



Fourteenth session

The Hague, 18-26 November 2015

Report to the Bureau on the review of the procedure for the nomination and election of judges**I. Background**

1. This report is submitted pursuant to the mandate given to the facilitator, Mr. Stefan Barriga (Liechtenstein), on the review of the procedure for the nomination and election of judges. The mandate is based on resolution ICC-ASP/13/Res.5, in which the Assembly decided “to review the procedure for the election of judges as set forth in sections B and C of the resolution ICC-ASP/3/Res.6 as amended, including by the present resolution, on the occasion of future elections with a view to making any improvements as may be necessary”.

II. Discussions in the New York Working Group

2. The facilitator held several rounds of informal consultations in the inter-sessional period. The proposals made and the discussions thereon are reflected in the facilitator’s discussion paper (part IV).

III. Conclusions and recommendations**A. Text for the omnibus resolution**

3. On the basis of these consultations, the Bureau recommends that the following language be included in the omnibus resolution to be adopted at the fourteenth session of the Assembly:

42. *Decides* to adopt the amendment to the procedure for the nomination and election of judges¹ contained in annex [...] to the present resolution;

43. Also *decides* to continue to review the procedure for the nomination and election of judges as set forth in sections B and C of resolution ICC-ASP/3/Res.6 as amended, including by the present resolution, on the occasion of future elections with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator’s discussion paper²;

[44. *Requests* the Bureau to ensure that elections of judges and other Court officials do not disrupt the substantive segments of the Assembly of States Parties, including by holding the elections at a separate segment of the Assembly of States Parties, or by considering holding a separate session for elections in New York]

¹ *Official Records ... Third session ... 2004* (ICC-ASP/3/25), part III, ICC-ASP/3/Res.6.

² See part IV of the present report.

B. Text for inclusion in annex I to the omnibus resolution on mandates of the Assembly

Requests the Bureau to update the Assembly, at its fifteenth session, on the progress of the review to the procedure for the nomination and election of judges.^[2]

C. Text to be inserted as an annex to the omnibus resolution

4. Amendments to resolution ICC-ASP/3/Res.6, regarding the procedure for the nomination and election of judges
 - a) Amend paragraph 1 by inserting the text in bold:
 1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court. **The communication shall reproduce paragraph 6 of this resolution and remind Governments of the importance of elected judges who have made their solemn undertaking being available to take up their full-time service when the Court's workload so requires.**
 - b) Amend paragraph 6 by inserting sub-paragraph (f):
 6. 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;
 - (b) *Indicating* whether the candidate is being nominated for inclusion in list A or list B for the purposes of article 36, paragraph 5, of the Statute;
 - (c) *Containing* information relating to article 36, paragraph 8(a)(i) to (iii), of the Statute;
 - (d) *Indicating* whether the candidate has any expertise under article 36, paragraph 8(b), of the Statute;
 - (e) *Indicating* under which nationality the candidate is being nominated for the purposes of article 36, paragraph 7, of the Statute, where a candidate is a national of two or more States; and
 - (f) ***Indicating the commitment of the candidate to be available [immediately/without undue delay] to take up full-time service when the Court's workload so requires.***
 - c) Amend paragraph 23 as follows:
 23. Once regional and gender voting requirements are discontinued and **provided that the number of remaining candidates allows** the minimum voting requirements regarding lists A and B **are to be fulfilled**, each further ballot shall be restricted to the most successful candidates of the previous ballot. Before each ballot, the candidate (or, in the event of a tie, the candidates) having obtained the lowest number of votes in the previous ballot shall thus be excluded, provided that the number of candidates remains at least twice the number of seats to be filled.
 - d) Add a new paragraph *27 ter*:
 - 27 ter.* If the judicial vacancy occurs during the intersessional period prior to a regular election of six judges, the election to fill that vacancy shall take place at that same session, unless the Bureau decides otherwise after consulting the Court. If the Bureau decides to hold the vacancy election at that same session, the procedures for the nomination and election of judges shall apply *mutatis mutandis*, subject to the following provisions:

^[2] Report of the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/14/41).

