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**Fifteenth session**

The Hague, 16-24 November 2016

**Report of the Bureau on the arrears of States Parties**

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## I. Introduction

1. Pursuant to articles 112, 115 and 117 of the Rome Statute, the expenses of the Court and of the Assembly of States Parties that are provided in the budget considered and decided by the Assembly, shall be provided by, inter alia, contributions made by States Parties, which shall be assessed in accordance with an agreed scale of assessment based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

2. Pursuant to regulation 105.1 of the Financial Regulations and Rules “assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later.” For purpose of this report, lack of full payment in this timeframe is labeled as “outstanding contribution.” Pursuant to the same regulation, “[a]s of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.” Further, as per article 112 paragraph 8 of the Rome Statute “a State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.”

3. As in previous sessions, at its twelfth and thirteenth sessions, the Assembly of States Parties (“the Assembly”) “emphasize[d] the importance of endowing the Court with the necessary financial resources, and urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly.”<sup>1</sup>

4. At its twelfth session, the Assembly “decide[d] that, with the understanding that the facilitation in the New York Working Group and its report to the Assembly on arrears is biennialized, the Bureau should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears; and request[ed] the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears.”<sup>2</sup> The Assembly also took note of the Report of the Bureau on the arrears of States Parties<sup>3</sup> and of its recommendations, including “that the topic be considered again in two years with a report to be submitted to the fourteenth session of the Assembly.”<sup>4</sup> This biennial reporting was done in an effort to contribute to the improvement of the working methods of the Assembly, and to bring additional value to the reports of the committee.

5. At its fourteenth session, the Assembly received a report on the arrears of States Parties,<sup>5</sup> submitted by the facilitator on the issue of arrears, Mr. Slavomir Kantor (Slovakia).<sup>6</sup>

6. The Assembly decided “that the Bureau, through the President of the Assembly, the coordinator of the Working Group and the focal point, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments, as appropriate, continue to engage in dialogue with States

<sup>1</sup> ICC-ASP/12/Res.8, para 60; ICC-ASP/13/Res.5, para 86.

<sup>2</sup> *Ibid.*, annex I, para. 10(b).

<sup>3</sup> ICC-ASP/12/30

<sup>4</sup> ICC-ASP/12/Res.8, para 62.

<sup>5</sup> ICC-ASP/14/40.

<sup>6</sup> The report submitted at the fourteenth session addressed, inter alia, the issue of the biennial facilitation. While not recommending that the facilitation be ended or that its biennial schedule be modified, the report noted that “... having considered the level of outstanding contributions remains worrisome... it is considered necessary that a focal point be appointed to assist the Bureau in this task throughout 2016, to keep the Working Groups informed as regularly as possible on the status of contributions, and to ensure that the requests for payment sent by the Court are received and acted upon by all States Parties. A report to the Assembly at its fifteenth session would be deemed necessary to inform the Assembly of the issues and obstacles identified in pursuing the objective of zero arrears.”

Parties that have outstanding contributions or are in arrears and report thereon to the Assembly at its fifteenth session.”<sup>7</sup>

7. The present report is thus submitted pursuant to the decision of the Assembly at its fourteenth session. The mandate on the issue of arrears was granted to the New York Group by the Bureau of the Assembly and Mr. Sebastian Rogač (Croatia) was appointed as the facilitator on the issue of arrears, via silence procedure on 24 February 2016.

8. This report follows the submission of reports from the fourth to fourteenth sessions of the Assembly, respectively, by the previous facilitators on the same issue and aims to build on their findings and recommendations.<sup>8</sup> It should thus be read in conjunction with the said reports, whose recommendations have been endorsed by the Assembly.

9. It must be recalled, that in general, the facilitation on the issue of arrears has a number of objectives:

(a) To find ways to ensure that no assessed contributions to the Court remain outstanding, by promoting a culture of financial discipline;

(b) To seek ways of cooperating with States Parties that have not met their financial obligations in order to reverse any outstanding balances;

(c) To examine what could be done in the cases in which these outstanding contributions amount to arrears under article 112 of the Rome Statute and/or when obligations have not been met due to circumstances beyond the control of the States Parties in question;

(d) To keep under review the mechanism allowing States Parties to seek exemptions from article 112;<sup>9</sup> and

(e) To enhance communication among the Assembly, the Court and States Parties in arrears, so as to address the issue of outstanding assessed contributions more effectively.

10. At the meeting of the New York Working Group held on 1 April 2016, and in the presence of the President of the ASP, the facilitator presented the work plan for 2016.

