

**ASSEMBLY OF STATES PARTIES TO THE  
ROME STATUTE OF THE  
INTERNATIONAL CRIMINAL COURT**

**EIGHTEENTH SESSION  
THE HAGUE, 2 - 7 DECEMBER 2019**

**OFFICIAL RECORDS  
VOLUME I**

*Note*

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Dec.”.

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## Part I Proceedings

### A. Introduction

1. In accordance with the 7 February 2019 decision of the Bureau of the Assembly of States Parties to the Rome Statute of the International Criminal Court (“the Assembly”), the eighteenth session of the Assembly was held in The Hague from 2 to 7 December 2019, for a total of six working days.<sup>1</sup> The decision was taken pursuant to the request of the Assembly, at the 13th meeting of the seventeenth session, on 12 December 2018, for the Secretariat “to present options for scheduling the next session of the Assembly” and for the Bureau “to decide on the date and venue of the eighteenth session by 31 January 2019.”<sup>2</sup>
2. In accordance with the Rules of Procedure of the Assembly of States Parties,<sup>3</sup> (“the Rules of Procedure”), the President of the Assembly invited all States Parties to the Rome Statute to participate in the session. Other States that had signed the Statute or the Final Act were also invited to participate in the session as observers.
3. In accordance with rule 92 of the Rules of Procedure, invitations to participate in the session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions,<sup>4</sup> as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.
4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non- governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or in consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Assembly, attended and participated in the work of the Assembly.
5. In accordance with rule 94 of the Rules of Procedure, the following States were invited to be present during the work of the Assembly: Bhutan, Democratic People’s Republic of Korea, Equatorial Guinea, Eswatini, Kiribati, Lao People’s Democratic Republic, Lebanon, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, South Sudan, Tonga, Turkmenistan and Tuvalu.
6. The list of delegations to the session is contained in document ICC-ASP/18/INF.1.
7. The session was opened by the President of the Assembly of States Parties, Mr. O-Gon Kwon (Republic of Korea), who had been elected for the seventeenth to nineteenth sessions.<sup>5</sup>

<sup>1</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-2019-Bureau-1-b.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-2019-Bureau-1-b.pdf).

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventeenth session, The Hague, 5-12 December 2018* (ICC-ASP/17/20), part III, ICC-ASP/17/Res.5, annex I, para. 19 (b).

<sup>3</sup> *Official Records ... First session... 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part II.C.

<sup>4</sup> General Assembly resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53, 61/43, 61/259, 63/131, 63/132, 64/3, 64/121, 64/122, 64/123, 64/124, and decision 56/475.

<sup>5</sup> At its sixteenth session, the Assembly had, pursuant to rule 29 of its Rules of Procedure, elected the Bureau for the seventeenth to nineteenth sessions of the Assembly, as follows: *President*: Mr. O-Gon Kwon (Republic of Korea); *Vice-Presidents*: Mr. Momar Diop (Senegal) and Mr. Michal Mlynár (Slovakia); *Other members of the Bureau*: Argentina, Australia, Austria, Colombia, Côte d’Ivoire, Denmark, Ecuador, Estonia, France, Gambia, Ghana, Japan, Mexico, Netherlands, Serbia, Slovenia, State of Palestine and Uganda. See: *Official Records... Sixteenth session.... 2017* (ICC-ASP/16/20), vol.I, part I, paras. 16-17. At the 1st plenary meeting of the seventeenth session, pursuant to rule 29 of its Rules of Procedure, the Assembly elected Mr. Jens-Otto Horslund (Denmark) by acclamation as a Vice-President of the Assembly to complete the term of office of Mr. Momar Diop (Senegal) who had been elected Vice-President of the Assembly and who had resigned from that post effective 19 March 2018.

8. At the Assembly's 1st and 7th plenary meetings, on 2 and 5 December 2019, respectively, in accordance with rule 25 of its Rules of Procedure, the following States were appointed to serve on the Credentials Committee: Austria, Dominican Republic, Hungary, Japan, Mexico, New Zealand, Romania, South Africa, and the State of Palestine.

9. Also at its 7th plenary meeting, the Assembly appointed Mr. Mamadou Racine Ly (Senegal) as Rapporteur for the eighteenth session.

10. The Director of the Secretariat of the Assembly, Mr. Renan Villacis, acted as Secretary of the Assembly. The Assembly was serviced by the Secretariat.

11. At its 1st plenary meeting, on 2 December 2019, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure, and remembered, in particular, victims.

12. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/18/1/Rev.1):

1. Opening of the session by the President.
2. Silent prayer or meditation.
3. Adoption of the agenda.
4. Election of a Bureau member
5. States in arrears.
6. Credentials of representatives of States at the eighteenth session:
  - (a) Appointment of the Credentials Committee; and
  - (b) Report of the Credentials Committee.
7. Organization of work.
8. General debate.
9. Report on the activities of the Bureau.
10. Report on the activities of the Court.
11. Report of the Board of Directors of the Trust Fund for Victims.
12. Election of six members of the Committee on Budget and Finance.
13. Election to fill a vacancy on the Committee on Budget and Finance.
14. Election of one member of the Advisory Committee on the nomination of judges.
15. Consideration and adoption of the budget for the eighteenth financial year.
16. Consideration of the audit reports.
17. Review of the work and the operational mandate of the Independent Oversight Mechanism.
18. Amendments to the Rome Statute and the Rules of Procedure and Evidence.
19. Cooperation.
20. Decision concerning the date of the next session of the Assembly of States Parties.
21. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance.
22. Other matters.

13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/18/1/Add.1).

14. Also at its 1st plenary meeting, on 2 December 2019, the Assembly agreed on a programme of work and decided to meet in plenary session as well as in the working group

format. The Assembly established a Working Group on the Programme Budget for 2020. Ms. Marlene Bonnici (Malta) was appointed Coordinator of the Working Group on the Programme Budget for 2020. Mr. Vincent Rittener (Switzerland) was appointed Coordinator for the consultations on the omnibus resolution. Mr. Luke Roughton (New Zealand) was appointed Coordinator for the review of the procedure for the nomination and election of judges, and Mr. Martin Sørby (Norway) was appointed Coordinator for the revision of the judges' remuneration.

## **B. Consideration of issues on the agenda of the Assembly at its eighteenth session**

### **1. Election of a Bureau member**

15. At the 1st plenary meeting, on 2 December 2019, the Assembly, pursuant to rule 29 of its Rules of Procedure, elected the State of Palestine to complete the term of Japan as a member of the Bureau, from the day after the conclusion of the eighteenth session of the Assembly until the conclusion of the nineteenth session, pursuant to an internal arrangement in the Asia-Pacific group.<sup>6</sup>

### **2. States in arrears**

16. At the 1st plenary meeting, on 2 December 2019, the Assembly was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to twelve States Parties.

17. The President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The President also appealed to all States Parties to pay their assessed contributions for 2020 in a timely manner.

### **3. Credentials of representatives of States Parties at the eighteenth session**

18. At its 9th plenary meeting, on 6 December 2019, the Assembly adopted the report of the Credentials Committee (see annex I to this report).

### **4. General debate**

19. At the 1st, 2nd, 3rd and 4th plenary meetings, on 2 and 3 December 2019, statements were made by the representatives of Andorra; Argentina; Australia; Austria; Bangladesh; Belgium; Bolivia (Plurinational State of); Botswana; Brazil; Bulgaria; Canada; Chile; Colombia; Costa Rica; Cyprus; Czech Republic; Denmark; Ecuador; El Salvador; Estonia; Finland (on behalf of the European Union); France; Gambia; Georgia; Germany; Ghana; Greece; Hungary; Iceland; Ireland; Italy; Japan; Kenya; Latvia; Lesotho; Liechtenstein; Luxembourg; Malawi; Maldives; Mali; Malta; Mexico; the Netherlands; New Zealand; Nigeria; Norway; Panama; Paraguay; Peru; Poland; Portugal; Republic of Korea; Romania; Senegal; Sierra Leone; Slovakia; Slovenia; South Africa; Spain; State of Palestine; Sweden; Switzerland; Timor-Leste; Trinidad and Tobago; Tunisia; Uganda; United Kingdom of Great Britain and Northern Ireland; Uruguay; Vanuatu; Venezuela (Bolivarian Republic of); and Zambia. Statements were also made by China (People's Republic of); Cuba; and Iran (Islamic Republic of).

20. The following international organizations and other entities made a statement: African Union; Council of Europe; International Committee of the Red Cross; International Development Law Organization; and the Sovereign Order of Malta.

21. A statement was made by the International Criminal Court Bar Association. The following civil society organizations also made statements: Africa Legal Aid; Asian Legal Resource Centre (Bangladesh); Coalition for the International Criminal Court; Darfur Women Action Group/African Network on International Criminal Justice; International

<sup>6</sup> See: Agenda and decisions of the 4 December 2017 meeting of the Bureau at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ICC-ASP-2017-Bureau-07.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2017-Bureau-07.pdf) and *Official Records... Seventeenth session... 2018* (ICC-ASP/17/20), vol. I, part I, para. 16.

Federation for Human Rights; Regional Center for Human Rights (Ukraine); Lawyers for Justice in Libya; Parliamentarians for Global Action; Transitional Justice Coordination Group (Afghanistan); Venezuelan Informal Network on the International Criminal Court.

## **5. Report on the activities of the Bureau**

22. At its 1st plenary meeting, on 2 December 2019, the Assembly took note of the oral report on the activities of the Bureau, delivered by the President H.E. Mr. O-Gon Kwon. The President noted that, since the seventeenth session, the Bureau had held 11 formal meetings in order to assist the Assembly in the discharge of its responsibilities under the Rome Statute, as well as a Bureau retreat on 13 June 2019.

23. On behalf of the Bureau, the President expressed pleasure with the work conducted in 2019 by its working groups in The Hague and New York, and by the facilitators and the *ad country* focal points, as they had successfully carried out the mandates of the Assembly under the leadership of their respective Coordinators, Vice-President Ambassador Jens-Otto Horslund (Denmark) and Vice-President Ambassador Michal Mlynár (Slovakia). He was also pleased with the work of the Study Group on Governance under the leadership of Ambassador María Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan) succeeded by Ambassador Hidehisa Horinouchi (Japan), as well as the focal points of the Study Group. This had enabled the Bureau to submit for the Assembly's consideration the respective reports and recommendations on the issues within its mandate.

## **6. Report on the activities of the Court**

24. At its 1st plenary meeting, on 2 December 2019, the Assembly heard statements by Judge Chile Eboe-Osuji, President of the Court, and by Ms. Fatou Bensouda, Prosecutor of the Court. At the same meeting, the Assembly took note of the report on the activities of the International Criminal Court.<sup>7</sup>

## **7. Report of the Board of Directors of the Trust Fund for Victims**

25. At its 1st meeting, on 2 December 2019, the Assembly heard a statement by Mr. Felipe Michelini, Chairperson of the Board of Directors of the Trust Fund for Victims. The Assembly considered and took note of the report on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2018 to 30 June 2019.<sup>8</sup>

## **8. Election of six members of the Committee on Budget and Finance**

26. In a note dated 5 September 2019, the Secretariat informed States that it had received six candidatures and submitted to the Assembly a list of the six candidates nominated by States Parties for election to the Committee on Budget and Finance.<sup>9</sup>

27. At its 1st plenary meeting, on 2 December 2019, in accordance with resolution ICC-ASP/1/Res.5<sup>10</sup> of 12 September 2003 and the recommendation of the Bureau,<sup>11</sup> the Assembly dispensed with a secret ballot<sup>12</sup> and elected the following six members of the Committee on Budget and Finance by consensus:

- (a) Ms. Carolina Maria Fernandez-Opazo (Mexico)
- (b) Mr. Urmet Lee (Estonia)
- (c) Mr. Loudon Overson Mattiya (Malawi)
- (d) Mr. Daniel McDonnell (United Kingdom of Great Britain and Northern Ireland)

<sup>7</sup> ICC-ASP/18/9.

<sup>8</sup> ICC-ASP/18/14.

<sup>9</sup> ICC-ASP/18/7.

<sup>10</sup> As amended by resolution ICC-ASP/2/Res.4.

<sup>11</sup> See: Agenda and decisions of the 17 September 2019 meeting of the Bureau: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf).

<sup>12</sup> ICC-ASP/1/Res.5, para. 11.



- (e) Mr. Klaus Stein (Germany)
- (f) Mr. Richard Veneau (France)

28. The terms of office of the six members shall begin to run on 21 April 2020.<sup>13</sup> Pursuant to the 12 November 2019 recommendation of the Bureau,<sup>14</sup> taken pursuant to the recommendation of the Committee on Budget and Finance,<sup>15</sup> the Assembly decided that the members of the Committee on Budget and Finance elected at the eighteenth session shall be elected for terms beginning on 21 April 2020 and ending on 31 December 2022.

## 9. Election to fill a vacancy on the Committee on Budget and Finance

29. Pursuant to paragraph 2 of the annex to resolution ICC-ASP/1/Res.5, the Bureau decided on 7 May 2019 that the election to fill the vacancy which arose from the 18 March 2019 resignation of Ms. Ingrid Eiken Holmgren (Sweden) would take place during the eighteenth session of the Assembly and the nomination period to fill the vacancy would run from 3 June to 25 August 2019.

30. By the closing date of the nomination period, one nomination by Austria had been received. In a note dated 5 September 2019, the Secretariat submitted to the Assembly the name of the candidate.<sup>16</sup>

31. At its 1st meeting, on 2 December 2019, in accordance with resolution ICC-ASP/1/Res.5, and the recommendation of the Bureau,<sup>17</sup> the Assembly dispensed with a secret ballot and elected the following member of the Committee on Budget and Finance:

Mr. Werner Druml (Austria)

32. Mr. Druml was elected for the remainder of the term of Ms. Holmgren, namely until 20 April 2021, and would be eligible for re-election.

## 10. Election of one member of the Advisory Committee on nominations of judges

33. At its seventeenth session, the Assembly, on the recommendation of the Bureau,<sup>18</sup> appointed by consensus eight members of the Advisory Committee for three-year terms commencing on 5 December 2018, and decided that the ninth member would be appointed at the eighteenth session of the Assembly.<sup>19</sup>

34. In a note, dated 27 September 2019, the Bureau recommended the election of the one candidate nominated for appointment to the Advisory Committee.<sup>20</sup> At its 1st plenary meeting, on 2 December 2019, the Assembly, on the recommendation of the Bureau,<sup>21</sup> appointed the following member of the Advisory Committee on the nominations of judges for a three-year term commencing on 2 December 2019:

Mr. Sang-Hyun Song (Republic of Korea)

35. In accordance with the recommendation of the Bureau to the seventeenth session,<sup>22</sup> the candidate appointed would serve for the remainder of the three-year term, i.e. until 4 December 2021, with the possibility of being re-elected only once.

<sup>13</sup> ICC-ASP/18/7.

<sup>14</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-18-Bureau-10.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-Bureau-10.pdf).

<sup>15</sup> Report of the Committee on Budget and Finance on the work of its thirty-third session: *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, paras. 270-271.

<sup>16</sup> ICC-ASP/18/8.

<sup>17</sup> See: Agenda and decisions of the 17 September 2019 meeting of the Bureau: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf).

<sup>18</sup> Report of the Bureau on the Advisory Committee on Nominations (ICC-ASP/17/21).

