

**Seventeenth session**

The Hague, 5-12 December 2018

**Report of the Bureau on the arrears of States Parties****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 the purposes of this report, lack of full payment within this timeframe is labeled “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.”

3. 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.”<sup>1</sup>

4. The Assembly of States Parties (“the Assembly”) has often “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>2</sup>

5. At its twelfth session, the Assembly decided to biennialize the topic of arrears and its reporting in an effort to contribute to the improvement of the working methods of the Assembly.<sup>3</sup>

6. This decision notwithstanding, in subsequent sessions the Assembly decided “that the Bureau [...] should continue to monitor the status of payments received throughout the

<sup>1</sup> Article 112, paragraph 8, of the Rome Statute provides as follows: “A State Party which is in arrears in the payment of 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>2</sup> ICC-ASP/12/Res.8, para 60; ICC-ASP/13/Res.5, para 86.; ICC-ASP/14/Res.4, para. 100; ICC-ASP/15/Res.5, para. 117; ICC-ASP/16/Res.6, para. 127.

<sup>3</sup> ICC-ASP/12/Res.8, annex I, para 10(b).

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.”<sup>4</sup> The result was that, although the topic was formally biennialized, in practice it was still being reported upon annually.

7. At its sixteenth session, the report on the arrears of States Parties noted “the worrisome state of outstanding contributions and arrears”, and that 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”.<sup>5</sup> The report also noted that it was necessary for the Working Group to take up its biennialized facilitation on the issue of arrears throughout 2018.<sup>6</sup>

8. At its sixteenth session, the Assembly urged all States Parties to make timely payments of assessed contributions and requested the Court and States Parties to make serious efforts and take necessary steps to reduce the level of arrears and outstanding contributions as far as possible to avoid liquidity issues for the Court.<sup>7</sup>

9. The present report is thus submitted pursuant to the decision of the Assembly at its sixteenth session. The Bureau of the Assembly granted to the New York Working Group the mandate on the issue of arrears and Mr. Mohammad Humayun Kabir (Bangladesh) was appointed as the facilitator on the issue of arrears on 4 March 2018.

10. 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>8</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.

## II. Status of contributions and arrears

11. In the report of its thirty-first session, the Committee on Budget and Finance recommended that all States Parties in arrears settle their accounts with the Court as soon as possible. The Committee noted with concern the trend of increasing arrears in recent years, which results in a significant risk of a liquidity shortfall. The Committee further shared its concern about the risk of a liquidity crisis arising from States Parties’ arrears, which could seriously endanger the operations of the Court.<sup>9</sup>

12. As of 12 November 2018, the total outstanding contributions, including for the regular budget, the Working Capital Fund, the Contingency Fund, the Capital Replacement Fund and the host State loan, stood at €22,890,492.

13. As of 12 November 2018, 77 States Parties were fully settled, 21 States Parties had outstanding contributions for the 2018 budget, and 24 States Parties were in arrears, 12 of

<sup>4</sup> ICC-ASP/14/Res.4, annex I, para. 14(b).

<sup>5</sup> ICC-ASP/16/34.

<sup>6</sup> *Ibid.*

<sup>7</sup> ICC-ASP/16/Res.1, para. C(1).

<sup>8</sup> See *supra*, footnote 1.

<sup>9</sup> Report of the Committee on Budget and Finance on the work of its thirty-first session, ICC-ASP/17/15.

which were ineligible to vote and were required to make a minimum payment in order to avoid the application of article 112, paragraph 8, of the Rome Statute.

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

14. As in previous years, information on the status of contributions to the Court was annexed to the reports of the two annual sessions of the Committee on Budget and Finance.<sup>10</sup>

15. The Secretariat sent letters to States Parties subject to the provisions of article 112, paragraph 8, of the Statute on 20 March and 12 October 2018. The President of the Assembly of States Parties communicated with all States Parties on the issue of arrears via letter dated 13 September 2018.

16. From April to September 2018, the facilitator met with concerned State Party delegations from Permanent Missions to the United Nations, particularly those with significant outstanding contributions, to discuss both the amount and status of their arrears. The facilitator also reached out to delegations from States Parties that are currently subject to article 112, paragraph 8, of the Statute (suspension of voting rights) and urged them to restore their voting rights by settling their arrears. The facilitator also suggested to States Parties that they might wish to consult with the Secretariat and explore the possibility of reaching a payment arrangement with the Court, such as settling arrears via instalment payments.

17. The Secretariat periodically updated the facilitator on the status of contributions and arrears; the facilitator shared the updated information with the concerned States Parties upon receiving new figures.

18. The facilitator reported to the New York Working Group on his activities and sought suggestions for increasing the effectiveness of his mandate. He also joined a meeting of The Hague Working Group on the budget via telephone, in order to provide updates on the activities being carried out in New York. The Coordinator of the New York Working Group, Ambassador Michal Mylnár (Slovakia), also brought up the issue of arrears to the attention of delegations during meetings of the New York Working Group.

### **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 heighten its efforts to ensure financial discipline from all States Parties.

20. Considering that the level of outstanding contributions still remains a cause for concern, the Assembly must again 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. As the Court adopts its budget on an annual basis, and as it has been demonstrated that despite the Assembly's best efforts to streamline working methods by biennializing the facilitation on arrears the matter requires annual attention, the facilitator therefore recommends that the Assembly reinstitute an annual facilitation on the matter of arrears.

21. To further bolster the mandate of the facilitator, and in the event of a looming liquidity shortfall crisis for the Court, the discussion of arrears could be taken up to higher levels at the Permanent Missions to the United Nations, particularly those with a significant amount of outstanding contributions. The presence of the President of the Assembly of States Parties would be valuable when making such an approach.

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

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<sup>10</sup> See, generally, ICC-ASP/17/5 and ICC-ASP/17/15.

## Annex

### Draft text for the omnibus resolution

1. Paragraph 126 of the 2017 omnibus resolution (ICC-ASP/16/Res.6) is maintained:  
*“Takes note with concern of the report of the facilitator on the arrears of States Parties.”*
2. Paragraph 127 of the 2017 omnibus resolution (ICC-ASP/16/Res.6) 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 are to be included in the Mandates section of the 2018 omnibus resolution:

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, **via the re-establishment of an annual facilitation on the topic of arrears**, report thereon to the Assembly at its eighteenth session;”*

*“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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