

**Eleventh session**

The Hague, 14-22 November 2012

**Report of the Bureau Working Group on
the Advisory Committee on Nominations****I. Introduction**

1. At its tenth session, the Assembly decided to establish an Advisory Committee on Nominations,¹ which would operate in accordance with the terms of reference annexed to the Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (hereinafter “the terms of reference”).² At its meeting of 1 May 2012, the Bureau decided to open a nomination period for members of the Advisory Committee and also established a Working Group, which “would comprise one member from each regional group, [and] would be tasked with identifying nine candidates for nomination by the Bureau and election by the Assembly, and with ensuring that the requirements set out in the Committee’s terms of reference are respected.” The present report is submitted pursuant to this mandate.

2. At subsequent meetings, the Bureau appointed the members of the Working Group, with the last member being appointed by a silence procedure expiring on 2 October 2012. The five members were Brazil, the Czech Republic, Japan, South Africa and Switzerland.

3. The President of the Assembly convened the first meeting of the Working Group on 9 October 2012. At this meeting, she stressed the need for the Working Group to complete its work by 3 November at the latest. The Working Group held three subsequent meetings on 16, 23 and 24 October 2012.

4. At its inaugural meeting, the Working Group elected Mr Dire Tladi (South Africa) as its Chairman. The Chairman briefed the Bureau on the work of the Working Group at its 15 October meeting. Additionally, in accordance with the suggestion made at that Bureau meeting, on 23 October the Bureau convened in an informal meeting to interact with the Working Group.

5. The Secretariat of the Assembly of States Parties provided the substantive servicing to the Working Group and Mr. René Holbach, Special Assistant to the President of the Assembly, served as its Secretary.

II. Criteria

6. The Committee had before it fourteen nominations, which were received by the Secretariat of the Assembly at the conclusion of the extended nomination period on 31 August 2012.

¹ See operative paragraph 19 of resolution ICC-ASP/10/Res.5.

² ICC-ASP/10/36.

7. The Working Group was cognisant of the criteria for membership in the Advisory Committee contained in paragraphs 1 and 2 of the terms of reference, viz.:

(a) 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.

(b) 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.

8. The Working Group considered that these criteria required a two-stage assessment procedure. First, on the basis of paragraph 2 of the terms of reference (cf. the wording “drawn from”), it had to assess whether the candidates nominated by States Parties fulfilled the requirements of being “eminent interested and willing persons of a high moral character, who have established competence and experience in criminal or international law.” Only candidates who individually fulfilled these criteria would be considered at the second stage of consideration, set out in paragraph 1 of the terms of reference.

9. At the second stage of its selection, the Working Group considered that it must take into account, together with competency requirements, the necessity that the Advisory Committee collectively reflect “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.” Based on a cumulative application of these criteria, it would arrive at a recommendation for nine nominees.

III. Methodology and procedural narrative

10. At its first meeting, on 9 October 2012, the Working Group focused on procedural issues, including how it would deal with the requirements in the terms of reference regarding the candidates’ individual competence, while ensuring due regard for the consideration of equitable representation. In this regard, it decided to consider these elements together. The Working Group also decided to recommend that the Bureau and the President appeal to all States Parties to refrain from campaigning.

11. At its meeting on 16 October 2012, the Working Group conducted an assessment of each individual candidate based on the curriculum vitae submitted by the nominating State Party in order to determine compliance with the criteria in paragraph 2 of the terms of reference. Members of the Working Group were given the opportunity to express which aspects of each individual candidature they perceived to be negative and positive, and which aspects elicited queries. During this phase, members of the Working Group agreed to abstain from providing comments on candidates from their own country.

12. While conducting this examination, the Working Group was keenly conscious of the fact that some of the criteria contained in paragraph 2 of the terms of reference were difficult to assess and therefore subjective in nature. It was noted, for example, that it would be difficult to make a comparative assessment of candidates’ eminence, once a certain threshold was crossed, or to compare the eminence of individuals with different professional backgrounds. The Working Group had come to the conclusion that, although individual members had some queries regarding certain aspects of some of the curricula vitae presented, the Working Group had sufficient information to reach a decision without making further enquiries from the nominating governments.

13. There was a consensus within the Working Group that 13 of the 14 candidates presented met the criteria contained in paragraph 2 of the terms of reference and could thus advance to the second stage of consideration.

14. On 23 October 2012, the Working Group held two meetings. First, the Working Group held an informal interactive session with other members of the Bureau intended to consider both procedural and substantive matters. The informal interactive session was followed immediately by a meeting to begin the second stage of the consideration. During the meeting with the other members of the Bureau, the view had been expressed strongly

that an equitable geographic representation, based on the number of States Parties to the Rome Statute, was a fundamental requirement under the terms of reference and should be at the heart of the Working Group's consideration.

15. During the second stage of consideration, the meetings for which were held on 23 and 24 October 2012, the Working Group was of the view that an equitable geographic representation was indeed a fundamental component of the terms of reference and would ensure not only the legitimacy of the Advisory Committee, but also that its determinations are based on the most diverse and representative set of opinions possible. For the same reason, the Working Group considered that it would be important to have a balance between experts in international criminal law and public international law; between persons with a civil law and a common law background; between persons with academic, judicial and diplomatic backgrounds; and, insofar as possible given the status of nominations, between both genders.

16. The Working Group noted that the Asia-Pacific Group was the only group to have submitted a single candidate; all other regional groups had submitted two candidates or more that had likewise fulfilled the requirements of paragraph 2 of the terms of reference. Thus, the Working Group decided to proceed on the basis of a scheme that allocated two seats in the Advisory Committee to each regional group except for the Asia-Pacific Group, which would be allocated one seat. These seats were filled by taking a holistic view of the remaining criteria contained in paragraph 1 of the terms of reference.

IV. Conclusions and recommendations

17. The Working Group concluded that the vast majority of candidates before it were eminently qualified to serve on the Advisory Committee. The Working Group took the view, however, that the terms of reference did not allocate seats, but mandated an equitable geographical representation, based on the number of States Parties to the Rome Statute, under the condition that each of the candidates was sufficiently qualified. The Working Group was constantly guided by the principle that the requirements in the terms of reference had to be cumulatively met and that, under all circumstances, members of the Advisory Committee had to be appropriately qualified, while also ensuring equitable representation. The scheme of geographical representation adopted by the Working Group was adopted on the strength of the candidates individually meeting the competency requirements.

18. The Working Group recommended that the Bureau nominate the following candidates for election to the Advisory Committee (with an asterisk identifying a candidate from a common law jurisdiction). The Working Group was of the view that these candidates met the individual and collective criteria set out in the terms of reference and would be able to discharge the mandate set out therein:

- (a) BRANT, Leonardo Nemer Caldeira (Brazil)
- (b) FUKUDA, Hiroshi (Japan)
- (c) KIRSCH, Philippe (Canada*)
- (d) NSEREKO, Daniel David Ntanda (Uganda*)
- (e) PETRIČ, Ernest (Slovenia)
- (f) PINTO, Mónica (Argentina)
- (g) PRANDLER, Árpád (Hungary)
- (h) SIMMA, Bruno (Germany)
- (i) SOCK, Raymond Claudius (Gambia*)

19. In concluding their work, the members of the Working Group expressed their thanks to the Bureau for the trust it had placed in them, and expressed their hope that the list of nominees would prove to be acceptable to the Bureau and would ultimately lead to an election of the Working Group by consensus, in accordance with the terms of reference. The Working Group also expressed the hope that its report would guide the work of future processes to compose the Advisory Committee on Nominations.
