



Assembly of States Parties

Distr.: General
29 November 2022

Original: English

Twenty-first session

The Hague, 5-10 December 2022

Report of the Bureau on the Study Group on Governance

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I. Introduction

1. The Study Group on Governance (the “Study Group”) was established via a resolution¹ of the Assembly of the States Parties (the “Assembly”) in December 2010 “to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence...”; and “to facilitate this dialogue with a view to identifying issues where further action is required, in consultation with the Court, and formulating recommendations to the Assembly through the Bureau”. It was further decided that “the issues to be dealt with by the Study Group include, but are not limited to, matters pertaining to the strengthening of the institutional framework both within the Court and between the Court and the Assembly, as well as other relevant questions related to the operations of the Court”.

2. In 2011, the Study Group dealt with the relationship between the Court and the Assembly, strengthening the institutional framework within the Court and increasing the efficiency of the criminal process. At the request of the Assembly at its tenth to twentieth sessions, the dialogue between the organs of the Court and States Parties was continued from 2012 to 2022.

3. In response to the final report of the Independent Expert Review², dated 30 September 2020, (“IER report”) and the Comprehensive Action Plan³ adopted by the Bureau on 28 July 2021, the twentieth session of the Assembly requested that⁴:

“[...] the relevant Assembly mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to continue with the assessment and, where appropriate, implementation in 2022 and to submit to the Bureau the outcome of its consideration, including on action already taken and proposals for next steps, by 15 November 2022.”

4. The twentieth session of the Assembly further took note of the report of the Bureau on the Study Group on Governance⁵ and the recommendations contained therein, and extended the mandate of the Study Group for a further year⁶ requesting the Study Group to consider and report on the following issues:⁷ (i) Recommendations of the Independent Experts allocated to the Study Group in the Comprehensive Action Plan; and (ii) Facilitation of a platform for the discussion of the Independent Experts’ recommendations assigned to the Court.

5. On 21 February 2022, the Bureau appointed Ambassador Arnoldo Brenes Castro (Costa Rica) and Ambassador Heinz Walker-Nederkoorn (Switzerland) as Co-Chairs of the Study Group on Governance, and also appointed Mr. Jan Christoph Nemitz (Germany), Ms. Mio Takanashi (Japan) and Mr. Cornelius Scholtz (South Africa) as co-focal points.

6. The Study Group held seven meetings, on 21 February, 21 March, 26 April, 17 May, 9 June, 11 October and 25 October 2022. The co-Chairs and co-focal points held discussions with the President of the Assembly, the Coordinator of the Hague Working Group, States Parties, the Review Mechanism, the Chair of the Working Group on Amendments, the facilitator in the New York Working Group on the issue of equitable geographical representation and gender balance (GRGB), the Court focal points⁸ and other representatives of the Court.

7. This report on the Study Group describes the activities of the Study Group in the past year and contains recommendations regarding the continuation of its work.

¹ ICC-ASP/9/Res.2.

² ICC-ASP/19/16

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

⁴ ICC-ASP/20/Res.3, para.9.

⁵ ICC-ASP/20/21.

⁶ ICC-ASP/20/Res.5, para.96.

⁷ *Ibid.*, annex I, para 9.

⁸ Mr. James Stewart, Deputy Prosecutor, Mr. Hiram Abtahi, Chef de Cabinet of the Presidency, and Mr. Osvaldo Zavala Giler, Senior Special Assistant to the Registrar. Mr. Stewart and Mr. Zavala Giler were replaced by Mr. Mamadou-Racine Ly and Mr. Juan Escudero, respectively.

II. Consideration of issues

8. Informed by its mandate and the Comprehensive action plan, the program of work for the Study Group focused on the following issues: a) The continuation and commencement of the assessment of IER recommendations allocated to the Study Group, (R27, R30, R33, R76-R78, R82, R83, R92, R95, R99, R101, R103, R144, R145, R148, R202, R203, R214, R215, R381-R384); b) The commencement of the implementation of recommendations where the assessment has been positively concluded (R55, R146, R206); and c) The continued facilitation of a dialogue with the Court on clusters of recommendations allocated to the Court.

