

Assembly of States Parties

Distr.: General
23 October 2007

Original: English

Sixth session

New York

30 November to 14 December 2007

Report of the Bureau on the arrears of States Parties

Note by the Secretariat

Pursuant to operative paragraph 42 of resolution ICC-ASP/5/Res.3, of 1 December 2006, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the arrears of States Parties. The attached 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

1. In December 2004, the Bureau of the Assembly of States Parties (“the Bureau”) decided to establish two standing working groups, one in The Hague and the other in New York, in accordance with resolution ICC-ASP/3/Res.8 adopted by the Assembly at its third session. The first report of the Bureau on the issue of arrears (ICC-ASP/4/14) was adopted at the fourth session of the Assembly of States Parties (“the Assembly”). As requested, the Bureau submitted its second report (ICC-ASP/5/27) to the Assembly at its fifth session.

2. In paragraph 42 of its resolution ICC-ASP/5/Res.3, the Assembly of States Parties took note of the report of the Bureau on the arrears of States Parties and endorsed the nine recommendations it contained, which addressed the two issues that had been brought to the attention of the Bureau at its previous session, namely, that the Bureau should:

- Report back to the fifth session of the Assembly of States Parties on the status of arrears, including on suggestions, if necessary, of measures to promote the timely, full and unconditional payment of assessed contributions and advances towards the costs of the Court; and
- Adopt the guidelines for the submission of documentation with reference to requests for exemption under article 112, paragraph 8, of the Rome Statute to the Assembly and convey them to the Court.

3. On 9 March 2007, the Bureau approved the appointment of Mr. Marko Rakovec (Slovenia) as facilitator on the issue of arrears. This report reflects the outcome of the consultations conducted by the facilitator on the issue.

4. Between May and August 2007, the facilitator held numerous informal consultations with experts from the Registry of the Court, the Secretariat of the Assembly and the Committee on Budget and Finance (“the Committee”) on questions of finance and contributions. He also contacted specific States Parties and met with representatives of the Coalition for the International Criminal Court.

5. The facilitator held two meetings with interested States Parties, on 2 and 21 May 2007, within the framework of the New York Working Group of the Bureau. An updated draft report was then circulated to the Permanent Missions to the United Nations in New York of all States Parties with a request for comments by 15 August 2007.

I. Status of contributions as at 1 August 2007

6. At the time of drafting of this report, in early August 2007, the Court had completed four financial periods (2002/03, 2004, 2005, 2006) and was halfway into its fifth financial period (2007). As at 1 August 2007, the total amount of outstanding contributions for the 2007 budget amounted to € 18.4 million, which is 207 per cent of the approved budget for 2007 (€ 88.9 million). At that date also, a number of States Parties had not yet made payments for the preceding two full years, which means that up to 6.7 per cent of the membership might be excluded from voting.¹ The data shows a slight improvement in payments in the 2007 financial period.

¹ Assessed contributions and advances to the Working Capital Fund are calculated on the basis of the budget adopted and the amount of the Working Capital Fund determined by the Assembly of States

7. During the consultations, many delegations repeated their concerns over the non-payment of assessed contributions to the Court. The fact that, according to the Registry, currently outstanding contributions have not so far placed any constraints on the work of the Court (i.e. entailed a cash-flow crisis) is due only to past underspending by the Court. This situation, however, could very well change in future years. Delegations therefore called for strict implementation of the recommendations adopted by the Assembly in annex III to its resolution ICC-ASP/5/Res.3.

8. When the facilitator enquired as to the reasons for non-payment or delays in payment of contributions, States Parties repeated one of the following explanations they had given in previous years:

- (a) Non-payment is due to technical reasons, usually a lack of coordination among the various national institutions responsible for communication with the Court;
- (b) Non-payment is due to limited fiscal resources which prevented the Government from honouring its obligations in respect of the total amount of the contributions owed to international organizations;
- (c) For some States, the reason for their failure to make timely payments is improper budgetary planning. Funds are reserved at the end of the year instead of at the beginning of each year.

9. The States Parties participating in these consultations nevertheless reiterated their strong support for the Court and several of those with outstanding contributions made commitments to remit these contributions at the earliest possible time.

II. Assessment of the nine recommendations endorsed by the Assembly (ICC-ASP/5/Res.3, annex III)

10. At its fifth session, the Assembly endorsed the Bureau's nine recommendations (ICC-ASP/5/Res.3, annex III), which addressed the issue of outstanding contributions to the Court's budget and the issue of arrears.²

Parties. Subsequently, the Registrar of the Court informs the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund (*Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), ICC-ASP/1/3, part. II, D, Financial Regulations and Rules, regulation 5.5.). According to regulation 5.6 of the Financial Regulations and Rules of the Court, assessed contributions and advances are due and payable in full within 30 days of receipt of the initial communication from the Court regarding the determination of the respective Government's assessed contribution (January of each year). As of 1 January of the following calendar year, the unpaid balance of such contributions and advances is considered to be one year in arrears (regulation 5.6).

