



Assembly of States Parties

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Letter of the Chair of the Working Group on Amendments to the President of the Assembly of States Parties, dated 9 December 2011

Proposed amendment to Rule 4 of the Rules of Procedure and Evidence

Mr. President,

In my capacity as Chair of the Working Group on Amendments (WGA) I have the honor to bring the following to your attention:

By resolution ICC-ASP/8/Res.6, the Assembly of States Parties established a Working Group for the purpose of considering, as from its ninth session, amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute at its eighth session, as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly.

In accordance with its mandate the WGA considered, at its meeting of 2 December 2011, the report of the Bureau on the Study Group on Governance dated 23 November 2011 which proposed to amend Rule 4 of the Rules of Procedure and Evidence. The proposed amendment is annexed to this letter.

On the basis of the documentation received by the Study Group and the deliberations of the meeting of 2 December the WGA recommends to the Assembly to adopt, at its tenth session, the draft amendment to Rule 4 of the Rules of Procedure and Evidence as proposed by the Group.

Yours sincerely,

Paul Seger
Ambassador
Permanent Representative
Permanent Mission of Switzerland to the United Nations

New York, 9 December 2011

Annex

Extract from the report of the Bureau on the Study Group on Governance¹

IV. Cluster II: Strengthening the institutional framework within the Court

17. Some meetings of the Study Group have focused on this cluster. In addition, the focal point conducted informal consultations with representatives of interested States Parties and organs of the Court as a way to identify areas on which the Study Group should concentrate its discussions. After consultations in respect to these issues, it was agreed to address, subject to discussions in related clusters, the following topics:

(a) Powers and competences of the Presidency of the Court in relation to the judiciary;

(b) Relationship between the Presidency and the Registry with regard to the administration of the Court; and

(c) Administrative accountability of the Office of the Prosecutor and its relationship with the other organs of the Court.

[...]

20. As regards the powers and competencies of the Presidency, there was a range of general issues to be considered, in particular those related to the assignment of judges to divisions, which is a cross-cutting issue with cluster I. The focal point was also of the view that other issues for discussion could include some of the questions raised by the Committee on Budget and Finance in previous recommendations, such as the role of the Presidency in reviewing the judicial calendar.

21. The work of the Study Group in relation with this cluster focused mainly in reviewing the potential role of the Presidency in the assignment of judges to divisions, with the Study Group considering this as a possible way to strengthen the Presidency's authority to oversee the administration of judges and minimize, to the extent possible, situations resulting in the extension of judicial mandates and/or the excusal of judges. Building on the conclusions reached in cluster I related to the extension of judges, the Study Group considered that the current mechanism to assign judges to divisions could potentially limit the proper administration of the Court, responsibility which lays in the Presidency. The focal point submitted to the consideration of the Study Group a draft amendment to the Rules of Procedure and Evidence transferring the decision on the assignment of judges to divisions from the plenary of judges to the Presidency. The focal point also noted that such an amendment could already be applicable to the composition of divisions that will follow the election of six new judges, in case the amendment is adopted by the Assembly at its tenth session. The proposal received unanimous support from States. The Presidency informed the Study Group that a majority of judges was opposed to the draft amendment. **Having considered the view of the majority of judges, the Study Group nevertheless recommends the Assembly to consider and adopt at its tenth session, the draft amendment to rule 4 of the Rules of Procedure and Evidence** (appendix I).

[...]

¹ ICC-ASP/10/30.

VI. Recommendations

29. The Study Group recommends that the Assembly:

[...]

(f) Adopt at its tenth session the draft amendment to rule 4 of the Rules of Procedure and Evidence (annex I);

[...]

Annex I

Draft resolution on amendments to the rule 4 of the Rules of Procedure and Evidence

The Assembly of States Parties,

Recalling the need 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;

Recognizing that enhancing the efficiency and effectiveness of the Court is of a common interest both for the Assembly of States Parties and the Court,

Recalling operative paragraphs 1 and 2 of resolution ICC-ASP/9/Res.2² and article 51 of the Rome Statute,

1. *Decides* that rule 4, paragraph 1, of the Rules of Procedure and Evidence³ is replaced as follows:

“Rule 4
Plenary sessions

1. The judges shall meet in plenary session after having made their solemn undertaking, in conformity with rule 5. At that session the judges shall elect the President and Vice-Presidents.”

2. *Further decides* that the following Rule 4 *bis* is inserted after Rule 4:

“Rule 4 *bis*
The Presidency

1. Pursuant to article 38, paragraph 3, the Presidency is established upon election by the plenary session of the judges.

2. As soon as possible following its establishment, the Presidency shall, after consultation with the judges, decide on the assignment of judges to divisions in accordance with article 39, paragraph 1.”

² *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I.

³ *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

Appendix

Rule 4, paragraph 1, of the Rules of Procedures and Evidence, with marked changes

Rule 4 Plenary sessions

1. The judges shall meet in plenary session after having made their solemn undertaking, in conformity with rule 5. At that session the judges shall elect the President and Vice-Presidents.
 2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, the Rules and the Regulations and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.
 3. The quorum for each plenary session shall be two-thirds of the judges.
 4. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions shall be taken by the majority of the judges present. In the event of an equality of votes, the President, or the judge acting in the place of the President, shall have a casting vote.
 5. The Regulations shall be adopted as soon as possible in plenary sessions.
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