11. At the fourth meeting of the Bureau, held on 6 June 2016, the Bureau was presented with an appeal by the President to all States Parties to settle their accounts as soon as possible if they had not yet done so, so that the Court has the requisite resources to carry out its work.

## II. Status of contributions and arrears

12. As of 31 October 2016, the total outstanding contributions, including for the regular budget, the Contingency Fund and interest on the host State loan stood at €33,864,437, an increase of €12,825,264 from 31 October 2015.

13. With regard to outstanding contributions, the Committee on Budget and Finance stressed that “not meeting obligations in relation to the payment of contributions may seriously jeopardize the daily operations of the Court”, adding that “if contributions remain unpaid at the end of the year, the Court may need to resort to the Working Capital Fund [...]”<sup>10</sup>

14. As of 31 October 2016, 75 States Parties were fully settled, 22 States Parties had outstanding contributions for the 2016 budget, 27 States Parties were in arrears, 12 of

<sup>7</sup> ICC-ASP/14/Res.4

<sup>8</sup> ICC-ASP/4/14, ICC-ASP/5/27, ICC-ASP/6/19, ICC-ASP/7/26, ICC-ASP/8/41, ICC-ASP/9/27, ICC-ASP/10/34, ICC-ASP/11/23, ICC-ASP/12/30, and ICC-ASP/14/40.

<sup>9</sup> Article 112, paragraph 8, of the Rome Statute provides as follows: “A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.”

<sup>10</sup> See CBF 27 at paragraph 22.

which were ineligible to vote and required to make a minimum payment in order to avoid the application of Article 112, paragraph 8 of the Rome Statute.<sup>11</sup>

### **III. Consultations and sharing of information**

15. As every year, information on the status of contributions to the Court was annexed to the respective reports of the two annual sessions of the Committee on Budget and Finance, which were distributed to States Parties by the Secretariat.

16. The New York Working Group regularly discussed the issue of arrears in its meetings throughout the year. On 11 and 18 July, and 13 September 2016, the facilitator briefed other facilitators and focal points in The Hague via videoconference. On these occasions, the facilitator discussed the status of arrears and presented updated information on outstanding contributions.

17. The facilitator held bilateral consultations with various States Parties with outstanding contributions, informing them about the exact amounts and the status of their arrears. While emphasizing the importance of settlement of assessed contributions, the facilitator presented States Parties copies of notes verbales and letters sent on the issue of arrears by the Registrar to the States Parties. In July 2016, the facilitator met with the Permanent Missions to the United Nations of some States Parties with significant outstanding contributions. These demarches were followed by further consultations with States Parties during September and October 2016.

18. In October 2016, the facilitator was informed that some States Parties in arrears which he had engaged closely in New York were taking important steps to pay their outstanding contributions, and that appropriate measures would be taken in order to address the matter urgently.

### **IV. Conclusions and recommendations**

19. Bearing in mind the worrisome state of outstanding contributions and arrears, the overall status of contributions should be kept under close observation, and the Assembly should redouble its efforts to ensure financial discipline from all States Parties.

20. Considering that the level of outstanding contributions remains a cause for concern, the Assembly must undertake focused efforts to ensure that no assessed contributions to the Court remain outstanding and ensure that the requests for payment are acted upon by all States Parties. It is therefore necessary that the Working Group take up its biennialized facilitation on the issue of arrears throughout 2017, and report thereon to the Assembly at its sixteenth session.

21. The facilitator concludes its inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of the paragraphs contained the annex to the present report.

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<sup>11</sup> See CBF 27 at Annex II.

## Annex

### Draft text for the omnibus resolution

1. Paragraph 99 of the 2015 omnibus resolution (ICC-ASP/14/Res.4) is re-inserted with an addition:

“*Takes note* with concern the report of the facilitator on the arrears of States Parties.”

2. Paragraph 100 of the 2015 omnibus resolution (ICC-ASP/14/Res.4) is maintained:

“*Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;”

3. The following paragraphs to be inserted into the Mandates section of the 2016 omnibus resolution replacing paragraph 14(b) of the 2015 omnibus resolution (ICC-ASP/14/Res.4):

With regard to the programme budget,

“*Decides* that the Bureau, through the President of the Assembly, the Coordinator of the Working Group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and report thereon to the Assembly at its sixteenth session;”

4. Paragraph 14(c) of the Annex I of the 2015 omnibus resolution (ICC-ASP/14/Res.4) is maintained:

“*Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;”

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