



Fourteenth session

The Hague, 18-26 November 2015

Report of the Bureau on the arrears of States Parties**I. Introduction**

1. Pursuant to articles 112, 115 and 117 of the Rome Statute, the expenses of the Court and of the Assembly of States Parties, that are provided in the budget considered and decided by the Assembly, shall be provided by, inter alia, contributions made by States Parties, which shall be assessed in accordance with an agreed scale of assessment based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

2. Pursuant to regulation 105.1, “assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later.” For purpose of this report, lack of full payment in this timeframe is labeled as “outstanding contribution.” Pursuant to the same regulation, “[a]s of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.” Further, as per article 112 paragraph 8 of the Rome Statute “a State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.”

3. As in previous sessions, at its twelfth and thirteenth sessions, the Assembly of States Parties (“the Assembly”) “emphasize[d] the importance of endowing the Court with the necessary financial resources, and urge[d] 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 Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly.”¹

4. At its twelfth session, the Assembly “decide[d] that, with the understanding that the facilitation in the New York Working Group and its report to the Assembly on arrears is biennialized, the Bureau should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears; and request[ed] the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears.”² The Assembly also took note of the Report of the Bureau on the arrears of States Parties³ and of

¹ ICC-ASP/12/Res.8, para 60; ICC-ASP/13/Res.5, para 86.

² *Ibid.*, annex I, para. 10(b).

³ ICC-ASP/12/30

its recommendations, including “that the topic be considered again in two years with a report to be submitted to the fourteenth session of the Assembly”.⁴

5. The present report is thus submitted pursuant to the decisions of the Assembly at its twelfth and thirteenth sessions, to the mandate on the issue of arrears granted to the New York Group by the Bureau of the Assembly on 23 January 2015, and to the appointment by the Bureau of the Assembly on 12 March 2015 of Mr. Slavomir Kantor (Slovakia), as facilitator on this issue.

6. This report follows the submission of reports to the fourth to twelfth sessions of the Assembly, respectively, by the previous facilitators on the same issue and aims to build on their findings and recommendations.⁵ It should thus be read in conjunction with the said reports, whose recommendations have been endorsed by the Assembly.

7. It must be recalled, that in general, the facilitation on the issue of arrears has a number of objectives:

- (a) To find ways to ensure that no assessed contributions to the Court remain outstanding, by promoting a culture of financial discipline;
- (b) To seek ways of cooperating with States Parties that have not met their financial obligations in order to reverse any outstanding balances;
- (c) To examine what could be done in the cases in which these outstanding contributions amount to arrears under article 112 of the Rome Statute and/or when obligations have not been met due to circumstances beyond the control of the States Parties in question;
- (d) To keep under review the mechanism allowing States Parties to seek exemptions from article 112;⁶ and
- (e) To enhance communication among the Assembly, the Court and States Parties in arrears, so as to address the issue of outstanding assessed contributions more effectively.

8. Pursuant to the roadmap of resolution ICC-ASP/13/Res.5, and following consultations, at the third meeting of the New York Working Group, held on 4 April 2015, the facilitator indicated the work plan for 2015:

- (a) Considering the elections to fill a judicial vacancy at the Court that were scheduled to take place on 24 and 25 June 2015, the facilitation would give priority to consultations with States Parties whose arrears would trigger the application of paragraph 8 of article 112, in order to avoid the loss of voting rights of those States; and
- (b) Considering that at the second meeting of the Bureau, held on 9 March 2015, the Bureau was informed that the amounts of accumulated outstanding contributions could have an impact on the cash-flow and the need to make use of the Working Capital Fund for 2015, with the possible implication that States Parties could be asked to replenish this fund and that there may not be a budget surplus at the end of 2014, which was intended to finance part of the cost of the consolidated permanent premises project, the facilitation would focus also on consultations with the States Parties with the highest amount of outstanding contributions.

9. The New York Working Group was also informed that the facilitation would ensure regular updates to States Parties as well as ongoing bilateral meetings with relevant States Parties to achieve the objectives of the facilitation.