A. Continuity of proceedings (R206, R214-R215, R381-R384)

9. In 2021, the Study Group discussed the modalities for proceeding with proposed amendments to the Rules of Procedure and Evidence, in the absence – in spite of its pursuit – of consensus. In the past, the Court had proposed some amendments to the Rules which were aimed at a greater efficiency and effectiveness in Court proceedings. Some of those proposals were not adopted by the Assembly of States Parties, after having been thoroughly discussed by both the Study Group and the Working Group on Amendments, as they did not enjoy consensus.

10. Resolution ICC-ASP/20/Res.4 adopted at the twentieth session provides a way forward for such proposals that have been in limbo since their discussion by both the Study Group and the Working Group on Amendments. It highlights the common interest of the Court as well as States Parties to provide for rule amendments, with full respect for articles 112(7) and 51(2) of the Rome Statute regarding, respectively, the taking of decisions by the Assembly by consensus and, in the absence of consensus, upon adoption, respectively, by a two-thirds majority of those present and voting, and by a two-thirds majority of the members of the Assembly of States Parties.

11. The Independent Expert Review found that a deadlock exists that disables the Court from “steadily introducing measures to improve the multifarious aspect of its procedures.” To that end, the Experts proposed recommendations R206 as well as R381-384.

12. In past years, States Parties have been examining proposed Rule 140 *bis* (Temporary absence of a judge):

“If a judge is, for illness or other unforeseen urgent personal reasons, unable to be present at any hearing, the remaining judges of the Chamber may exceptionally order that the hearing of the case continues in the absence of that judge for completion of a specific matter which has already commenced and can be concluded within a short timeframe, provided that:

- (a) The Chamber is satisfied or, if it is not practicable to consult the absent judge, the remaining judges of the Chamber are satisfied that this arrangement is in the interests of justice; and
- (b) The parties consent to this arrangement.”

13. This rule proposal envisages a response to several situations where a trial judge had been temporarily absent from the bench and where that absence had resulted in delays to proceedings. Such delays cause higher costs and can lead to problematic situations for witnesses who have already been brought to The Hague.

14. During the discussions of draft rule 140 *bis* at the meetings of the Study Group on 22 February and 21 March 2022, States Parties agreed with the suggested way forward, namely to engage with the Working Group on Amendments with a view to adopting proposed rule 140 *bis* (cf. R206) at the twenty-first session of the Assembly of States Parties in December 2022.

15. Also, States Parties agreed that following the twenty-first session, the Study Group would further examine the remainder of R381-384, the implementation of which would require an amendment to the Rome Statute.

16. Since 2020, the Study Group has had further discussions with respect to the management of the transitions in the judiciary. The IER recommended in the relevant parts:

R214: The Rome Statute should be amended to provide for the assignment of a substitute judge to enable a trial to continue following the substitute judge certifying that they have familiarized themselves with the record of the proceedings.

R215: When the workload of the Court develops to the point where it no longer allows for a substitute judge to be assigned from the 18 regularly elected, the ASP should consider applying Article 36(2) and electing one or more judges for such purpose.

17. At the 25 October 2022 meeting of the Study Group, States Parties discussed proposed rule 140 *ter* which envisages the substitution of a judge during the trial proceedings if a sitting judge becomes permanently unavailable to continue a trial, while fulfilling the requirement of article 74, paragraph 1 of the Rome Statute, namely the physical presence of all judges at each stage of the trial and throughout the proceedings.

18. As of today, there exists a “Sword of Damocles” as the current legal framework of both the Rules and the Rome Statute does not allow for the substitution of a judge who has become permanently unable to continue the trial after the hearing of the case has commenced (article 36, paragraph 10 of the Rome Statute).

19. States Parties were asked whether they would prefer to continue with the discussion on proposed rule 140 *ter*, or whether they would prefer a combined approach of a rule amendment as well as an amendment to article 74 of the Rome Statute. A view was expressed by a State Party that the second option would require discussions in the Working Group on Amendments, and that the ratification might be problematic as the threshold for amendments to the Statute is rather high. Also, it was mentioned that the term “deliberations” in article 74 would have to be interpreted.

