



BUREAU OF THE ASSEMBLY OF STATES PARTIES

First meeting

2 February 2022

(via remote link)

Agenda and decisions

The meeting was chaired by the President of the Assembly, Ms. Silvia Fernández de Gurmendi (Argentina). Vice-Presidents Ambassador Bob Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic) also participated.¹

1. Lesson learnt on the election of the Prosecutor process: update

The co-facilitators of the lessons learnt process, Ambassador Alexander Marschik (Austria) and Ambassador Ksenija Milenković (Serbia),² briefed the Bureau on the tentative programme of work for 2022. They intended to provide a platform for an open and frank discussion on the election process, and envisaged written and oral consultations with States Parties and civil society. They would hold consultations with States Parties in New York in early March and in The Hague in early April, in the working group format, and would also consult with civil society and other key actors who had been involved in the process of the election of the Prosecutor. The co-facilitators would circulate a technical questionnaire to States Parties based on relevant reports and documents, in order to get their insights and suggestions on the process of the election of the Prosecutor, with a two-month period for responses. The questionnaire would neither prejudge States Parties' positions nor be exhaustive, and States could suggest additional elements for inclusion. The co-facilitators would be assisted by an external assistant who could be employed in April. They would provide regular updates to the Bureau on the progress of their work and would submit their report to the Bureau in September, to give ample time to States Parties for analysis thereof in advance of the Assembly session.

Some delegations stated that the timing of consultations in New York and The Hague should be balanced, scheduled as close as possible together, and be held in advance of the recruitment of the external assistant. A view was expressed that the lessons learnt process was State-driven and the role of the external assistant should be limited to an administrative one, and should not include his/her conclusions or substantive analysis. Questions were raised about the modality and timelines of consultations and reporting.

The co-facilitators explained that, as they planned to both conduct in-person consultations in New York and The Hague, the dates had been chosen to achieve this end. The working group format would give the opportunity for participation by all States Parties; they might use a hybrid format for consultations with civil society. In addition, the external assistant would be employed for three months and would be tasked with compiling in a systematic

¹ Two members of the Bureau, Japan and Republic of Korea, that started their mandates on 1 January 2022, participated.

² Appointed by the Bureau on 2 November 2022.

manner States Parties' replies to the questionnaire, but the analysis of contents thereof would be the responsibility of the co-facilitators.

2. Review Mechanism: update

A State Party representative on the Review Mechanism, Ambassador Paul van den IJssel (Netherlands), also on behalf of Ambassador Michael Imran Kanu (Sierra Leone), presented a update on the work of the Review Mechanism.

The Mechanism had begun considering its work programme for 2022, which would be shared with States Parties. As a main task, the Mechanism would continue to function as a platform for discussion of the assessment of those recommendations it had assigned to itself in the Comprehensive Action Plan³ (CAP) for the first half of 2022. The CAP would remain its guide for the Review

The Mechanism would also serve as a platform for/or facilitate round table discussions on the implementation of positively assessed recommendations. It would continue to focus on the areas identified as priority areas, as well as those recommendations mentioned in the CAP for assessment in the first half of 2022. As regards the timelines, the discussion of some recommendations could require more than one meeting

Ambassador van den IJssel presented an outline of the 2022 meetings that the Mechanism proposed. In addition to meetings as the platform for discussion, the Mechanism envisaged holding roundtables, an idea that had been supported by some States Parties at the twentieth session. The first roundtable would be dedicated to working culture and three additional roundtables may be held in May, June and July to consider recommendations that had already been assessed. The Mechanism would be in a better position to decide on the next steps at the end of the first half of 2022, taking into account the discussions held.

As regards meetings held, the State Party representatives had met with the President to discuss their plans and to address how to proceed regarding R363.⁴ The Review Mechanism had held one internal meeting to discuss the draft work programme. The Study Group on Governance team would meet with the Review Mechanism on 3 February. Both bodies were preparing their respective work plans and would discuss how each would deal with the recommendations allocated to them. The Review Mechanism would also meet with the Court focal points in the coming days.

According to its practice, the Mechanism would continue to consult with States Parties, facilitators, the Court, civil society and all stakeholders, in the interest of inclusiveness and transparency. It would also continue to regularly brief States Parties on its work through its briefings to the Bureau and its working groups, its reports, and through the Matrix,⁵ which would be revised by June on the basis of the progress made in the assessment of recommendations.

