



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Third meeting

13 April 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. Lesson learnt on the election of the Prosecutor process: update

Ambassador Ksenija Milenković (Serbia), co-facilitator of the Lessons learnt exercise, briefed to the Bureau on their progress. Co-facilitator Ambassador Alexander Marschik (Austria) was unable to attend the meeting.

Ambassador Milenković indicated that the facilitators had held its second round of consultations in The Hague the week before, following the first round in New York in the beginning of March. The facilitators held a plenary meeting at the ICC premises in the format of The Hague Working Group. The facilitation also held a number of bilateral meetings with interested States Parties, as well as a number of other actors. The facilitators also held a consultation meeting with the representatives of civil society. The meeting was held in a virtual format upon their request given the fact that their representatives are scattered all over the world. Ambassador Milenkovic indicated that this round was also very successful.

Ambassador Milenković noted that following the two rounds of consultations, the next step will be to wait for the responses to the questionnaire. She then reminded the Bureau members that the deadline for submission was the 15 of April. Following the deadline, she indicated that co-facilitators would start reading and analyzing the responses received, and that together with the notes and the remarks from the two rounds of consultations as well as other meetings that were held, the facilitators would start drafting the report. She added that the facilitation is currently on schedule with the timeline that was presented to the Bureau in January. Ambassador Milenković concluded her remarks by thanking all States Parties for their active engagement and willingness to share their positions and thoughts with both facilitators.

In response to a question regarding the report of the facilitation, Ambassador Milenković indicated that the facilitators would submit their report to the Bureau and that they intend to do so by the end of September according to the timeline. She added that the report is to be presented at the ASP in December at the next Assembly session.

The point was made that draft report be distributed to States Parties with enough time for them to review it ahead of the ASP.

2. Review Mechanism: update

The State Party representatives on the Review Mechanism, Ambassador Paul van den IJssel and Ambassador Michael Imran Kanu, briefed the Bureau on the progress of the work of the Review Mechanism. Since its briefing to the Bureau on 9 March, the Mechanism had briefed The Hague Working Group on 17 March.

The Review Mechanism had held one additional meeting as the platform for discussion, at which recommendation R363 on ASP-Court relations had been positively assessed, and in which the President had participated. The next step would be implementation, where the Assembly Presidency would take the lead. The President had suggested that the discussion on the strategic vision of the Court referred to in the recommendation could be held in 2023, to coincide with the 25th anniversary of the adoption of the Rome Statute, a position which had also been stated by the Court and which no participant had contested. It was suggested that the Bureau make a proposal on the implementation for the consideration of the Assembly at its twenty-first session.

The Review Mechanism was continuing its meeting schedule set out in the 14 February 2022 programme of work, with adjustments where required. In its upcoming meetings, it would continue the discussion on Unified governance (R1-R13), as well as assess the recommendations on Relations with civil society and media (R153-R162) and on Communication (R164-R166), the Secretariat of the Assembly (R369-370), and on Induction and professional development (R174-R177), and continue the assessment of R354 and R358 on the Secretariat of the Trust Fund for Victims. As regards recommendation R105 on “Tenure”, the Mechanism was awaiting the Court’s report on the practice of other international organizations that had the tenure policy, as well as the report of the Committee on Budget and Finance on this issue, after which it intended to come to a conclusion on R105.

In addition, it would hold a series of Roundtables, the first of which would be on “Working culture”, the recommendations on which had been positively assessed in 2021. It would also hold a meeting with ASP mandate holders, to discuss the status of the respective mandates and any challenges facilitators might be facing

At all the meetings held in 2022, the Chair of the IER Experts, Mr. Richard Goldstone, and some Experts had participated, in their personal capacity, in order to present the rationale behind the recommendations being considered, which had been appreciated by all stakeholders. The Review Mechanism would continue to invite the Experts.

The Review Mechanism would issue a report by 30 June on the overall progress of its work, and would also update the matrix contained in that report.