20. The Study Group decided that this issue would be further considered.

B. Election of the Registrar (R76-R78)

21. In accordance with article 43, paragraph 4, of the Rome Statute and Rule 12, paragraph 1, of the Rules of Procedure and Evidence, the Registrar is elected by an absolute majority of judges, taking into account any recommendation by the Assembly of States Parties. The role of the Assembly with this existing framework is to provide recommendations on the list of qualified candidates established by the Presidency.

22. The Independent Expert Review found that his election process “ought to be more thorough and that States Parties should play a stronger role in the process, in line with the provisions of the Rome Statute.”

23. The Assembly of States Parties noted at its twentieth session that there would not be sufficient time to fully assess and implement these recommendations before the election of the Registrar in April 2023 and decided to strengthen the participation of States Parties in the upcoming election within the existing legal framework. It further decided to continue the consideration and possible implementation of the recommendations for future elections and requested the Study Group to report thereon to the twenty-first session of the Assembly.

24. The Study Group further discussed these issues at its 22 February 2022 meeting. By then, the Court, upon invitation, had already consulted with States Parties on the drafting of the vacancy announcement for the position of Registrar. As a result, the Bureau adopted the proposals put forward by States Parties for inclusion of certain text in the vacancy announcement. Furthermore, the Study Group discussed the mandate on the establishment of

a due diligence process and on public roundtables which the Bureau and The Hague Working Group considered.

25. These roundtables, with ten candidates, took place on 11 and 12 October 2022, when the candidates answered questions prepared in advance by States Parties and civil society and presented by the Vice-President and Coordinator of The Hague Working Group, Ambassador Kateřina Sequensová (Czech Republic), as well as representatives of civil society. The roundtables gave States Parties and other stakeholders as well as the judges an informative and helpful impression of the candidates, thereby informing the ultimate decision of the judges.

26. The Study Group will continue the consideration of recommendations R76-R78 after the election of the next Registrar in 2023. The reasoning for this approach is threefold. Firstly, it would allow the Court and States Parties to concentrate their resources on the ongoing election process. Secondly, lessons learnt from the upcoming election can be included into the assessment of the recommendations. Lastly, recommendations R77 and R78 are linked to the Three-Layered Governance Model, the more detailed discussion of which is not yet finalized.

C. Human Resources (R92, R95, R99, R101, R103)

27. At the meeting of 26 April 2022 the Study Group assessed recommendations R92, R95, R99, R101 and R103 related to Human Resources. Representatives of the Registry and the Office of the Prosecutor explained that the Court had assessed all recommendations positively and briefed States Parties on the status of implementation.

28. They explained that R92 and R95 were linked to other recommendations and that their implementation forms part of a broader exercise reviewing the Court's recruitment processes. With regard to R92, a job family project had been launched in late 2021 with the intention of developing and classifying generic job descriptions to create job families and accurately reflect core responsibilities of positions at the Court. R95 was almost fully implemented, with the National Professional Officer Category, short term contracts and secondments established.

29. On R99, the Court noted that its training function (including leadership programs) was, in principle, centralized in the Registry. Only specific training relevant to skills needed in the Office of the Prosecutor was organized separately. Following a staff survey, the Court had implemented an online learning system available to staff both in The Hague and abroad, leading to lower costs per training activity and an increased participation rate (from 45% to 75%). Moreover, the Court is further exploring ways to strengthen staff training and development through two types of learning concepts: social learning through mentoring/coaching programs and experimental learning such as creating cross-organ project teams or job shadowing.

30. As regards R101, the Court explained that its Financial Rules and Regulations (FRR) currently prohibit moving staff across major budget programs/organs. Therefore the Court would submit a proposal to the Committee on Budget and Finance to update the FRR to accommodate inter-organ temporary assignments.

31. With regard to R103 the Court referred to its already existing guidelines for gratis personnel which set the framework for secondments. This framework had informed a recent request from the Prosecutor, seeking secondments for 10 profiles where his office had identified a lack in technical capacity.

