



Twelfth session

The Hague, 20-28 November 2013

Report of the Bureau: Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau**I. Mandate**

1. The mandate for the evaluation derives from operational paragraph 45 of resolution ICC-ASP/11/Res.8 of November 2012, which reads as follows:

“Requests the Bureau, through The Hague Working Group, including its Study Group on Governance, and the New York Working Group to make an evaluation of the respective Groups’ working methods, including on the relationship between this resolution and other resolutions, and to report back to the Assembly at its twelfth session on their findings, including proposals for rationalization, prioritization, regular scheduling and increased efficiency of their work.”

2. The recommendations listed in this report are the result of a collection of ideas carried out through informal consultations with States Parties and interested stakeholders such as Court organs and nongovernmental organizations on both sides of the Atlantic. More specifically, consultations with members of The Hague Working Group have taken place in The Hague on 8, 17, 23 May, 20 June, 16, 25 July and 6 September, while consultations with members of the New York Working Group have taken place in New York on 23 May 2013. A discussion of the report by both members of the New York Working Group and a delegation of The Hague Working Group took place on 4 June in New York. The Court and NGOs have been consulted on an ongoing basis.

II. Framework

3. The Assembly of States Parties (Assembly) is master of its own procedures, and hence of its own working methods. According to article 112, paragraph 2(g), of the Rome Statute, it is entitled to “perform any [...] function consistent with this Statute or the Rules of Procedure and Evidence”. According to article 112, paragraph 4, it “may establish such subsidiary bodies as may be necessary”. Article 112, paragraph 9, provides that the Assembly “shall adopt its own rules of procedure”.

4. According to article 112, paragraph 3(c), of the Rome Statute, the Bureau of the Assembly is tasked to “assist the Assembly in the discharge of its responsibilities”. Since December 2004 it operates in the form of two Working Groups, one based in New York and one in The Hague, each with its own responsibilities. The Hague Working Group includes its Study Group on Governance and is complemented by the activities of two subsidiary bodies of the Assembly based in The Hague, i.e. the Oversight Committee on Permanent Premises and the Independent Oversight Mechanism, while the New York Working Group is complemented by the Working Group on Amendments. The overall workload has shifted considerably over time from New York to The Hague. Closer to its

inception, much of the workload was shouldered by New York, whereas in 2012, roughly 75 per cent of all meetings were convened in The Hague.

5. Decisions of the Assembly usually require considerable preparatory work, which is done between sessions. Article 112, paragraph 6, of the Rome Statute, provides that the Assembly meets once a year or, when circumstances so require, on the occasion of special sessions. The Assembly currently does not provide for the possibility of its own decision-making other than through reconvening as an Assembly or, within the limits of its mandate, through the Bureau of the Assembly, in accordance with article 112, paragraph 3(c), of the Rome Statute.

6. On the basis of decisions of the previous Assembly, the Bureau allocates mandates, in the form of *ad personam* or *ad country* mandates, or focal points. The mandate-holders report back to the Bureau, which then considers those reports and, if approved, submits them to the Assembly for decision-making. The Bureau may also decide to request further work on an issue or appoint a person or country for a specific task. It may also decide to take up an issue by convening special meetings of the Bureau.

III. Genesis of mandates

7. The Assembly creates mandates through its resolutions. The Bureau is entitled, according to the Rules of Procedure of the Assembly, to sub-delegate tasks to fulfill its own mandate. The Bureau for example appoints facilitators for resolutions or creates focal points for certain issues. The same applies by extension to subsidiary bodies, which are also free to sub-delegate tasks. Other issues that the Assembly processes are not in need of a special mandate but come about through statutory requirement, such as the election of judges or of Bureau members. Taking all of this into account, the number of tasks assigned to individuals and subsidiary bodies goes well beyond two dozen, if not more, in any given intersessional period. Indeed, the eleventh session of the Assembly has been served with no less than forty reports for its consideration, and this does not include the proposed budget documentation and supplementary notes on elections and the like. The number of meetings and electronic communications are correspondingly much higher. In 2012, the two working groups and the Bureau met no less than 134 times, in 2011 even 171 times.¹ In the first half of 2013 alone, the Secretariat of the Assembly brought no less than one thousand messages to the attention of States Parties, with the prospectus of a manifold increase in the second half of the year in preparation of the Assembly of States Parties.