Ambassador Kanu had met the President of the Court, Judge Piotr Hofmański, during the ICC President’s visit to New York in April. The meeting offered the opportunity for in-person discussions between them on the review process, in particular the recommendations allocated to the Judiciary. President Hofmański provided updates on the ICC Presidency’s 18 and 19 March 2022 retreats in the Netherlands and plans for the 2023 retreat in Syracuse, Italy. The retreats provided the opportunity for the judges to focus on and discuss the IER recommendations allocated to the judiciary.

3. IER recommendations for implementation by the Bureau (R169 and R363)

The President recalled that IER recommendations R169 and R363 had been positively assessed at the 27 October 2021 and 3 March 2022 meetings of the Review Mechanism, and the next step for each recommendation was implementation.

As regards recommendation 169, the Review Mechanism had indicated in its report to the twentieth session that implementation should take place under the auspices of the Bureau. Since the recommendation had been positively assessed, the Bureau now had to decide on how to implement

it. The President invited initial views and ideas on the type of strategy or mechanism that could help counter political attacks against the Court. The discussion was the starting point of a brainstorming and she intended to present concrete ideas at a later meeting, based on views expressed by the Bureau.

A view was expressed that the system for responding to external threats should not be complicated, should be flexible and should allow the Assembly and the Presidency to react quickly, as in the recent external attacks on the Court. The designation of a focal point in each State Party could facilitate rapid coordination when necessary. A number of Bureau members expressed support for the view that it was the fundamental responsibility of the Assembly Presidency to react to threats against the Court.

The Bureau agreed that the President would have an informal discussion with the Bureau focal points on non-cooperation, as their experience might be relevant, and would make a proposal to the Bureau at its next meeting. This item would be kept on the agenda of the Bureau.

As regards recommendation, R363 concerning a discussion among stakeholders on the strategic vision for the Court, the President recalled that it had been allocated to Court, the ASP President and civil society in the Comprehensive action plan. She had participated in the meeting on 3 March referred to in agenda item 2, had endorsed the views of the Court in support of the initiative and suggested that this exercise take place in 2023, the year of the 25th anniversary of the adoption of the Rome Statute. As the recommendations had been positively assessed at that meeting, it was now necessary to discuss implementation. She recalled that some States had suggested a conference or a series of events on the strategic vision for the Court. Further, a proposal of the Bureau should be adopted by the twenty-first session of the Assembly so that the discussion could proceed in 2023. As the recommendation had also been allocated to the Court, the President would continue consultations with the Court on how it envisaged this discussion.

A view was expressed that the Bureau should proceed with caution since any strategy agreed in 2023 for the next 10 years had the potential to quickly become irrelevant in light of possible rapid developments relating to the Court. Further, it was important to keep the discussion on strategic vision separate from the work of the Court and avoid duplicating the work of the review process. The discussion should be narrow and focussed on issues such as improved management of the Court and its image. A view was also expressed that the 25th anniversary in 2023 would be an appropriate opportunity for stocktaking, and that the Assembly should not devote too many resources to this exercise. It was stated that if civil society held an event, States Parties could contribute to it.

The President noted that all speakers had agreed it was an important conversation, and that resources, including intellectual resources, should not be diverted away from the review process. The President suspended discussion of the item, and she would continue to exchange views with the Court on implementation of the recommendation.

4. Election of the Registrar: update on due diligence

The President recalled the mandate of the Assembly where it had requested the Bureau “to establish a due diligence process before September 2022 for candidates for Registrar in consultation with the Presidency of the Court and the Independent Oversight Mechanism...”. She noted that the due diligence mechanism needed to be established as soon as possible, earlier than September, taking into account that the vacancy announcement would expire on 1 May 2022 and that some aspects of the process, e.g. the background checks of candidates, should start as soon as possible as part of the shortlisting of candidates.

The Head of the IOM, Mr. Saklaine Hedaraly, introduced a draft proposal for a due diligence process for candidates¹ which took into account some preliminary comments from the ICC Presidency as well as other actors, including civil society.