⁴ ICC-ASP/12/Res.8, para 62.

⁵ ICC-ASP/4/14, ICC-ASP/5/27, ICC-ASP/6/19, ICC-ASP/7/26, ICC-ASP/8/41, ICC-ASP/9/27, ICC-ASP/10/34, ICC-ASP/11/23, ICC-ASP/12/30.

⁶ Article 112, paragraph 8, of the Rome Statute provides as follows: “A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.”

II. Status of contributions and arrears

10. At its last report to the Assembly,⁷ the total amount of outstanding contributions to the Court by States Parties to the approved programme budget for 2013, as at October, stood at €9,157,083. This amount was equivalent to 8.17 per cent of the total budget of €12,039,600. The total amount of outstanding contributions to the Contingency Fund stood at €50,463. Further, the total outstanding contributions by all States Parties since 2002, amounted to an additional €9,543,571.

11. As at the same date, 32 States Parties had not yet paid their contributions in full. Of these, 9 were ineligible to vote, pursuant to article 112, paragraph 8, of the Rome Statute.

12. As at 20 April 2015,⁸ the total amount of outstanding contributions to the Court by States Parties to the approved programme budget for 2015 stood at €3,899,919. This sum was equivalent to 42.91 per cent of the 2015 assessed contributions of €125,597,639. The total amount of outstanding contributions to the Contingency Fund stood at €7,758. Further, prior year outstanding contributions by all States Parties since 2002, amounted to an additional €9,053,708.

13. As at the same date, 82 States Parties had not yet paid in full their contributions. Of these, 55 States Parties had outstanding contributions for their assessed contributions to the 2015 budget. Twenty-seven additional States Parties were in arrears, of which 12 were in ineligible to vote, pursuant to article 112, paragraph 8, of the Rome Statute.

14. As at 15 September 2015,⁹ the total amount of outstanding contributions to the Court by States Parties to the approved programme budget for 2015 stood at €30,017,155. This amount was equivalent to 23.90 per cent of the 2015 assessed contributions of 125,597,639. The total amount of outstanding contributions to the Contingency Fund stood at €6,161. Further, prior years outstanding contributions by all States Parties since 2002, amounted to an additional €8,151,645.

15. As at 15 September 2015, 56 States Parties had not yet paid in full their contributions. Of these, 33 had outstanding contributions for their assessed contributions to the 2015 budget, and 23 were in arrears, of which 11 would be required to make a minimum payment before the fourteenth session of the Assembly so as to avoid the application of article 112, paragraph 8, of the Rome Statute.

III. Consultations and sharing of information

16. At its second meeting in 2015, the Bureau considered the status of outstanding contributions and of arrears. It encouraged all States Parties to regularize their financial obligations to the Court as soon as possible and decided to remain seized of the issue, noting that the demarches undertaken in other international organizations on outstanding contributions could be borne in mind.

17. The New York Working Group considered the status on contributions at its fourth (8 May 2015), fifth (16 June 2015), seventh (14 July 2015), and ninth (27 August 2015) meetings. At its tenth meeting (3 September 2015), a briefing by the Registrar of the Court allowed States Parties to exchange views on the importance and means of encouraging discipline and prompt payments by States Parties.

18. As every year, information on the status of contributions to the Court was annexed to the respective reports of the two annual sessions of the Committee on Budget and Finance, which were distributed to States Parties by the Secretariat. It was also brought to the attention of States Parties by the Coordinator of the New York Working Group, Ambassador Sebastiano Cardi (Italy), in a message dated 29 May 2015.

⁷ ICC-ASP/12/30.

⁸ Report of the Committee on Budget and Finance on the work of its twenty-fourth session, ICC-ASP/14/5, annex II.

⁹ Report of the Committee on Budget and Finance on the work of its twenty-fifth session, ICC-ASP/14/15, annex II. *Ibid.*

19. The facilitator undertook several bilateral consultations with States Parties with outstanding contributions. As a result, from these consultations, States with outstanding contributions were informed about the exact amount and the importance of paying the assessed contribution on time in order to keep the Court in a good financial condition.