32. States Parties stressed the relevance of the recommendations and welcomed that the Court had already taken steps to implement them. In relation to the use of secondments, one delegation voiced concern that an overuse could create a dependence on States Parties and lead to loss of knowledge in the long term. Another delegation pointed out that they could jeopardize efforts made in working towards a balanced geographical and gender representation in light of some national restrictions preventing secondments. A third delegation shared its positive experience with seconding an expert to the Court and recalled

that secondments are not meant to substitute but to complement positions at the Court with a view to bringing in not-readily-available, specialized expertise and support the Court in developing know-how.

33. The facilitator for the mandate “Geographical representation and gender balance (GRGB) in the recruitment of staff of the Court” joined virtually to participate in the discussion on R92 and R95. He underlined the importance of considering the impact on geographical representation and gender balance when assessing R92 and R95 and explained that he would relay the contents of the Court’s presentation to the GRGB facilitation.

D. Key performance indicators (R144-R146, R148)

34. At the meeting of the Study Group on 17 May 2022 representatives of the Registry and of the Office of the Prosecutor presented the 2021 report of the Court on key performance indicators (“KPI” or “KPIs”) and provided an update on the assessment and status of implementation of recommendations R144-R146.

1. Presentation of the 2021 report on performance indicators (R146)

35. With regard to the 2021 report on performance indicators, a representative of the Registry recalled that the Court had positively assessed R146 and implemented a number of measures in order to standardize the collection of data, make the presentation of data more coherent and reader-friendly and consequently provide more meaningful insight of the achievement of strategic goals.

36. In his presentation, he pointed out three areas of improvement: the adjusted reporting timeline, the inclusion of high-leverage indicators and an improved data presentation. For the first time the reporting timeline was adjusted to January to December (instead of to September), aligning the strategic process better to the budget process and enabling an inclusion of relevant KPIs in the Court’s proposed program budget for 2023. New KPIs, such as on new cooperation agreements, on staff wellbeing or on information security were added in order to provide more meaningful insight into the Court’s performance in relation to the strategic-level objectives and goals. Lastly, additional charts and graphics, accompanied by definitions and narratives, assisting in the understanding of the data presented, make the report more reader-friendly.

37. The KPIs themselves remained mostly unchanged throughout 2021 but were being revised in 2022 in view of the new Court-wide Strategic Plan for the period 2023-2025. He indicated that some KPIs will be sorted out while new ones would need to be defined and linked to each of the Court’s new strategic goals.

38. In particular, the following challenges of measuring performance would need to be addressed in future. Firstly, KPIs should not only be measurable but also actionable. Secondly, KPIs should be aligned with the Court’s strategic plan and measure performance not workload. Thirdly, some KPIs are not entirely under the control of the Court, but depend on external factors. Fourthly, for some KPIs an additional analysis is needed to evaluate the data. Fifthly, for some KPIs the Court is missing concrete targets and baselines.

39. In response to a query on the link between KPIs and the budget, he clarified that in the view of the Court, KPIs should not relate to resources but to strategic goals. They should not cover all activities of the Court, nor measure how much work the Court does, but instead evaluate how well the Court does its work.

40. A number of delegations welcomed the report on key performance indicators and commended the Court for the improvements achieved, acknowledging in particular the improved data presentation and the efforts to align strategic planning with budgeting. One delegation expressed the view that more work remains to be done in measuring the judicial and prosecutorial performance. The Co-Chairs concluded that recommendation R146 was considered implemented.

2. Assessment of recommendations R144, R145, R147 and R148

41. A representative of the Registry informed delegations that the Court had positively assessed recommendations R144-R147 and briefed them on the status of implementation.

42. He explained, in response to R144, that the Court was working on developing KPIs for each strategic goal of the Court-wide Strategic Plan for 2023-2025. A working group would coordinate this work and ensure that the strategic plans of all organs would be harmonized accordingly. Furthermore, the same working group was working on the inclusion of KPIs in the proposed program budget for 2023, as recommended in R145. R146 was considered to be implemented as had been outlined earlier in the meeting. Lastly, R147 would be implemented after the new strategic plan was finalized. Only then would the Court be in a position to engage with other organizations and tribunals to explore the possibility of sharing information on KPIs in an effort to enable cross-comparisons. In particular, on issues such as staff-wellbeing or geographic balance and gender representation, such a comparison should be feasible and useful.

