



Assembly of States Parties

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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 (“the Assembly”), as outlined in the budget considered and decided by the Assembly, shall be provided by, inter alia, contributions made by States Parties. 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 and adjusted in accordance with the principles on which that scale is based.

2. Pursuant to regulation 105.1 of the Financial Regulations and Rules, “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 the purposes of this report, lack of full payment within this timeframe is considered an “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. 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.”

3. The Assembly has regularly “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 eighteenth session, the Assembly decided “that the Bureau, through the President of the Assembly, the Coordinator of the working group and the facilitator, 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

¹ ICC-ASP/12/Res.8, para 60; ICC-ASP/13/Res.5, para 86.; ICC-ASP/14/Res.4, para. 100; ICC-ASP/15/Res.5, para. 117; ICC-ASP/16/Res.6, para. 127; ICC-ASP/17/Res.5, para. 144; ICC-ASP/18/Res.6, para. 147.

in arrears, and via the annual facilitation on the topic of arrears, report thereon to the Assembly at its nineteenth session.”²

5. Also at its eighteenth session, in the resolution on the budget,³ the Assembly urged all States Parties to make timely payments of their assessed contributions and requested the Court and States Parties to make serious efforts and take necessary steps to reduce the level of arrears and outstanding contributions as far as possible to avoid liquidity issues for the Court.⁴ The Assembly also welcomed the Court’s development of guidelines, consistent with existing rules and regulations, for States Parties which are in arrears and subject to the provisions regarding loss of voting rights, and which face significant economic hardship, to enter into voluntary and sustainable payment plans.⁵ The Assembly further encouraged such States Parties to work voluntarily, in coordination with the Court, to develop payment plans, and requested the Court to keep States Parties informed of any payment plans and their implementation through The Hague Working Group facilitation on the budget, including via the monthly financial reports provided to States Parties.

6. The Bureau allocated the mandate for the topic of arrears to the New York Working Group on 18 December 2019, and on 6 February 2020 Mr. Mohammad Nore Alam (Bangladesh) was appointed as the facilitator for the topic of arrears. On 4 March 2020, following the resignation of Mr. Alam, Ms. Mosammat Shahanara Monica (Bangladesh) was appointed as the facilitator for the topic of arrears.

7. The objectives of the facilitation on the topic of arrears are as follows:

(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; 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.

II. Status of contributions and arrears

8. As of 31 October 2020, the total outstanding contributions, including for the regular budget, the Working Capital Fund, the Contingency Fund, and the host State loan, stood at €42,125,441.

9. As of 31 October 2020, 77 States Parties were fully settled, 25 States Parties had outstanding contributions for the 2020 budget, and 21 States Parties were in arrears, ten of which were ineligible to vote and were required to make a minimum payment in order to avoid the application of article 112, paragraph 8, of the Rome Statute.

² ICC-ASP/18/Res.6, annex I, para. 16(b).

³ ICC-ASP/18/Res.1.

⁴ ICC-ASP/18/Res.1, section C, para. 1.

⁵ ICC-ASP/18/Res.1, section C, para. 2.

10. In the report on the work of its thirty-fifth session,⁶ the Committee on Budget and Finance reviewed the status of contributions and arrears and reiterated its previous recommendation that all States Parties in arrears settle their accounts with the Court as soon as possible. The Committee noted that the upcoming elections of Judges and the Prosecutor presented a situation where voting rights would be highly sought after, and thus urged States in arrears to settle their accounts in a timely manner. The Committee requested that the Secretariat of the Assembly notify States Parties in arrears once again prior to the nineteenth session of the Assembly, highlighting the importance of their contributions for the budget and the financial stability of the Court, and for the States Parties themselves to regain their voting rights.

11. The Committee continued to urge all States Parties to make their payments on time in order to ensure that the Court has sufficient funds throughout the year. The Committee requested that the Court once again notify those States Parties that had not paid their contribution in full of their payment obligations prior to the nineteenth session of the Assembly in December 2020. Furthermore, while welcoming the efforts made in previous years by the Court in order to avoid a liquidity shortfall, the Committee recommended that the Court use and further develop different forms of interactions with States Parties to minimise the risk to liquidity, such as: formal letters to relevant national authorities; facilitating video-conferences or meetings with high-level or technical State representatives engaged in the payment process, and further engaging with other relevant partners to address their intended payment schedule; contact early in the year (January/February 2021) with embassies of the main contributors to obtain clarity on when payment of contributions to the Court would be expected; as well as enhancing coordination with the President of the Assembly of States Parties and the facilitator on arrears.

III. Consultations and sharing of information

12. As in previous years, information on the status of contributions to the Court was annexed to the reports of the two sessions of the Committee.⁷ In addition, as mandated by the Assembly at its seventeenth session,⁸ States Parties received a monthly financial report from the Court which included information on the status of contributions.

13. The Secretariat periodically updated the facilitator on the status of contributions and arrears. On 3 November 2020 the Secretariat sent letters to the States Parties subject to the provisions of article 112, paragraph 8, of the Statute.

14. During 2020, the facilitator approached relevant State Party delegations from Permanent Missions to the United Nations, particularly those with significant outstanding contributions, to discuss both the amount and status of their arrears. The facilitator also reached out to delegations from States Parties that are currently subject to article 112, paragraph 8, of the Statute, and urged them to restore their voting rights by settling their arrears.

15. Despite restrictions on in-person meetings due to the COVID-19 pandemic, the facilitator continued to reach out to the States Parties in New York. The facilitator also kept the New York Working Group regularly updated on those efforts and outcomes.

IV. Conclusions and recommendations

16. Bearing in mind the worrisome state of outstanding contributions and arrears, the status of contributions should be kept under close observation. The Assembly must continue to undertake focused efforts to ensure that no assessed contributions to the Court remain outstanding and to ensure that the requests for payment are acted upon by all States Parties. For this reason the facilitator recommends that the Assembly continue to have an annual facilitation on the matter of arrears.

⁶ ICC-ASP/19/15/AV, paras. 148 to 158.

⁷ See ICC-ASP/19/5 and ICC-ASP/19/15/AV.

⁸ ICC-ASP/17/Res.4, section N, para. 10.

17. The facilitator concludes her inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of the paragraphs contained in the annex to this report.

Annex

Draft text for the omnibus resolution

1. Paragraph 146 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) is maintained:
“*Takes note with concern* of the report of the Bureau on the arrears of States Parties.”
2. Paragraph 147 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) 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;”
3. The following paragraphs are to be included in the Mandates section of the 2020 omnibus resolution:

With regard to the **programme budget**,

“*Decides* that the Bureau, through the President of the Assembly, the Coordinator of the working group and the facilitator, 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, via the annual facilitation on the topic of arrears, report thereon to the Assembly at its twentieth session;”

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