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Report of the Advisory Committee on Nominations of Judges on the work of its fifth meeting

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I. Introduction

A. Opening of the session

1. The fifth meeting of the Advisory Committee on Nominations of Judges (“the Committee”) was opened by the Acting Chairperson of the Committee, Mr. Philippe Kirsch (Canada), who had served as Chairperson at the previous meetings, and was held at the International Criminal Court, The Hague, on 26 September 2016.

B. Adoption of the agenda

2. The Committee adopted the following agenda:
1. Opening of the session
 2. Adoption of the agenda
 3. Election of officers
 4. Work of the Advisory Committee:
 - (a) Overview of the Committee's past work
 - (b) Review of proposals to modify the terms of reference of the Advisory Committee
 - (c) Possible improvements to the work of the Advisory Committee not requiring modifications to the terms of reference
 - (d) Review of questions to be posed to candidates.
 5. Other matters
3. The following members participated in the meeting¹:
- (a) Mr. Thomas Barankitse (Burundi)
 - (b) Mr. Bruno Cotte (France)
 - (c) Mr. Hiroshi Fukuda (Japan)
 - (d) Mr. Adrian Fulford (United Kingdom)
 - (e) Mr. Philippe Kirsch (Canada)
 - (f) Mr. Ernest Petrič (Slovenia)
 - (g) Ms. Mónica Pinto (Argentina)
 - (h) Mr. Manuel Ventura Robles (Costa Rica)

C. Election of officers

4. The Committee elected Mr. Philippe Kirsch (Canada) as Chairperson, and Ms. Mónica Pinto (Argentina) as Vice-Chairperson by consensus, in accordance with its Rules of Procedure. The term of the mandate of the Chairperson and Vice-Chairperson would last for the duration of the mandate of the Committee, until 17 November 2018.

5. The Secretariat of the Assembly of States Parties (“the Secretariat”) provided the substantive servicing for the Committee, and the Director, Mr. Renan Villacis, acted as Secretary.

¹ One member was unable to attend.

II. Consideration of issues on the agenda of the Committee

A. Work of the Advisory Committee

1. Overview of the Committee's past work

6. The Committee considered its work at the first to fifth meetings, with a view to determining improvements in its working methods.

2. Review of proposals to modify the terms of reference of the Advisory Committee

7. The Committee received a presentation by the Chair of its work during the first three-year mandate, the challenges it had faced and the lessons learned. It took note that the Committee had met in person in New York or in The Hague. During its interviews of candidates at its second, third and fourth meetings, the Committee had found face-to-face interviews an important factor in the assessment of candidates. On several occasions, the Committee had considered issues relevant to an assessment of candidates within the scope of its mandate, including its working methods, as reflected for example in its report on the work of its fourth meeting, in the segment titled "Mandate of the Advisory Committee on Nominations".²

8. The Committee recalled its mandate, set out in document ICC-ASP/10/36.³

9. The Committee further recalled the mandate of the Assembly to the Bureau at its thirteenth and fourteenth sessions:⁴

(b) *also requests* the Bureau to undertake, in consultation with the Advisory Committee on Nominations and at the end of its mandate, a review of the experience of the Advisory Committee and to report to the Assembly at its fifteenth session on that experience, including suggestions, as appropriate, on how to improve the terms of reference contained in the annex of the report of the Bureau on the establishment of an Advisory Committee on nominations of Judges of the International Criminal Court (ICC-ASP/10/36);⁵

10. The Committee considered, in the light of its experience since its first meeting in 2011, that it was not necessary to seek a review of the mandate and that it would continue to carry out its work within the terms of the existing mandate. It considered that it was too early to modify its mandate and stressed the importance of stability for both the Committee and the Assembly. The Committee was relatively new and in the process of developing its working methods.

3. Possible improvements to the work of the Advisory Committee not requiring modifications to the terms of reference

11. The Committee considered its working methods, adopted at its first meeting,⁶ as well as the lessons learned from its previous experience of conducting its mandate in relation to candidates elected at the twelfth, thirteenth and resumed thirteenth sessions of the Assembly, respectively.⁷

² Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting (ICC-ASP/13/46), paras. 15-19.

³ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC-ASP/10/36), annex, as amended by resolution ICC-ASP/13/Res.5, annex III.

⁴ Resolutions ICC-ASP/13/Res.5, annex I, para. 4 (b) and ICC-ASP/14/Res.4, annex I, para. 5 (b).

⁵ Such as the question of conflict of interest.

⁶ Report of the Advisory Committee on Nominations of Judges on the work of its first meeting (ICC-ASP/12/23), paras. 8-13.

⁷ Report of the Advisory Committee on Nominations of Judges on the work of its second meeting (ICC-ASP/12/47), Report of the Advisory Committee on Nominations of Judges on the work of its third meeting (ICC-ASP/13/22) and Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting (ICC-ASP/13/46).

12. The Committee recalled its understanding that it had been the wish of some States that it develop further its observations concerning candidates nominated for election by providing additional guidance, such as a form of ranking among candidates, or an evaluation going beyond the candidates' strict qualifications under the relevant provisions of the Rome Statute.⁸ It noted that some proposals had been informally made. The Committee reiterated its concern that some of the proposals could go beyond its mandate and depart from the intention of the Assembly of States Parties in establishing the Committee. Having also considered this matter at its fifth meeting, the Committee also reiterated, however, its preparedness to accommodate any wishes the Assembly of States Parties might have in the execution of its mandate, subject to corresponding guidance.⁹

13. At this stage, the Committee decided to increase the specificity of its assessments of candidates in its future reports, while functioning within the confines of its existing mandate.

14. The Committee reiterated the importance of face-to-face interviews with the candidates to the effective discharge of its mandate, in light of its experience during four meetings in which it assessed candidates. The Committee recalled that it had previously stressed the importance of face-to-face interviews with candidates and that it had requested States Parties to ensure that their candidates are available for face-to-face interviews with the Committee. The Committee stressed that it was the responsibility of the nominating State to ensure that its candidate attended the face-to-face interview.

15. The Committee once more stressed the importance that judges elected to the Court be in good health, that they be prepared to serve the whole term starting at the beginning of their term of office, without any extraneous duties that could delay their assumption of office or interfere with the discharge of their duties of a judge as provided in article 40, paragraph 3, of the Rome Statute.

16. The Committee reiterated the importance of States Parties seeking to ensure a fair representation of female and male judges, in accordance with article 36, paragraph 8, of the Rome Statute.

4. Review of questions to be posed to candidates

17. In the context of its consideration of possible improvements to the work of the Advisory Committee not requiring modifications to the terms of reference,¹⁰ the Committee considered the questions it had previously posed to candidates in face-to-face interviews and made some changes and additions to those questions, which had already been modified on several occasions in the course of its previous work.

B. Other matters

Dates and venue of the 2017 meeting

18. The Committee agreed that it would hold its sixth meeting as of 18 September 2017 in The Hague for a period of at least six working days in order to carry out its mandate regarding the election of six judges foreseen for the sixteenth session of the Assembly. The Committee thus urges States that will propose candidates for judges to foresee their presence in The Hague that week in order to have a face-to-face interview.

19. In order to provide assistance to those developing States that may submit candidates, the Committee proposes that the Assembly consider the establishment of a trust fund, to be funded via voluntary contributions, to finance their travel to the venue of the interview.

⁸ Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting (ICC-ASP/13/46), paras. 15-16.

⁹ Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting (ICC-ASP/13/46), para. 16.

¹⁰ See part II.A.2 of this report.