43. The Co-Chairs concluded that all recommendations were positively assessed, with implementation of R144 and R145 ongoing and implementation of R147 to follow. Further consideration of R148 and the possibilities of measuring the Court's impact was put on hold in anticipation of the final report on the Nuremberg benchmark's project⁹, expected to be published in late 2022.

E. Other IER recommendations allocated to the Study Group (R55, R202 and R203)

44. Recommendation R55 concerning the appointment of a senior media officer to head the Public Information Unit was not discussed, but it is reflected on the IER matrix that this recommendation is already being implemented and that the recruitment process for the position is ongoing.

45. At the 25 October 2022 meeting of the Study Group, the co-Chairs provided a status update on recommendations R202 and R203. These recommendations regarding representations by an *amicus curiae* were not assessed by the Court. The co-Chairs suggested that the Study Group postpone the assessment of these recommendations to 2023 and to inform the Review Mechanism of their assessment, requesting that they be included in the matrix on the progress in the assessment of the IER recommendations.

F. Facilitation of platform for discussion

46. The Study Group recalled that, in allocating the IER recommendations in the Comprehensive action plan, the Review Mechanism had decided to work through existing Assembly structures in order to avoid burdening the Assembly with new structures. The Review Mechanism allocated the recommendations concerning governance issues to the Study Group on Governance as the platform for discussion (except for those related to Unified Governance, R1-R20, where the RM had decided to facilitate the initial discussion).¹⁰ On 9 June and 11 October 2022, the Study Group held meetings in order to discuss the clustered IER recommendations allocated to the Court that were assigned to the Study Group as the platform for discussion. The Court gave an update of its assessment of the respective recommendations, focusing on those earmarked for 2022.

⁹ a feasibility study to determine whether benchmarks for international criminal justice can be established

¹⁰ Introductory note, Proposal for a Comprehensive Action Plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible further action, para. 7. See: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-CAP-Introductory-Note-ENG.pdf

1. Update on efficiency of the judicial process and fair trial rights (R207-R212) and (R194-R196, R200, R205, R213)

47. In the Study Group meeting on 9 June, the Chef de Cabinet of the Presidency of the Court and the Chief of Staff of the Registry indicated that the Court had assessed recommendations R207 to R212 positively.

48. Both, R207 and R210 are currently being implemented. As to R207, which relates to the case law database, the Chambers follow a flexible approach of staffing and deploy resources flexibly, as necessary. The adequate resourcing for the database will remain a priority for the Judiciary. As to R210, the Judiciary has already a practice of recording oral decisions and in future it will be channelled through the JWP database.

49. Technological and digital enhancement of the Court indicated in R208 and 209 are in the process of implementation. For further improvement, the Court is planning to include an enhancement of IT systems in its Strategic Plan for 2023 to 2025.

50. Regarding R211 and R212, the Court has been working on implementation of online services indicated in these recommendations, taking into account information security and needs of each organs.

51. In the Study Group meeting on 11 October, the Chef de Cabinet of the Presidency of the Court elaborated on R194 to R196, R200, R205 and R213,.

52. R194 and R195 were assessed negatively since the Chambers Practice Manual is a non-binding document. When the application of some of its content becomes systematic, further thought may be given to its incorporation into a binding instrument.

53. R196 was assessed positively with modification. In practice, this recommendation is generally implemented already. However, in accordance with the Regulations of the Court, the election of the Presiding Judge is conducted by the respective Chamber.

54. R200 is assessed positively with modification. The judges agreed during their retreat in 2021, that a smooth and timely transition from the pre-trial to trial phase is essential and have implemented such transition in the Chambers Practice Manual. Further amendments as to the Court's regulatory texts are currently on their way.

