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Report of the Bureau on the scheduling of Assembly sessions

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I. Introduction

1. The present report is submitted pursuant to the mandate given to the Bureau for the topic “Scheduling of Assembly sessions” based on paragraph 106 of resolution ICC-ASP/20/Res.5, in which the Assembly of States Parties (“Assembly”) “[r]equest[ed] the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency”.¹ In paragraph 107 of the resolution, the Assembly “[r]equest[ed] also the Bureau to address in its report under paragraph 105 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled”.²

2. Following the resignation of Ms. Maitê de Souza Schmitz (Brazil), the Bureau appointed on 7 September 2022 Mr. Vinícius Fox Drummond Cançado Trindade (Brazil) as its focal point for the topic “Scheduling of Assembly sessions” to lead the consultations with all relevant stakeholders.

3. The focal point notes that the New York Working Group of the Bureau conducted the assessment of the relevant recommendations of the Independent Expert Review (IER), which had been included in the final report of the “Independent Expert Review of the International Criminal Court and the Rome Statute System”, dated 30 September 2020, pursuant to resolution ICC-ASP/19/Res.7 requesting the submission of the outcome of their consideration to the Bureau by 1 November 2021.

4. The focal point further notes that no recommendations were directly allocated to the focal point for consideration under the “Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible future action”, submitted by the Review Mechanism on 30 June 2021 and adopted by the Bureau on 28 July 2021. Taking into account the overarching nature of this topic, the focal point has continued informal consultations relating to the developments made in the review process at each stage for the purpose of planning timely and constructive engagement with the relevant stakeholders.

II. Consultations with States Parties

5. In the first semester of 2022, the focal point convened two meetings to consult with relevant stakeholders on three main issues: i) the schedule of Assembly sessions; ii) the length of each session; and iii) the location of each session. During the first meeting, held on 22 March 2022, the Director of the Secretariat of the Assembly of States Parties and a representative of the Registry of the Court briefed participants on the topic of the facilitation. Following the first meeting, the focal point circulated a non-paper with the compilation of options for the scheduling of Assembly sessions as a basis for further discussions.

6. A second meeting was held on 11 April 2022, in which participants had a further opportunity to provide their views on the options for the scheduling of Assembly sessions, having the non-paper as a basis for the discussion. The non-paper provided options for the way forward, based on the comments received from States Parties in the first phase of consultations, in 2019 and 2020.

7. At its third meeting held on 5 October 2022, the focal point proposed that States Parties continued consultations on the following options provided by the non-paper. On the topic of when the Assembly should take place, States Parties were presented with the options of (i) moving the Assembly sessions to the first semester of the year, with the adaptation of the budget cycle; (ii) moving the Assembly sessions to the first semester of the year, with a resumed session during the second semester of each year to adopt the budget of the Court; or (ii) keeping the Assembly sessions in the second semester. Some States Parties expressed

¹ ICC-ASP/20/Res.5, para. 106.

² ICC-ASP/20/Res.5, para. 107.

their position on the question of when Assembly sessions were held. A discussion was held on the importance of having a transitional period of two years in case any changes were made in this regard.

8. On the topic of the duration of Assembly sessions, States Parties were presented with the options of (i) five days, unless there are judicial and prosecutorial elections; (ii) maximum of six days, unless there are judicial and prosecutorial elections; (iii) minimum of six days; or (iv) minimum of seven days. On the topic of where Assembly sessions should take place, States Parties were presented with the options of (i) keeping the current arrangement of two years in The Hague and one year in New York, when judicial elections are held; (ii) alternating one year in The Hague and one year in New York; (iii) holding sessions exclusively in The Hague; or (iv) holding elections exclusively in New York.