<sup>19</sup> *Official Records ... Seventeenth session ... 5-12 December 2018* (ICC-ASP/17/20), vol. I, part I, para. 28.

<sup>20</sup> ICC-ASP/18/19.

<sup>21</sup> Ibid. See also: Agenda and decisions of the 17 September 2019 meeting of the Bureau: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-2019-BUREAU-8.pdf).

<sup>22</sup> Report of the Bureau on the Advisory Committee on Nominations (ICC-ASP/17/21), para. 13.

## 11. Consideration and adoption of the budget for the eighteenth financial year

36. At its 5th meeting, on 4 December 2019, the Assembly heard statements by Mr. Peter Lewis, Registrar of the Court, and Mr. Hitoshi Kozaki, Chairperson of the Committee on Budget and Finance (“the Committee”).

37. The Assembly, through its Working Group on the Programme Budget, considered the 2020 proposed programme budget, the reports of the Committee on Budget and Finance and the reports of the External Auditor. The Assembly also considered the reports of the Audit Committee.

38. At its 9th meeting, on 6 December 2019, the Assembly adopted the report of the Working Group on the programme budget (ICC-ASP/18/WGPB/1) wherein it, inter alia, conveyed the recommendation of the Working Group that the Assembly endorse the recommendations of the Committee at its thirty-third session, with the additional adjustments as reflected in resolution ICC-ASP/18/Res.1.

39. At the same meeting, the Assembly also considered and approved, by consensus, the programme budget for 2020.

40. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/18/Res.1, concerning the programme budget in relation to the following:

(a) Programme budget for 2020, including appropriations totalling €149,205.6 thousand and staffing tables for each of the major programmes. This amount is reduced by the instalments for the host State loan and the portion of the approved budget for Major Programme IV amounting to €479.7 thousand to be financed from the 2017 cash surplus;

(b) Working Capital Fund for 2020;

(c) Outstanding contributions;

(d) Contingency Fund;

(e) Scale of assessment for the apportionment of expenses of the Court;

(f) Financing of appropriations for 2020;

(g) Premises of the Court;

(h) Transfer of funds between major programmes under the 2019 approved programme budget;

(i) Audit;

(j) Budget Management Oversight;

(k) Development of budget proposals;

(l) A strategic approach to an improved budgetary process;

(m) Human Resources;

(n) Referrals by the Security Council;

(o) Five-Year Information Technology and Information Management Strategy; and

(p) Amendments to the Rules of Procedure of the Committee on Budget and Finance.

41. At its 9th meeting, on 6 December 2019, further to the mandate contained in resolution ICC-ASP/17/Res.1,<sup>23</sup> the Assembly adopted by consensus resolution ICC-ASP/18/Res.2 concerning the remuneration of the judges of the International Criminal Court.

## 12. Consideration of the audit reports

42. At its 5th meeting, on 4 December 2019, the Assembly heard a statement by Mr. Samir Abu Lughod, Chairperson of the Audit Committee. The Assembly also heard a statement by Mr. Guy Piolé on behalf of the External Auditor, Mr. Didier Migaud. The Assembly took

<sup>23</sup> Paragraph 2.

note with appreciation of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 January to 31 December 2018<sup>24</sup> and of the Trust Fund for Victims for the same period.<sup>25</sup>

### **13. Review of the work and operational mandate of the Independent Oversight Mechanism**

43. By resolution ICC-ASP/18/Res.6,<sup>26</sup> the Assembly requested the Bureau to complete the review of the work and the operational mandate of the Independent Oversight Mechanism, including the consideration of amendments to the mandate to cover investigations of allegations against former officials.

### **14. Amendments to the Rome Statute and the Rules of Procedure and Evidence**

44. At its 9th plenary meeting, on 6 December 2019, the Assembly took note of the report of the Working Group on Amendments.<sup>27</sup> At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/18/Res.5 on amendments to article 8 of the Rome Statute of the International Criminal Court.

### **15. Cooperation**

45. At its 7th plenary meeting, on 5 December 2019, the Assembly considered the topic of cooperation with the Court, in a two-segment plenary discussion on inter-State and inter-institutional cooperation: Examples of inter-State and regional cooperation initiatives for the effective implementation of the mandate of the International Criminal Court; and Court's priorities and challenges in terms of cooperation focusing on arrest and voluntary cooperation agreements.

46. At its 9th plenary meeting, on 6 December 2019, the Assembly adopted, by consensus, resolution ICC-ASP/18/Res.3 on cooperation.

### **16. Decision concerning the dates and venues of the next sessions of the Assembly of States Parties**

47. At its 9th meeting, on 6 December 2019, the Assembly decided to hold its nineteenth session in New York from 7 to 17 December 2020, and to hold its twentieth session in The Hague.

### **17. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance**

48. At its 9th meeting, on 6 December 2019, the Assembly decided that the Committee on Budget and Finance would hold its thirty-fourth and thirty-fifth sessions in The Hague, from 4 to 8 May 2020 and 14 to 25 September 2020, respectively.

### **18. Other matters**

#### *a) Review of the Court*

49. At its 6th plenary meeting, on 4 December 2019, the Assembly held a discussion on Review of the Court.

50. At its 9th plenary meeting, on 6 December 2019, the Assembly adopted resolution ICC-ASP/18/Res.7 entitled "Review of the International Criminal Court and the Rome Statute system".

<sup>24</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part C.1.

<sup>25</sup> *Ibid.*, part C.2.

<sup>26</sup> Annex I, para. 15.

<sup>27</sup> ICC-ASP/18/32.

b) *Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly*

51. The Assembly expressed its appreciation to Finland and Ireland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly.

52. The Assembly noted with satisfaction that seven delegations had made use of the Trust Fund to attend the eighteenth session of the Assembly.

## Part II

### External audit, programme budget for 2020 and related documents

#### A. Introduction

1. The Assembly of States Parties (the Assembly) had before it the 2020 proposed programme budget submitted by the Registrar of the International Criminal Court (the Court), in an advance version, on 16 July 2019,<sup>1</sup> the two addenda to the budget,<sup>2</sup> the reports of the thirty-second<sup>3</sup> and thirty-third<sup>4</sup> sessions of the Committee on Budget and Finance (the Committee), the reports of the Audit Committee on its ninth and tenth sessions,<sup>5</sup> the financial statements for the Court for the period 1 January to 31 December 2018,<sup>6</sup> and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2018.<sup>7</sup> In addition, the Assembly had before it annex III of the report of the Committee on the work of its thirty-third session, in which the Court outlined the budgetary implications of the Committee's recommendations on the budgets of the major programmes.

2. At its fifth plenary meeting, the Assembly heard statements by the Registrar of the Court, Mr. Peter Lewis, the Chairperson of the Committee, Mr. Hitoshi Kozaki, the Chairperson of the Audit Committee, Mr. Samir Abu Lughod, and the representative of the External Auditor (*la Cour des comptes* (France)), Mr. Guy Piolé. The Assembly was further assisted by the Vice-Chairperson of the Committee, Mr. Urmet Lee.

3. The Working Group on the Programme Budget met on 5 and 6 December 2019. During the meetings the draft resolution was considered and finalized.

#### B. External audit

4. The Assembly noted with appreciation the reports of the External Auditor and the related comments of the Committee, contained in the report on the work of its thirty-third session.

#### C. Amount of appropriation

5. The Court's 2020 proposed programme budget amounted to €151,235.2 thousand, including €3,585,100 for Major Programme VII-2 (Host State Loan), a first addendum for €230.7 thousand for legal aid requirements in the *Al Hassan* case, and a second addendum for €479.7 thousand within Major Programme IV for the costs of the Committee on the Election of the Prosecutor and the Independent Expert Review.

6. The Committee considered the Court's 2020 proposed programme budget at its thirty-third session and concluded that there were a number of areas where savings could be made. Accordingly, the Committee recommended that the budget allocation be reduced to a total of €149,788.5 thousand, including €3,585,100 for Major Programme VII-2 (Host State Loan), the first addendum for €230.7 thousand for legal aid requirements in the *Al Hassan* case, and the additional €479.7 thousand within Major Programme IV for the costs of the Committee on the Election of the Prosecutor and the Independent Expert Review.

7. The Assembly noted that the Court had informed States Parties that, following careful consideration of the latest developments in cases and situations, the additional resources of €230.7 thousand requested by the Court in the first addendum to the budget<sup>8</sup> could be absorbed within the budget for legal aid for the defence as originally recommended by the Committee during its thirty-third session. The Court indicated that this was only possible after a very detailed consideration of the application of the legal aid policy to the new

<sup>1</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part A.

<sup>2</sup> *Ibid.*, annexes XIX and XX.

<sup>3</sup> *Ibid.*, part B.1.

<sup>4</sup> *Ibid.*, part B.2.

<sup>5</sup> Available on the website of the Assembly at [http://asp.icc-cpi.int/en\\_menus/asp/AuditCommittee/](http://asp.icc-cpi.int/en_menus/asp/AuditCommittee/).

<sup>6</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part C.1.

<sup>7</sup> *Ibid.*, part C.2.

<sup>8</sup> *Ibid.*, part A, annex XIX.

developments following the consideration by the Committee of the 2020 proposed programme budget.

8. The Assembly endorsed the recommendations contained in the report of the Committee, with the additional adjustments as reflected in resolution ICC-ASP/18/Res.1.

9. The Assembly decided that, on an exceptional basis, for the year 2020, the amount of €479.7 thousand of the budget appropriations approved by the Assembly for Major Programme IV shall be financed using the cash surplus from 2017.

10. The Assembly therefore approved a budget appropriation for 2020 of €149,205.6 thousand.

11. The Assembly noted that without Major Programme VII-2 (Host State Loan) and the portion of the approved budget for Major Programme IV to be financed from the 2017 cash surplus, the total level of assessed contributions for the 2020 programme budget amounted to €145,140.8 thousand.

#### **D. Contingency Fund**

12. The Assembly decided to maintain the notional level of the Contingency Fund at €7 million.

13. The Assembly authorized the Court to transfer funds between major programmes at year end if the costs of unforeseen activities could not be absorbed within one major programme while a surplus existed in other major programmes, to ensure that all appropriations for 2019 were exhausted before accessing the Contingency Fund.

#### **E. Working Capital Fund**

14. The Assembly took note of the recommendations of the Committee on Budget and Finance and decided that the Working Capital Fund for 2020 shall be established in the amount of €11.6 million. The Assembly also decided that the Court may only use the surplus funds and funds received from the payment of outstanding contributions to reach the established level of the Working Capital Fund.

#### **F. Amendments to the Rules of Procedure of the Committee on Budget and Finance**

15. The Assembly adopted amendments to the Rules of Procedure of the Committee on Budget and Finance as reflected in annex I<sup>9</sup> to resolution ICC-ASP/18/Res.1.

#### **G. Financing of appropriations for 2020**

16. The Assembly resolved that, for 2020, the total assessed contributions amounted to €145,140.8 thousand.

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<sup>9</sup> The Executive Secretary continues to perform general functions within the Secretariat as a whole, as per paragraph 632 of the proposed programme budget of the Court for 2020 (*Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part A).

## Part III

### Resolutions adopted by the Assembly of States Parties

#### Resolution ICC-ASP/18/Res.1

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

#### ICC-ASP/18/Res.1

#### **Resolution of the Assembly of States Parties on the proposed programme budget for 2020, the Working Capital Fund for 2020, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2020 and the Contingency Fund**

*The Assembly of States Parties,*

*Having considered* the 2020 proposed programme budget of the International Criminal Court (“the Court”) and the related conclusions and recommendations contained in the reports of the Committee on Budget and Finance (“the Committee”) on the work of its thirty-second<sup>1</sup> and thirty-third<sup>2</sup> sessions,

#### **A. Programme budget for 2020**

1. *Approves* appropriations totalling €149,205,600 in the appropriation sections described in the following table:

<i>Appropriation section</i>			<i>Thousands of euros</i>
Major Programme	I	Judiciary	12,081.5
Major Programme	II	Office of the Prosecutor	47,383.4
Major Programme	III	Registry	75,916.9
Major Programme	IV	Secretariat of the Assembly of States Parties	3,316.7
Major Programme	V	Premises	2,270.0
Major Programme	VI	Secretariat of the Trust Fund for Victims	3,226.1
Major Programme	VII-5	Independent Oversight Mechanism	704.7
Major Programme	VII-6	Office of Internal Audit	721.2
<i>Subtotal</i>			145,620.5
Major Programme	VII-2	Host State Loan	3,585.1
<b>Total</b>			<b>149,205.6</b>

2. *Notes* that those States Parties that have opted for the one-time payment in respect of the permanent premises and have made such payments in full will not be assessed for the contributions corresponding to Major Programme VII-2 Host State Loan, amounting to €3,585,100;

3. *Further notes* that these contributions as well as the portion of the approved budget for Major Programme IV amounting to €479.7 thousand to be financed from the 2017 cash surplus, as exceptionally decided in section F, paragraph 1 of the present resolution, will bring down the level of the 2020 programme budget appropriations that need to be assessed for contributions by States Parties from €149,205,600 to €145,140,800, and that this amount will be assessed following the principles described in section E;

<sup>1</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.1.

<sup>2</sup> *Ibid.*, part B.2.

4. *Further approves* the following staffing tables for each of the above appropriation sections:

	Judiciary	Office of the Prosecutor	Registry	Secretariat, Assembly of States Parties	Secretariat, Trust Fund for Victims	Independent Oversight Mechanism	Office of Internal Audit	Total
USG	-	1	-	-	-	-	-	1
ASG	-	1	1	-	-	-	-	2
D-2	-	-	-	-	-	-	-	-
D-1	-	3	3	1	1	-	1	9
P-5	3	18	22	1	-	1	-	45
P-4	3	36	44	1	4	1	1	90
P-3	21	77	83	1	2	-	1	185
P-2	12	79	90	1	-	1	-	183
P-1	-	25	5	-	-	-	-	30
<i>Subtotal</i>	<i>39</i>	<i>240</i>	<i>248</i>	<i>5</i>	<i>7</i>	<i>3</i>	<i>3</i>	<i>545</i>
GS-PL	1	1	15	2	-	-	-	19
GS-OL	11	79	312	3	2	1	1	409
<i>Subtotal</i>	<i>12</i>	<i>80</i>	<i>327</i>	<i>5</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>428</i>
<b>Total</b>	<b>51</b>	<b>320</b>	<b>575</b>	<b>10</b>	<b>9</b>	<b>4</b>	<b>4</b>	<b>973</b>

## B. Working Capital Fund for 2020

*The Assembly of States Parties,*

*Recalling* that the Working Capital Fund was established to ensure that the Court be able to meet short-term liquidity problems pending receipt of assessed contributions,<sup>3</sup>

*Noting* the recommendation of the Committee at its twenty-seventh session to reinstate the Working Capital Fund to represent approximately one month's expenditure of the Court's 2016 approved budget (€11.6 million),<sup>4</sup>

*Further noting* that the Committee recommended a consideration of a multi-year funding timetable,<sup>5</sup>

1. *Notes* that the Working Capital Fund for 2019 was established in the amount of €11.6 million;

2. *Further notes* that the current level of the Working Capital Fund is €9.1 million, and *also notes* that the Court will replenish the Working Capital Fund to the level of €11.54 million, exceptionally using the available cash surplus from 2017, in line with the recommendation of the Committee;<sup>6</sup>

3. *Resolves* that the Working Capital Fund for 2020 shall be established in the amount of €11.6 million, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court;

4. *Takes note* of the recommendation of the Committee<sup>7</sup> at its thirty-second session that the Working Capital Fund be maintained at one month of the Court's expenditure, therefore recommending an increase of the notional level to €12.3 million, and *notes* that States Parties

<sup>3</sup> Financial Regulations and Rules 6.2.