55. Regarding R205, which has been positively assessed, the judges will, upon request, consider whether sitting elsewhere than in The Hague is in the interest of justice, depending on the circumstances of the specific case.

56. R213 was assessed positively with modification. Although the judges concur with the basic concept of the recommendation, they consider that interlocutory appeals vary from case to case and setting up a fixed guideline in the Chambers Practice Manual is not appropriate.

2. Update on Registry Governance (R80-R86)

57. The Chief of Staff of the Registry indicated at the meeting on 9 June that all the recommendations from R80 to R86 were assessed positively.

58. R80 to R82 are in the process of being implemented and the Registry continues its effort to enhance the capacity of field offices. In relation to R82, the Court has established a regional field office in Uganda which acts as a hub for several countries in the region.

59. Concerning R83 to R86, the Registry has implemented several measures to improve relationships with local stakeholders, for example, requesting budget for the recruitment of National Professional Officers, appropriate transfer of personnel among regional offices and The Hague, and providing access to the court records from the staffs of field offices.

3. Update on Human Resources (R91, R93-94, R96-R98, R100, R102, R104)

60. The Chief of Staff of the Registry also indicated in the 9 June meeting that human resources-related recommendations, namely, R91, R93, R94, R96 to R98, R100, R102, and R104 were all assessed positively.

61. Regarding R91 and 93, the Court has done an overall reform of its recruitment process and continues its effort to avoid bias and to improve diversity. He also mentioned that despite the Court's efforts, it is not always feasible to include a representative of an under-represented geographical region in the recruitment panel and budgetary implications need to be taken into account in the reform process.

62. R94 and R96 are in the process of being implemented. In terms of R96, it is difficult for the Court to fund the paid internships and visiting scholar positions with the regular budget, and these currently rely on voluntary contributions from the States Parties.

63. Regarding R97 and R98, the Court has improved its performance appraisal system by introducing a training course for managers and a 360-degree assessment. It has thus implemented both recommendations.

64. The multilingualism indicated in R100 is in the process of being implemented. The Court continues its effort to improve both the French language capability of the staff and the utilization of local languages in the situation countries.

65. R102 and R104 both relate to staffing and have already been implemented. Regarding R102, the Court is planning to enhance relationships between universities and NGOs in the future.]

4. Update on Chambers Governance (R21-R37)

66. At the meeting of the Study Group on 11 October 2022, the Chef de Cabinet of the Presidency indicated that all but four recommendations concerning Chambers Governance have been assessed by the Court.

67. Recommendations R22, R23, R27 and R28 have not been assessed yet. These recommendations concern the proper grading of posts and the structure of Chambers. The interrelation of these matters with the broader consideration of structure and staffing matters would make consideration of these recommendations premature.

68. Recommendation R35 was considered as positively assessed, since the recommendation to fill the position of Administrative Coordinator of Chambers has been implemented already.

69. Recommendation R25 concerning the assignment of legal officers to individual judges has been assessed negatively since the Chambers staff work in team constellations.

70. Recommendation R30 concerning the reporting lines of the Head of Chambers staff was also assessed negatively, since this recommendation is closely linked to the proposed model of Unified Governance, which previously has been negatively assessed. However, recommendation R31, which concerns enabling and empowering the Head of Chambers, was assessed positively.

71. Recommendation R21, which proposes an integrated case team organization, was assessed positively with modification and the implementation has started.

72. Recommendation R24 concerning assignment of a case team from the Pre-Trial stage of proceedings to the end of the trial has been assessed positively with modification.

73. Recommendation R26 concerning an organized scheme on the inter-divisional transferability of legal officers was assessed positively.

74. Recommendation R29 concerning cultural diversity and geographical representation in Chambers was assessed positively.

75. Recommendation R32 concerning recruitment and performance appraisal of Chambers legal support staff was assessed positively with modification, noting that judges tend to not sit in recruitment panels, but that for the recruitment of more senior staff, judges may have to serve on the recruitment panel. Recommendation R37 relating to a recruitment process that is open and competitive has been similarly assessed.

