



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Seventh meeting

6 October 2021

(via remote link)

Agenda and decisions

1. Financial situation of the Court

a) Liquidity

The Bureau took note of the information on the liquidity of the Court, including that according to the monthly financial situation of 30 September 2021, the cash flow projections show a liquidity shortfall of approximately €23.4 million at the end of 2021 before utilizing €11.5 million of the Working Capital Fund.

The Registrar informed the Bureau that, on 6 October 2021, an additional payment of €600 thousand had been made, he expressed his gratitude for the engagement of States Parties and highlighted the significance of every payment towards managing the liquidity of the Court.

The Registrar had approached States not in arrears to discuss the possibility of their making either an advance or an early payment. He acknowledged the difficulties that States Parties faced when asked to make such payments, given their respective financial rules and processes.

The Registrar also indicated that, in order to manage the issue of liquidity, the expenditures of the Court are carefully being monitored and that discussions on whether any payments, such as pensions or medical insurance, could be deferred to 2022 were also taking place, bearing in mind the penalties that would follow such deferrals.

Bureau members acknowledged the Court's financial problems and it was stated that States Parties should do whatever was possible to ensure that payments were made as soon as possible. Nonetheless, the point was made that a generalized request for States Parties to make early or advance payments every year did not resolve the problem, but rather results in reproducing the same problem, allowing some States in arrears to get used to such a situation, and that this should not become the norm. There was a need for all delegations to work together in order to prevent the situation from becoming the new standard.

The President acknowledged the concerns raised by the Bureau members and echoed their opinions that advance or early payments were not sustainable solutions. She recalled recommendation 140 of the Independent Expert Review (IER) recommendations, concerning States in arrears and the liquidity crisis, which had been allocated to the facilitation on arrears for discussion during the second semester of 2021.

a) Status of contributions

As of 30 September 2021, a total of €50.7 million of current and prior years' assessed contributions from States Parties was outstanding.

2. Review Mechanism: update

The State Party representatives, Ambassador Paul van den IJssel (Netherlands) and Ambassador Michael Imran Kanu (Sierra Leone) briefed the Bureau on the progress of the work of the Review Mechanism. Since their briefing to the 8 September meeting of the Bureau, they had briefed the New York Working Group and The Hague Working Group, on 29 September.

The Review Mechanism had held two meetings as the platform for the assessment of the recommendations of the Group of Independent Experts that had not been allocated to an existing Assembly mandate. Its current focus was the priority recommendations which it had identified.¹

At the first meeting, held on 13 September, States Parties had adopted the programme of work of the Review Mechanism.

This meeting dealt with the topic of re-instating the structure of two Deputy Prosecutors (recommendation 48). It was an information sharing meeting, where the Prosecutor presented his views and States Parties and other stakeholders had the opportunity to react. The States Party representatives' reading of the meeting (not conclusive) was that there was much support among States Parties for re-instating the structure of two Deputy Prosecutors and for the proposed reorganization of the Office of the Prosecutor. This issue would now be discussed in the facilitation on the budget, taking into account the recommendations of the Committee on Budget and Finance. They noted that the decision on two Deputy Prosecutors was within the authority of the Prosecutor.

The 30 September meeting of the Review Mechanism was dedicated to another priority issue, workplace culture, gender equality and some human resources issues. Each Head of organ and the Staff Union Council presented views and all speakers stated a policy of zero tolerance for bullying and harassment, including sexual harassment. Many States Parties stated that the recommendations needed to be implemented. The Focal Point for Gender Equality made a statement.

The Review Mechanism would hold further formal meetings on the remaining priority recommendations. It was also meeting with the Assembly mandate holders to discuss their progress made, and any challenges.

As regards reporting, the mandate holders were required to submit to the Bureau by 1 November a report on the outcome of their consideration, including on action already taken and proposals for next steps.² The Review Mechanism would submit a report on the review process to the Assembly well in advance of its twentieth session.³ Further, it would prepare a stand-alone resolution on the work of the Review Mechanism and the mandates for 2022. They would seek to avoid duplication with the omnibus resolution and would liaise with the facilitator.

The Review Mechanism would continue its work fully respecting the principles of transparency and inclusivity. Given the importance of interpretation to ensuring inclusiveness,

¹ (i) Reinstating the structure of two Deputy Prosecutors; (ii) working culture-related recommendations; (iii) unified governance.