<sup>4</sup> *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.2, para. 144.

<sup>5</sup> *Ibid.*, para. 148.

<sup>6</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 179.

<sup>7</sup> *Ibid.*, part B.1, para. 66.



will continue to consider this matter in The Hague Working Group facilitation on the budget; and

5. *Decides* that the Court may only use the surplus funds and funds received from the payment of outstanding contributions to reach the established level of the Working Capital Fund.

## C. Outstanding contributions

*The Assembly of States Parties,*

*Welcoming* the report of the Bureau on the arrears of States Parties,<sup>8</sup> and in particular the conclusions and recommendations contained in that report,<sup>9</sup>

1. *Urges* all States Parties to make timely payments of assessed contributions and *requests* 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, and *further requests* the Court to communicate to the Committee all information concerning outstanding contributions in advance of the nineteenth session of the Assembly of States Parties;

2. *Welcomes* the Court's development of guidelines,<sup>10</sup> consistent with existing rules and regulations, for States Parties which are in arrears and subject to the provisions of article 112, paragraph 8 of the Rome Statute, and which face significant economic hardship, to enter into voluntary and sustainable payment plans, *encourages* States Parties in arrears and subject to the provisions of article 112, paragraph 8, to work voluntarily, in coordination with the Court, to develop such payment plans, and *further requests* the Court to keep States Parties informed of any such payment plans and their implementation through The Hague Working Group facilitation on the budget, including via the monthly financial reports provided to States Parties; and

3. *Takes note* of the recommendations of the Committee<sup>11</sup> and the External Auditor<sup>12</sup> concerning liquidity issues and *notes* that States Parties will continue to consider this matter in The Hague Working Group facilitation on the budget.

## D. Contingency Fund

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res.4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res.4 requesting the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Recalling further* that the Contingency Fund was established to ensure that the Court can meet: a) costs associated with an unforeseen situation following a decision by the Prosecutor to open an investigation; b) unavoidable expenses for developments in existing situations that could not be accurately estimated at the time of the adoption of the budget; and c) costs associated with an unforeseen meeting of the Assembly,<sup>13</sup>

*Taking note* of the advice of the Committee in the reports on the work of its eleventh, thirteenth, nineteenth and twenty-first sessions,

*Recalling* that the Assembly, at its sixteenth session decided that, should the Contingency Fund fall below €5.8 million by its seventeenth session, the Assembly would assess the need for its replenishment, bearing in mind the report of the Committee on Budget and Finance,<sup>14</sup> and regulation 6.6 of the Financial Regulations and Rules,

<sup>8</sup> ICC-ASP/18/34.

<sup>9</sup> Ibid., paras. 15 and 16.

<sup>10</sup> ICC-ASP/18/6.

<sup>11</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2. para. 193.

<sup>12</sup> Final audit report on the budget process of the International Criminal Court (ICC-ASP/18/2/Rev.1), recommendation 9.

<sup>13</sup> Financial Regulations and Rules 6.6.

<sup>14</sup> *Official Records ... Seventeenth session ... 2018* (ICC-ASP/17/20), vol. II, part B.2.

1. *Notes* that the current level of the Contingency Fund is €5.2 million;
2. *Decides* to maintain the Contingency Fund at the notional level of €7.0 million for 2020; and
3. *Requests* the Bureau to keep the €7.0 million threshold under review in light of further experience on the functioning of the Contingency Fund.

## **E. Scale of assessment for the apportionment of expenses of the Court**

*The Assembly of States Parties,*

1. *Decides* that for 2020, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for 2019-2021,<sup>15</sup> and adjusted in accordance with the principles on which the scale is based;<sup>16</sup> and
2. *Notes* that, in addition, any maximum assessment rate for the largest contributors and for the least developed countries applicable for the United Nations regular budget will apply to the Court's scale of assessment.

## **F. Financing of appropriations for 2020**

*The Assembly of States Parties,*

*Noting* its resolution ICC-ASP/18/Res.7 on the Review of the International Criminal Court and the Rome Statute system,

*Noting also* the decision of the Bureau to establish a Committee on the Election of the Prosecutor,

*Noting further* the addendum to the proposed programme budget of the Court for 2020 proposing the level of resources to fund the Independent Expert Review and the work of the Committee on the Election of the Prosecutor, as well as the recommendations of the Committee on Budget and Finance to approve additional resources to this end amounting to €479.7 thousand,

1. *Decides* that, on an exceptional basis, for the year 2020, the amount of €479.7 thousand of the budget appropriations approved by the Assembly for Major Programme IV shall be financed using the cash surplus from 2017;
2. *Notes* that the payments corresponding to Major Programme VII-2 Host State Loan, as well as the portion of the approved budget for Major Programme IV to be financed from the 2017 cash surplus, will reduce the level of the budget appropriations to be assessed for contributions by States Parties to €145,140,800;
3. *Resolves* that, for 2020, assessed contributions for the budget amounting to €145,140,800 of the budget appropriations approved by the Assembly under section A, paragraph 1 of the present resolution, will be financed in accordance with regulations 5.1 and 5.2 of the Financial Regulations and Rules of the Court; and
4. *Emphasizes* that this formula does not constitute a precedent for financing the regular budget of the Court.

## **G. Premises of the Court**

*The Assembly of States Parties,*

*Noting* the recommendations of the Committee on Budget and Finance regarding maintenance and capital replacement for the premises of the Court,<sup>17</sup>

<sup>15</sup> A/RES/73/271.

<sup>16</sup> Rome Statute of the International Criminal Court, article 117.

<sup>17</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.1, paras. 76-83, and part B.2, paras. 107-117.

1. *Approves* the commencement of capital replacement for the premises of the Court at the level of €425 thousand in 2020, while underlining the need to see maintenance and capital replacement in conjunction;
2. *Emphasizes* the need for the capital replacement to be fully justified and limited only to those elements which are absolutely necessary, *requests* the Court to ensure that all measures are taken to achieve savings and efficiencies, including using alternatives to capital replacement whenever possible, and *invites* the Court to submit a long-term plan and estimates for capital replacement in line with these principles;
3. *Notes* that any capital replacement needs arising in the foreseeable future should be financed within the scope of the regular budget process;
4. *Welcomes* the intention of the Committee to review the medium and long-term plans and estimates for capital replacement, as well as financial and administrative mechanisms, at its thirty-fourth session<sup>18</sup> and *invites* the Committee to undertake a detailed analysis and evaluation of the proposed budget taking into account the need for prioritization;
5. *Takes note* of the recommendation of the Committee<sup>19</sup> regarding a mechanism for *pro bono* expert advice from States Parties in the planning and implementation of capital replacement, and *invites* States Parties to further explore this possibility and put forward suggestions in this regard;
6. *Reaffirms* that the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget, and *requests* that a report on the topic be submitted for consideration by the nineteenth session of the Assembly; and
7. *Welcomes with appreciation* the artwork donations to the premises of the Court made by several States Parties in 2019.

## **H. Transfer of funds between major programmes under the 2019 approved programme budget**

*The Assembly of States Parties,*

*Recognizing* that under regulation 4.8 of the Financial Regulations and Rules no transfer between appropriation sections may be made without authorization by the Assembly,

1. *Decides* that, in line with established practice, the Court may transfer any remaining funds between major programmes at the conclusion of 2019 should costs for activities which were unforeseen or could not be accurately estimated be unable to be absorbed within one major programme, whilst a surplus exists in other major programmes, in order to ensure that appropriations for each major programme are exhausted prior to accessing the Contingency Fund.

## **I. Audit**

*The Assembly of States Parties,*

*Having regard* to the Charter of the Audit Committee, adopted at its fourteenth session,<sup>20</sup> as amended,

*Noting* the reports of the Audit Committee on the work of its ninth and tenth sessions,<sup>21</sup>

*Further noting* the recommendations of the Committee on Budget and Finance concerning audit matters,<sup>22</sup>

<sup>18</sup> Ibid., part B.2, para 114.

<sup>19</sup> Ibid., para. 116.

<sup>20</sup> *Official Records ... Fourteenth session ... 2015* (ICC-ASP/14/20), vol. II, part B.3, annex IV.

<sup>21</sup> AC/9/5 and AC/10/5, available on the website of the Audit Committee at [https://asp.icc-cpi.int/en\\_menus/asp/AuditCommittee](https://asp.icc-cpi.int/en_menus/asp/AuditCommittee).

<sup>22</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, paras. 231-257.

1. *Welcomes* the reports of the Audit Committee on the work of its ninth and tenth sessions;
2. *Decides* to extend the term of the External Auditor, the *Cour des comptes*, for a further year, so as to include the financial statements of the Court and the Trust Fund for Victims for 2020;
3. *Notes* that a detailed selection procedure for procurement of an External Auditor will be completed in time for the nineteenth session of the Assembly of States Parties;
4. *Decides* to re-appoint Ms. Elena Sopkovà as a member of the Audit Committee for a term of three years starting on 1 January 2020, while serving as an active member of the Committee on Budget and Finance;
5. *Takes note* of the recommendations made by the *ad hoc* Selection Panel and *decides* to re-appoint Mr. Samir Abu Lughod (Jordan) and to appoint Ms. Clarissa Van Heerden (South Africa) as members of the Audit Committee for a term of three years starting on 1 January 2020;
6. *Requests* the External Auditor to conduct an evaluation of the oversight bodies of the Court as part of its work in 2020, replacing the performance audit, and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole; and
7. *Takes note* of the proposed amendments to the Charter of the Audit Committee contained in annex III to the report of the Audit Committee on its tenth session, *requests* the Audit Committee to provide more detailed background information on the proposed amendments, and *decides* to consider those amendments, including any additional information provided by the Committee and taking into consideration the outcome of the evaluation to be undertaken by the External Auditor, in order to take a decision as appropriate.

## **J. Budget Management Oversight**

*The Assembly of States Parties,*

1. *Notes* that the Strategic Plans of the Court, the Office of the Prosecutor and the Registry are dynamic and updated on a regular basis;
2. *Notes* the Strategic Plans of the Court, the Office of the Prosecutor and the Registry for the period 2019-2021 and *also notes* that the Strategic Plans benefit from the views and comments States Parties make in the dialogue with the Court, the Office of the Prosecutor and the Registry;
3. *Welcomes* the report of the Office of the Prosecutor on the implementation of its Strategic Plan for 2016-2018, and *requests* the Court to continue to assess, develop and apply the lessons learned contained therein;
4. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach;
5. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, including on use of and improvements on performance indicators;
6. *Invites* the Court, the Office of the Prosecutor and the Registry to report annually to the Assembly on the implementation of the Strategic Plans; and
7. *Notes* the oversight roles of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, and *recommends* that these bodies continue to expand their coordination in order to improve the timely exchange of information and reporting of results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities, and to avoid duplication of competence and work.

## K. Development of budget proposals

*The Assembly of States Parties,*

1. *Requests* the Court to present a sustainable budget proposal for its 2021 programme budget, based on transparent and strict financial assessments and needs-analysis. Proposed increases above the level of the 2020 approved budget should be requested only when necessary for the purpose of mandated activities and after all possible steps have been taken to finance such increases through savings and efficiencies;
2. *Recalls* that the proposed programme budget should present the costs for the following year by first highlighting the costs of maintaining current activities, then proposing changes to those activities including full costings of such changes;
3. *Invites* the Court to continue to ensure a stringent internal budgetary process steered by the Registry as part of an annual cycle taking into account past expenditure and leading to a sound and transparent budget proposal, thus allowing the Court to manage its financial situation responsibly, *encourages* the Court to make all efforts to ensure a balanced budget, as appropriate, across organs, and *emphasizes* that the Court should strive to present accurate and sustainable budget proposals based on robust forecasts;
4. *Welcomes* the recommendation of the External Auditor<sup>23</sup> that the Court question the nature of current appropriations when preparing the annual budget proposal, to avoid a gradual drift in budget appropriations;
5. *Recalls* the conclusions of the External Auditor with regard to financial trade-offs<sup>24</sup> and *further recalls* that States Parties support the Court in many ways, also outside the normal budgetary process;
6. *Welcomes* the constructive dialogue between the Committee on Budget and Finance and the Court at the thirty-second session of the Committee on the presentation of budget proposals and *requests* the Court to set Court-wide annual efficiency targets and to present an annex to the 2021 programme budget on the achievements of these efficiency targets, as well as detailed information which clearly distinguishes, to the extent possible, between savings, efficiencies, non-recurrent cost reductions and additional cost reductions achieved in 2020 and estimations for 2021, and which, as recommended by the External Auditor,<sup>25</sup> refers to those savings and efficiencies which result from genuine managerial initiatives and have an impact on the baseline; and
7. *Further welcomes* the recommendations of the Committee in relation to the presentation of the budget proposals and the efforts made by the Court in this regard, *encourages* continued improvement, and *notes* that the Committee will be updated ahead of its thirty-fourth session on the measures taken by the Court and will include its comments in its reports to the Assembly of States Parties.

## L. A strategic approach to an improved budgetary process

*The Assembly of States Parties,*

*Bearing in mind* the independence and confidentiality required to allow the Judiciary and the Office of the Prosecutor to carry out its duties,

1. *Emphasizes* the central role that the report of the Committee on Budget and Finance has on budget discussions in preparation for the Assembly sessions, and *requests* the Committee to ensure that its reports are published as soon as possible after each session;
2. *Reiterates* that in principle documentation should be submitted at least 45 days before the beginning of the respective session of the Committee in both working languages of the Court;

<sup>23</sup> Final audit report on the budget process of the International Criminal Court (ICC-ASP/18/2/Rev.1), recommendation 2.

<sup>24</sup> *Ibid.*, para. 213.

<sup>25</sup> *Ibid.*, recommendation 3.