- (a) Candidates nominated for the regular election shall also be considered as nominated for the vacancy election, unless the nominating State Party decides otherwise. States Parties may also nominate candidates for the vacancy election only, without restriction to any region, gender or list. No separate nomination period is required for the vacancy election;
- (b) The judicial vacancy shall not affect the calculation of the minimum voting requirements for the regular election (paragraphs, 11, 20, 21 and 22);
- (c) The election to fill the judicial vacancy shall take place after the regular election of six judges has concluded, and at least one day later to allow the early distribution of instructions and sample ballot papers in accordance with paragraph 25;
- (d) Those candidates that have not been elected in the regular elections shall be included on the ballot paper for the vacancy election, unless the nominating State Party decides otherwise, and subject to paragraphs (e) and (f) below;
- (e) If after the regular election the number of judges from list A remains below 9 or the number of judges from list B below 5, only candidates from the underrepresented list shall be included on the ballot paper; others shall no longer be considered as nominated;
- (f) If after the regular election a regional or gender minimum voting requirement is not fulfilled, only candidates that can satisfy any of the underrepresented regional minimum voting requirements as well as the underrepresented gender minimum voting requirement shall be included on the ballot paper; others shall no longer be considered as nominated; and
- (g) A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36 of the Statute.

IV. Facilitator's discussion paper

5. The present paper is submitted by the facilitator, Mr. Stefan Barriga (Liechtenstein), to help steer the consultations and to reflect their outcomes, also with a view to facilitating possible future discussions. The present version of the paper reflects the status quo after the informal consultations held on 16 June, 14 July, 27 August, 8 October and 27 October 2015 in New York, and after the expiration of a silence procedure on 6 November 2015. The proposals under Topics 3.1, 4.2, and 7 were forwarded to the ASP for adoption in the context of the omnibus resolution; the draft proposal under Topic 6 was forwarded for further discussion in that context. No further action was taken with regard to other topics in respect of which there was no agreement on the respective proposals.

A. Topic 1: One candidate, one seat (avoiding “forced” or “automatic” election)

6. Belgium submitted a revised proposal aimed at addressing the situation (that has occurred in the past) where only one candidate remains for one seat. In this situation, the candidate is practically guaranteed to be elected with 100% of the votes. The reason is that States Parties submitting an empty ballot paper are not considered to be “present and voting” and, therefore, not considered at all. Theoretically, one single vote could thus be enough for the candidate to be elected by a “two-thirds majority of the States Parties “present and voting” in accordance with art. 36(6)(a) of the Rome Statute (namely in case all other State Parties hand in empty ballot papers).

Belgian proposal: a) counting abstentions, b) proceeding to one last ballot

7. Belgium proposed that once the minimum voting requirements are discontinued, States that abstain from voting (i.e. by submitting an empty ballot paper) should also be considered as “States Parties present and voting”, as an exception to Rule 66 of the ASP

Rules of Procedure.³ Accordingly, **empty ballot papers would be taken into account when calculating the majority required** for election.

8. Furthermore, once only one candidate remained for one position, the ASP should vote only one last time. If the candidate does not get the 2/3 majority of States Parties submitting a ballot paper, then the **election would be postponed** and the nomination re-opened.

9. Some delegations expressed support for this proposal and in particular the notion that abstentions should be counted. Others considered it rather complicated, and the point was made that it could jeopardize the States Parties' right to abstain. The point was also made that any candidate that made it so far in the elections must already have received very significant support, therefore the proposal may possibly not address a real problem.

10. In light of the discussion, Belgium withdrew its proposal on para. 16 (counting abstentions). Instead, and based on suggestions made by delegations, Belgium proposes to add a sentence to para. 16 bis (which applies only to the "one candidate, one seat" situation), which would read in its entirety:

"16 *bis* If there is no more than one candidate for one single position, the Assembly shall proceed to a last ballot. If the candidate does not obtain a two-thirds majority of States Parties present and voting, the election shall be postponed until a resumed session of the Assembly of States Parties. In such case, the procedure for the nomination of candidates shall restart. **In accordance with Rule 66 of the Rules of Procedure of the Assembly of States Parties, the ballot paper must permit to the States Parties present and voting to cast an affirmative or negative vote.**"

11. Some delegations supported the revised proposal, but some others expressed serious concern, including about the possibility that the position might not be filled at the election, leading to a judicial vacancy. Belgium further indicated that instead of proceeding to one last ballot, two such ballots could be held.

B. Topic 2: Providing greater choice for States Parties

12. Belgium also re-submitted several proposals aimed at, generally speaking, increasing the number of candidates for States Parties to choose from.

