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Report of the Bureau on the arrears of States Parties

Note by the Secretariat

Pursuant to paragraph 52 of resolution ICC-ASP/7/Res.3, of 21 November 2008, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the arrears of States Parties. The present report reflects the outcome of the informal consultations held by the New York Working Group of the Bureau.

Report of the Bureau on the arrears of States Parties

A. Introduction

1. The present report is submitted pursuant to the mandate given to the facilitator on the issue of arrears, Mr. Tomohiro Mikanagi (Japan), upon his appointment by the Bureau of the Assembly of States Parties (hereinafter, “the Assembly”) at its fourth meeting, on 9 February 2009. The report follows the submission of reports to the fourth, fifth, sixth and seventh sessions of the Assembly by the previous facilitators on the same issue and aims to build on their findings and recommendations. It should thus be read in conjunction with the said reports, whose recommendations have been endorsed by the Assembly. The facilitator held informal consultations with the New York Working Group on 10 July 2009.

2. 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 which have not met their financial obligations in order to reverse any outstanding balances;
 - c) To examine what could be done in 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 State Party in question;
 - d) To keep under review the mechanism allowing States Parties to seek exemptions to article 112;¹ and
 - e) To enhance communication among the Assembly, the Court and the States Parties in arrears, so as to address the issue of outstanding assessed contributions more effectively.

3. In addition to endorsing the recommendations of the Bureau on the arrears of States Parties,² the Assembly, at its sixth session, “urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions”³ and “decide[d] that the Bureau should review on a regular basis the status of payments received throughout the financial year of the Court and consider additional measures to promote prompt payment of contributions by States Parties, as appropriate”.⁴

¹ 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”.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.2, paragraph 48 and annex III.

³ *Ibid.*, paragraph 46.

⁴ *Ibid.*, paragraph 48.

B. Status of contributions as at 30 September 2009 and States in arrears as at 12 October 2009

4. As at 12 October 2009, five States Parties are in arrears. The total amount of outstanding contributions to the Court by States Parties that are in arrears stands at €36,915, while the total outstanding contributions as at 30 September 2009 by all States Parties since 2002 amount to €4,175,064. Five States Parties will be required to make a minimum payment before the eighth session of the Assembly (to be held from 18 to 26 November 2009), so as to avoid inducing the application of article 112 of the Rome Statute.

5. The total outstanding contributions by all States Parties to the assessments of the approved programme budget for 2009 amount to €3,829,273.

C. Informal consultations

6. The summary of the informal consultations held on 10 July 2009 is as follows:

- a) It was indicated that the number of States in arrears and the amount of the contributions in arrears have decreased substantially compared to last year. The view was expressed that the decrease in the number of States in arrears may have been due to the outcome of the elections in January 2009.
- b) Given that the outstanding amount of arrears subject to article 112 is relatively small, it was suggested that further improvement of the situation could be encouraged through enhanced efforts to strengthen communication with the States Parties in question. In this regard, the participants in the informal consultations endorsed the facilitator's proposal to communicate with the States in arrears in order to inform and remind them of unfulfilled financial obligations.
- c) Lastly, it was stressed that, in contrast with the arrears subject to article 112, outstanding contributions that are not subject to article 112 are increasing, which could have a negative effect on the functioning of the Court. It was pointed out that the status of the outstanding contributions may be partly affected by differences in the fiscal years of the individual States Parties. However, as the overall amount of the outstanding contributions is increasing, the view was expressed that it is crucial to address the issue in future considerations by the States Parties.

D. Conclusions

7. Finding ways to encourage and assist States Parties in arrears which are subject to article 112 continues to be one of the main aims of States Parties' strategy to combat arrears. The decrease in the amount of unpaid contributions subject to article 112 is a welcome development in this regard. In order to further improve the situation, communication with those States Parties in arrears needs to be strengthened as much as possible.

8. On the other hand, considering the relatively large amount of outstanding contributions falling outside the scope of article 112, it is suggested that more attention be given to this issue in future considerations by States Parties.