² According to 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." In paragraph 19 of its report on arrears of States Parties (ICC-ASP/4/14), the Bureau noted that the loss of voting rights takes effect *ipso jure* and that the Committee on Budget and Finance seemed to agree that article 112, paragraph 8, of the Rome Statute should be applied in the same way when it recommended that States Parties be informed periodically of the States that were ineligible to vote and of States that had recovered their voting rights following payment of their arrears.

11. With respect to the outstanding contributions, the Registry of the Court is requested to provide States Parties, on a quarterly basis, with an updated information note on the contributions received from States Parties (recommendation 1). States Parties are also requested to provide the Registry, on a yearly basis and upon the Court's request, with information (name and contact details) of the individual responsible for the actual payments to the Court (recommendation 3). In addition, the Court, the Bureau and the Secretariat should provide all necessary information to States Parties to facilitate their budgetary planning and should inform them of the consequences of the outstanding contributions (recommendations 2, 4 and 8).

12. With respect to the arrears, the Assembly decided that a State Party requesting exemption from the loss of voting rights under article 112, paragraph 8, of the Rome Statute should submit information and documentation (in accordance with paragraph 42 of resolution ICC-ASP/4/Res.4) that would substantiate and comprehensively support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the State Party concerned (recommendations 5 and 6). The Assembly further decided that, if possible, requests should be accompanied by a payment plan or other form of political commitment by the requesting State to address the issue as a matter of urgency and to take concrete steps towards payment as soon as possible. The Assembly noted that, while it is up to each State Party to decide whether to engage in a concrete payment scheme, the provision of a payment plan to remit the arrears would substantially increase the possibilities that permission to vote would be granted (recommendation 7). Lastly, the Assembly decided that it could consider applications for exemption from the loss of voting rights with regard to any resumed session of the Assembly or meeting of the Bureau that takes place between 1 January and the first session of the Committee on Budget and Finance in any year, without prior recommendation by the Committee (recommendation 9).

13. States Parties found the recommendations useful and noted that, to a large extent, they had been implemented as requested. They noted, however, that recommendation 3, by which the Assembly requests States Parties to provide the Registry with information (name and contact details) of the individual responsible for the actual payments to the Court, had been implemented by very few States Parties. The Registry of the Court therefore calls on all States Parties that have not yet done so to provide the requested information.

14. In general, the financial situation of the Court has improved slightly in relation to the same period last year. States Parties agreed that the recommendations certainly contributed to this improvement and called for further strict implementation of all nine recommendations.

15. One delegation proposed an additional recommendation that would call upon the different regional organizations and groups to facilitate the payment of outstanding contributions. A number of States Parties welcomed this proposal but needed more time to consider it further. One delegation cautioned that payments to the Court's budget were a matter for States Parties only and should not be discussed in other forums.

III. Conclusion and recommendations

16. While the Court's current financial situation appears to be sound and outstanding contributions are not a major concern, States Parties, the Court, the Bureau, the Registry and the Secretariat should nevertheless strive toward strict implementation of the provisions of the Rome Statute and resolutions adopted subsequently, particularly the nine recommendations endorsed by the Assembly in resolution ICC-ASP/5/Res.3, annex III. It was noted that

recommendation 3³ had so far been implemented by only a limited number of States Parties. The facilitator is therefore proposing the following paragraph for inclusion in the draft resolution that will be proposed for the consideration of the Assembly at its sixth session:

Recommendation 1

Calls upon States Parties to fully and without further delay implement the nine recommendations adopted by the Assembly in annex III to its resolution ICC-ASP/5/Res.3.

17. From his consultations with States Parties and Court officials, the facilitator noted that the reasons for non-payment were often of a technical nature or due to inadequate budgetary planning. Most States Parties have many financial obligations to the budgets of various international institutions, which makes budgetary planning more difficult, especially in situations of scarce financial resources, and payments are made according to the priorities established by senior government officials. Since it is crucial for the Court's budget to be included in those lists, the facilitator is proposing the following paragraph⁴ for inclusion in the draft resolution that will be proposed for the consideration of the Assembly at its sixth session:

Recommendation 2

Calls upon States Parties whose outstanding contributions exceed the amount of the contributions due for the preceding full year to address a letter to the Registry of the Court indicating when they plan to settle their outstanding obligations. Such letters would in no way affect the provisions of article 112, paragraph 8, of the Rome Statute.

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³ The Assembly of States Parties *requests*, in order to facilitate better communication between the Court and States Parties on matters of contributions, States Parties to provide the Registry, on a yearly basis and upon the Court's request, with information (name and contact details) of the individual responsible for the actual payments to the Court. This information could be accompanied, on a voluntary basis, by information on when that State Party expects to remit its financial contribution to the Court.

⁴ The aim of this recommendation is to bring the issue of outstanding contributions to the attention of the highest authorities in the respective States. It will act as an incentive for a certain State Party to remit outstanding contributions and to make its contribution to the Court's budget a priority fiscal issue.