1. Belgian proposal: extending the nomination period to allow for more candidates

13. Under the current rules, the President of the Assembly is already required to extend the nomination period to ensure at least two candidatures for each minimum voting requirement (MVR) that may apply. Usually, however, not all seats are subject to minimum voting requirements. Belgium proposes that the nomination period should be extended to ensure that overall there are at least twice as many candidates as vacant positions. Some support was expressed for this proposal, and a preference was expressed for one single extension of the nomination period, rather than up to three. Some concern was expressed as to the effect of this proposal on the work of the Advisory Committee on Nominations.

2. Belgian proposal: At least three candidates for regional MVR's needed

14. Belgium proposes that a regional group that has an **MVR of one** should submit **at least three candidatures** and thus provide greater choice (under current rules, two candidatures would suffice). A regional group that enjoys an **MVR of two** should submit **at least four candidatures** (no change to current rules). A regional group that enjoys an **MVR of three** should submit **at least six candidatures** (under current rules, five candidatures would suffice). Some delegations supported the proposal, but others raised serious concerns, as the proposal would have a disproportionate impact on smaller regional groups. Also, the concern was raised that this rule could entice groups to submit less qualified candidates just for the purpose of fulfilling this requirement.

³ "For the purposes of these Rules, the phrase "States Parties present and voting" means States Parties present and casting an affirmative or negative vote. States Parties which abstain from the voting shall be considered as not voting."

3. **Belgian proposal: At least three candidates for gender MVR's needed**

15. Along similar lines to the proposal under 2.2, Belgium proposes that a **gender MVR of one** should only apply provided that **at least three candidatures of that gender** are submitted (under current rules, two candidatures would suffice). For an election with a **gender MVR of two or more**, the existing rules would stay in place.⁴ Some delegations supported the proposal, but others expressed caution as to its potential effects.

C. **Topic 3: Speeding up the election process**

16. Several delegations expressed the wish to make the election process faster, i.e. to have fewer rounds of balloting. The facilitator pointed out that the main reason for the lengthy process was the requirement of a 2/3 majority under article 36(6)(a) of the Rome Statute, which was very difficult to amend. It was difficult for candidates to obtain such a large majority of votes, though the MVR system helped in this regard to some extent, since they helped channel votes toward underrepresented regions, genders and groups of expertise (A/B).

Belgian proposal: Reduce number of candidates more quickly

17. Belgium proposes that the ASP should amend para. 23, which deals with restricted balloting. Under the current rule, the candidate having obtained the lowest result is automatically eliminated from the next round of balloting. This rule, however, only takes effect after the MVRs are discontinued (typically after the fourth round). The MVR's related to list A/B, however, can continue even after the fourth round – thereby preventing restricted balloting (which speeds up the process) from starting. The proposal is not to wait until any potential list A/B requirement is fulfilled, but to **start restricting ballots immediately once the regional/gender MVRs are discontinued**. As drafted, the proposal would ensure that the next ballot would still contain sufficient candidates so that any list A/B requirement can still be fulfilled.

18. The Facilitator pointed out that the current cut-off rules were softer than those applied in the General Assembly or the Treaty Body elections, and that the Belgian proposal would bring them closer to these precedents. He also pointed out that the proposal made the procedure simpler.

19. Some delegations expressed strong support for this proposal, other wished to consider it carefully. The language below was agreed to by silence procedure (6 November 2015):

Amend paragraph 23 as follows:

23. Once regional and gender voting requirements are discontinued and **provided that the number of remaining candidates allows** the minimum voting requirements regarding lists A and B **are to be** fulfilled, each further ballot shall be restricted to the most successful candidates of the previous ballot. Before each ballot, the candidate (or, in the event of a tie, the candidates) having obtained the lowest number of votes in the previous ballot shall thus be excluded, provided that the number of candidates remains at least twice the number of seats to be filled.

D. **Topic 4: Aligning judicial vacancies with regular elections**

20. Under the current rules for judicial vacancies, the Bureau is mandated to fix the venue and date of the election within a certain time period (no later than 20 weeks after the occurrence of the vacancy). The rules do however not specify how to proceed in case a judicial vacancy occurs during the intersessional period leading to an ASP session with regular elections. In terms of efficiency, holding both elections at the same ASP meeting would be desirable. The current rules do not rule out such a possibility, but do not provide further guidance.

⁴ Table in Para. 20(c) of resolution ICC-ASP/3/Res.6.