3. *Stresses* the utmost importance of achieving economies of scale, streamlining activities, identifying potential duplications and promoting synergies within as well as between the different organs of the Court;
4. *Welcomes* the Court's continued efforts to fully implement the "One-Court principle" when establishing the proposed programme budget, which has resulted in improvements to the budgetary process;
5. *Welcomes* the inclusion of comparative tables in the report of the Committee showing the yearly increases in approved programme budgets 2013-2019 and budget allocation per active investigation in Major Programme II and *invites* the Court to include updated versions of these tables in future budget proposals;
6. *Welcomes* the continued work of the Court on the topic of performance indicators as an important tool to fulfil its functions, in particular with regard to effective leadership and management, and *encourages* the Court to continue this work in light of the recommendations of the External Auditor and to share with States Parties any update on the development of performance indicators;
7. *Invites* the Board of Directors of the Trust Fund for Victims to consider the recommendations of the Committee on the Secretariat of the Trust Fund for Victims, *encourages* the Secretariat of the Trust Fund for Victims to continue its close coordination with the other organs of the Court, *takes note* of the report on the evaluation which expresses some concerns on the administration of the Secretariat of the Trust Fund for Victims by the Independent Oversight Mechanism, *regrets* the late submission of that report to the President of the Assembly, and *decides* to examine the conclusions and recommendations contained therein, through the Bureau and its working group, in order to identify measures with a view to improve operations and increase its efficiency and effectiveness in the implementation of the mandate, at the nineteenth session of the Assembly;
8. *Notes* the importance of frequently reconsidering the value of current activity, including any opportunities for redeployment,<sup>26</sup> and *recalls* that careful prioritization is an important principle of efficient and effective management and is key to achieving successful outcomes;
9. *Requests* the Court, in consultation with the Committee, to continue to develop its budgetary process, guided by the Registry, by:
  - (a) Further strengthening the "One-Court principle" by ensuring that the budget process and its underlying assumptions and objectives are based on coordinated and robust strategic planning and prioritization;
  - (b) Further enhancing dialogue and information sharing between the Court and States Parties on the assumptions, objectives and priorities which underpin the draft programme budget at an early stage;
  - (c) Employing maximum flexibility in the management of its human resources in reacting to unexpected situations, and to the extent possible redeploying resources based on actual workload requirements;
  - (d) Continuing to explore ways to preserve the Court's long-term ability to deliver on its mandate effectively and efficiently, while being mindful of the financial constraints of States Parties;
  - (e) Enhancing the dialogue and information sharing between the Court and States Parties on potential medium-term cost drivers with a view to enhancing budget predictability; and
  - (f) Continuing to make all efforts to ensure accurate forecasting and expenditure in all budget lines;
10. *Requests* the Court to continue submitting its annual report on activities and programme performance including, as appropriate, relevant information on the approved budget, expenditure and variance at the sub-programme level with all budget lines, as well

<sup>26</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 27.

as the provisional expenditures and revenues for all trust funds administered by the Court, also being provided by the Court in its financial statements;

11. *Welcomes* the monthly financial reports provided by the Court to States Parties, showing monthly figures on cash flow, balances of the General Fund, the Working Capital Fund and the Contingency Fund, the status of assessed contributions, and monthly and annual cash flow forecasts, and *emphasizes* the usefulness of these reports; and

12. *Commits* itself to financial practices which give utmost priority to the annual budget cycle and *calls for* a restrictive use of multi-annual funds administered outside the cycle.

## M. Human Resources

*The Assembly of States Parties,*

*Recalling* its decision, during its fifteenth session,<sup>27</sup> to approve the implementation of all the elements of the new compensation package applicable as of 1 January 2017, in alignment with the changes and timelines approved by the United Nations General Assembly,

*Noting* the report of the Committee on Budget and Finance on the work of its twenty-eighth session, which welcomed the development of the policy put forward by the Court regarding the compensation review package,<sup>28</sup>

*Noting also* that the Court submitted the amended text of the Staff Rules relating to the United Nations education grant, special education grant and related benefits to the Committee on Budget and Finance at its thirty-second session and that the Committee recommended that the Assembly approve the proposed changes,<sup>29</sup>

1. *Welcomes* the work undertaken by the Court to implement the changes with respect to the new compensation package for staff members in the Professional and higher categories in conformity with the United Nations common system standards;

2. *Takes note* of the text of the amended provisional Staff Rules relating to the United Nations education grant, special education grant and related benefits, and *notes* that the Court intends to promulgate the amended Staff Rules in early 2020;

3. *Notes* the Administrative Instruction on the Classification and Reclassification of Posts promulgated by the Registrar,<sup>30</sup> *requests* the Committee to continue monitoring the implementation of the Administrative Instruction at its thirty-fourth and thirty-fifth sessions and to report to the Assembly, *decides* to approve the reclassifications recommended by the Committee for 2020, *also decides* that no new requests for reclassifications should be submitted by the Court until the new review of the Administrative Instruction is finalized,<sup>31</sup> *stresses* that reclassifications of posts cannot be used as a promotion tool or as a consequence of increased workloads and *recalls* the importance of fairness and transparency in all Human Resources decision-making;

4. *Notes* the External Auditor's recommendations that the Court strive to apply a unified set of Human Resources management policies<sup>32</sup> and develop and publish an ethics charter,<sup>33</sup> and *encourages* the Court to update States Parties on the implementation of those recommendations; and

5. *Encourages* prudent management of the Court's human resources to ensure full budget discipline, and *notes* that all new staff of any category, including temporary, must be properly justified.<sup>34</sup>

<sup>27</sup> ICC-ASP/15/Res.1, section N, para. 1.

<sup>28</sup> *Official Records ... Sixteenth session ... 2017* (ICC-ASP/16/20), vol. II, part B.1, para. 105.

<sup>29</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.1, para. 121.

<sup>30</sup> ICC/AI/2018/002, 22 November 2018.

<sup>31</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 43.

<sup>32</sup> Final audit report on Human Resources Management (ICC-ASP/17/7), recommendation 2.

<sup>33</sup> *Ibid.*, paras. 238-240.

<sup>34</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 37.

## N. Referrals by the Security Council

*The Assembly of States Parties,*

*Noting with concern* that, to date, expenses incurred by the Court due to referrals by the United Nations Security Council<sup>35</sup> have been borne exclusively by States Parties,

*Recalling* that, pursuant to article 115 of the Rome Statute, expenses of the Court and the Assembly shall be provided, inter alia, by funds of the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council,

*Mindful* that, pursuant to article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations, the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations shall be subject to separate arrangements,

1. *Notes* the report of the Registry on the approximate costs allocated so far within the Court in relation to referrals by the Security Council,<sup>36</sup> and *notes* that to date the approved budget allocated in relation to the referrals amounts to approximately €65 million, borne exclusively by States Parties;
2. *Encourages* States Parties to continue discussions on a possible way forward on this issue; and
3. *Invites* the Court to continue including this matter in its institutional dialogue with the United Nations and to report thereon to the nineteenth session of the Assembly.

## O. Five-Year Information Technology and Information Management Strategy

*The Assembly of States Parties,*

*Noting* the recommendation of the Committee at its thirty-first session with regard to multi-year budgeting of the Five-Year Information Technology and Information Management Strategy (“the Strategy”),<sup>37</sup>

*Recalling* its request<sup>38</sup> to the Court to provide the Committee, at its thirty-second session, with a solution within the parameters of the Financial Regulations and Rules for the transfer of unspent funds of the Strategy, caused by objective delays in procurement, from one financial year to the following,

*Noting* the recommendation of the Committee at its thirty-third session<sup>39</sup> that the Court continue to implement the Strategy on the basis of the maximum cost estimates for the years 2019-2021 as presented in the report of the Committee on the work of its thirty-first session (2019: €2,168.5 thousand; 2020: €2,072.5 thousand and 2021: €2,559.5 thousand),<sup>40</sup>

1. *Decides*, in view of the nature of this long-term project, that a portion of the 2019 approved budget for the Strategy amounting to €307,000, and resulting from objective delays in procurement, shall remain available in 2020; and
2. *Requests* the Registrar to report annually to the Assembly, through the Committee, on the implementation of the Strategy.

<sup>35</sup> United Nations Security Council resolutions 1593 (2005) and 1970 (2011).

<sup>36</sup> ICC-ASP/18/28.

<sup>37</sup> *Official Records ... Seventeenth session ... 2018* (ICC-ASP/17/20), vol. II, part B.2, para. 104.

<sup>38</sup> ICC-ASP/18/Res.4, section P, para. 1.

<sup>39</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2, para. 86.

<sup>40</sup> *Official Records ... Seventeenth session ... 2018* (ICC-ASP/17/20), vol. II, part B.2, para. 98, table 5.



## **P. Amendments to the Rules of Procedure of the Committee on Budget and Finance**

*The Assembly of States Parties,*

*Noting* its consideration in 2018 and 2019 of the proposed amendments to the Rules of Procedure of the Committee on Budget and Finance, and *recalling* its request to the Committee to provide more detailed background information on the proposed amendments, and its request to The Hague Working Group to discuss the proposed amendments and any additional information in the context of the budget facilitation,

1. *Takes note* of the proposed amendments to the Rules of Procedure of the Committee on Budget and Finance as contained in annex IV of the report of the Committee on the work of its thirty-second session;<sup>41</sup>
2. *Notes* that the proposed amendments and relevant background information were considered by the Assembly, bearing in mind that the Assembly of States Parties is the only decision-making body having the necessary authority to review its resolutions;
3. *Decides* to adopt the Rules of Procedure of the Committee on Budget and Finance as contained in annex I to this resolution; and
4. *Also decides* to include this issue as part of the overall Review of the International Criminal Court and the Rome Statute system.<sup>42</sup>

<sup>41</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.1.

<sup>42</sup> ICC-ASP/18/Res.7.

## Annex

### **Amended Rules of Procedure of the Committee on Budget and Finance**

#### **I. Sessions**

##### **Rule 1**

##### **Frequency of sessions**

The Committee on Budget and Finance (hereafter referred to as “the Committee”) shall meet when required and at least twice per year.<sup>1</sup>

##### **Rule 2**

##### **Place of sessions**

In general, the Committee shall meet at the seat of the Court. Sessions of the Committee may be held at another place, if the Committee and/or the Assembly of States Parties (hereafter referred to as “the Assembly”) so decides.

##### **Rule 3**

##### **Convening of sessions**

1. Sessions of the Committee shall be convened at the request of:
  - (a) The Assembly;
  - (b) The majority of the members of the Committee; or
  - (c) The Chairperson of the Committee.
2. Before the Chairperson organizes a session of the Committee, he/she shall consult the members of the Committee, including on the date and duration of the session.
3. Any session of the Committee called pursuant to a request of the Assembly shall be convened as soon as possible but no later than sixty days from the date of the request, unless the Assembly decides otherwise.

##### **Rule 4**

##### **Notification of members**

The Chairperson, via the Executive Secretary,<sup>2</sup> shall notify the members of the Committee as early as possible of the date and duration of each session.

#### **II. Agenda**

##### **Rule 5**

##### **Drawing up of the provisional agenda**

The provisional agenda for each session of the Committee shall be drawn up by the Executive Secretary in consultation with the Chairperson of the Committee, whenever possible, and shall include:

- (a) All items proposed by the Assembly;
- (b) All items proposed by the Committee members;
- (c) All items proposed by the Chairperson;

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-7 February 2003* (ICC-ASP/1/3/Add.1), ICC-ASP/1/Res.4, annex, para. 4.

<sup>2</sup> Refer to rule 16.

- (d) All items proposed by any member of the Committee; and
- (e) All items proposed by the Court.

## **Rule 6**

### **Communication of the provisional agenda**

The provisional agenda for each session of the Committee shall be communicated to the members of the Committee, the Court and States Parties as early as possible in advance of the session, but at least twenty-one days before the opening of the session. Any subsequent change in or addition to the provisional agenda shall be brought to the notice of the members of the Committee, the Court and the States Parties of the Assembly sufficiently in advance of the session.

## **Rule 7**

### **Adoption of the agenda**

1. At the beginning of each session, the Committee shall adopt its agenda for the session, on the basis of the provisional agenda.
2. The Committee may, if necessary, amend the agenda, provided that no item referred to it by the Assembly be deleted or modified.

## **III. Functions of the Committee**

## **Rule 8**

### **Functions**

1. The Committee is a subsidiary body of the Assembly composed of independent experts elected by the Assembly.<sup>3</sup>
2. The Committee shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly. In particular, the Committee shall review the proposed programme budget of the Court and shall make the relevant recommendations to the Assembly. The Committee shall also consider reports of the Audit Committee<sup>4</sup> and the External Auditor concerning the financial operations of the Court and shall transmit them to the Assembly together with any comments which it may deem appropriate.

## **Rule 9**

### **Incompatible activities and confidentiality**

1. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Committee.
2. Members of the Committee shall not be eligible to assume any other functions at the International Criminal Court during their term.
3. Members of the Committee shall inform the Chairperson<sup>5</sup> about any potential conflict of interest they might have or that may arise. Members finding themselves in such a situation shall not participate in the consideration of matters to which the conflict relates and shall not vote on such matters. If the Chairperson has any conflict of interest, the Committee members should be informed and the Vice-Chairperson will chair the consideration of the matter.

<sup>3</sup> ICC-ASP/1/Res.4.

<sup>4</sup> At its fourteenth session, the Assembly approved the re-establishment of the Audit Committee. *Official Records ... Fourteenth session ... 2015* (ICC-ASP/14/20), vol. II, part B.3, paras. 140-145 and annex IV.

<sup>5</sup> Or Vice-Chairperson if the member in this case is the Chairperson.

## **IV. Members of the Committee**

### **Rule 10**

#### **Election and term of the Chairperson and the Vice-Chairperson**

1. Each year at its first meeting, the Committee shall elect a Chairperson and a Vice-Chairperson from among its members.
2. The Chairperson and the Vice-Chairperson shall be elected for a term of one year, ending on the day before the first session in the following calendar year, and shall be eligible for re-election twice.

### **Rule 11**

#### **Acting Chairperson**

1. In the absence of the Chairperson, the Vice-Chairperson shall take his/her place and exercise his/her functions.
2. If the Chairperson ceases to hold office pursuant to rule 15, the Vice-Chairperson shall take his/her place and exercise his/her functions until the election of a new Chairperson.

### **Rule 12**

#### **Powers of the Chairperson**

1. The Chairperson, in the exercise of his/her functions, remains under the authority of the Committee.
2. In addition to exercising the powers conferred upon him/her elsewhere in these rules, the Chairperson may declare the opening and closing of each meeting of the Committee, direct the discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. He/she shall rule on points of order and, subject to these rules, shall have complete control of the proceedings of the Committee and over the maintenance of order at its meetings. The Chairperson may, in the course of the discussion of an item, propose to the Committee the limitation of time to be allowed to speakers, the limitation of the number of times each member may speak on any question, the closure of the list of speakers or the closure of the debate. He/she may also propose the suspension or the adjournment of the meeting or of the debate on the question under discussion.
3. The Chairperson shall represent the Committee at relevant meetings, to support the work of the Committee or may delegate another member to do so. The Chairperson shall report to all members on any such meetings.

### **Rule 13**

#### **Powers of the Acting Chairperson**

The Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson.

### **Rule 14**

#### **Rapporteur**

The Committee may appoint one of its members as Rapporteur at each session.

### **Rule 15**

#### **Replacement of the Chairperson or the Vice-Chairperson**

If the Chairperson or the Vice-Chairperson ceases to be able to carry out his/her functions or ceases to be a member of the Committee, he/she shall cease to hold such office and a new Chairperson or Vice-Chairperson shall be elected for the unexpired term.

## **V. Secretariat**

### **Rule 16**

#### **Duties of the Secretariat**

1. The Committee is assisted by the Secretariat of the Assembly of States Parties (ASP Secretariat). An Executive Secretary from within the ASP Secretariat has been designated for this purpose.<sup>6</sup> Additional resources as and when these are required may be allocated by the Head of the ASP Secretariat.
2. The Executive Secretary reports to the Chair of the Committee on all issues of substance pertaining to the work of the Committee but remains a member of the ASP Secretariat in line with the management structure of the Court.<sup>7</sup>
3. The Executive Secretary, a staff member of the Secretariat, shall receive, translate, reproduce and distribute recommendations, reports and other documents of, and provided to, the Committee, interpret statements made at meetings, prepare and circulate, when it is so decided, records of the session, have custody and proper preservation of the archives of the Committee and, generally, perform all other work that the Committee may require.
4. The Executive Secretary will fulfil such duties by coordinating between the Committee members and the respective units of the Court.
5. The Executive Secretary shall be responsible for all the arrangements that may be necessary for the meetings, including ensuring that the Committee has all the pertinent documents (in line with the agenda of the meeting) to be able to undertake its work.
6. The Executive Secretary shall keep the members of the Committee informed of any questions that may be brought before it for consideration.
7. The Executive Secretary shall provide to the Committee, at its request, information and reports on questions specified by the Committee.