The process proposed was largely modelled on the process established for the election of the Deputy Prosecutor at the twentieth session. It would contain two parts:(i) review of existing background information, e.g. criminal background checks, as well as a consent form and a detailed questionnaire submitted by the candidate; and (ii) the creation of a confidential channel to receive allegations of misconduct. It took into account the lessons learnt from the Deputy Prosecutor. The changes included the expansion of the definition of misconduct, the extension to 45 days of the timeline for the submission of material to the confidential channel, and the strengthening of the process of dissemination of the confidential channel. The IOM Head drew to the attention of the Bureau a suggestion from civil society for the holding of reputational interviews; this had not been included largely due to the resource constraints of his office.

The President welcomed the consultations with the ICC President and noted that further views may be submitted.

In response to queries raised, the IOM Head clarified that, while for the Deputy Prosecutor the IOM had received the assistance of different Registry sections, the current process would be centralized in one office in order to avoid duplication, with relevant Registry sections, e.g. Security and Safety, Human Resources etc. reporting to the IOM, as required.

The IOM Head clarified that the provision on failure of a candidate to submit a completed questionnaire reflected the text included in the vacancy announcement. Where information was incomplete, the IOM would request candidates to complete the missing information and give them time to do so before disqualifying them. The important thing was that candidates should not obfuscate, which would raise a red flag.

Further, he clarified that the use of open-source information in background checks would ensure that information available in other places that might not otherwise come to light could be raised with the candidate or brought to the attention of the decision makers. As regards the wider dissemination of the confidential channel, having additional time (45 days) and having more channels would make it easier to know if a candidate had issues to be addressed. The Court could also post it on its website and social media accounts, and the Secretariat and civil society might also do so.

In response to a query on the expanded definition of misconduct for the current process for the Registrar, he noted that it was not a matter of having different criteria for the Deputy Prosecutor and the Registrar, but that the elements listed in the definition usually formed part of a whole.

The President stated that consultations on the due diligence process would continue, particularly with ICC Presidency. She hoped that the Bureau would be in a position to adopt the process at its next meeting, depending on how these consultations developed. The item would be kept on the agenda.

¹ Titled “[Proposal on] due diligence process for candidates for Registrar”.

5. Other matters

a) Presentation by the Chair of the Board of Directors of the Trust Fund for Victims on changes introduced to the Secretariat of the Trust Fund for Victims (1:21)

The Chair of the Board of Directors of the Trust Fund for Victims, Ms. Minou Tavárez Mirabal, thanked the States that had contributed to the Trust Fund and noted that since the first order of reparations was confirmed in *Lubanga* (2015), *Katanga* (2016), *Al Mahdi* (2017) and *Ntaganda* (2021), the Trust Fund had reached 500,000 victims directly. Despite progress by the Trust Fund in setting the foundations for its work, it faced challenges relating to its operations, an adequate fundraising strategy, and adequate governance and accountability models

The Chair recalled that the Board had responsibility for the success of the Trust Fund and should provide direction, oversight and ensure accountability. The IER Experts' report had identified the weaknesses of the Board, which stemmed from its structure, mandate and the absence of a governance and decision-making programme. The previous and current Boards took the IER findings very seriously and sought to tackle its weaknesses through structure, strategies and day-to-day work with the core weakness. It had adopted a working methods policy which clarified the roles of the Board and its Secretariat, and was working on core documents, e.g. strategies on investment, fundraising and visibility, and a programme cycle. The IOM Evaluation of the Secretariat, the Committee on Budget and Finance and the IER all corroborated the finding of the Board's weakness. In view of this, the Board had determined that improvements could be made to its Secretariat, which was staffed by professionals. She shared information on the Board's decisions in that regard, which aimed to revitalize the Trust Fund, allow the Board to examine issues with fresh eyes, and fill the gaps.