76. Recommendation R33 urging the improvement of the contractual arrangements of Chambers legal staff was assessed positively with modification, noting that staffing matters of Chambers must be handled the same as the rest of the Court in accordance with the rules of the United Nations common system and the contractual scheme of the Court.

77. Recommendation R34 concerning professional development of legal staff was assessed positively and is being implemented.

78. Recommendation R36 concerning the job description of administrative assistants has been positively assessed with modification, noting that while administrative assistants are not personal assistants to judges. Reasonable requests of a personal nature may be accommodated.

5. Update on Coherent and Accessible Jurisprudence and Decision-Making (R216-R218, R222-R224)

79. At the meeting of the Study Group on 11 October 2022, the Chef de Cabinet of the Presidency indicated that the Court assessed recommendations R216 and R217 positively. These recommendations concern respect to the decisions of other Chambers, urging the Court to depart from established practice or jurisprudence only where that is justified on grounds precisely articulated in the decision/judgment. It was noted that Chambers have already due regard to existing jurisprudence and only depart from it with a valid reason.

80. Recommendation R223 concerning advance circulation of the final draft of the proposed judgment among all the Judges of the Chamber was also positively assessed.

81. Recommendations R218, R222 and R224 were not addressed.

III. The way forward

1. As regards the way forward for the Study Group, the Co-Chairpersons and co-focal points noted that the consideration of IER recommendations allocated to the Study Group was ongoing. Since the majority of recommendations had been assessed while the assessment of only a few recommendations remained pending, a focus would need to lie on considering implementation.

2. In consequence, the Co-Chairpersons and co-focal points propose that the work of the Study Group in 2023 will be threefold and include 1) the conclusion of the assessment of IER recommendations allocated to the Study Group, 2) the commencement and continuation of the implementation of recommendations where the assessment has been positively concluded and 3) the continued facilitation of a dialogue with the Court on clusters of recommendations allocated to the Court.

3. In particular, this work will involve a consideration of the following issues:

- a) Continuity of proceedings (R214-R215, R381-R384)
- b) Election of the Registrar (R76-R78)
- c) Human Resources (R92, R95, R99, R101, R103)
- d) Key Performance Indicators (R144, R145, R148)

IV. Recommendations

4. The Study Group through the Bureau submits the following recommendations for the consideration of the Assembly:

A. For inclusion in the omnibus resolution

The Assembly of States Parties,

1. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

2. *Takes note* of the Bureau's report on the Study Group on Governance;¹¹

Extends for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, ICC-ASP/15/Res.5, ICC-ASP/16/Res.6, ICC-ASP/17/Res.5, ICC-ASP/18/Res.6, ICC-ASP/19/Res.6 and ICC-ASP/20/Res.5;

3. *Takes note* of the final report of the Independent Expert Review, dated 30 September 2020, the Comprehensive Action Plan, adopted by the Bureau on 28 July 2021 and [the report of the Review Mechanism submitted pursuant to ICC-ASP/20/Res.3, including the Matrix on progress in the assessment of the IER recommendations of the Review Mechanism,¹²] and *notes* that the Study Group will continue to consider recommendations falling within its mandate;

B. For inclusion in the mandates annexed to the omnibus resolution

With regard to the **Study Group on Governance**,

(a) *invites* the Court to further engage in a structured dialogue with States Parties with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence, and to provide State Parties with its assessment and update on implementation of the respective IER recommendations;

(b) *invites the Court* to provide State Parties with its assessment and update on implementation of the respective IER recommendations;

(c) *requests the Study Group* to facilitate a platform for the discussion of the Independent Experts' recommendations assigned to the Court;

(d) *invites* the Study Group to closely cooperate with the Court, subsidiary bodies and other facilitations established by the Assembly on the assessment and implementation of the Independent Experts' recommendations that address governance issues;

(e) *requests* the Study Group to continue considering the Independent Experts' recommendations assigned to it, which relate in particular to the continuity of proceedings, the election of the Registrar, human resources and key performance indicators, and to report thereon to the twenty-second session of the Assembly.

¹¹ ICC-ASP/21/18

¹² ICC-ASP/21/...