² Resolution ICC-ASP/19/Res.7, para. 7.

³ *Ibid.*, para. 9

they had requested interpretation into English and French for the formal meetings of the Review Mechanism and expressed their gratitude to the Registry's Language Services Section for its support in that regard.

Appreciation was expressed for the fact that the Review Mechanism's meetings included delegations in both New York and The Hague. Further, the importance was highlighted of ensuring that all States had knowledge and information on the issues, to enable them to participate more fully in the decision-making at the Assembly sessions. It was suggested that the President or the Review Mechanism look at how the meetings of the facilitations could be made more inclusive. The President noted that it was necessary to consider further how a greater number of States could be involved in discussions on issues before the Assembly, and how even more inclusiveness could be ensured.

3. Preparations for the twentieth session of the Assembly

The Bureau was informed that the Secretariat of the Assembly continues with preparations for the twentieth session of the Assembly, looking into implication of the various COVID-19 measures taken by the host State and recent experience at United Nations Headquarters in New York.

Bearing in mind the objective of minimizing the risk to the safety and well-being of delegates, Court officials and ICC staff as well as the relative improvement of the situation, the Bureau decided to double the number of State Parties, non-Parties as well as civil society representatives that could be allowed access to the World Forum Convention Center, as follows:

- a) The in-person access to the World Forum Convention Center will be expanded to:
 - (i) Four representatives per State Party at any given time;
 - (ii) Two representatives per observer and invited State at any given time.
Each delegation under i) and ii) will be seated behind a table and with a microphone on the floor of the main hall. However, more delegates may register to attend the session, but they may not enter the World Forum unless their colleagues have departed.
 - (iii) Sixteen NGO representatives in total at any given time. More NGO representatives may register to attend the session, but they may not enter unless their colleagues have departed.
 - (iv) Four representatives for each organ of the Court and subsidiary bodies of the Assembly.
- b) Access to the World Forum will only be granted with the presentation of the COVID-19 entry pass;⁴
- c) All attendees will be required to wear a mask unless directly addressing a meeting;
- d) A contact tracing system will be implemented by the Secretariat for all the participants who enter the World Forum.

Some queries were raised regarding the COVID-19 entry pass, especially regarding access of delegates attending from outside of the European Union. The President indicated that the Secretariat will prepare more detailed guidelines regarding access to the World Forum Convention Center, taking into consideration the above measures and any developments which may occur in the coming weeks. It was also noted that the format of informal consultations during the session will be determined in the coming weeks.

⁴ COVID-19 entry pass can be obtained via three options: 1) Full vaccination; 2) Recovery certificate; or 3) Negative test result. Further information can be found at the following websites:
<https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19/cultuur-uitgaan-en-sport/coronatoegangsbewijs>
<https://www.government.nl/topics/coronavirus-covid-19/covid-certificate/covid-certificate-for-travel-or-events>

Taking into account the exorbitant costs of holding a hybrid interactive session (Euros 140000), the Bureau also decided that the plenary meetings during the twentieth session will instead be web streamed via the ICC YouTube channel in the floor language. The Secretariat will look into the technical possibility of streaming the session in the other languages. It was also noted that it would be feasible for a delegation to deliver a statement via a pre-recorded video.

4. Lessons learnt exercise of the Prosecutor's selection process

The President updated the Bureau on the lessons learnt exercise of the Prosecutor's selection process. She indicated that the Bureau had now received all three reports it had requested at its meeting on 13 May: on 5 August 2021, the Bureau had received a) the report of the former Presidency of the Assembly, dated 26 July 2021, and b) the report of the Committee on the Election of the Prosecutor, dated 31 July 2021, and that on 3 October 2021, the Bureau had received c) the report by the Panel of Experts, which included a summary with key recommendations.

The Bureau deliberated the discussion paper submitted by the President on the lessons learnt exercise of the Prosecutor's selection process and its annex, dated 4 October 2021. With regards the proposal to appoint two facilitators, arguments were put forward against and in favour of appointing both facilitators in New York or one facilitator in The Hague and one in New York. The second option was selected and it was agreed to include among the potential facilitators States which had submitted comments on the way forward via a non-paper. With regards to the external support mentioned in the proposal, the point was made that this was required due to the limited substantive support that the Secretariat could provide during this process due to its workload related to the Review.