## **VI. Conduct of business**

### **Rule 17**

#### **Conduct of business**

As far as conduct of business is concerned, the proceedings of the Committee shall be governed by general practice as reflected in the Rules of Procedure of the Assembly.

## **VII. Decision-making**

### **Rule 18**

#### **Voting rights**

Each member of the Committee, including the Chairperson, shall have one vote.

### **Rule 19**

#### **Decision-making**

1. As a general rule, decision-making in the Committee should be by consensus. If all efforts to reach a decision by consensus have been exhausted, decisions shall be taken by a majority of members present and voting.
2. If a vote is equally divided, the proposal or motion shall be regarded as rejected.

<sup>6</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part B.2, para. 122.

<sup>7</sup> ICC-ASP/2/Res.3.

**Rule 20****Meaning of the phrase “members present and voting”**

For the purposes of these rules, the phrase “members present and voting” means members present and casting an affirmative or negative vote. Members who abstain from voting shall be considered as not voting.

**Rule 21****Conduct of voting**

The Committee shall apply *mutatis mutandis* the rules relating to the conduct of voting in the Rules of Procedure of the Assembly.

**Rule 22****Elections**

All elections shall be held by secret ballot and the procedure shall be conducted by the Secretariat.

**Rule 23****Conduct of elections**

The Committee shall apply *mutatis mutandis* the rules relating to elections in the Rules of Procedure of the Assembly.

**VIII. Languages****Rule 24****Languages of the Committee**

In line with rule 38 of the ASP Rules of Procedure, Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Committee. The Committee can decide which language(s) to use among these six languages as working languages.

**Rule 25****Interpretation**

Statements made in any of the six languages of the Committee shall be interpreted into the other five languages, if requested by any Committee member and in line with the relevant rules.

**Rule 26****Other languages**

1. Any member may make a statement in a language other than the languages of the Committee. In this case, he/she shall himself/herself provide for interpretation into one of the languages of the Committee.
2. Interpretation into the other languages of the Committee (by the interpreters of the Court where possible) may be based on the interpretation given in the first such language.

**Rule 27****Translation of documents**

All recommendations and other documents of the Committee shall be published in the languages of the Committee, which are also the official languages of at least one State Party to the Rome Statute, unless otherwise decided by the Chairperson of the Committee.<sup>8</sup>

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<sup>8</sup> ICC-ASP/7/Res.7.

## **IX. Meetings**

### **Rule 28 Meetings**

1. The meetings of the Committee shall be held in private closed session, unless the Committee decides otherwise.
2. The Committee may decide to issue a communiqué through the Executive Secretary.

## **X. Review of the Rules**

### **Rule 29 Review of the Rules**

The Rules of Procedure may be reviewed, if and when necessary. Any proposed amendments shall be approved by the Assembly.

## Resolution ICC-ASP/18/Res.2

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.2

### **Resolution on the remuneration of the judges of the International Criminal Court**

*The Assembly of States Parties,*

*Recalling* its prior resolutions on the remuneration of judges of the International Criminal Court,

*Recalling also* its request<sup>1</sup> to the Bureau to establish a working group, based in The Hague and open only to States Parties, to discuss a mechanism to consider a revision of the judges' remuneration,

*Recalling further* its resolution ICC-ASP/17/Res.1, by which it decided to establish a mechanism for the review of the judges' remuneration, subject to the adoption of terms of reference by the Assembly,<sup>2</sup> and requested the Registry to commission, in coordination with the Working Group on the Revision of the Judges' Remuneration, an expert in international remuneration systems to undertake a study on the judges' remuneration, including the salary structure and benefits package, and to consider the possible terms of reference for a mechanism to review the remuneration of judges, taking into account the cost implications and the suggestions put forward in the report of the Working Group on the Revision of the Judges' Remuneration,<sup>3</sup>

*Recalling* its request to the Working Group on the Revision of the Judges' Remuneration to prepare the terms of reference for a mechanism to review the remuneration of judges, taking account of the recommendations of the expert, with a view to a decision on their adoption at the eighteenth session of the Assembly,

1. *Welcomes* the report of the Working Group on the Revision of the Judges' Remuneration;<sup>4</sup>
2. *Adopts* the Terms of Reference for the Review of the Judges' Remuneration ("Terms of Reference") contained in annex I to the present resolution;
3. *Requests* the panel referred to in the Terms of Reference to implement the procedure set out in those Terms of Reference for the first time in 2020, for the second time in 2022, and thereafter on a triennial basis;
4. *Notes* that any costs associated with the panel referred to in the Terms of Reference shall be covered from within the existing resources of the Court for the year in which it operates; and
5. *Decides* to amend the conditions of service and compensation of judges of the International Criminal Court<sup>5</sup> by replacing section XIII with the text contained in annex II to the present resolution.

<sup>1</sup> ICC-ASP/16/Res.1, section N, para. 1.

<sup>2</sup> ICC-ASP/17/Res.1, para. 6.

<sup>3</sup> ICC-ASP/17/Res.1, para. 3.

<sup>4</sup> ICC-ASP/18/33.

<sup>5</sup> As adopted by the Assembly in resolution ICC-ASP/3/Res.3 and amended by resolution ICC-ASP/6/Res.6.



## Annex I

### Terms of Reference for the Review of the Judges' Remuneration

These Terms of Reference shall govern the Review of the Judges' Remuneration.

#### A. Mandate

1. A panel of three members, consisting of the Vice-President and Coordinator of The Hague Working Group, the facilitator on the budget, and one outgoing or former member of the Committee on Budget and Finance, to be appointed by the Bureau, shall facilitate the consideration by the Assembly of possible adjustments to the remuneration of the judges of the International Criminal Court, in accordance with article 49 of the Rome Statute of the International Criminal Court.

#### B. Methodology

2. On a triennial basis, before the end of May of the respective year, the panel shall submit a report to the Bureau which shall contain a recommendation for a possible adjustment of the remuneration of the judges of the International Criminal Court.
3. Following consideration of the panel report by The Hague Working Group, the Bureau shall submit the report to the Assembly, at its next regular session, for final approval or rejection of the recommended adjustment.
4. If approved by the Assembly, the adjustment of the remuneration of the judges shall take effect as of 1 January of the following year. An adjustment shall not apply retroactively.
5. When making their recommendation, the panel shall, in particular, take into account:
  - (a) The ability of the Court to attract highly qualified candidates to the position as judges;
  - (b) The cost of living in The Netherlands; and
  - (c) The financial situation of the Court.

#### C. Working methods

6. The Rules of Procedure of the Assembly of States Parties shall apply to the proceedings of the panel, *mutatis mutandis*.
7. The panel may convene in person, by correspondence, or via remote link, as appropriate and in a cost-efficient manner.
8. The Secretariat of the Assembly of States Parties shall provide administrative support to the panel.

#### D. Amendments

9. Amendments to these Terms of Reference are subject to a decision by the Assembly.
10. These Terms of Reference shall be reviewed by the Assembly after three reviews have been completed.

## Annex II

### **Amendment to the conditions of service and compensation of judges of the International Criminal Court contained in the annex to resolution ICC-ASP/3/Res.3, as amended by resolution ICC-ASP/6/Res.6**

*Replace section XIII with the following text:*

The remuneration of the judges of the International Criminal Court shall be reviewed by the Assembly in accordance with the Terms of Reference for the Review of the Judges' Remuneration contained in annex I to resolution ICC-ASP/18/Res.2. All other provisions of these conditions of service and compensation may be reviewed by the Assembly as appropriate.

## Resolution ICC-ASP/18/Res.3

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.3

#### Resolution on cooperation

*The Assembly of States Parties,*

*Recalling* the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation, including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, ICC-ASP/10/Res.2, ICC-ASP/11/Res.5, ICC-ASP/12/Res.3, ICC-ASP/13/Res.3, ICC-ASP/14/Res.3, ICC-ASP/15/Res.3, ICC-ASP/16/Res.2, ICC-ASP/17/Res.3 and the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2,

*Determined* to put an end to impunity by holding to account the perpetrators of the most serious crimes of concern to the international community as a whole, and *reaffirming* that the effective and expeditious prosecution of such crimes must be strengthened, inter alia, by enhancing international cooperation,

*Stressing* the importance of effective and comprehensive cooperation and assistance by States Parties, other States, and international and regional organizations, to enable the Court to fulfil its mandate as set out in the Rome Statute and that States Parties have a general obligation to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction, including with regard to the execution of arrest warrants and surrender requests, as well as other forms of cooperation set out in article 93 of the Rome Statute,

*Welcoming* the report of the Court on cooperation<sup>1</sup>, submitted pursuant to paragraph 31 of resolution ICC-ASP/17/Res.3,

*Noting* that contacts with persons in respect of whom an arrest warrant issued by the Court is outstanding should be avoided when such contacts undermine the objectives of the Rome Statute,

*Further noting* the arrest guidelines issued by the Office of the Prosecutor for the consideration of States, including inter alia, the elimination of non-essential contacts with individuals subject to an arrest warrant issued by the Court and that, when contacts are necessary, an attempt is first made to interact with individuals not subject to an arrest warrant,

*Noting* the guidelines setting out the policy of the United Nations Secretariat on contacts between United Nations officials and persons who are the subject of arrest warrants or summonses issued by the Court, as annexed to a letter dated 3 April 2013 by the Secretary General of the United Nations to the President of the General Assembly and the President of the Security Council,<sup>2</sup>

*Welcoming* the publication released by the Court at the seventeenth session of the Assembly “Arresting ICC suspects at large: Why it matters; What the Court does; What States can do” and the social media campaign of the Court in order to raise awareness on the fifteen unimplemented arrest warrants issued by the Court,

*Recognizing* that requests for cooperation and the implementation thereof should take into account the rights of the accused,

*Commending* international and regional organizations’ support for strengthening cooperation in the area of voluntary agreements,

*Recalling* the pledges relating to cooperation made by States Parties at the Review Conference in Kampala and *noting* the importance of ensuring adequate follow-up with regard to the implementation of pledges,

<sup>1</sup> ICC-ASP/18/16 and Corr.1.

<sup>2</sup> A/67/828-S/2013/210

*Taking note* of the “Matrix over possible areas of strengthening the Court and the Rome Statute System”, dated 27 November 2019, prepared by the Presidency of the Assembly, which identifies as a priority issue to be addressed by the Bureau and its working groups, the strengthening of cooperation;

1. *Emphasizes* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and *stresses* that the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants;
2. *Expresses* serious concerns that arrest warrants or surrender requests against 15 individuals remain outstanding<sup>3</sup> despite the arrest and surrender to the Court of two suspects in November 2019 and January 2019 and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;
3. *Notes* the OTP and the Registry common efforts to devise and implement common strategies and missions to foster the arrest of suspects within the inter-organ working group on arrest strategies created in March 2016;
4. *Reaffirms* that concrete steps and measures to securing arrests need to be considered in a structured and systematic manner, based on the experience developed in national systems, the international ad hoc and mixed tribunals, as well as by the Court, regarding both tracking efforts and operational support;
5. *Underlines* the necessity to continue the discussions on practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants following the seminar organized by the facilitators on cooperation on 7 November 2018 in The Hague;
6. *Urges* States Parties to avoid contact with persons subject to a warrant of arrest issued by the Court, unless such contact is deemed essential by the State Party, *welcomes* the efforts of States and international and regional organizations in this regard, and *acknowledges* that States Parties may, on a voluntary basis, advise the ICC of their own contacts with persons subject to a warrant of arrest made as a result of such an assessment;
7. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, in particular through implementing legislation and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and to set up effective procedures and structures so as to ensure that they can fully meet their obligations under the Rome Statute regarding cooperation and judicial assistance;
8. *Acknowledges* efforts by States, by civil society organizations and by the Court, including through the Legal Tools Project, to facilitate exchange of information and experiences, with a view to raising awareness and facilitating the drafting of national implementing legislation and underlines the need to further exchange experience and best practices between States Parties;
9. *Encourages* States to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court related issues, including requests for assistance, within and across government institutions, as part of efforts aimed at making national procedures for cooperation more efficient, where appropriate;
10. *Recalls* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities, and *encourages* States Parties to continue the discussion;

<sup>3</sup> As of 23 October 2019, see ICC-ASP/18/16, para. 43.

11. *Emphasizes* the on-going efforts made by the Court in providing focused requests for cooperation and assistance which contribute to enhancing the capacity of States Parties and other States to respond expeditiously to requests from the Court, *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance and *invites* the States to consider offering consultations and facilitating meetings between the Court organs formulating the requests and the competent national authorities ultimately in charge of executing them with a view to finding solutions together on ways to assist or transmit the information sought and when appropriate, to follow up on execution of requests and discuss on the most efficient way forward;
12. *Recognizes* that effective and expeditious cooperation with regard to the Court's requests for the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crime is crucial to the provision of reparations to victims and for potentially addressing the costs of legal aid;
13. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible; *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitate cooperation between the Court, States Parties, other States and international organizations;
14. *Recalls* the importance of the non-legally binding Paris Declaration on asset recovery annexed to resolution ICC-ASP/16/Res.2;
15. *Welcomes* the proposal of the facilitation on cooperation to create a secured digital platform to reinforce exchange of relevant information between States Parties to encourage inter-State cooperation and to strengthening States' capacity to cooperate with the Court; to identify the practical challenges to the effective execution of the Court's requests for cooperation and to further raise awareness of the Court's mandate and requirements for financial investigations and asset recovery, and *decides* to continue the work with the Court and the Secretariat of the Assembly in order to open the platform in 2020;
16. *Urges* States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court;
17. *Calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to the Agreement on Privileges and Immunities of the International Criminal Court as a matter of priority, and to incorporate it in their national legislation, as appropriate;
18. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the new relocation agreement concluded since the last resolution on cooperation, and *stresses* the need for more relocation agreements or arrangements with the Court for the expeditious relocation of witnesses;
19. *Calls upon* all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses;
20. *Acknowledges* that, when relocation of witnesses and their families proves necessary, due account should be given to finding solutions that, while fulfilling the strict safety requirements, also minimize the humanitarian costs of geographical distance and change of linguistic and cultural environment and *urges* all States Parties to consider making voluntary contributions to the Special Fund for Relocations;
21. *Welcomes* the conclusion of two agreements between the Court and the Republic of Slovenia, and the Republic of Georgia on the Enforcement of sentences;
22. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences, and on interim and final release is likely to increase in the coming years as more cases proceed toward conclusion, *recalls* the principle enshrined in the Rome Statute that

States Parties should share the responsibility for enforcing sentences of imprisonment and for the interim and final release, in accordance with principles of equitable distribution, and *calls upon* States Parties to actively consider the conclusion of agreements with the Court to this end;

23. *Commends* and *further encourages* the work of the Court on framework agreements or arrangements, or any other means in areas such as interim release, final release - also in cases of acquittal - and sentence enforcement which may be essential to ensuring the rights of suspects and accused persons, in accordance with Rome Statute and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;

24. *Requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its nineteenth session;

25. *Welcomes* and *further encourages* the increased cooperation between the Court and the United Nations, and other international and regional organizations, relevant mechanisms for collecting and preserving evidence, and other inter-governmental institutions with a view to foster prosecution of crimes falling within the jurisdiction of the Court;

26. *Urges* States Parties to explore possibilities for facilitating further cooperation and communication between the Court and international and regional organizations, including by securing adequate and clear mandates when the United Nations Security Council refers situations to the Court, ensuring diplomatic and financial support; cooperation by all United Nations Member States and follow-up of such referrals, as well as taking into account the Court's mandate in the context of other areas of work of the Security Council, including the drafting of Security Council resolutions on sanctions and relevant thematic debates and resolutions;

27. *Emphasizes* the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and *encourages* States Parties to use their capacity as members of international and regional organizations to that end;

28. *Welcomes* the work undertaken on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>4</sup> *recalls* the flyer prepared by the Court that can be used by all stakeholders to promote the 66 recommendations and increase their understanding and implementation by relevant national actors and the Court;

29. *Requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

30. *Requests* the Bureau, through its Working Groups to speed up its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;

31. *Requests* the Bureau, through the facilitation on cooperation, bearing in mind the process launched for the review and the strengthening of the Court, to examine the issues and challenges related to cooperation, with a view to identify concrete measures and follow-up action in order to address those challenges and to report thereon to the Assembly at its nineteenth session;

32. *Encourages* the Bureau to identify issues for the Assembly to continue holding plenary discussions on specific topics related to cooperation, including on the issue of financial investigations and arrests;

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<sup>4</sup> Resolution ICC-ASP/6/Res.2, annex II.