The Review Mechanism expressed its appreciation to the Deputy Prosecutor, Mr. James Stewart, one of the Court's focal points, who would conclude his mandate in early March. The Mechanism thanked him for his commitment to the cause of the review of the Court, his

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive%20Action%20Plan-ENG.pdf

⁴ R363: A discussion among stakeholders (Court, States Parties and civil society) should be convened on the strategic vision for the Court for the next ten years, which will enable the Court and the ASP to focus their efforts of implementing the Rome Statute in the same direction. An outcome of the discussion should be agreeing on the level of activity that the Court is expected and desired to reach in ten years' time and the steps (resources, cooperation and institutional development) that need to gradually occur for the organisation to reach that point. See "Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report - 30 September 2020" (ICC-ASP/19/16): https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-16-ENG-IER-Report-9nov20-1800.pdf

⁵ ICC-ASP/20/36, annex.

support for its work, and his very insightful and useful contributions, and noted that he had been very instrumental in the progress of the Mechanism's work.

3. Interpretation of article 42 (4) of the Rome Statute regarding the election of the Deputy Prosecutors: Follow up

The President recalled The Bureau's 3 and 24 November 2021 preliminary discussions on the interpretation of article 42, paragraph 4, of the Rome Statute, where there had been divergent views. Some members had submitted their legal interpretations and the Presidency of the Assembly had prepared a legal interpretation. The Guide for the election, prepared by the Secretariat,⁶ was relevant.

The President invited the Bureau's views on the process moving forward and noted that it would apply for the next election only if the future Prosecutor wished to have two Deputies.

Some Bureau members supported a proposal that either (a) a working group comprising members from each region and with representation of the different legal traditions be established to study the question; or (b) the issue be referred to the Study Group on Governance. Some stated that the process of the election of the Deputy Prosecutors at the twentieth session was legitimate and any further discussion of the article would not put into question its legitimacy. Others indicated that there was no need for the Bureau to rush, as there was adequate time to study the issue before the next election. In addition, a view was expressed that it was not desirable to amend the Rome Statute.

Upon the suggestion of a delegation, the President indicated that the Secretariat would prepare a compilation of the material that had been submitted regarding the interpretation of article 42, paragraph 4, for the 2021 election of deputy prosecutors, so that these could be placed on the record and be available for future elections.

4. Twenty-first session of the Assembly: provisional agenda

The Bureau approved the provisional agenda for the twenty-first session of the Assembly, dated 21 January 2022, which had been drawn up by the Secretariat in accordance with rule 11 of the Rules of Procedure of the Assembly, and requested the Secretariat to disseminate it.

5. Independent Oversight Mechanism: Final Evaluation Report of the Registry's Strategic Plan 2019-2021

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, introduced the Evaluation report titled "Evaluation of the results of the Registry's Strategic Plan 2019-2021", dated 21 December 2021, submitted pursuant to the Bureau's 10 June 2021 request. The report evaluated achievements under the Strategic Plan and was intended to inform the next strategic plan.

Ms. Judita Jankovic, Senior Evaluation Specialist of the IOM, explained that the Registry's Strategic Plan 2019–2021 had been launched on 17 July 2019 with 41 tasks and was structured around the strategic priorities identified therein. Staff had appreciated the vision and the goodwill of the Registrar to bring improvements in the Registry, and perceived that the Strategic Plan had provided a structure for prioritization and performance management, facilitated a reporting culture, and included continuous improvement elements. She also stated the elements that were less favoured by staff. The best practices included the robust processes

⁶ ICC-ASP/20/37/Rev.1, Introduction.

and tools created and applied for the reporting and monitoring of progress, the continuous improvement element and process instigated as part of the plan, and the overall approach to adapt and re-prioritize the implementation of the plan to respond to external circumstances.

Mr. Hedaraly concluded that the approach and adaptations made by the Registry during the three-year reporting cycle were overall found to be coherent, with flexibility and agility under the circumstances. The Registry had been very cooperative in the evaluation process, which sent a message regarding accountability. It had accepted all recommendations except one, which it had partially accepted and had stated its reasons. The report would be further considered under the facilitation on Budget management oversight.

6. Election of the Registrar: vacancy announcement

The President recalled the Assembly's mandates on the election of the Registrar set out in resolution ICC-ASP/20/Res.4. As regards consultations between the Court and States Parties on the draft vacancy announcement,⁷ the President had, on 24 January, requested States Parties' comments on the draft vacancy announcement prepared by the Presidency of the Court. States Parties had submitted comments relating, respectively, to public roundtable discussions and the criterion of "high moral character".

As regards the establishment of a due diligence process,⁸ the timeframe set out in the resolution was important since the Presidency of the Court was expected to transmit the list of candidates to the President of the Assembly in August. The Court would carry out its own assessment of candidates in the preparation of the short list, but the due diligence process should be in place before the list was sent to the President of the Assembly. It was important that the vacancy announcement contain information on a due diligence process, which could include a channel for the submission and consideration of allegations against candidates.