8. The Bureau allocates mandates between New York and The Hague. The division of labour between New York and The Hague has evolved over the years, but would appear to follow a well-established logic. On the one hand, institutional questions whose discussion benefit from close interaction with the Court, such as the Court's budget, governance, oversight and host-country related issues are designated to The Hague. On the other hand, questions relating to the United Nations or that require the fullest possible representation on the part of States Parties are designated to New York. In many cases, the allocation of facilitations involves a trade-off between universality and the ability for involvement of the Court.²

9. The allocation of mandates between New York and The Hague, as decided by the Bureau, tends to follow this logic. The Hague Working Group is responsible for advancing the discussions on the budget of the Court, the salaries and allowances of judges, the legal aid system, victims and affected communities, and other questions of governance of the Court. As subsidiary bodies of the Assembly in their own right, the Oversight Committee on Permanent Premises, the Committee on Budget and Finance, and the Independent Oversight Mechanism are also located in The Hague.

10. The New York Working Group is responsible for arrears and geographical and gender representation, as well as two facilitations on elections (of judges and the

¹ As at 20 September 2013, the working groups would have met 69 times, with more meetings to be held in the weeks prior to the Assembly.

² As at 20 September 2013, there are about 35 chairs/facilitator/focal points between the two working groups (20 in The Hague and 15 in New York),

prosecutor), matters where the widest representation on the part of States Parties is important. The same reasoning applies to the treatment of amendments to the Rome Statute or the Rules of Procedure and Evidence. Due to the close relation with the work of the United Nations, members of the New York Working Group are also serving as focal points for the issue of peace and justice.

11. Some mandates have been allocated, at least formally, to both The Hague and New York at the same time through *ad country* mandates. This is the case for complementarity (Denmark and South Africa), non-cooperation (Belgium, Japan and Uruguay), as well as the Plan of action for achieving universality of the Rome Statute (Cyprus, Japan and Romania). But it is true that despite this special type of designation, facilitations have tended to be driven more at one location than the other. The Advisory Committee on Nominations, which is a subsidiary body of the Assembly, is composed of independent members who themselves determine where they wish to convene.

12. The allocation of a limited set of mandates, however, is not as intuitive. Among these, one could mention cooperation, which is currently developed in The Hague. These would seem to be cases of particular joint concern, where both the proximity to the Court and the UN as a political body are desirable. One could also mention the facilitations of the resolutions on complementarity and cooperation, as well as of the omnibus resolution.

13. Roughly half of resolution-based mandates originate from the annual omnibus resolution, while the other half originates from stand-alone resolutions.

14. Not every mandate generates a resolution, nor does every resolution generate a mandate. Only few resolutions have been a constant companion of the Assembly. There has always been a budget resolution. Since its second session, the approach of the Assembly has also been to adopt an omnibus resolution. Resolutions on particular issue areas have not been as constant; indeed, they occasionally have come and gone. In years where this has happened, the omnibus resolution has served as temporary repository of resolution language.

IV. Areas for improvement

15. After more than ten years of operation, it is only natural that some of the working methods of the Assembly require adjustments or even rethinking. Five problem areas are identified in this section.

16. Firstly, there is a general lack of strategic overview over the priority, number, extent and added value of existing mandates. Given that mandates may automatically be carried over from previous years or may be created very much on an ad hoc basis, the intersessional activity has tended to simply expand over the years. This, in turn, has at the cost of States Parties considerably burdened the Secretariat with the additional processing of meeting preparations and reports and their translation, while diminishing the prospects of the Assembly to put its attention and resources to use where it is strategically most required to achieve certain ends.

17. Secondly, the intersessional workload has taken such proportions that only few, if any, delegations are capable of digesting the amount of reports and results that are produced, and not all processes are handled with maximum efficiency. The increased workload has often caused difficulties for States Parties in conducting thorough analysis of each subject and holding close and effective consultations with capitals before meetings on each subject. This is not a rare phenomenon in international organizations, but it certainly is one that poses considerable challenges, certainly in terms of legitimacy of the decisions arrived at. Another result is that more preparatory work is reopened at the Assembly of States Parties.

18. Thirdly, the relationship between the New York Working Group and The Hague Working Group, like any good relationship, needs constant care. The growing workload contributed to an increased risk of miscommunication across the Atlantic. A significant contribution to ameliorating the situation is the holding of Bureau meetings in both cities, and the Bureau indeed is the body responsible for the contributions of both working groups to come together.

19. Fourthly, the agenda of the Assembly of States Parties is often so crowded such that little time tends to be left for the discussion of political issues central to the functioning of the Court. Consideration should therefore be given to ways how certain decisions of the Assembly could be taken entirely within the intersessional period, without convening a special session of the Assembly.

