



## ***REPORT ON THE SEVENTH SESSION OF THE ASSEMBLY OF STATES PARTIES, THE HAGUE, NOVEMBER 2008***

The AMICC secretariat participated in the seventh session of the Assembly of States Parties (ASP) meeting in The Hague, The Netherlands, November 14-22, 2008. In addition to following, advocating and reporting on the below issues, we were asked on several occasions to brief conference participants on the prospects for US-ICC policy in the upcoming Obama administration. AMICC conducted a briefing for the Amnesty International's International Justice Campaigning Conference which coincided with the first three days of the ASP in The Hague; another briefing for members of the international NGO Coalition (CICC); and a third for government delegates.

By way of introduction, it may be helpful to describe this year's budget process which affected several of AMICC's priorities. The Committee on Budget and Finance (CBF) recommended allocating approximately 101.3 million Euro (\$129 million) for the Court's 2009 budget, approximately 12% growth from the 2008 budget. However, several of the major donor States Parties did not wish to see such growth and instead sought a zero-growth budget. As a compromise, the Assembly approved the CBF budget package but only assessed States Parties approximately 96 million Euro. In order to meet any other budgetary needs, the Court would need to tap into the Court's Working Capital Fund, a step that required the ASP's waiver of the Court's financial regulations. The Court could also use the Contingency Fund to make up for budgetary shortcomings. Many NGOs advocated for fully funding the Court's budget and hope that the ASP will not repeat this for future budgets.

### Establishment of an Independent Oversight Mechanism for the ICC

This issue is important to our rebuttal of the charge by US critics that the ICC lacks checks and balances, including any effective system for detecting and stopping waste, fraud and abuse. Article 112(4) of the Rome Statute specifies that the ASP "may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy." On November 4, 2008, the ASP issued a report which included a paper by the then-Ambassador of Cyprus to the UN on the adoption of an independent oversight mechanism (IOM). According to the report's recommendations, the IOM would draft its own regulations but its duties will be limited to the supervision of the Court's personnel and officials, not including its administration nor affecting the disciplinary power of the Presidency or the Prosecutor. The Assembly would also establish a subsidiary organ to which the oversight mechanism would report and be responsible. An IOM would help to prevent and counter waste, fraud and abuse at the ICC. Thus it would help to rebut critics of the Court in the US who claim that there are insufficient checks and balances on the Court.

In response to the report, the Court emphasized that it already has mechanisms to address misconduct by Court personnel and officials, and therefore it is not necessary to create an independent mechanism. The Court also stated that the function of an IOM could be carried out by the Internal Audit Office by extending its mandate. State Parties have maintained that the mechanism should not significantly increase the Court's financial burden. Nevertheless, some States Parties and NGOs have argued that an IOM must be completely independent of the Court's structure. Additionally, NGOs argued that the mechanism should also investigate fraud and misuse of financial resources as well as violence and sexual harassment cases.





Despite the ongoing discussions on this issue, because of the ASP's inability to agree to a reference to the Bureau's report and its recommendation to establish an IOM, it was deleted from the ASP's omnibus resolution. As a compromise solution, the ASP agreed that the issue of the IOM would be taken up at one of the resumed ASP sessions in New York in January or February. This issue is now being discussed in consultations within The Hague Working Group to decide how it will be addressed early next year, taking in consideration the recommendations made by the Bureau and the Committee on Budget and Finance.

## Legal Aid and Meaningful Resources to Defense Counsel and Victims' Representatives

There are frequent American charges that the Court will not have due process. Legal aid is especially important at the ICC where defendants frequently lose access to their assets and defenses must be created over serious obstacles of distance and time. In its seventh session, the ASP endorsed a reduction in the legal aid budget of 700,000 Euro (approximately \$890,000), as recommended by the Committee on Budget and Finance (CBF). The Court was invited to present to the Assembly at its eighth session in 2009 an updated report on the legal and financial aspects for funding victims' legal representation and another on alternative ways to determine indigence to be reviewed by the CBF in its twelfth and thirteenth sessions in 2009.

The issue of legal aid was not a priority advocacy issue for many NGOs at the ASP, due in part to the budget situation described above which endorsed the recommendations of the CBF. Since the Registry did not wish to reopen the issue of legal aid and made it clear that it could maintain legal aid level through the use of the contingency fund, many NGOs focused on the issue of family visits to indigent detainees. The Court's first defendants are now detained at the Court, in many cases far away from family members in Africa. Providing funds for family visits to indigent detainees, as recommended by the Registry in the last ASP, continued to be controversial among States Parties. The States Parties decided to continue to study the issue, providing 40,500 Euro for such visits in 2009, stressing that this funding does not create a precedent for international or domestic jurisdictions. Family visits can be important to maintaining the morale of defendants so that they can participate effectively in their defense.