With regards the timing of the report it was agreed that the facilitators would submit its report in advance to the twentieth first session of the Assembly and that the facilitators would be requested to provide regular updates of their work to the Bureau. Their mandate would be based on the text of ICC-ASP/19/Res. 6, paragraph 78 as included in the discussion paper but the three reports previously mentioned would help guide the process further. A reference to confidentiality would be added to the principles included in the discussion paper.

It was agreed that a revised version of the discussion paper would be circulated together with the names of the proposed facilitators for approval by the Bureau via silence procedure, so that they can start their work as soon as possible.

5. Trust Fund for Victims: recommendations on amendments to resolution ICC-ASP/1/Res.6

Further to the Bureau's 17 September 2019 and 8 April 2021 referral to The Hague Working Group of the proposals⁵ of the Board of Directors of the Trust Fund for Victims for amendment to Assembly resolutions ICC-ASP/1/Res.6 and ICC-ASP/1/Res.7, the Bureau considered the recommendation of The Hague Working Group thereon.

At its 29 September meeting, The Hague Working Group agreed to recommend to the Bureau the amendment proposals in the following three areas:

- a) An extension of the term of office of members of the Board of Directors from three years to four years.

⁵ Dated 5 September 2019 and 10 March 2021, respectively.

- b) Ensuring continuity on the Board by having staggered terms of office, to be determined by a drawing of lots.
- c) Eligibility for election twice, instead of once, where a member is elected to fill a vacancy during the last twelve months of the predecessor's term.

The relevant documentation setting out the Board's amendment proposals was conveyed to all States Parties on 24 September 2021.⁶ Should the amendments be approved by the Assembly, they would apply to the elections to be held for the members of the Board in 2024.

The Bureau requested the Secretariat to prepare the proposed amendments as an Assembly document in the format which would allow for consideration and adoption by the Assembly via the omnibus resolution.

6. Other matters

The Bureau had a short exchange of views regarding the Election of the next Deputy prosecutors.

The President had a very productive trip to New York during the second half of September, which had allowed her to, inter alia, meet many State representatives, all mandate holders and facilitators, high-level United Nations officials, as well as civil society organizations in bilateral and group meetings. She hoped that those encounters would contribute to raising awareness and support for the Court.

Annex

Amendment proposals to resolution ICC-ASP/1/Res.6,⁷ annex, paragraphs 2 and 3, recommended by the Bureau to the Assembly of States Parties

2. The Board shall have five members who shall be elected for a term of ~~three~~ **four** years and may be re-elected once. They shall serve in an individual capacity on a pro bono basis. **At the first election upon entry into force of this provision, two of the then elected members of the Board shall be selected by lot to serve for a term of two years.**

3. The Assembly shall elect the members of the Board, all of whom shall be of a different nationality, on the basis of equitable geographical distribution and taking into account the need to ensure equitable gender distribution and equitable representation of the principal legal systems of the world. The members of the Board shall be of high moral character, impartiality and integrity and shall have competence in the assistance to victims of serious crimes. In the event of a vacancy, an election shall be held in accordance with the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims. The procedure shall apply mutatis mutandis, subject to the following provisions:

⁶ a) Paper, titled "Amendments to the annex to the resolution ICC-ASP/1/Res.6", proposed by the Board of Directors of the Trust Fund for Victims, dated 23 September 2021;

b) Letter, dated 10 March 2021 from the Chair of the Board of Directors, Ms. Mama Koité Doumbia, to the President of the Assembly, Ms. Silvia Fernández de Gurmendi;

c) Letter, dated 5 September 2019 from the Executive Director of the Secretariat of the Trust Fund for Victims, Mr. Pieter de Baan, on behalf of the former Chair of the Board of Directors, Mr. Felipe Michelini, addressed to the former President of the Assembly, Mr. O-Gon Kwon.

⁷ As amended by ICC-ASP/4/Res.5.

- (a) The Bureau of the Assembly of States Parties may fix a nomination period which is shorter than the one used for other elections.
- (b) The Bureau of the Assembly of States Parties may elect the member.
- (c) A member elected to fill a vacancy shall serve for the remainder of the predecessor's term and may be re-elected once.
- (d) A member elected to fill a vacancy who starts to serve during the last twelve months of the predecessor's term may be re-elected twice.