21. Since the elections have to be held separately,⁵ some questions arise as to the impact of the vacancy election on the regular election, including: (1) if nomination periods overlap, can candidates run for both a vacancy election and a regular election? There was general consensus that this should be possible. (2) Should the vacancy affect the manner in which the MVR's are calculated during the regular election? Different views were initially expressed, though in the course of the consultation there was a trend toward not recalculating the MVR's for the regular elections, which could otherwise become a moving target throughout the nomination procedure). (3) Should the vacancy election take place before or after the regular election? Different views were expressed in this regard, though there was a trend toward holding them after the regular election.

1. Belgian proposal: Hold vacancy election prior to regular election

22. Belgium proposes that when a vacancy election coincides with a regular election, the vacancy election should take place first. The results of that election should then be taken into account when calculating the MVR's for the first round of the regular election.

23. Belgium later indicated a preference to proceed on the basis of the Facilitator's proposal below.

2. Facilitator's proposal: Merge nomination process, hold election after regular election

24. The Facilitator suggested the concrete language below for consideration. **The proposed paragraph 27ter would be an addition to the resolution, the existing paragraph 27 – containing the existing standard procedure for vacancy elections – would remain in place.** The proposal is intended to be as pragmatic and uncomplicated as possible, while safeguarding the most important features of the existing rules for vacancy elections. It is premised on the notions (1) that there should be one single nomination process for regular and vacancy elections (an opt-out system for candidates who do not want to be considered for the vacancy; note that candidates can opt-out, i.e. withdraw, at any time), (2) that the vacancy should not impact the calculation of MVRs for the regular election (especially if the vacancy occurs during an already opened nomination period for regular elections, thus avoiding a re-calculation of MVRs at that stage), and (3) that the vacancy election should take place after the regular election, since candidates will primarily be interested in being elected to a full term. The proposal indicates that merging the nomination process is the default option, but leaves discretion to the Bureau to decide otherwise. Most importantly, the proposal clarifies a number of important questions (e.g. MVR calculation) that arise when the elections are indeed held at the same ASP.

25. Facilitator's concrete proposal (as revised):

27 ter. If the judicial vacancy occurs during the intersessional period prior to a regular election of six judges, the election to fill that vacancy shall take place at that same session, unless the Bureau decides otherwise after consulting the Court. (*Comment: For example if a replacement is needed more urgently; or if the vacancy occurs too close to the regular election*) If the Bureau decides to hold the vacancy election at that same session, the procedures for the nomination and election of judges shall apply *mutatis mutandis*, subject to the following provisions:

- (h) Candidates nominated for the regular election shall also be considered as nominated for the vacancy election, unless the nominating State Party decides otherwise. States Parties may also nominate candidates for the vacancy election only, without restriction to any region, gender or list. (*Comment: the added language clarifies even further that the decision as to which candidates may be included on the ballot paper will only be made after the regular election, therefore no restrictions apply in the nomination process*) No separate nomination period is required for the vacancy election.

⁵ This is due to the following two reasons: (1) the vacancy election is about a shorter term of office (only the remaining term of the outgoing judge), and not about a full term; (2) the nomination requirements are different for a vacancy election: only candidates that can fulfill any potential MVRs can be nominated (in a regular election, the nomination is not restricted at all).

- (i) The judicial vacancy shall not affect the calculation of the minimum voting requirements for the regular election (paragraphs, 11, 20, 21 and 22). *(Comment: this was the practice during the most recent regular elections)*
- (j) The election to fill the judicial vacancy shall take place after the regular election of six judges has concluded, and at least one day later to allow the early distribution of instructions and sample ballot papers in accordance with paragraph 25.
- (k) Those candidates that have not been elected in the regular elections shall be included on the ballot paper for the vacancy election, unless the nominating State Party decides otherwise, and subject to paragraphs (e) and (f) below.
- (l) If after the regular election the number of judges from list A remains below 9 or the number of judges from list B below 5, only candidates from the underrepresented list shall be included on the ballot paper; **others shall no longer be considered as nominated.** *(Comment: the outcome of the regular election thus determines whether the vacancy election will be restricted to candidates of underrepresented categories, or whether it will be open to all remaining candidates – the revised language is aimed to make that even clearer).*
- (m) If after the regular election a regional or gender minimum voting requirement is not fulfilled, only candidates that can satisfy any of the underrepresented regional minimum voting requirements as well as the underrepresented gender minimum voting requirement shall be included on the ballot paper; **others shall no longer be considered as nominated.** *(See comment under (e))*
- (n) A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36 of the Statute.