The Chair hoped to brief the Bureau more regularly on key issues and on the Board's work, and would also seek the guidance of the Bureau. The Board would approach States Parties to request voluntary contributions. She noted that the Trust Fund belonged to the entire Rome Statute system, and required the political will and financial support of all States Parties.

In commenting, a Bureau member noted that the review of the governance of the Secretariat of the Trust Fund had been addressed in the IER report and was part of the follow-up discussions, and the relevance of the management structure of the Trust Fund was highlighted. The Chair was encouraged to keep the Bureau informed of the next steps in the Board's work.

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

Events planned by States Parties

The Republic of Korea informed the Bureau that the *ad country* co-focal points for Universality, Republic of Korea and the Netherlands, planned to hold an event in Brussels on 18 May. As diplomatic missions of more than 20 Non-States Parties were represented in that capital, it would be a good opportunity to explain the role of the Court and why it matters to become a State Party. The President of the Assembly, President of the Court and a Deputy Prosecutor would be invited as speakers.

Ecuador informed the Bureau of an event to be held in June, at which the President of the Assembly and judges of the Latin American region of the Court would participate.

The President reminded States that they should communicate 20th anniversary initiatives to the Secretariat, which would post the information to its webpage.² She encouraged States to continue organizing events, which was a good way of promoting the Court.

² 20th.Info@icc-cpi.int

Activities planned by the Court

The Chef de Cabinet of the Presidency informed the Bureau that the Court would hold a conference on 1 July, which would feature leading experts on the Court's achievements and challenges and highlight the concrete operations of the Court. The keynote speaker would be former President of the Court and Chair of the Rome Diplomatic Conference, Mr. Philippe Kirsch. There would be three substantive panels that would include the three Principals, the President of the Assembly, Chair of the Board of Directors of the Trust Fund for Victims, the President of the International Criminal Court Bar Association, leading academics, practitioners, and civil society. All Embassies accredited to The Hague, as well as representatives of international and regional organizations would be invited.

c) Status of contributions

The Bureau took note of the status of contributions to the budget of the Court as at 31 March 2022.

d) Activities of the President

i) 18 March retreat of the Presidency of the Assembly with the Heads of organs and two Deputy Prosecutors in Voorschoten, in the vicinity of The Hague

At the 18 March retreat, each organ presented its own priorities for 2022 in light of new developments and heavy workload and exchanged views on how to meet such priorities in order to fulfil its core mandate of investigations and trials as well as on how deal with internal and external challenges.

There was agreement on the importance of advancing with the assessment and implementation of the recommendations of the Independent Expert Review, noting that the Court had already made considerable progress on some of the recommendations.

Within the Review process, some of the key steps taken in regard to the working culture as one of the priorities include the ongoing recruitment processes of a temporary ombudsperson and the focal point for gender as well as the ongoing elaboration of fundamental administrative instructions.

The President indicated that discussion also touched upon budgetary matters and the need to ensure the necessary resources to be able to deliver on Court's increased workload. As regards the liquidity issue in 2022, the situation would be manageable if the payments by States Parties follow the pattern of 2021 and if the Court uses 50% of the Working Capital Fund.

The President indicated that the budget priorities for the Court were to maintain an appropriate budget baseline, bearing in mind that voluntary contributions could not provide a sustainable support in relation to various situations and five expected trials, the need to upgrade the Court's infrastructure, and the increase in the rate of inflation.

Looking outwards, the discussion focused on security challenges derived from current developments, including a possible increase in attacks against the Court and on possible additional measures that may be needed to increase the physical security of the Court.

The retreat also allowed for discussion on initiatives for universality such as the event organized on 18 May by the Netherlands and the Republic of Korea as co-focal points on universality in Brussels and annual Parliamentarians for Global Action meeting in Buenos Aires on 4 and 5 November 2022.

ii) 19 March retreat of the Presidency of the Assembly with the Presidency of the Court in Voorschoten in the vicinity of The Hague

A second retreat on 19 March allowed for a discussion on issues of common interest, to better understand the governance challenges the Court's Presidency may be facing and the support the Assembly could provide.