9. It was also proposed that, if States Parties could not agree on the modality of the Assembly Sessions, States Parties could explore the possibility of agreeing at least on the following general objectives: i) that any future decision on the scheduling of Assembly sessions are aimed to ensure effective, efficient, concise and productive meetings of the Assembly of States Parties, with broadest participation of States Parties and effective use of resources; ii) to avoid duplication with a division of labour between New York and The Hague that furthers this objective; and iii) to further study the possibility of a transition period in order to avoid an impact on the Court's budget, elections and the work of subsidiary bodies.

10. During the fourth meeting held on 8 November 2022, States Parties discussed a proposal circulated by the facilitator that States Parties agree on: (i) Assembly sessions being moved to the first semester of the year, with a resumed session during the second semester of each year to adopt the budget of the Court, with a transitional period of two years; (ii) Assembly sessions having a maximum of six days, unless there are prosecutorial or judicial elections; and (iii) continue alternating Assembly sessions two years in The Hague and one year in New York, when judicial elections are held. States Parties were briefed by the Director of the Secretariat of the Assembly of States Parties and Chief of Staff to the Registrar of the Court on the proposal of the facilitation.

11. The Director of the Secretariat of the Assembly of States Parties indicated that the different cost structures between The Hague and New York should be considered when contemplating a resumed session, given that Assembly sessions held in New York tended to be longer to accommodate elections. If a resumed Assembly session was to be held in New York, costs would relate to UN conference room services and travel and subsistence allowance for Secretariat staff to travel to New York. On the possible impact of the shift in the dates of the Assembly sessions on the election of judges, the Secretariat informed that there would be no change to the nine-year mandate of judges, or on the date of assumption of office – the only variation would be that elections would be held several months earlier, but there may need to be further consideration on how to adapt the rules of the bodies involved in the election process, such as the Advisory Committee on Nominations.

12. Some States Parties expressed flexibility with the proposal put forward by the facilitator, although there remained different preferences concerning the timing of the sessions of the Assembly of States Parties. Some States Parties raised concerns with regards to the financial implications a resumed session of the Assembly of States Parties would entail, while others expressed their views on the decoupling of the budgetary process from the rest of the discussions of the Assembly of States Parties. A concern was expressed that if Assembly sessions were to be scheduled for the first half of the year they could coincide with the beginning of its legislative years in States Parties. Some States Parties expressed their views on the possible implications on judicial elections. Consideration was given to the proposal that the discussions on the topic be continued in 2023, with further discussions on how a transitional period could address possible impact and implications of the scheduling of Assembly sessions on the budget and work of the Court. The facilitator proposed that States Parties agree on the general objectives referred in paragraph 9 of the present report so as to guide discussions in 2023.

III. Conclusions and recommendations

13. The Bureau recommends that it continue the consideration of the topic of the scheduling of Assembly sessions in 2023, taking into account the ongoing review process, and report thereon to the twenty-second session of the Assembly.

14. The Bureau concludes its intersessional work by recommending to the Assembly the inclusion of language in the omnibus resolution (annex).

Annex I

Draft text for the omnibus resolution

1. Paragraph 106 of the 2021 omnibus resolution (ICC-ASP/20/Res.5) remains unchanged, reading:

“Requests the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;”

2. Paragraph 107 of the 2021 omnibus resolution (ICC-ASP/20/Res.5) would be updated, reading:

“Requests also the Bureau to address in its report under paragraph 106 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled;”

3. A new paragraph would be included in the omnibus resolution, reading:

“Requests that the Bureau consider as general objectives on the discussions on the scheduling of Assembly meetings that any future decision on the scheduling of Assembly sessions are aimed to ensure effective, efficient, concise and productive meetings of the Assembly, with broadest participation of States Parties and effective use of resources; to avoid duplication with a division of labour between New York and The Hague that furthers this objective; and to further study the possibility of a transition period in order to avoid an impact on the Court’s budget and work;”

4. Paragraph 11 (i) of annex I (mandates) of the 2021 omnibus resolution (ICC-ASP/20/Res.5) remains unchanged, reading:

“(i) requests the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau, and to make recommendations to improve efficiency; and”