## Effective Oversight of the ICC through the Establishment of Subsidiary ASP Bodies

Beyond the discussion of the independent oversight mechanism and the decision of the ASP not to address it at this session, there was little discussion of subsidiary ASP bodies within the Assembly with the exception of the current Oversight Committee on the permanent premises and the standing Committee on Budget and Finance. In NGO meetings during the course of the session, AMICC raised the issue of the establishment of subsidiary ASP bodies. We pointed out that the ASP could not properly carry out its duties of oversight without standing committees. The Committee on Budget and Finance is being asked to pronounce on matters such as legal aid which are outside its competence.

## Plans and Preparations for the 2010 Review Conference and Implications of this Planning for Possible US and American NGO Participation in it

Regarding the planning for the 2010 Review Conference, the Assembly accepted the invitation of the Government of Uganda to host the meeting in Kampala during the first half of 2010. It will likely take place in





the second quarter of 2010 and last for 5-10 working days. The Ugandan government and the Court will now begin the process of negotiating the details of the conference. The ASP decision left open the possibility that the Bureau could decide to change the date and venue of the Review Conference should unforeseen developments arise that would pose a risk to the outreach or success of the conference. The Review Conference is open to all those participating in the ASP and on the same conditions. It will be open to ASP observers, including signatories of the Rome Statute and the separate Final Act, which will enjoy all rights but voting. The Assembly also requested the Government of Uganda to take steps to ensure full and meaningful participation of NGOs and civil society in the Review Conference and other related events. It is a major AMICC objective to persuade the Obama administration to participate constructively in the Review Conference and its preparatory meetings.

Based on the initial discussions of the Working Group on the Review Conference regarding possible amendments to the Rome Statute, which may be considered at the Assembly's next full session in November, the States Parties will likely focus on the crime of aggression and conditions for the exercise of the Court's jurisdiction over it; the Article 124 "opt-out" for seven years of the Court's jurisdiction over war crimes, as required by the Statute; crimes of terrorism and drug crimes, as recommended by Resolution E of the Final Act in Rome; and additional war crimes and the criminalization of the use of some weapons.

### The Work of the Special Working Group on the Crime of Aggression

The definition of the crime of aggression, especially its reference to the power of the Security Council, is likely to be of special concern to the Obama administration. The Special Working Group continued its discussions on the definition of the crime and the conditions for the exercise of jurisdiction. It also paid special attention to the entry into force of any amendments as well as the question of whether future States Parties would be able to decide upon joining the Court whether to be bound by any aggression amendments. The Special Working Group also considered drafting prior to the Review Conference elements of the crime, which would instruct the judges how to apply any aggression provision. It is mandated to conclude its work and recommendations on proposed amendments defining the crime and specifying the exercise of the Court's jurisdiction 12 months prior to the 2010 Review Conference. States also discussed the possibility of holding an additional informal inter-sessional meeting next year in Princeton.

### The Decision on the Permanent Premises of the Court

On November 6, 2008, the architectural competition for the new seat of the ICC concluded with three winners. The international jury chaired by Chief Government Architect of The Netherlands, Liesbeth van der Pol, selected three winners of 19 entries from all over the world that were displayed in the Atrium of The Hague City Hall. The winners will receive cash prizes but only one of them will be selected as the final design for the new building. This decision will be made public in early 2009. The new building should be finished by 2014. More information, including renderings of the three designs, is available at:  
<http://www.icc-architectural-competition.com/pages/results/prize-winners.php>.

Leading up to and during the jury selection, the AMICC secretariat worked with international NGO colleagues to ensure that the permanent premises would include adequate facilities for the Court's future caseload,





including scalability options; adequate facilities for counsel for suspects and defendants and the legal representatives of victims; and that the Court's design would adequately reflect the Court's mission to end impunity for atrocity crimes and bring justice to victims. While the latter is a subjective question, we are satisfied from the initial designs that as proposed they will support due process in the building, making adequate provision for all of the participants in the proceedings as well as the Court's caseload. We will continue to monitor the progress of the final design.

The permanent premises project, to be built at the Alexanderkazerne site between the City of The Hague and the North Sea dunes, is estimated to cost approximately 190 million Euro (\$241 million). Notwithstanding that the Oversight Committee on the permanent premises will continue to consider alternative sources of financing, the Assembly of State Parties accepted The Netherlands' 200 million Euro (\$254 million) loan to build the permanent seat of the Court. This loan will have to be repaid in a period of 30 years at an interest rate of 2.5 per cent. Moreover, the Project Director will have to report annually to the ASP through the Oversight Committee on costs related to the project but not directly to the construction as well as on how the budget is invested. In addition, the Court and the host State will have to draft a legal agreement on the separation of the ownership of the land and of the building, the land lease and the mortgage which will have to be submitted for approval to the Oversight Committee.

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