
6. *Decides* to mandate the Bureau to continue the preparations of the stocktaking of international criminal justice with a view to preparing the format of the discussion, preliminary background materials and proposals for outcomes for each topic identified in annex IV, for consideration at the resumed session;
7. *Requests* the Bureau to consider the issue of strengthening the enforcement of sentences and submitting a proposal for a decision to be considered at the Review Conference;
8. *Further requests* the Bureau to continue preparations for the Review Conference, including with regard to its scope and financial and legal implications, as well as practical and organizational issues;
9. *Decides* that the Bureau shall, inter alia, as part of the follow up to the Review Conference, keep under constant review the question of enhancing the efficiency and effectiveness of the Court, including by considering the possibility of establishing mechanisms within its New York and The Hague working groups;
10. *Requests* the Secretariat of the Assembly to report to the Bureau on the status of the discussions with a view to the expeditious conclusion, through the Court, of a Memorandum of Understanding between the Government of Uganda and the Secretariat which ensures that the provisions of the Agreement on the Privileges and Immunities of the International Criminal Court are applicable, *mutatis mutandis*, to the Review Conference, and which should also contain a time plan for preparatory steps;
11. *Requests* the Government of Uganda to continue consultations with the Coalition for the International Criminal Court on provisions regarding visa arrangements and other preconditions for full access of and participation by representatives of civil society and non-governmental organizations, including victims' organizations, in the Conference and other events to be held in Uganda, and the planning of side-events in conjunction with the Review Conference, with a view to their inclusion in the Memorandum of Understanding referred to above;
12. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely and voluntary manner to the Trust Fund, so as to allow the participation of least developed countries and other developing States in the Review Conference.

## Annex I

Draft amendment to article 124 of the Rome Statute

*[Article 124 of the Statute is deleted]*<sup>1</sup>

## Annex II

### **Liechtenstein: Proposals for a provision on aggression\***

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honor, in his capacity as former Chairman of the Special Working Group on the Crime of Aggression, to refer to article 121, paragraph 1 of the Rome Statute of the International Criminal Court. In accordance with that provision, the proposed amendment on aggression elaborated by the Special Working Group is herewith submitted for circulation to all States.

The Permanent Representative of the Principality of Liechtenstein to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of his highest consideration.

### **Proposals for a provision on aggression elaborated by the Special Working Group on the Crime of Aggression**

#### **Draft resolution**

*(to be adopted by the Review Conference)*

The Review Conference,

*(insert preambular paragraphs)*

1. *Decides* to adopt the amendments to the Rome Statute of the International Criminal Court (hereinafter: “the Statute”) contained in the annex to the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph [4 / 5] of the Statute;

*(add further operative paragraphs as needed)*

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<sup>1</sup> No amendment would be necessary if article 124 is retained.

\* Previously issued as United Nations depositary notification C.N.727.2009.TREATIES-7, dated 29 October 2009.

## Appendix

### Draft amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression

1. *Article 5, paragraph 2, of the Statute is deleted.*
2. *The following text is inserted after article 8 of the Statute:*

#### **Article 8 bis** **Crime of aggression**

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
  - (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
  - (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
  - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
  - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
  - (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
  - (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
  - (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. *The following text is inserted after article 15 of the Statute:*

**Article 15 bis**

**Exercise of jurisdiction over the crime of aggression**

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, subject to the provisions of this article.

2. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

3. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

4. **(Alternative 1)** In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression,

*Option 1 – end the paragraph here.*

*Option 2 – add:* unless the Security Council has, in a resolution adopted under Chapter VII of the Charter of the United Nations, requested the Prosecutor to proceed with the investigation in respect of a crime of aggression.

4. **(Alternative 2)** Where no such determination is made within [6] months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression,

*Option 1 – end the paragraph here.*

*Option 2 – add:* provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15;

*Option 3 – add:* provided that the General Assembly has determined that an act of aggression has been committed by the State referred to in article 8 bis;

*Option 4 – add:* provided that the International Court of Justice has determined that an act of aggression has been committed by the State referred to in article 8 bis.

5. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

6. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

4. *The following text is inserted after article 25, paragraph 3 of the Statute:*

**3 bis.** In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

5. *The first sentence of article 9, paragraph 1 of the Statute is replaced by the following sentence:*
  1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis.
6. *The chapeau of article 20, paragraph 3, of the Statute is replaced by the following paragraph; the rest of the paragraph remains unchanged:*
  3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

## Appendix

### Draft Elements of Crimes\*

#### Article 8 bis

#### Crime of aggression

##### Introduction

1. It is understood that any of the acts referred to in article 8 bis, paragraph 2, qualify as an act of aggression.
2. There is no requirement to prove that the perpetrator has made a legal evaluation as to whether the use of armed force was inconsistent with the Charter of the United Nations.
3. The term “manifest” is an objective qualification.
4. There is no requirement to prove that the perpetrator has made a legal evaluation as to the “manifest” nature of the violation of the Charter of the United Nations.

##### Elements

1. The perpetrator planned, prepared, initiated or executed an act of aggression.
2. The perpetrator was a person<sup>1</sup> in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.
3. The act of aggression – the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations – was committed.
4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.
5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.
6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.

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\* Previously issued as ICC-ASP/8/INF.2, annex I.

<sup>1</sup> With respect to an act of aggression, more than one person may be in a position that meets these criteria.

## Annex III

### Belgium: Proposal of amendment

**Proposed by Austria, Argentina, Belgium, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Romania, Samoa, Slovenia and Switzerland**

Add to article 8, paragraph 2, e), the following: «xvii) Employing poison or poisoned weapons;

xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.»

