

SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES

NEW YORK WORKING GROUP OF THE BUREAU

20 July 2011

Informal summary

The President of the Assembly, H.E. Ambassador Christian Wenaweser (Liechtenstein) chaired the meeting.

1. Briefing by the Coordinator of the Search Committee for the position of the Prosecutor of the International Criminal Court

The Coordinator of the Search Committee, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, expressed his gratitude to those who expressed support for the work of the Committee at the 10 June 2011 meeting of the Working Group. He regretted that one delegation had broken the silence procedure regarding a written statement of support by States Parties and called on the delegation concerned to indicate their reasons for objecting and how else the process could be conducted.

The Coordinator informed the Working Group about his travel to the annual meeting of the International Association of Prosecutors (IAP, 27-29 June) and the World Summit of Prosecutors-General, Attorneys-General and Chief Prosecutors (29 June – 1 July) in Seoul, where he had had the opportunity to meet many prosecutors and to brief the IAP about the work of the Committee.

The Coordinator stated that the Committee had last met on 18 July 2011 and had discussed in particular the challenge of balancing transparency with confidentiality, in line with the terms of reference of the Committee,¹ while making basic enquiries into the background of the candidates under consideration. Some names under consideration had leaked beyond those individuals with whom some Committee members had consulted, but he was convinced that the list as a whole was not known beyond the Committee itself.

The Committee had 26 names on the list, including nine new names, while three names had been removed including at the request of the persons concerned. Of the 26 names 21 were men, five were women. In terms of regions 15 were from WEOG, eight from the African Group, one from the Eastern European Group, two from GRULAC and none from the Asian Group.

The next meeting of the Committee would take place on 12 September. The cut-off date for expressions of interest would be 9 September, whereafter the Committee would not entertain further expressions of interest. Interviews with candidates would most likely take place during the week of 10 to 15 October. The Coordinator recalled that in order to allow for this informal Committee process to be successful, no formal nomination should be made until States Parties informally agree on a consensus candidate in November. He stressed that the Committee was committed to continue to do its work with integrity and that it welcomed the assistance of all States.

The President thanked the Coordinator and the other members of the Committee for their efforts and opened the floor for questions and comments.

¹ "Bureau of the Assembly of States Parties: Search Committee for the position of the Prosecutor of the International Criminal Court: Terms of Reference", (ICC-ASP/9/INF.2).

The point was made that the Committee provided a good level of transparency, as it continued to keep States informed, but the allegations of leaks were of concern. Furthermore, a question was raised regarding the role of individuals or civil society in nominating candidates. Clarification was also sought on the procedure of expressions of interest on the part of States Parties, short of an actual nomination. In addition, attention was drawn to the concerns expressed by African States Parties with respect to the Court's work and the performance of the Prosecutor, and the question was raised regarding to what extent the Committee was consulting with African interlocutors.

In response, the Coordinator confirmed that the confidentiality of the process had to be safeguarded, and that the current list of candidates was now watermarked. Two or three names might have escaped as a consequence of some direct inquiries that Committee members made, but the list as a whole was not in the public domain. The Coordinator recalled that the Committee received only informal referrals, but no formal nominations. Indeed, no formal nomination should be made at this stage. Regarding interaction with African stakeholders, the President stated that one member of the Search Committee, H.E. Ambassador Baso Sangqu (South Africa), had attended the African Union (AU) summit in Malabo/Equatorial Guinea (23 June – 1 July), and that there were ongoing contacts with officials of African States Parties, both before and after the AU Summit. He also recalled that the meeting in Seoul, which the Coordinator had attended, was of global reach and deemed an ideal opportunity to do outreach.

Regarding the objection given to the draft written statement of support for the Committee, the delegation concerned stressed that it had no problem with resolution ICC-ASP/3/Res.6 governing the election of the Prosecutor, but that it had questions about the current process. It questioned why the Committee called on States Parties not to make formal nominations, which was a procedure foreseen in the Statute. The delegation was therefore not ready to make a general statement of support, but was willing to look at any further draft proposal.

In response, the Coordinator stressed that the position of the Prosecutor was so crucial that it should be filled by consensus, and inquired how the delegation would suggest to proceed differently. He further recalled that a similar process had taken place prior to the nomination of the first Prosecutor. The President recalled that there was indeed no legal obstacle for any State Party to make a formal nomination. However, the Committee process was designed to find a solution by consensus, as reflected in ICC-ASP/3/Res.6. Therefore, one formal nomination should ideally be made once there was informal agreement about a consensus candidate. The decision to elect the Prosecutor remained squarely with States Parties, and was not for the Committee to take. He was convinced that the current process could be extremely useful and potentially exemplary for other contexts as well.

Other delegations expressed their support for the work of the Committee. It was critical for the Court that the work of the Committee proceeded successfully, with the least possible interventions that might be perceived as political. Countries that openly supported certain candidates should exercise restraint in order not to undermine the credibility of that candidate, if selected as Prosecutor. There was a need to balance confidentiality and transparency. It was recalled that the final decision would be taken by States Parties, not by the Committee. There was an important distinction to be made between the formal procedure, which was still applicable, and the informal process, which should generate the political support for a consensus candidate.

The query was made regarding the line between nominations and expression of interest, and whether there was a need to have a common understanding that States would be aloof of the process and whether there would therefore be a need for a code of conduct. Concern was also expressed that regional rotation would not always ensure quality.

The Coordinator stressed that at this stage, all activities should be informal. Only once there was informal agreement in November 2011, should the formal nomination of the consensus candidate be made. He stressed that the Committee should receive further names and requested the assistance of States in this respect.

The President noted that the Committee was strictly technical in nature, looking at the qualifications of potential candidates. The Committee had no view on questions such as regional endorsements and had not expressed itself in this respect. The question of a possible code of conduct was a matter for States Parties to discuss and would thus have to be taken up by the Bureau, not by the Committee. He stressed that in his capacity as the President of the Assembly, he had advised States Parties not to entertain any campaign activity or formal nominations at this stage. The integrity of the process had to be protected, so that the Committee would be able to deliver a quality result.

Concern was expressed that the Committee had no names under consideration from Asia, and very few from Eastern Europe. There was thus a need to redouble efforts to submit further names to the Committee for its consideration. The point was made that the process should focus on merit. The Committee process had significance for future decision-making processes of the Assembly, as it was breaking new ground.

The President concluded by stating that the Working Group would remain involved in the process.

2. Presentation of the candidate for the post of President of the Assembly for the tenth to twelfth sessions

The President recalled that the question of the next Presidency of the Assembly had been open for a long time and informed the Working Group that H.E. Ms. Tiina Intelmann, current Ambassador of Estonia to Israel, was the sole candidate for this position. After consultations on a possible transition period, it was confirmed that Amb. Intelmann would be in New York as of November 2011, which would allow for a well-managed transition. She would be the first female and the first full-time President of the Assembly.

Amb. Intelmann recalled her previous experience at UN Headquarters in New York, including as Permanent Representative to the United Nations and stressed the strong commitment by Estonia to the Court, which had served on the Bureau twice. She informed that her government would create and finance a separate full-time post for her to fulfil the functions as President of the Assembly. The handover would take place in accordance with the Rules of procedure of the Assembly, i.e. at the beginning of the tenth session of the Assembly on 12 December 2011. She would be available for bilateral meetings with interested delegations in New York in late July.

The candidature of Amb. Intelmann was warmly welcomed, and in particular the commitment to a full-time Presidency.

The President informed that the suggested format for a transition would be submitted to the Bureau at its 26 July 2011 meeting and then approved within a few days via a silence procedure.

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