20. Fifthly, given the technical nature of many mandates, the deliberations of the respective working groups tend to occasionally lack the required expertise to inform the decisions of the Assembly in the best possible manner. In some cases, the Assembly has been able to benefit from interactions with Court officials to address the problem, but it has been less imaginative to request outside counsel from other experts or institutions. Consultations among delegations need of course remain a requirement, but they could instead more often begin with input provided by experts as a basis for discussions.

V. Decisions and recommendations of the Bureau

21. Firstly, to enhance the strategic overview over mandates, the Bureau recommends to the Assembly to:

a) Consider, at each session and for every existing and every new mandate, the possibility to, instead of annual facilitations, deal with a certain subject on biennial, triennial or on a less frequent basis, alternatively dispense with reporting requirements altogether, the aim being to reduce the number of facilitations.

b) Accord the omnibus resolution a role in providing coherence and consistency in the work of the Assembly by cross-referencing stand-alone resolutions or other processes and by encapsulating, in a structured manner, core political messages designed to strengthen the Court, without affecting the substantive contents of stand-alone resolutions.

c) Pool the decisions to establish, renew, modify or terminate a mandate in its annual omnibus resolution, possibly in the form of an annex or an otherwise distinct part of the resolution. By jointly, as States Parties, approving the priority, extent, pacing and number of mandates, the Assembly would provide itself with a central planning document for the intersessional period.

22. Furthermore, the Bureau decided to:

d) Explore the workability of a review in the intersessional period. Ideally, such a review would serve to take stock of all ongoing processes, to formulate recommendations for the next session of the Assembly as to its programme of work, which mandates should best be continued, merged, altered, or terminated, and furthermore to determine which issues would require a stand-alone resolution. The review could take into account the interrelation or coherence of different subjects and/or the relevance of the subject to the recent activities of the Court as well as better coordination and cooperation between facilitators. The review could take place in any manner that the Bureau would consider appropriate, including through a video conference. Any review would clearly require the substantive input of the facilitators or focal points concerned.

e) Encourage the regional focal points tasked with the identification of future members of the Bureau to inform individuals who wish to become members of the next Bureau, in particular as potential Vice-Presidents, about the tasks and responsibilities involved, and to consolidate membership well in advance of elections. Interested States should also be informed that the majority of the meetings of the Working Groups take place in The Hague and if not represented in The Hague, the respective State could consider sending a representative from Brussels to participate in important meetings, such as key meetings of The Hague Working Group.

f) Mandate the two Vice-Presidents to take up a coordinating role in the management of mandates under way, and specify their respective tasks in this regard. Currently, the two working groups operate on the basis of terms of reference adopted by the Bureau in February 2006.

23. Secondly, to lower the overall intersessional workload, the Bureau decided to:

a) Consider restricting, as much as possible, reporting of the Bureau to the Assembly to oral contributions and, to that end, encourages facilitators to submit a short summary of their activities to be included in the oral report of the President of the Assembly instead of a written report it being understood that the oral report of the President of the Assembly itself will be reflected in the official records of the Assembly.. This would serve to significantly reduce the number of separate and at times lengthy written reports submitted in the run-up to the Assembly of States Parties.

b) Starting by the end of the next Assembly: to evaluate if one of the following forms - single person mandates in the form of facilitations, focal points or – as a novelty – rapporteurs – can be given to each mandate. The three different types of mandate-holders would serve distinct purposes. Facilitators are mandated to shepherd a particular issue through inclusive consultations with delegations to a specific outcome, for example a resolution. Focal points are mandated to serve as primary responders and coordinators for a particular issue, without expectations that there need to be a specific result. Rapporteurs would be mandated to examine a particular question and report back to the Bureau (and by extension to the Assembly) reflecting a personal, expert-based assessment. It is the work of rapporteurs that would inform the work of facilitators or decision-making by the Bureau.

c) Request the Secretariat to provide the Bureau with an overview over its current responsibilities, tasks and areas for improvement, in order to enable the Bureau review the mandate of the Secretariat of the Assembly contained in ICC-ASP/2/Res.3, and make recommendations to the Assembly in this regard. The review would involve both a reflection on the part of States Parties as to what sort of support they require from the Secretariat, as well as a consideration of how well the current Secretariat is suited to provide this support.

d) Request the Secretariat of the Assembly to continue on its “paper-light” approach to communications and documentation³ and, in this connection, to improve the existing Assembly Extranet so that States Parties can have an “open space” (as the main committees of the UN General Assembly do) in order to share documentation and find documentation on specific themes more easily. This would allow delegates to access documents that are uploaded online and organized in a thematic way without cluttering inboxes. The possibility of concentrating email messages by the Secretariat to one per day could also be explored.