33. *Recognizes* the importance of ensuring a safe environment for strengthening and fostering cooperation between civil society and the Court and of taking all necessary action to address threats and intimidation directed at civil society organizations;

34. *Welcomes* the organization by the Court, with the support of States Parties and international and regional organizations, of the 6<sup>th</sup> Focal points seminar on cooperation in January 2019 at the seat of the Court with attendance of 28 national focal points from situation countries and other countries of relevance for the judicial activities of the Court, and a one day technical seminars directly following the focal points seminar, focused on cooperation regarding financial investigations and recovering of assets, *underlines* that those seminars constitute important platforms to enhance dialogue and cooperation between the Court and States Parties including on new developments in technical areas of cooperation, and *encourages* all stakeholders, including civil society organizations, to continue organizing events that allow for exchange of information with the purpose of enhancing cooperation and constructively seeking solutions to identified challenges;

35. *Welcomes* the plenary session on cooperation held during the eighteenth session of the Assembly, which offered an opportunity to share best practices of inter-state and inter-institutional cooperation among States Parties, the Court and other stakeholders, and which highlighted the need for a greater engagement of States Parties on this matter; and

36. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, *welcomes* the Court report on cooperation<sup>5</sup>, *requests* the Court to submit an updated report on cooperation to the Assembly at its nineteenth session and to present in that report disaggregated data over the responses provided by States Parties, including highlighting the main challenges.

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<sup>5</sup> ICC-ASP/18/16 and Corr.1.

## Resolution ICC-ASP/18/Res.4

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.4

#### **Resolution on the review of the procedure for the nomination and election of judges**

*The Assembly of States Parties,*

*Bearing in mind the provisions of the Rome Statute of the International Criminal Court (“the Court”),*

*Emphasizing that the Court is a permanent international criminal court with the power to exercise its jurisdiction under the Rome Statute over persons for the most serious crimes of concern to the international community as a whole, and as such it must ensure that it maintains the highest standards in its proceedings,*

*Welcoming the contribution the Court has made to accountability and lasting respect for international justice, and determined to continue efforts to strengthen the Court and assist the effective exercise of its mandate,*

*Recalling that in its resolution ICC-ASP/1/Res.3 the Assembly agreed that it would review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary,*

*Affirming that it is the responsibility of States Parties to nominate and elect judicial candidates in accordance with article 36 of the Rome Statute,*

*Recognizing the need to amend the terms of reference for the establishment of an Advisory Committee on Nominations of Judges of the International Criminal Court in accordance with article 36 of the Rome Statute,*

*Emphasizing the importance of equitable geographical representation and gender balance in the organs of the Court,*

1. *Stresses* the importance of nominating and electing as judges qualified, competent and experienced persons of the highest quality and of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices, in accordance with article 36 of the Rome Statute, and *decides* to strengthen the Advisory Committee on Nominations of Judges, so that it can further assist States Parties to that end;
2. *Reaffirms* the need for States Parties to assess the competencies of candidates in accordance with article 36, paragraph 3, of the Rome Statute;
3. *Requests* the Advisory Committee on Nominations of Judges to provide information and analysis to States Parties on assessing the qualities of candidates in accordance with article 36(3)(b), in advance of the nineteenth session of the Assembly;
4. *Recalls* that, under article 36(4)(a) of the Statute, nominations of candidates for election to the Court may be made by any State Party to the Statute, and shall be made either by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question, or by the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court, and in this regard, *stresses* the need for States Parties to be consistent with their obligations under the Rome Statute;
5. *Encourages* States Parties to also take into account good practices at the national and international levels when conducting their national procedures for the nomination of candidates to the Court;
6. *Encourages* States Parties to submit information and commentary on their own existing or prospective nomination and selection procedures to the Secretariat of the Assembly, *requests* the Secretariat to make those submissions available to the Advisory



Committee on Nominations of Judges, and *also requests* the Secretariat to make those submissions publicly available where the submitting State Party has not objected to this;

7. *Requests* the Advisory Committee on Nominations of Judges, in consultation with States and other relevant stakeholders, to prepare and present at the earliest possible date, but no later than the twentieth session of the Assembly of States Parties, a compendium of submissions from States Parties, and to prepare a reference document for States Parties to use on an optional basis, which includes practices that could be taken into account when States Parties are establishing or utilizing national nomination procedures;

8. *Notes with appreciation* the work of the Advisory Committee on Nominations of Judges, and *recalls* that information and analysis presented by the Committee is to inform the decision-making of States Parties and enhance their evaluation of candidates, and is not in any way binding on them or on the Assembly of States Parties;

9. *Recalls* that States Parties should exercise their votes in accordance with article 36;

10. *Encourages* States Parties to refrain from the trading of votes;

11. *Encourages* candidates to deepen their knowledge of the Rome Statute and *welcomes* efforts undertaken by candidates, including relevant training, as appropriate; and

12. *Decides* to adopt the amendments to the procedure for the nomination and election of judges, and the amendments to the Terms of Reference of the Advisory Committee on Nominations of Judges, contained in annexes I and II, respectively, to the present resolution.

## Annex I

### **Amendments to resolution ICC-ASP/3/Res.6 regarding the procedure for the nomination and election of judges**

#### **A. Paragraph 3**

Delete the phrase “shall open 32 weeks before the elections” and insert additional text so that it reads: “The nomination period shall open on the first Monday of the calendar year when an election should take place, and shall last 12 weeks. Any extension of the nomination period shall take into account the need for the Advisory Committee on Nominations of Judges to produce its report at least 16 weeks before the elections.”

#### **B. Insert the following as a new paragraph 6 (f)**

Indicating whether the nomination is made under article 36, paragraph 4(a)(i) or paragraph 4(a)(ii), and specifying in the necessary detail the elements of that procedure.

#### **C. Insert the following as a new paragraph 12 *bis***

All nominated candidates shall be available for interviews, including by videoconference or similar means, before the Advisory Committee on Nominations of Judges. Nominating States should endeavor to ensure that candidates make themselves available for interviews before the Advisory Committee on Nominations of Judges.

#### **D. Insert the following as a new paragraph 12 *ter***

Once the Advisory Committee on Nominations of Judges has made its assessments of candidates, and as early as possible prior to elections, the Bureau will facilitate public roundtable discussions to be held with all candidates. The roundtable discussions shall be open to States Parties and other relevant stakeholders, and conducted in both working languages of the Court. Candidates shall participate in either of the working languages of the Court and may participate by videoconference. The roundtable discussions shall be recorded on video to be made available on the website of the Assembly of States Parties. The remaining modalities for the roundtable discussions will be determined by the New York Working Group.

## Annex II

### **Amendments to the Terms of Reference of the Advisory Committee on Nominations of Judges, contained in the annex to document ICC-ASP/10/36<sup>1</sup>**

#### **A. Paragraph 3**

At the end of paragraph 3 insert: “any member who is a national of a State Party shall not participate in the assessment of candidates nominated by that State Party”

#### **B. Insert the following as a new paragraph 5 *bis***

To that effect, the Committee shall:

- (a) develop a common questionnaire for all nominees that asks them to explain: i) their experience in managing complex criminal proceedings; ii) their experience in public international law; iii) specific experience in gender and children matters; iv) track record of impartiality and integrity; and v) fluency in one of the working languages of the Court; and provide all nominees the option to make their answers to the questionnaire public;
- (b) ask nominees to demonstrate their legal knowledge by presenting relevant evidence;
- (c) check candidates’ references and any other information publicly available;
- (d) create a standard declaration for all candidates to sign that clarifies whether they are aware of any allegations of misconduct, including sexual harassment, made against them;
- (e) assess practical skills such as the ability to work collegially; knowledge of different legal systems; and exposure to and understanding of regional and sub-regional political, social, and cultural environments;
- (f) document the national-level nomination processes in the nominating State Parties; and
- (g) report on the above aspects.

#### **C. Insert the following as a new paragraph 8 *bis***

The Committee shall also, upon request by a State Party, provide a confidential, provisional assessment of the suitability of a potential candidate of that State Party. Such a provisional assessment shall be based solely on information submitted to the Committee by the State Party concerned, and shall not require the Committee to communicate with the potential candidate. A request for a provisional assessment of a potential candidate shall be without prejudice to the decision of the State Party to nominate or not nominate that potential candidate. Any provisional assessment shall also be without prejudice to the evaluation of that individual by the Committee, should they be nominated by a State Party. The number of Committee members responsible for conducting a provisional assessment of a potential candidate shall be limited to three. In the case of a candidate being nominated by a State Party after a provisional assessment, the Committee members that conducted the provisional assessment of the candidate shall recuse themselves from the formal evaluation of that candidate.

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<sup>1</sup> Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court.

**D. Insert the following as a new paragraph 10 *bis***

Once the Committee has completed its work, it shall prepare a thorough and detailed report, of a technical character, that will include for each candidate:

- (a) information collected in accordance with paragraph 5 *bis*;
- (b) qualitative evaluation, information, and analysis, strictly on the suitability or unsuitability of each candidate for a judicial role in light of the requirements of article 36, including detailed reasons for the Committee's evaluation; and
- (c) indication of the national nomination procedure used, including if it was followed in each specific case.

**E. Insert as a new paragraph 10 *ter***

The Committee may request States to provide further information about candidates that it requires to consider and evaluate the candidate's suitability as a judicial appointee.

**F. Amend paragraph 11**

The report of the Committee shall be made available to States Parties and observers by submission to the Bureau, at least 16 weeks before the elections, for thorough subsequent consideration by the Assembly of States Parties.

## Resolution ICC-ASP/18/Res.5

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.5

### **Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court**

*The Assembly of the States Parties,*

*Noting* article 121, paragraphs 1 and 2, of the Rome Statute of the International Criminal Court which permits the Assembly of States Parties to adopt any proposed amendment to the Rome Statute after the expiry of seven years from the entry into force of the Statute,

*Noting* also article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and confirming its understanding that in respect of this amendment, the same principle that applies in respect of a State Party which has not accepted this amendment applies also in respect of States that are not Parties to the Statute,

*Confirming* that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendments contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

*Noting* article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

*Considering* that the crime referred to in article 8, paragraph 2 (e) (xix) is a serious violation of the laws and customs applicable in armed conflict not of an international character,

*Noting* that the crime referred to in article 8, paragraph 2 (e) (xix) is without prejudice to the Second Additional Protocol of 8 June 1977 to the Geneva Conventions,

1. *Decides* to adopt the amendment to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to the present resolution, which is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;
2. *Also decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex II to the present resolution;
3. *Calls upon* all States Parties to ratify or accept this amendment to article 8;
4. *Urges* all States that have not done so to ratify or accede to the Rome Statute, and in doing so to also ratify or accept the amendment to article 8.

## **Annex I**

### **Amendment to be inserted as article 8-2-e)-xix) of the Rome Statute**

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies.

## **Annex II**

### **Elements of crime of new article 8-2-e)-xix) of the Rome Statute**

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## Resolution ICC-ASP/18/Res.6

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.6

### **Strengthening the International Criminal Court and the Assembly of States Parties**

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from the crime of genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent and the duty to end the most serious crimes of concern to the international community and to put an end to the impunity of the perpetrators of such crimes is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law, as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that justice and peace are complementary and mutually reinforce each other,

*Welcoming* that the international community has agreed to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels and, in this regard, encouraging societies facing conflicts to move from war to peace through peaceful solutions,

*Convinced* that justice and the fight against impunity and holding to account the perpetrators of the most serious crimes of concern to the international community and persons criminally responsible under the Statute are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court’s central role as the only permanent international criminal court within an evolving system of international criminal justice and the contribution of the Court to guarantee lasting respect for and the enforcement of international justice,

*Noting* the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

*Reaffirming* its commitment to the Rome Statute of the International Criminal Court and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

*Welcoming also* in this regard relevant contributions from the Court relating to sexual and gender-based crimes, such as the Office of the Prosecutor’s Policy Paper on Sexual and Gender-Based Crimes,<sup>1</sup> as well as contributions from States Parties and other relevant actors, including initiatives for advancing the knowledge and understanding of such crimes, and *convinced* that these initiatives should be an integral part of strategic dialogues and actions

<sup>1</sup> <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

to strengthen the Court and national courts in the fight against impunity, while fully respecting their judicial independence,

*Recalling* that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling further* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

*Recognizing* that crimes within the jurisdiction of the Court threaten the peace, security and well-being of the world and, in consequence, that these are values protected by the Rome Statute,

*Underscoring* its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of the Court's judicial decisions,

*Taking note with appreciation* of the annual United Nations General Assembly resolutions concerning the Court,

*Welcoming* the statement by the President of the Security Council of 12 February 2013 in which the Council stated its intention to continue fighting impunity, reiterated its previous call regarding the importance of State cooperation with the Court in accordance with the respective obligations of States and expressed its commitment to effective follow-up of Council decisions in this regard,

*Deeply concerned* by the on-going lack of effective follow-up by the Security Council to its resolutions referring situations to the Court and its consequences, despite efforts by States Parties,

*Recalling* the full range of justice and reconciliation mechanisms with restorative measures that are complementary to criminal justice processes, including truth and reconciliation commissions, national reparations programmes and institutional and legal reforms, including guarantees of non-recurrence,

*Acknowledging* relevant decisions of the Court that have recognized that contributions to the promotion of peace and reconciliation may be a relevant consideration in sentencing decisions, on a case by case basis,

*Recalling* the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010,

*Recalling also* the decision by the Assembly of States Parties ("the Assembly") to establish a representation of the Court at the African Union Headquarters in Addis Ababa, and *reiterating* that such presence would promote dialogue with the Court and the understanding of its mission within the African Union and among African States, individually and collectively,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Reaffirming* the importance of States Parties' cooperation with the Court to the fulfilment of its mandate, and gravely concerned by attempts at intimidation to deter cooperation,