The Assembly had also requested the Bureau to consult with the IOM in establishing the due diligence process. The Head of the IOM shared his experiences of the 2021 due diligence process for the election of the Deputy Prosecutors, highlighted the points that had worked well, and the areas that would require some improvements. He noted that not much needed to be improved and the mere fact of having this process could not be understated as it would provide assurances to the Court, States Parties and the public at large that any issues had been investigated.

The biggest challenge had been the timeframe, which should be taken into account in designing the process for the election of the Registrar. The submission of the list of candidates at the end of August would allow one month for the channel for the submission of allegations. Regarding the number of candidates to which the due diligence process might apply, this could potentially escalate depending on the number of candidates and the number of allegations against them. He encouraged the Bureau and the Court to consider and agree on the timelines and on a limit to the number of candidates.

It would also be necessary to adjust the reporting lines of the IOM for this process. The consideration of confidentiality regarding the submission of allegations, as well as due process to allow candidates to respond, would also be required.

The Bureau would make a proposal to the Presidency and would prepare a more detailed proposal on due diligence in the future, which would be discussed with the IOM, as indicated in the resolution.

⁷ ICC-ASP/20/Res.4, section II, titled "Election of the Registrar (R76-R78)", para. 2.

⁸ *Ibid.*, para. 4.

The Bureau agreed to recommend to the Presidency the inclusion in the vacancy announcements of the proposals by States Parties of text on the public roundtable discussions with candidates and on an explicit reference to the criterion of “high moral character”. It also agreed to recommend that the reference to geographical representation and gender balance be given more prominence in the vacancy announcement.

As regards the Assembly’s request to the Bureau, through The Hague Working Group, to consider facilitating public roundtable discussions with the candidates,⁹ the President invited Bureau members to submit comments on improving the format of roundtables to the Secretariat by the end of May. The Bureau would consider the modalities of the roundtable discussions at a future meeting.

7. Other matters

a) Commemoration of the twentieth anniversary of the entry into force of the Rome Statute

The President informed the Bureau that 1 July 2022 would mark the twentieth anniversary of the entry into force of the Rome Statute. She had had initial discussions with the Presidency of the Court and they considered it appropriate for the Court to take the lead in the planning and organization of the 2022 commemoration, while the Assembly would do so for the commemoration of the twenty-fifth anniversary of the adoption of the Rome Statute in 2023. She was confident that States Parties would contribute to this year’s commemoration.

The Bureau agreed to appeal to States, intergovernmental organizations and civil society to organize events under the theme “Twentieth anniversary of the entry into force of the Rome Statute”, with a preference for events focused on the future of the Rome Statute system and on the universality of the Statute. The Secretariat was in the process of setting up a webpage to reflect the events held in connection with the twentieth anniversary, within existing resources. A message would be conveyed to all stakeholders about events being organized so that all would be informed thereof. Once the event had occurred, the webpage would also include links to any press releases/summaries the organizers might wish to share.

Liechtenstein announced that they would organize an event on cyberwarfare and the Rome Statute on the occasion of commemorating the anniversary and suggested that States should coordinate in order to avoid any overlap of their activities. The President noted that such coordination could be done via the Secretariat¹⁰ and the Court, and suggested that any State planning an event should keep the Bureau informed. She indicated that this item would be kept on the agenda of the Bureau from now on in order to allow for regular sharing of information on preparations of events.

b) Status of contributions

The President provided an update regarding the status of contributions to the budget of the Court. As at 31 December, the Court had received 90 per cent of the assessed contributions to the approved budget for 2021. The total amount of outstanding contributions, for 2021 and for prior years, stood at €36,276,428 million. A total of 23 States Parties had outstanding contributions of more than one year, and nine of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute. The usual monthly financial report with the data as at the end of January 2022 would be disseminated to States Parties in the coming days. On behalf of the Assembly, the President thanked States Parties for their recent payments.

⁹ Ibid., para. 5.

¹⁰ 20th.info@icc-cpi.int

c) Other announcements

The President informed the Bureau that the solemn undertaking¹¹ for the Deputy Prosecutors would take place on the morning of 7 March 2022 (Central European Time). As she would not be able to attend, Vice-President Ambassador Sequensová would participate on behalf of the Presidency.

The President would visit Washington, D.C. and New York in the first two weeks of March and travel to The Hague in the third week of March.

As regards the appointment of facilitators and focal points, the Vice-Presidents were consulting the respective working groups to see which mandate holders may be able to continue and to identify persons to fill vacancies. They would present the names of candidates in the coming weeks, which would be considered by the Bureau under a silence procedure.

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¹¹ Article 45 of the Rome Statute.