24. Thirdly, to improve the relationship between The Hague and New York, the Bureau decided to:

a) Encourage the two Vice-Presidents to report to delegations about the activities of their counterpart in New York and The Hague, respectively. The Vice-Presidents could address the Bureau on a regular basis.

b) Encourage facilitators to hold concentrated, one-day events on certain issues, as was done in the context of the cooperation facilitation recently, to help smaller delegations to participate in debates that they find important and to concentrate discussions on a certain topic within one day. Such workshop-style events would serve to substitute for a series of meetings on the same issue area. In order to allow most ample participation, scheduling of events should be planned and announced as soon as possible in the year, and coordinated with the concerned Vice-President.

c) Invite facilitators for resolutions of particular significance to the Assembly, i.e. where both the proximity to the Court and the UN as a political body are desirable, engage in consultations involving delegates in The Hague and New York.

d) Make better use of existing technologies, e.g. by enhancing the use of teleconferencing etc. to allow for mutual participation of The Hague and New York in the most important discussions, or in the case of The Hague meetings, to allow participation of delegations with representations in Brussels only.

³ In recent years, the Bureau of the Assembly has endorsed the Secretariat’s approach on increasing digital means of communications and reducing the amount of paper documents for Assembly sessions.

25. Fourthly, to make room for Assembly sessions to consider political matters in a more thorough manner, the Bureau decided to:

a) Explore the possibility of enhancing intersessional decision-making within the existing legal framework of the Assembly.

b) Consider streamlining the Assembly sessions, in order to allow more time for discussions on substantive matters.

26. Fifthly, to inform the Assembly with greater expertise, the Bureau is willing to explore with the facilitators, or facilitators concerned make increased use of experts or (in exceptional circumstances) expert groups to provide recommendations or advice, oral or written, in assistance to an existing mandate. The recommendations elaborated through experts would then serve as a basis or supplement for deliberations among delegates within the respective working groups or the Bureau. The advice of experts would seem particularly useful in highly technical areas, or where intimate knowledge of a subject matter is of great advantage. A case in point would be the area of legal aid or certain aspects of cooperation, victims issues, complementarity or the Study Group on Governance, to name examples.

27. The Bureau acknowledges the small scale practical changes related to the work of The Hague Working Group and the Study Group on Governance that have already been undertaken, and it welcomes the implementation by the respective groups of the following goals:

a) Better sequencing, scheduling and planning of facilitator's meetings/better organized meetings allowing for a more inclusive process: meetings should be scheduled early in the year, taking into consideration the planning of other organizations in The Hague. A tentative programme/journal over all the meetings planned (HWG + facilitators meetings up to the Assembly) sent out in the beginning of the year with updates. Each facilitator could present a plan over planned meetings, goals and results – taking inspiration from the Study Group on Governance roadmap. Meetings should be limited whenever possible to two hours.

b) Facilitators' 'hand-over document' and 'guiding note' allowing for more focused discussions: outgoing facilitators (for facilitations that continue) could be asked to draft a personal lessons learned/hand-over document with recommendations regarding both substance and process. These lessons learned could also feed into the general guidelines/facilitator's guiding note. This note could contain practical recommendations regarding procedure and recommendations for report writing and drafting of resolutions and could be provided by the Secretariat of the Assembly together with the facilitator (based on collected experience of facilitators and the Secretariat of the Assembly).

c) Limit demands for documentation asked from the Court: delegates should only ask for information which is relevant to solve outstanding issues and at the same time allow the Court sufficient deadlines to produce the corresponding report. Documents from the Court should be as short as possible, focusing on the issues at hand, in particular keeping preliminary remarks as concentrated and focused as possible. Furthermore, they should be streamlined with a structure, summary and target number of pages. The same should apply for reports from the facilitators. In general, documentation for meetings should be made available at least two working days in advance in order to give delegates a sufficient amount of time to consult with their capitals. The same would apply for silence procedures. This would also give a better opportunity to the less represented States to provide written comments.

d) Streamline the work of the Secretariat of the Assembly: put as much information as possible, including reports, on the Assembly section of the Court's website for easy access. The Secretariat would evaluate its website in order to have an easy accessible, clearly structured, transparent and user friendly webpage.

28. Finally, the Bureau considers that through this report and its decisions, it has fulfilled the mandate contained in operational paragraph 45 of resolution ICC-ASP/11/Res.8 of November 2012. At the same time, it expresses its determination to remain seized of the matter of evaluating and rationalizing the working methods of the subsidiary bodies of the Bureau, as set out in this report.