(Comment: paragraphs (e)-(g) are taken almost verbatim from existing paragraph 27)

26. Delegations expressed interest in the Facilitator's proposal and made some specific suggestions, which are reflected in the revised text above. It was also pointed out that if such a provision had been in place at the last ASP, the latest vacancy would have been filled much more quickly and without the expenses required for a resumed ASP.

27. The question was raised as to whether the above proposal would negatively affect a regional group that may have an MVR in the regular election as well as in the vacancy election. If a regional group got one of two candidates elected in the regular election, only one candidate would be left for the vacancy election, which is not sufficient to keep the regional MVR.

28. The Facilitator therefore suggested adding the possibility that candidates may also be nominated for the vacancy election only, as reflected in subpara. (a) of the the revised proposal above. The Facilitator also pointed out that if an underrepresented region had only one candidate left for the vacancy, that candidate would indeed be the only candidate on the ballot (provided no other region was underrepresented).

29. Some delegations remained concern the proposal could lead to a situation where nominated candidates ultimately will not be admitted to the ballot paper; others stated that this would simply have to be explained to the candidates, and that the candidates would in any event be admitted to the ballot paper for the regular election. Some concern was also expressed that the proposal was complicated; others stated that the proposal was nevertheless preferable to the status quo, as it made the procedure more efficient.

30. *The language above was eventually agreed to by silence procedure (6 November 2015).*

E. Topic 5: Making the process simpler – or at least easier to understand

31. Some delegations expressed an interest in simplifying the procedure, as well as in avoiding confusion and invalid ballots. A number of suggestions were made:

- (a) Sample ballot papers including the actual names of the candidates should be made available prior to the election. *It was pointed out that this is indeed already the current practice.*
- (b) Disseminating an easy-to-understand guide to election procedures. *The Secretariat noted that such guides are currently produced with simple instructions for concrete elections, see e.g. doc ICC-ASP/12/46. However, no generic guide to the election procedure as such exists, which would help representatives better understand the resolution. The Secretariat indicated that it would be ready to produce such a document. This was warmly welcomed by delegations.*
- (c) Making the ballot papers available in additional languages. *It was pointed out that this may delay the printing of ballot papers between rounds. The suggestion was made instead to have the President's notes containing the voting instructions translated and printed for delegations.*
- (d) Hold mock elections during and not prior to the ASP.
- (e) Consider electronic means for voting; or Apps to give delegations instant information as to whether their ballot paper is valid; *these ideas were considered as interesting but not realistic.*
- (f) Consider ways of speeding up the counting of votes, which currently was done in an entirely manual way.
- (g) It was also suggested to make the balloting accessible to persons with disabilities (e.g. through Braille); *this proposal was not discussed further.*

F. Topic 6: Separating elections from regular ASP sessions

32. Some delegations stressed that elections should be held separately from regular ASP sessions, as the lengthy election process tends to overshadow the entire proceedings. Some delegations pointed out that elections should always take place in NY to ensure broadest possible participation. The point was however also made that elections should always be held during regular ASP sessions to minimize costs. Resuming the ASP's proceedings during counting was generally seen as a good practice. It was further suggested to improve the telling process.

33. In light of these discussions, the Facilitator suggested that common ground may be found in instructing the Bureau to ensure that elections are always held as a separate segment of the ASP that should not disrupt the general debate.

34. The Facilitator later pointed out that discussions in The Hague on ASP working methods have produced the following suggestion: "Recognizes the benefit of streamlining the agenda of the Assembly so as to allow more focused discussions on key issues. A return to the former tradition of holding separate Sessions in the New York Headquarters for elections of judges and Court officials would contribute to this end."

35. There was limited discussion about the proposal, with some delegations supporting it, but some opposition as well. The point was also made that when elections were held in New York, care should be taken to ensure that conference services and translation were available after hours. It was also pointed out that given the complexity of ICC elections, some delegations will want to ensure presence by capital representative during the elections.

36. The Facilitator suggested the following language to be used as a basis for further discussion in the negotiations on the omnibus resolution:

[44. Requests the Bureau to ensure that elections of judges and other Court officials do not disrupt the substantive segments of the Assembly of States Parties, including by holding the elections at a separate segment of the

Assembly of States Parties, or by considering holding a separate session for elections in New York.]

37. Delegations agreed to forward this draft language to the ASP for further discussion in the context of the omnibus resolution (silence procedure 6 November 2015).

