

**Tenth session**

New York, 12-21 December 2011

**Report of the Bureau on the establishment of
an Advisory Committee on nominations of judges of
the International Criminal Court****Note by the Secretariat**

Pursuant to paragraph 25 of resolution ICC-ASP/9/Res.3, of 10 December 2010, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the potential implementation of article 36, paragraph 4(c), of the Rome Statute. The present report reflects the outcome of the informal consultations held by the New York Working Group of the Bureau.

I. Background

1. Operative paragraph 25 of resolution ICC-ASP/9/Res.3¹ entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly of States Parties (“the Assembly”) on 10 December 2010, requested “the Bureau to prepare a report to the Assembly for its tenth session on the potential implementation of article 36, paragraph 4(c), of the Rome Statute”.
2. Article 36, paragraph 4 c), of the Rome Statute states that:
“The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee’s composition and mandate shall be established by the Assembly of States Parties.”
3. Following the adoption of resolution ICC-ASP/9/Res.3 by the Assembly, the Bureau appointed Ms. Francisca Pedrós Corretero (Spain) as facilitator for the Advisory Committee on nominations at its second meeting on 1 February 2011.
4. The facilitator held two informal consultations on this topic, respectively on 5 October and 10 November 2011. The Working Group agreed to present draft terms of reference setting out the mandate, composition and working methods of the Advisory Committee, at the tenth session of the Assembly (annex).

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Ninth session, New York, 6 – 10 December 2010* (ICC-ASP/9/20), vol. I, ICC-ASP/9/Res.3, para. 25.

II. General findings

5. The procedure for the nomination and election of judges must abide by the Rome Statute. In particular, candidates nominated by States Parties must fulfil the requirements of article 36, paragraphs 3 a), b) and c):

“ (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.”

6. Furthermore, article 36, paragraph 4 b), adds the requirement of being a national of a State Party:

“(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.”

7. States Parties are responsible for checking whether the nominated candidates fulfil the statutory requirements. In that respect, article 36, paragraph 4 a), states that:

“(...) Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.”

8. Moreover, paragraph 6 of resolution ICC-ASP/3/Res.6 of the Assembly, entitled “Procedure for the nomination and election of judges of the International Criminal Court” and dated 10 September 2004, establishes that:

“Every nomination should be accompanied by a statement:

(a) Specifying in the necessary detail how the candidate fulfils each of the requirements in article 36, paragraph 3(a), (b) and (c), of the Statute, in accordance with article 36, paragraph 4(a), of the Statute.”

9. The current procedure does not include the intervention of any evaluating independent body that would check the fulfilment of the requirements. According to the current formulation, that is a matter for States Parties.

10. Therefore, the establishment of an Advisory Committee would introduce an independent organism in the very structure of the Assembly in order to facilitate the process of election of the judges. The Committee would enjoy legitimacy, which is not to be found in any other organism with similar functions. It would ultimately be responsible to the Assembly; moreover, the possibility of its establishment is expressly provided for by the Rome Statute.

11. The Bureau has established, as well, a Committee for the election of the Prosecutor, Search Committee for the position of the Prosecutor of the International Criminal Court, whose mandate is described in ICC-ASP/9/INF.2.

12. The establishment of an Advisory Committee does not imply, in any case, the removal from States Parties of their role in the nomination of the candidates. It does not duplicate the Assembly in its role of election. Its function is of mere technical assessment, without altering the process of decision-making by these organisms.

13. As far as possible, the Advisory Committee should not generate additional and unnecessary cost and administrative burden. Moreover, the evaluation process by the Committee must be transparent.

III. Recommendations

1. Establish the Advisory Committee on nominations of judges of the International Criminal Court. For that purpose, draft terms of reference are annexed to the present report, which could be used as the source for the mandate, composition and working methods of the Committee;
2. Ensure that the Committee is composed of independent members with knowledge and vast experience in relevant areas of international justice, when adopting the terms of reference of the Advisory Committee; and
3. Ensure that the principal legal systems of the world are adequately represented in the Committee.

Annex

Terms of reference for the establishment of an Advisory Committee on nominations of judges of the International Criminal Court

A. Composition

1. The Committee should be composed of nine members, nationals of States Parties, designated by the Assembly of States Parties by consensus on recommendation made by the Bureau of the Assembly also made by consensus, reflecting the principal legal systems of the world and an equitable geographical representation, as well as a fair representation of both genders, based on the number of States Parties to the Rome Statute.
2. Members of the Committee should be drawn from eminent interested and willing persons of a high moral character, who have established competence and experience in criminal or international law.
3. Members of the Committee would not be the representatives of States or other organizations. They would serve in their personal capacity, and would not take instructions from States Parties, States or any other organizations or persons.
4. The Committee will designate a coordinator to chair its meetings and organize its work.

B. Mandate

5. The Committee is mandated to facilitate that the highest-qualified individuals are appointed as judges of the International Criminal Court.
6. Committee members would normally be designated for three year terms, with the possibility of being re-elected only once. Four of the first members designated shall be asked to serve only for one three year term, so as to stagger membership and provide continuity
7. The work of the Committee is based on the applicable provisions of the Rome Statute and its assessment of the candidates will be based strictly on the requirements of article 36, paragraphs (3) (a), (b) and (c).

C. Working methods

8. The Committee will convene in person, by correspondence, or via remote links, once candidates have been nominated by States. The members of the Committee shall ensure the confidentiality of all communications during the process.
9. The Committee may proceed to communicate with all candidates, including by interviewing, both orally and in writing, with regard to their qualification in accordance with the Rome Statute.
10. The evaluation procedure of the Committee shall be transparent. To that purpose, the Committee shall regularly and in detail brief the Bureau on its activities. The States Parties to the Rome Statute would be kept informed through the reporting procedures of the Bureau, and by briefings to the New York and The Hague Working Groups.
11. Once the Committee has completed its work, it will prepare information and analysis, of a technical character, strictly on the suitability of the candidates, which would be made available to States Parties and observers by submission to the Bureau, in sufficient time to allow for thorough subsequent consideration by the Assembly of States Parties.
12. Information and analysis presented by the Committee is to inform the decision-making of States Parties and is not in any way binding on them or on the Assembly of States Parties.