IV. Conclusions and recommendations

20. In the first semester of 2015, the total outstanding contributions to the Court's budget posed a risk to the cash flow and the Working Capital Fund of the Court. By 15 September 2015, however, payments of €23,882,764 had been made however, the total outstanding contributions by all States Parties since 2002 had decreased by more than 12 per cent compared to the first semester of the year, and 26 States Parties had settled their contributions.

21. However, the amount of outstanding contributions remains considerably high and worrisome, with the total outstanding contributions having increased from €9,543,571 in September 2013 to €38,174,961 in September 2015.

22. Further, those States Parties whose arrears exceed the quantum of contributions due from them for the preceding two full years has increased by 20 percent compared to data from the 2013 report of the Bureau.¹⁰ Also, although the number of States Parties that have not paid their contributions in full has remained constant between October 2014 (51 States Parties) and October 2015 (56 States Parties), it increased considerably from 32 States Parties in October 2013.

23. A positive development is that the outstanding contributions to the Contingency Fund have decreased considerably, from €50,463 in October 2013 to €6,161 in September 2015.

24. Bearing in mind the worrisome state of outstanding contributions and arrears, the overall status of contributions should be kept under close observation, and the Assembly should redouble its efforts to ensure financial discipline from all States Parties.

25. The progress on the status of outstanding contributions from the first part to the second part of the year underscores the importance of the role of the Bureau and of the Assembly in assisting the Court to receive in due time all outstanding contributions.

26. The consultations held bilaterally emphasized the need for accompanying the transmittal of information from the Registry on payments with informal follow-up by the facilitator and the Secretariat, especially with those States whose outstanding contribution might have a higher impact on the Court.

27. Further, during New York Working Group's meetings, States Parties appreciated regular briefings on the status of contribution and the arrears in particular. In order to improve this information, they have emphasized the importance of receiving detailed, written and up-to-date information on the status of contributions.

28. In addition, representatives of States Parties with outstanding contributions themselves appreciate the circulation of this information as it enables the Missions or Embassies to follow up with their respective capitals and their relevant national institutions on the importance of timely contributions to the budget of the Court.

29. As regards the relevance of the facilitation, it must be recalled that the status of arrears has been conducted and reported on annually by the Committee on Budget and Finance. In order to contribute to the improvement of the working methods of the Assembly, and to bring additional value to the reports of the Committee, the Assembly, at its twelfth session, decided to biennialize the facilitation on the issue of arrears.

30. However, considering that the level of outstanding contributions remains worrisome, and the Assembly must undertake focused efforts to ensure that no assessed contributions to the Court remain outstanding, it is considered necessary that a focal point be appointed to

¹⁰ ICC-ASP/12/30, para 4.

assist the Bureau in this task throughout 2016, to keep the Working Groups informed as regularly as possible on the status of contributions, and to ensure that the request for payment sent by the Court are received and acted upon by all States Parties. A report to the Assembly at its fifteenth session would be deemed necessary to inform the Assembly of the issues and obstacles identified in pursuing the objective of zero arrears.

31. The Working Group concludes its inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of the paragraphs contained in annex I of the present report.

Annex I

Draft text for the omnibus resolution

A. Paragraph 62 of the 2013 omnibus resolution (ICC-ASP/12/Res.8) is re-inserted with an addition:

“*Takes note with concern* the report of the Bureau on the arrears of States Parties.¹¹”

B. Paragraph 86 of the 2014 omnibus resolution (ICC-ASP/13/Res.5) is maintained

“*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 Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;”

C. The following paragraph to be inserted into the Mandates section of the 2015 omnibus resolution replacing paragraph 13(b) of the 2014 omnibus resolution (ICC-ASP/13/Res.5)

With regard to the programme budget,

“*Decides* that the Bureau, through the President of the Assembly, the Coordinator of the Working Group and the focal point, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and report thereon to the Assembly at its fifteenth session;”

D. Paragraph 13(c) of the Annex I of the 2014 omnibus resolution (ICC-ASP/13/Res.5) is maintained

“*Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;”

¹¹ ICC-ASP/14/40.