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**Fourteenth session**

The Hague, 18-26 November 2015

**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,<sup>1</sup> 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”).<sup>2</sup> The terms of reference were amended by resolution ICC-ASP/13/Res.5.<sup>3</sup> The impediment for re-election in paragraph 6 of the terms of reference was waived by decision ICC-ASP/13/Dec.2.

2. At its second meeting, on 9 March 2015, the Bureau decided that the nomination period for the election of members of the Advisory Committee on Nominations (hereinafter “the Advisory Committee”) which will take place at the fourteenth session of the Assembly, on the basis of a recommendation of the Bureau, would run for twelve weeks from 29 June to 20 September 2015. On 21 September, the Bureau decided to extend the nomination period for two weeks, to 4 October 2015.

3. At its eight meeting, on 29 June 2015, the Bureau established a working group mandated to evaluate the candidatures to the Advisory Committee on Nominations and to prepare the recommendation of the Bureau to the Assembly on the composition of the Committee for the next triennium. The present report is submitted pursuant to such mandate.

4. The Bureau further decided that the Working Group would be composed of five delegates, one per regional group, chosen from amongst the members of the Bureau, and would meet in New York. Chile, Hungary, Republic of Korea, Senegal, and the United Kingdom were appointed as members of the Working Group.

5. The Working Group held five meetings between 9 and 13 November 2015.

6. At its first meeting, on 9 November, the Working Group elected Mr. Zoltán Turbék (Hungary) as its Chairperson. There was an understanding that the chairmanship of subsequent working groups entrusted with a similar mandate would follow a pattern of rotation among regional groups.

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<sup>1</sup> See paragraph 19 of resolution ICC-ASP/10/Res.5.

<sup>2</sup> ICC-ASP/10/36.

<sup>3</sup> See paragraph 45 of the resolution.

## II. Criteria

7. The Committee had before it ten nominations, which were received by the Secretariat of the Assembly by the conclusion of the extended nomination period on 4 October 2015.

8. 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.

9. 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, it had to assess whether the candidates submitted 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 move to the second stage of consideration, set out in paragraph 1 of the terms of reference.

10. Regarding the second stage of its selection, the Working Group considered that it must take into account, together with the above requirements, the necessity that the Advisory Committee 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.” The need to ensure continuity in the work of the Advisory Committee had to be taken into consideration as well. The Working Group would arrive at a recommendation based on a cumulative application of these criteria.

## III. Methodology and procedural narrative

11. At its first meeting, on 9 November 2015, the Working Group focused on procedural issues, including how it would deal with the requirements in the terms of reference regarding the candidates on an individual basis, while ensuring due regard for the considerations of equitable representation in the Advisory Committee as a whole. It noted the constraints with respect to the latter requirement, given the pool of candidatures before it.

12. At its 2<sup>nd</sup> and 3<sup>rd</sup> meetings, on 10 and 11 November 2015, the Working Group conducted an examination of each individual candidate, to see whether she or he complied with the criteria contained 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 strengths, and which aspects elicited queries or comments, including in light of additional elements in the terms of reference and other relevant documents on the establishment of the Advisory Committee,<sup>4</sup> such as the requirement under paragraph 3 of the terms of reference that members of the Committee act independently, or of considerations regarding language skills. Attention was also drawn to the specific competence required to fulfil the mandate of the Advisory Committee, i.e. the facilitation of the selection process for persons nominated to serve as judges of the Court. During this phase, as a matter of principle, members of the Working Group abstained from the discussion regarding candidates of their own nationality.

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<sup>4</sup> See Report of the Bureau on the establishment of an Advisory Committee on Nominations of judges of the International Criminal Court (ICC-ASP/10/36).

13. While conducting this examination, although individual members had some queries regarding certain aspects of some of the curricula vitae presented, the Working Group considered that it had sufficient information to reach a decision.

14. The Working Group discussed the requirement of independence under paragraph 3 of the terms of reference and considered that additional guidance from the Bureau in this regard would be desirable in the future.

15. There was a consensus within the Working Group that all candidates met the criteria contained in paragraph 2 of the terms of reference and that it could thus advance to the second stage of consideration, which it commenced at the 3<sup>rd</sup> meeting, on 11 November 2015.

16. The Working Group was of the view that equitable geographic representation was 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 it was important to ensure a proper reflection of the principal legal systems of the world and take into account the factor of gender. In order to ensure continuity in the work of the Advisory Committee it was also important to have a balance between members who had previously served on the Committee and new members.

17. The Working Group noted that the Asia-Pacific Group and the Eastern European Group had each submitted one candidate; the African Group and the Latin America and Caribbean Group had each submitted two candidates; and the Western European and Other States Group, four candidates. This presented a particular challenge in terms of ensuring equitable geographical representation. Thus, the recommendation on the group of nominees that the Working Group would make under the circumstances would not constitute a precedent in this regard. Similarly, as there was only one female candidate, the Working Group was unable to ensure gender balance in the composition of the Advisory Committee.

18. The Working Group considered that its mandate was to recommend to the Bureau a group of nine nominees for election to the Advisory Committee on the basis of the candidatures before it. In light of the difficulties faced in fulfilling its task, it decided also to forward to the Bureau a number of recommendations set out in paragraph 22 below.

#### **IV. Conclusions and Recommendations**

20. The Working Group concluded that all the candidates before it were qualified to serve on the Advisory Committee. They therefore all met the individual criteria set out in paragraph 2 of the terms of reference.

21. The Working Group was of the view that an Advisory Committee comprised of the following members would best meet the collective criteria set out in paragraph 1 of the terms of reference, taking into account the pool of candidates, and recommends that the Bureau nominate them for election to the Advisory Committee (in alphabetical order and with an asterisk identifying a candidate from a common law jurisdiction and a cross those members who have not yet served on the Committee):

BARANKITSE, Thomas (Burundi)†  
 COTTE, Bruno (France)†  
 FUKUDA, Hiroshi (Japan)  
 FULFORD, Adrian (United Kingdom)\*†  
 KIRSCH, Philippe (Canada)\*  
 NSEREKO, Daniel David Ntanda (Uganda)\*  
 PETRIČ, Ernest (Slovenia)  
 PINTO, Mónica (Argentina)  
 VENTURA ROBLES, Manuel (Costa Rica)†

22. On the basis of its experience in the process of selecting candidates for election to the Advisory Committee, the Working Group submits the following recommendations to the Bureau:

- (a) To urge States Parties from each region to nominate more candidates, in order to ensure a wider selection pool for the purpose of achieving equitable geographical representation;
- (b) To urge States Parties to nominate more female candidates, in order to ensure a wider selection pool for the purpose of achieving fair representation of both genders;
- (c) To discuss means of ensuring diversity under paragraph 1 of the terms of reference during the selection process;
- (d) To appeal to all States Parties to refrain from campaigning during the selection process;
- (e) To request the Secretariat to prepare a standardized nomination form for the presentation of curricula vitae in order to facilitate the assessment of candidates;
- (f) To provide guidance, including, if necessary, through an amendment of the terms of reference, on the interpretation of the requirement of independence set out in paragraph 3 of the terms of reference, in particular whether it should be taken into consideration in future selection processes as regards the professional position of candidates at the time they would be serving as Advisory Committee members; and
- (g) To consider reviewing the number of members of the Advisory Committee in order to ensure equitable geographical representation within the Committee.

23. 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 members of Advisory Committee 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.

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