*Concerned* by the recent reports of threats and intimidation directed at some civil society organizations cooperating with the Court,

*Welcoming* the efforts undertaken by the Bureau and its Working Groups to identify ways to strengthen the International Criminal Court and the Rome Statute system through concrete, actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court,

*Emphasizing* the importance of equitable geographical representation and gender balance in the organs of the Court and, as appropriate, in the work of the Assembly and its subsidiary bodies,



*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly and to ensure the broadest visibility of the Court and the Assembly,

*Recognizing* that victims' rights to equal and effective access to justice, protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice, *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the Court towards victims and *determined* to ensure the effective implementation of victims' rights, which constitute a cornerstone of the Rome Statute system,

*Conscious* of the vital role of field operations in the Court's work in situation countries and the importance of stakeholders working together to create suitable conditions for field operations,

*Conscious also* of the risks faced by personnel of the Court in the field,

*Recalling* that the Court acts within the constraints of an annual programme budget approved by the Assembly,

1. *Reconfirms* its unwavering support for the Court as an independent and impartial judicial institution, *reiterates* its commitment to uphold and defend the principles and values enshrined in the Rome Statute and to preserve its integrity undeterred by any threats against the Court, its officials and those cooperating with it, *expresses concern* over any measures against Court officials, and *renews* its resolve to stand united against impunity;

## A. Universality of the Rome Statute

2. *Welcomes* the State that has acceded to the Rome Statute of the International Criminal Court since the seventeenth session, *invites* States not yet parties to the Rome Statute of the International Criminal Court to become parties to the Rome Statute, as amended, as soon as possible and *calls upon* all States Parties to intensify their efforts to promote universality;

3. *Notes with deep regret* the notification of withdrawal submitted by a State Party under article 127(1) of the Statute on 17 March 2018 as well as the withdrawal of its instrument of accession by another State on 29 April 2019, and *calls upon* these States to reconsider these withdrawals;<sup>2</sup>

4. *Welcomes with appreciation* the continuation by the President of the Assembly of the dialogue on the "Relationship between Africa and the International Criminal Court" initiated by the Bureau during the fifteenth session of the Assembly of States Parties, and invites the Bureau to further widen and deepen this dialogue as needed with all interested States Parties;

5. *Welcomes* the initiatives undertaken to celebrate 17 July as the Day of International Criminal Justice<sup>3</sup> as well as those to commemorate the 20th anniversary of the Rome Statute and *recommends* that, on the basis of lessons learnt, all relevant stakeholders, together with the Court, continue to engage in preparation of appropriate activities and share information with other stakeholders to that effect through the Secretariat of the Assembly<sup>4</sup> and otherwise;

6. *Calls upon* all international and regional organizations as well as civil society to intensify their efforts to promote universality;

7. *Decides* to keep the status of ratifications under review and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas, and *calls upon* States to annually provide the Secretariat of the Assembly of States Parties

<sup>2</sup> Depositary Notification C.N.138.2018.TREATIES-XVIII.10, see at: <https://treaties.un.org/doc/Publication/CN/2018/CN.138.2018-Eng.pdf>.

<sup>3</sup> *Official Records... Review Conference...* 2010 (RC/11), part II.B, Kampala declaration (RC/Decl.1), para 12.

<sup>4</sup> See ICC - Secretariat of the Assembly of States Parties at [https://asp.icc-cpi.int/en\\_menus/asp/asp%20events/ICJD/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/asp%20events/ICJD/Pages/default.aspx).

with updated information about actions and activities in support of international justice, as per the Plan of Action (paragraph 6(h));<sup>5</sup>

8. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law, and international cooperation and judicial assistance with the Court and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority and *encourages* the adoption of victims-related provisions, as and when appropriate;

9. *Welcomes* the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute<sup>6</sup> and *notes with appreciation* the efforts of the Court's President, the Office of the Prosecutor, the President of the Assembly, the Assembly, States Parties and civil society to enhance the effectiveness of universality-related efforts and to encourage States to become parties to the Rome Statute, as amended, and to the Agreement on Privileges and Immunities, as well as relevant efforts undertaken in the framework of the Universal Periodic Review of the Human Rights Council;

10. *Recalls* rule 42 of the Rules of Procedure of the Assembly of States Parties, *endorses* the Bureau decision of 18 October 2017 whereby it adopted an Understanding on the Participation of Observer States in Meetings of the Assembly of States Parties,<sup>7</sup> and *underscores* the importance of promoting universality of the Rome Statute and of strengthening the openness and transparency of the Assembly;

## **B. Agreement on Privileges and Immunities**

11. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *recalls* that the Agreement and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation, and in this regard *calls upon* States Parties, as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

12. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes and *appeals* to all States which are not party to the Agreement on Privileges and Immunities in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

## **C. Cooperation**

13. *Refers* to its resolution ICC-ASP/18/Res.3 on cooperation;

14. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, and *also calls upon* States Parties to ensure full and effective cooperation with the Court in accordance with the Rome Statute, in particular in the areas of implementing constitutional and legislative framework, enforcement of Court decisions and execution of arrest warrants;

15. *Reaffirms* the importance of supporting all those cooperating with the Court, including States and relevant international bodies and entities, in order to secure the ability of the Court

<sup>5</sup> ICC-ASP/5/Res.3, annex I.

<sup>6</sup> ICC-ASP/18/24.

<sup>7</sup> See: Agenda and decisions of the sixth meeting of the Bureau, annex II, appendix: [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ICC-ASP-2017-Bureau-06.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2017-Bureau-06.pdf).

to fulfil its critical mandate of holding accountable perpetrators of the most serious crimes of concern to the international community and delivering justice to victims;

16. *Further calls upon* States Parties to continue to express their political and diplomatic support to the Court, *recalls* the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2 and *encourages* States Parties and the Court to consider further measures to enhance their implementation and to strengthen their efforts to ensure full and effective cooperation with the Court;

17. *Underlines* the necessity to continue the discussions on practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants following the seminar organized by the facilitators on cooperation on 7 November 2018 in The Hague;

18. *Welcomes* the plenary session on cooperation held during the eighteenth session of the Assembly of States Parties which offered an opportunity to share best practices of inter-state and inter-institutional cooperation among States Parties, the Court and other stakeholders, and which highlighted the need for a greater engagement of States Parties on this matter;

19. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitate cooperation between the Court, States Parties, other States and international organizations;

20. *Recalls* the importance of the non-legally binding Declaration of Paris on asset recovery annexed to resolution ICC-ASP/16/Res.2;

21. *Welcomes* the agreement on the enforcement of sentences concluded between Georgia and the Court on 24 January 2019;

22. *Recalls* the Procedures relating to non-cooperation adopted by the Assembly in ICC-ASP/10/Res.5 and revised by the Assembly in resolution ICC-ASP/17/Res.5, *recognizes* with concern the negative impact that the non-execution of Court requests continues to have on the ability of the Court to execute its mandate, *takes note* of the decision of the Court on non-cooperation in relation to the Jordan Referral re. Al-Bashir Appeal;

23. *Recalls* the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation,<sup>8</sup> which was revised as annex III to ICC-ASP/17/31<sup>9</sup> and *encourages* States Parties to make use of it as they see fit in order to improve the implementation of the Assembly procedures relating to non-cooperation;

24. *Takes note* of the report of the Bureau on non-cooperation,<sup>10</sup> *welcomes* the efforts of the President of the Assembly in implementing the Assembly procedures relating to non-cooperation and *recalls* that the President serves ex officio as focal point for his or her region,<sup>11</sup> *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation;

25. *Recalls* the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and *welcomes* the efforts of States Parties to strengthen the relationship between the Court and the Council;

26. *Calls upon* States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, *encourages* the President of the Assembly and the Bureau to continue

<sup>8</sup> ICC-ASP/15/31, Add.1, annex II.

<sup>9</sup> ICC-ASP/17/31 (Report of the Bureau on non-cooperation – Annex III, updated Toolkit).

<sup>10</sup> ICC-ASP/18/23.

<sup>11</sup> ICC-ASP/11/29, para. 12.

consulting with the Security Council and *also encourages* both the Assembly and the Security Council to strengthen their mutual engagement on this matter;

27. *Noting* the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects,<sup>12</sup> *urges* States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued;

#### **D. Host State**

28. *Recognizes* the importance of the relationship between the Court and the host State in accordance with the terms of the Headquarters Agreement and *notes with appreciation* the on-going commitment of the host State to the Court with a view to its more efficient functioning;

#### **E. Relationship with the United Nations**

29. *Recognizes* the need for enhancing the institutional dialogue with the United Nations, including on Security Council referrals;

30. *Welcomes* the twice-yearly reports of the Prosecutor on the situations referred by the United Nations Security Council pursuant to resolutions 1593 (2005) and 1970 (2011), and *noting* the Prosecutor's repeated requests for effective Security Council follow-up, *recognizes* the efforts of some members of the Security Council in this regard, and *urges* all members of the Security Council to support future such requests;

31. *Recognizes* that ratification or accession to the Rome Statute by members of the United Nations Security Council enhances joint efforts to combat impunity for the most serious crimes of concern to the international community as a whole;

32. *Also recognizes* the Security Council's call regarding the importance of State cooperation with the Court and *encourages* further strengthening of the Security Council's relationship with the Court by:

(a) providing effective follow-up of situations referred by the Council to the Court and on-going political support;

(b) enabling financial support by the United Nations for expenses incurred by the Court due to referrals of the Council;

(c) continued support for the work of the Court through cooperation and assistance by peacekeeping and special political missions mandated by the Council, including by considering extending best practices with respect to the drafting of mandates of peacekeeping operations while respecting their basic principles, and increased cooperation between Sanctions Committees and the Court;

(d) considering mandating peacekeeping and special political missions to contribute, where appropriate, to the strengthening of national justice systems through training, outreach and other forms of assistance;

(e) enhanced engagement by the Council with Court representatives and on matters related to the Court in various formats; and

(f) institutionalizing Council cooperation with and support for the Court in this regard;

33. *Recalls* the report of the Court on the status of on-going cooperation with the United Nations, including in the field;<sup>13</sup>

34. *Encourages* all United Nations Offices, Funds and Programmes to strengthen their cooperation with the Court, and to collaborate effectively with the Office of Legal Affairs as focal point for cooperation between the United Nations system and the Court;

<sup>12</sup> See Corrigendum of "Orders to the Registrar concerning action to be taken in case of information relating to the travel of suspects", ICC-02/05-01/09-235-Corr (15 April 2015).

<sup>13</sup> ICC-ASP/12/42.

35. *Recalls* article 4 of the Relationship Agreement between the Court and the United Nations, and *stresses* the continuing need to ensure the ability of the Court to fully exercise its capacity of observer to the United Nations and its ability to interact and engage in dialogue with the United Nations, including through its attendance and participation as observer in the activities of the United Nations General Assembly, and through the Court's officials' regular visits to the United Nations to provide briefings and updates on its activities;

36. *Commends* the important work of the New York Liaison Office of the Court, *reiterates* its full support for the Office and *stresses* the importance of the continued and further strengthening of the implementation of its functions in accordance with ICC-ASP/4/6, paragraphs 2, 3 and 4;

37. *Welcomes* that States Parties have been informed throughout 2019 on Court-related developments at the United Nations and in particular at the Security Council, notably through regular briefings provided by the designated State Party member of the Security Council, and *calls upon* Bureau members and other States Parties to continue providing States Parties with information about their efforts at the United Nations and in any other international or regional fora to promote the fight against impunity;

38. *Welcomes* the presentation of the annual report of the Court to the General Assembly of the United Nations<sup>14</sup> and in particular its focus on the relationship between the Court and the United Nations, *also welcomes* the adoption of resolution A/RES/74/6 by the General Assembly and *encourages* States Parties to continue their constructive engagement with United Nations Member States to further strengthen this resolution;

39. *Notes with concern* that, to date, expenses incurred by the Court due to referrals by the Security Council continue to be borne exclusively by States Parties and *notes* that, to date, the approved budget allocated so far within the Court in relation to the referrals made by the Security Council amounts to approximately €65 million;

40. *Stresses* that, if the United Nations is unable to provide funds for the Court to cover the expenses incurred due to referrals by the Security Council, this will, among other factors, continue to exacerbate resource pressure on the Court;

41. *Urges* States Parties to pursue, within the General Assembly of the United Nations, the implementation of article 115, paragraph (b), of the Rome Statute, also taking into account that article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations states that the conditions under which any funds may be provided to the Court by a decision of the General Assembly shall be subject to separate arrangements;

42. *Encourages* the Court to further engage with the relevant Sanctions Committees of the United Nations Security Council with a view to improving their cooperation and achieving better coordination on matters pertaining to areas of mutual concern;

43. *Notes* that all cooperation received by the Court from the United Nations is provided strictly on a reimbursable basis;

## **F. Relationships with other international organizations and bodies**

44. *Welcomes* the efforts undertaken by various regional and other international organizations to support the Court in the fulfilment of its mandate;

45. *Recalls* the memoranda of understanding and agreements on cooperation concluded by the Court with the European Union, the Asian-African Legal Consultative Organization, the Organization of American States, the Commonwealth, the Organisation internationale de la Francophonie, the Parliament of the MERCOSUR, and the Inter-American Court of Human Rights;

46. *Welcomes* the efforts of the Court to engage with various regional bodies and entities, including through its participation in the bi-annual meeting of the Organization of American States on strengthening cooperation with the ICC, the EU Day against Impunity and the organization of a roundtable with the European Union, the briefing to the African, Caribbean

<sup>14</sup> United Nations document A/74/324.

and Pacific (“ACP”) Group of States in Brussels, Belgium, as well as the annual session of the Asian-African Legal Consultative Organization;

47. *Emphasizes* the need to pursue efforts aimed at intensifying dialogue with the African Union and to strengthen the relationship between the Court and the African Union and *welcomes* the Court’s further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office, *recognizes* the engagement of the President of the Assembly with officials of the African Union in Addis Ababa and *calls upon* all relevant stakeholders to support strengthening the relationship between the Court and the African Union;

48. *Welcomes* the series of meetings previously held in Addis Ababa which took the form of joint seminars between the Court and the African Union, in July 2011, October 2012, July 2014 and October 2015, and consequent retreats in October 2016 and in November 2017 organized by the Court to enable a frank and constructive dialogue between the Court and the African States Parties to the Rome Statute as a key measure to strengthen relations between the Court and its African partners and address challenges within the context of this relationship;

49. *Further welcomes* the organization of a retreat on 12 June 2019 in Addis Ababa, Ethiopia, between the Court and African States Parties to the Rome Statute, with the participation of the Office of the Legal Counsel of the African Union and the Trust Fund for Victims;

50. *Welcomes* the organization of joint seminars between the Court and the Caribbean Community (“CARICOM”) in Port of Spain, Trinidad and Tobago from 16 to 17 May 2011, and from 10 to 11 January 2017, on the importance of working towards the universality of the Rome Statute, adopting implementing legislation and increasing participation in meetings of the Assembly of States Parties;

51. *Also welcomes* the efforts to further the presence of the Court at meetings of regional organizations, including through the organization of a side event at the 48th Pacific Islands Forum held in Apia, Samoa, from 4 to 8 September 2017, and the address by the President of the Court to the 55th Ordinary Session of the Authority of Heads of State and Government of the Economic Community of West African States, in Abuja, Nigeria, on 29 June 2019;

52. *Recalls* the contribution that the International Humanitarian Fact-finding Commission, established by article 90 of the Additional Protocol I to the 1949 Geneva Convention, could make in ascertaining facts related to alleged violations of international humanitarian law and facilitating, where appropriate, the prosecution of war crimes, both at the national level and before the Court;

## G. Activities of the Court

53. *Takes note* of the latest report on the activities of the Court to the Assembly;<sup>15</sup>

54. *Notes with satisfaction* the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court’s activities including its preliminary examinations, investigations and judicial proceedings in various situations which either States Parties or the United Nations Security Council<sup>16</sup> referred to the Court or which the Prosecutor initiated *proprio motu*;

55. *Recalls* its invitation to the Court to continue to take note of best practices of other relevant international and national organizations tribunals and mechanisms, including those gained by national institutions that have already investigated and prosecuted crimes that fall within the Court’s jurisdiction, in solving challenges similar to those encountered by the Court, while reiterating its respect for the independence of the Court;

56. *Encourages* the Court to take note of the best practices of relevant international and national organizations, tribunals, and mechanisms related to sexual and gender-based crimes, including practices related to investigation, prosecution and training, in solving challenges

<sup>15</sup> ICC-ASP/18/9.