G. Topic 7: Ensuring immediate availability of elected judges

38. The suggestion was made to consider measures to ensure that elected judges are immediately available to take up their position at the Court. A joint proposal by Argentina, Brazil, Costa Rica, Ecuador, Mexico, Uruguay and Venezuela was submitted to this effect.

39. There was general support for the proposal, though some drafting suggestions were also made aimed at making it a bit more flexible.

40. The Facilitator suggested the slightly revised language below, which was agreed to by silence procedure (6 November 2015):

Amend paragraph 1 as follows:

2. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court. **The communication shall reproduce paragraph 6 of this resolution and remind Governments of the importance of elected judges who have made their solemn undertaking being available to take up their full-time service when the Court's workload so requires.**

Amend paragraph 6 as follows:

6. Every nomination should be accompanied by a statement:
- (g) 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;
 - (h) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of article 36, paragraph 5, of the Statute;
 - (i) Containing information relating to article 36, paragraph 8(a)(i) to (iii), of the Statute;
 - (j) Indicating whether the candidate has any expertise under article 36, paragraph 8(b), of the Statute;
 - (k) Indicating under which nationality the candidate is being nominated for the purposes of article 36, paragraph 7, of the Statute, where a candidate is a national of two or more States.
 - (l) Indicating the commitment of the candidate to be available to take up full-time service when the Court's workload so requires.**

Annex

Proposals by Belgium¹

Procedure for the nomination and election of judges of the International Criminal Court (ICC-ASP/3/Res.6)²

[...]

11. The President of the Assembly of States Parties shall extend the nomination period for two weeks, but no more than three times, if at the end of the nomination period any regional or gender minimum voting requirement³ is not matched with at least twice the number of candidates fulfilling that requirement, **and if there are not at least twice as many candidates as vacant seats.**

This addition aims at providing the ASP with a sufficient number of candidates, whose merits can be compared.

[...]

16 bis. If there is no more than one candidate for one single position, the Assembly shall proceed to a last ballot. If the candidate does not obtain a two-thirds majority of States Parties present and voting, the election shall be postponed until a resumed session of the Assembly of States Parties. In such case, the procedure for the nomination of candidates shall restart.

This rule aims at avoiding a voting procedure with an indefinite number of ballots during which the last candidate would not obtain the required majority to be elected.

[...]

20. During any given ballot, each State Party shall vote for no more candidates than seats to be filled, whereby it shall observe the minimum voting requirements regarding lists A and B, regional groups and gender. At the outset of each ballot, each minimum voting requirement shall be determined or discontinued in accordance with paragraphs 21 and 22.

- (a) Each State Party shall vote for a minimum number of candidates from lists A and B. For list A, this number shall be 9 minus the number of judges from list A remaining in office or elected in previous ballots. For list B, this number shall be 5 minus the number of judges from list B remaining in office or elected in previous ballots.
- (b) Each Party shall vote for a minimum number of candidates from each regional group. This number shall be 2 minus the number of judges from that regional group remaining in office or elected in previous ballots.

If the number of States Parties of any given regional group is higher than 16 at that moment, the minimum voting requirement for that group shall be adjusted by adding 1.

If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that regional group (rounded **up-down** to the nearest whole number where applicable). If there ~~is only one candidate~~ **are only two candidates** from a regional group, there shall be no minimum voting requirement for that group.

By requiring at least three candidates by region to obtain a regional minimum voting requirement, the rule would help insuring a sufficient choice for the election.

- (c) Each State Party shall vote for a minimum number of candidates of each gender. This number shall be 6 minus the number of judges of that gender remaining in

¹ Comment by Facilitator: This document contains only the proposals submitted by Belgium that remain under discussion after the conclusion of the consultations leading to ASP 14.

² The preamble and sections A, B and C, as well as the annexes, replicate the text of resolution ICC-ASP/3/Res.6. Sections D, E, F and G replicate the text of resolution ICC-ASP/1/Res.2

³ To be calculated in accordance with paragraph 20(b), second sentence, and paragraph 20(c), second sentence, only.

office or elected in previous ballots. However, if the number of candidates of one gender is 10 or less, the minimum voting requirement for that gender shall be adjusted in accordance with the following formula:

<i>Number of candidates</i>	<i>Minimum voting requirement shall not exceed:</i>
10	6
9	6
8	5
7	5
6	4
5	3
4	2
3	1
2	1
1	0

By requiring at least three candidates by gender to obtain a gender minimum voting requirement, the rule would help insuring a sufficient choice for the election.

[...]