#### Justification

The use of the weapons listed in this draft amendment is already incriminated by article 8, paragraph 2, b), xvii) to xix) of the Statute in case of an international armed conflict. This amendment extends the jurisdiction of the Court for these crimes in case of an armed conflict not of an international character (article 8, paragraph 2, e).

## **Annex IV**

### **Topics for stocktaking**

- a) Complementarity
- b) Cooperation
- c) The impact of the Rome Statute system on victims and affected communities
- d) Peace and justice



## Resolution ICC-ASP/8/Res.7

*Adopted at the 8<sup>th</sup> plenary meeting, on 26 November 2009, by consensus*

### ICC-ASP/8/Res.7

**Programme budget for 2010, the Working Capital Fund for 2010, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for the year 2010, the Contingency Fund, conversion of a GTA psychologist post to an established one, Legal aid (defence) and the Addis Ababa Liaison Office**

*The Assembly of States Parties,*

*Having considered* the proposed programme budget for 2010 of the International Criminal Court and the related conclusions and recommendations contained in the Report of the Committee on Budget and Finance on the work of its thirteenth session,<sup>1</sup>

#### A. Programme budget for 2010

1. *Approves* appropriations totalling €103,623,300 for the following appropriation sections:

<i>Appropriation section</i>	<i>Thousands of euros</i>
Major programme I - Judiciary	10,743.7
Major programme II - Office of the Prosecutor	26,828.3
Major programme III - Registry	59,631.1
Major programme IV - Secretariat of the Assembly of States Parties	4,272.8
Major programme VI - Secretariat of the Trust Fund for Victims	1,221.6
Major programme VII - Other major programmes	
Major programme VII.1 - Permanent Premises Project Office	584.2
Major programme VII.5 - Independent Oversight Mechanism	341.6
<b>Total</b>	<b>103,623.3</b>

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol.II, part B.2.

2. *Further approves* the following staffing tables for each of the above appropriation sections:

	Judiciary	Office of the Prosecutor	Registry	Secretariat Assembly of States Parties	Secretariat Trust Fund for Victims	Permanent Premises Project Office	Independent Oversight Mechanism	Total
USG		1						1
ASG		2	1					3
D-2								
D-1	1	2	4	1	1	1		10
P-5	3	11	17		1			32
P-4	3	30	38	3		1	1	76
P-3	21	44	67	1	3			136
P-2	5	47	58				1	111
P-1		17	9					26
<b>Subtotal</b>	<b>33</b>	<b>154</b>	<b>196</b>	<b>5</b>	<b>5</b>	<b>2</b>		<b>395</b>
GS-PL	1	1	16	2				20
GS-OL	16	63	269	2	2	1		353
<b>Subtotal</b>	<b>17</b>	<b>64</b>	<b>285</b>	<b>4</b>	<b>2</b>	<b>1</b>		<b>373</b>
<b>Total</b>	<b>50</b>	<b>218</b>	<b>479</b>	<b>9</b>	<b>7</b>	<b>3</b>	<b>2</b>	<b>768</b>

## B. Working Capital Fund for 2010

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2010 shall be established in the amount of €7,405,983, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court.

## C. Scale of assessment for the apportionment of expenses of the International Criminal Court

*The Assembly of States Parties,*

*Decides* that, for the year 2010, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for the year 2010 and adjusted in accordance with the principles on which that scale is based.<sup>2</sup>

*Notes* that, in addition, any maximum assessment rate for the largest contributors applicable for the United Nations regular budget will apply to the International Criminal Court's scale of assessments.

<sup>2</sup> Rome Statute of the International Criminal Court, article 117.

**D. Financing appropriations for the year 2010**

*The Assembly of States Parties,*

*Resolves* that, for the year 2010, budget appropriations amounting to €103,623,300 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part A, paragraph 1, and part B, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.

*Decides* that the decisions taken during the session regarding the Independent Oversight Mechanism, the Review Conference and family visits for detainees be reflected in the budget.

**E. Contingency Fund**

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res.4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res.4 that requested the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Taking note* of the advice of the Committee on Budget and Finance in the reports on the work of its eleventh and thirteenth sessions,

1. *Decides* to maintain the Contingency Fund at its current level for 2010;
2. *Decides* that, should the Fund reach a level below €7 million by the end of the year, the Assembly should decide on its replenishment up to an amount it deems appropriate, but no less than €7 million;
3. *Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

**F. Conversion of a GTA psychologist post to an established one**

*The Assembly of States Parties,*

*Decides* that the Registrar provide all pertinent information to the Committee so that it may discuss it at its fourteenth session in April 2010, and tasks the Committee to look at the Court's justification for the conversion, and revert back to the Assembly of States Parties.

**G. Legal aid (defence)**

*The Assembly of States Parties,*

*Decides* to endorse the recommendation of the Committee regarding the proposed budget for legal aid for defence. However, in case the Court needs additional funds, it was recalled that the Registry could afford itself of the flexibility to move funds within its major programme III. Moreover, the Registry can access the Contingency Fund in accordance with the Regulation 6.7 of the Financial Regulations and Rules.

**H. Addis Ababa Liaison Office**

*The Assembly of States Parties,*

*Decides* that the liaison office in Addis Ababa will perform all the duties entrusted by the Court and the Assembly, and will be staffed with one D-1 head of the Office, one GS-OL and one locally recruited GTA post as a driver, and that there will be no additional resources in the near future. Furthermore, the Court should report regularly to the Assembly on the performance of the Office.