<sup>16</sup> United Nations Security Council resolutions 1593 (2005) and 1970 (2011).

related to crimes under the Rome Statute, including sexual and gender-based crimes, while reiterating its respect for the independence of the Court;

57. *Recognizes* the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them, *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the nineteenth session of the Assembly;

58. *Notes with appreciation* the efforts undertaken by the Office of the Prosecutor to achieve the efficiency and transparency of its preliminary examinations, investigations and prosecutions;

59. *Welcomes* the continued implementation by the Office of the Prosecutor of its Policy Papers on Case Selection and Prioritization, on Children, and on Sexual and Gender-Based Crimes, and, in this regard, *stresses* the importance of the effective investigation and prosecution of sexual and gender-based crimes and crimes against children by the Court and by national courts, in order to end impunity for perpetrators of such crimes, *calls upon* States Parties to consider the Policy Papers to strengthen the investigation and prosecution of these crimes domestically and *notes* the on-going preparation of the Office of the Prosecutor's Policy Paper on the Protection of Cultural Property within the Rome Statute framework;

60. *Expresses its appreciation* to the Office of the Prosecutor for consulting with States Parties and other stakeholders before the issuance of its policies and strategies and *welcomes* the contributions made by States Parties in this regard;

61. *Also welcomes* the efforts undertaken by the Court to implement the One-Court principle, and to coordinate its activities among its organs at all levels, including through the implementation of measures to increase clarity on the responsibility of different organs, while respecting the independence of the judges and the Prosecutor and the neutrality of the Registry and *encourages* the Court to undertake all necessary efforts to fully implement the One-Court principle, inter alia with a view to ensuring full transparency, good governance, efficient use of financial resources and sound management;

62. *Notes* the Strategic Plans of the Court, the Office of the Prosecutor and the Registry for the period 2019-2021 and *also notes* that the Strategic Plans benefit from the views and comments States Parties make in the dialogue with the Court, the Office of the Prosecutor and the Registry;

63. *Notes with appreciation* the continued efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court's field operations with a view to increasing their efficiency and visibility and *encourages* the Court to continue to optimize its field offices and activities in close cooperation with the United Nations, as appropriate, in order to ensure the Court's continued relevance and impact in States in which it carries out its work;

64. *Welcomes* the on-going efforts undertaken by the Court to improve its use of alternative sources of information and evidence as well as its capacities to this end, including in the field of financial investigations, *encourages* the Court to continue these efforts and *notes* the importance of providing the Court with the appropriate means for this purpose;

65. *Recognizes* the important work done by the field-based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;

66. *Emphasizes* the need for the Court to continue to improve and adapt outreach activities with a view to further developing and implementing effectively and efficiently the Strategic Plan for Outreach<sup>17</sup> in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;

67. *Recalls* that the issues of public information and communication about the Court and its activities constitute a shared responsibility of the Court and States Parties, while

<sup>17</sup> ICC-ASP/5/12.

*acknowledging* the significant contribution of other stakeholders to developing a coordinated and comprehensive approach;

## H. Elections

68. *Refers* to resolution ICC-ASP/18/Res.4, which, inter alia, adopted amendments to the procedure set out in ICC-ASP/3/Res.6 for the nomination and election of judges, and amendments to the terms of reference of the Advisory Committee on Nominations of Judges of the International Criminal Court adopted by the Assembly via resolution ICC-ASP/10/Res.5, paragraph 19;

69. *Stresses* the importance of nominating and electing as judges, qualified, competent and experienced persons of the highest quality and of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices, in accordance with article 36 of the Rome Statute, and for this purpose encourages States Parties to conduct thorough and transparent processes to identify the best candidates;

70. *Stresses* 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;

71. *Welcomes* the report of the Bureau on the Advisory Committee on Nominations;<sup>18</sup>

72. *Recalls* its decision that the Advisory Committee on Nominations hold its sessions in The Hague or in New York, depending on the cost effectiveness of the particular venue;

73. *Reiterates* the importance of interviews with candidates, including by videoconference or similar means, to the effective discharge of its mandate and stresses the responsibility of the nominating States to ensure that candidates attend an interview with the Advisory Committee on Nominations;

74. *Recalls* the terms of reference of the Advisory Committee on Nominations of Judges of the International Criminal Court adopted by the Assembly via resolution ICC-ASP/10/Res.5, paragraph 19, as amended via resolution ICC-ASP/18/Res.4, and *requests* States Parties which may be considering nominations of their nationals as members of the Advisory Committee to bear in mind that the composition of the Committee should reflect, inter alia, "a fair representation of both genders";

## I. Secretariat of the Assembly of States Parties

75. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties ("the Secretariat"), *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat participates in the meetings of the Coordination Council when matters of mutual concern are considered;

76. *Recalls* the general oversight function of the Bureau over the Secretariat, as contained in the resolution establishing the Secretariat;<sup>19</sup>

77. *Welcomes* the report of the Bureau on the assessment of the Secretariat and the recommendations contained therein;<sup>20</sup>

## J. Counsel

78. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

<sup>18</sup> ICC-ASP/18/19.

<sup>19</sup> ICC-ASP/2/Res.3, annex, para. 10.

<sup>20</sup> ICC-ASP/17/39.



79. *Takes note* of the report on the constitution and activities of the International Criminal Court Bar Association;<sup>21</sup>

80. *Recognizes* the International Criminal Court Bar Association, as an independent representative body of counsel which may be consulted by the Registrar, if appropriate, pursuant to rule 20, sub-rule 3 of the Rules of Procedure and Evidence;

81. *Invites* the International Criminal Court Bar Association to report to the Assembly, through the Bureau, on its activities in advance of the nineteenth session;

82. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel and thus *continues to encourage* applications to the list of counsel established as required under rule 21, sub-rule 2, of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

## K. Legal aid

83. *Acknowledges* the Court's efforts to continue implementing the legal aid remuneration policy and *stresses* the need for continuous monitoring of the efficiency of the legal aid system to uphold and *strengthen* the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility;<sup>22</sup>

84. *Takes note* of the information provided by the Registrar<sup>23</sup> and the recommendations made by the Committee on Budget and Finance regarding this matter;<sup>24</sup>

85. *Recalls* the fundamental importance of the legal aid system to ensuring the fairness of judicial proceedings as well as the right of the defendants and victims to appropriate legal representation;

## L. Study Group on Governance

86. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

87. *Takes note* of the Bureau's report on the Study Group on Governance;<sup>25</sup>

88. *Extends* for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, ICC-ASP/15/Res.5, ICC-ASP/16/Res.6 and ICC-ASP/17/Res.5;

89. *Encourages* the Court to continue its work in 2020 on developing common practice, in particular on victim participation;

90. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt, as necessary;

91. *Welcomes* the continued work of the Court on the topic of performance indicators as an important tool to fulfill its functions;

92. *Expresses* the Assembly's wish to continue an active dialogue with the Court on that topic, bearing in mind that the Court needs to implement its intended approach in order to produce results which can form the basis of further dialogue;

93. *Takes note* of the "Matrix over possible areas of strengthening the Court and the Rome Statute System", dated 27 November 2019, prepared by the Presidency of the Assembly, as

<sup>21</sup> ICC-ASP/18/21.

<sup>22</sup> ICC-ASP/3/16, para. 16.

<sup>23</sup> CBF/32/11 and CBF/32/7.

<sup>24</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, part B.2. paras. 93, 96, 97 and 98.

<sup>25</sup> ICC-ASP/18/27.

well as the Terms of Reference for the Independent Expert Review, and *notes* that the Study Group may consider some issues indicated under “Governance”;

## **M. Proceedings of the Court**

94. *Emphasizes* that the effectiveness of proceedings of the Court is essential to the rights of victims and those of the accused, the credibility and authority of the institution and the promotion of the universality of the Statute, as well as the best possible use of the Court’s resources;

95. *Welcomes* the Court’s efforts to enhance the efficiency and effectiveness of proceedings, as well as the efforts on the part of States Parties and civil society in this regard, *mindful* of the importance of continued dialogue on this matter and *noting* the shared responsibility of the Court and States Parties in this regard;

## **N. Working methods review**

96. *Recognizes* the benefits of rationalizing the working methods of the subsidiary bodies of the Bureau and the Assembly in order to cope with an increasing workload;

97. *Welcomes* the steps already undertaken by the Bureau for the improvement of the working methods;

98. *Decides* to continue improving the working methods of the Bureau and the governance of the Assembly, and to that effect:

(a) *recalls* the revised general roadmap for facilitations contained in annex II of resolution ICC-ASP/15/Res.5 and *stresses* the need for its full implementation;

(b) *welcomes* the holding of Bureau meetings both in New York and in The Hague;

(c) *acknowledges* the importance of ensuring that the agenda of the Assembly allows sufficient time for substantive discussions;

(d) *recognizes* the importance of exchange of information as well as mutual consultations between the New York Working Group and The Hague Working Group on matters of joint concern with a view to enhancing efficiency while avoiding duplication of efforts;

(e) *encourages* all States Parties to use the Extranet designed for the work of the subsidiary bodies of the Bureau and the Assembly containing all necessary documentation on the work in progress; and

(f) *also encourages* States Parties to deliver statements no longer than five minutes and to submit written statements instead of oral ones;

99. *Recognizes* the importance of the work carried out by the facilitators and the focal points;

100. *Recalls* the representative geographical character of the Bureau and *encourages* Bureau members to strengthen their communication with States Parties of their respective regional group to inform the discussion of the Bureau, including by establishing appropriate mechanisms for providing regular updates on the work of the Bureau;

101. *Reiterates* that the Bureau shall have representative character in its composition, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world, and *requests* the Bureau to remain seized of the matter and report on the matter in the annual report on its activities;

102. *Requests* the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;

103. *Requests also* the Bureau to address in its report under paragraph 102 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled;

104. *Decides* to insert after rule 29, paragraph 1 of the Rules of Procedure of the Assembly of States Parties the text in annex II to the present resolution;

## **O. Victims and affected communities, reparations and Trust Fund for Victims**

105. *Refers* to its resolution ICC-ASP/13/Res.4 on victims and affected communities, reparations and Trust Fund for Victims;

106. *Reiterates* that victims' right to present and have considered their views and concerns at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected and to protection of their safety, physical and psychological well-being, dignity and privacy, under article 68 of the Rome Statute, as well as access to relevant information are essential components of justice and, in this regard, *emphasizes* the importance of effective outreach to victims and affected communities in order to give effect to the mandate of the Court;

107. *Stresses* the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and *emphasizes* the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims;

108. *Recalls* article 75 of the Rome Statute and, in this regard, the reparative justice role of the Court, and *notes* that assistance and reparations to victims may promote reconciliation and contribute to peace-building;

109. *Acknowledges* the importance of protective measures for victims and witnesses, including considering the best interests, rights and well-being of children and maintaining the physical and psychological welfare of witnesses, particularly victims of sexual and gender-based crimes, for the execution of the Court's mandate, *stresses* the need for States to conclude agreements with the Court in order to facilitate expeditious international relocation of persons at risk, *welcomes* the relocation agreement with the Court concluded since the seventeenth session of the Assembly, *urges* all States to consider concluding such relocation agreements and *encourages* all States to contribute to the Special Fund for Relocations;

110. *Stresses* that, since the identification, tracing and freezing or seizure of any assets of the convicted person are indispensable for reparations, it is of paramount importance that all necessary measures are taken to that end, in order for relevant States and relevant entities to provide timely and effective assistance pursuant to articles 75, 93, paragraph 1(k), and 109 of the Rome Statute, and *calls upon* States Parties to enter into voluntary agreements, arrangements or any other means to this end with the Court, as required;

111. *Recalls* the Court's previous commitment to review its Revised Strategy in Relation to Victims once a judicial cycle is finished,<sup>26</sup> and therefore *requests* the Court to submit an updated strategy, including measurable and time-bound objectives, to the Assembly at its nineteenth session;

112. *Renews its appreciation* to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims and affected communities;

113. *Notes* the significant growth in the activities of the Trust Fund, to include four on-going reparations proceedings as well as the expansion of assistance programmes to more situations before the Court;

114. *Calls upon* States, international and inter-governmental organizations, individuals, corporations and other entities to make voluntary contributions, in accordance with their financial ability, to the Trust Fund for Victims in order to broaden its resource base, improve the predictability of funding and maintain responsiveness to harm suffered by victims as well

<sup>26</sup> ICC-ASP/13/Res.4, para. 1.

as to the Court's judicial developments, and *renews its appreciation* to those that have done so;

115. *Invites* States Parties to respond to requests of the Trust Fund for Victims for earmarked contributions for the purposes of funding specific reparations awards, as well as of replenishing and strengthening the Trust Fund's general reparations reserve, and *expresses its appreciation* to those that have already done so;

116. *Invites* States Parties to consider making earmarked voluntary contributions to the Trust Fund to the benefit of victims of sexual and gender-based violence, and *expresses its appreciation* to those that have already done so;

117. *Notes* the intention of the Trust Fund for Victims to raise €10 million annually in voluntary contributions and private donations, in order ensure the implementation of Court ordered reparations and assistance activities to the benefit of victims in cases and situations before the Court;

## **P. Recruitment of staff**

118. *Takes note* of the Court's report on Human Resources Management,<sup>27</sup> and requests the Court to strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation with a particular focus on candidates from non-represented and underrepresented States Parties, gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma-related psycho-social needs and violence against women or children, and encourages further progress in this regard;

119. *Calls* upon the Court to report the outcome of its efforts to seek equitable geographical representation with a particular focus on candidates from non-represented and underrepresented States Parties and gender balance to the Assembly at its nineteenth session, including, but not limited to, improvements in the recruitment process and annual recruitment data;

120. *Takes note* of the continued dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, and *welcomes* the report of the Bureau and its recommendations;<sup>28</sup>

121. *Urges* States Parties to undertake efforts to identify and enlarge pools of potential applicants to the Court's professional positions from States Parties from non- and under-represented regions and countries, including through the financing by the Assembly of the Court's internship and visiting professional programmes, and by States Parties of Junior Professional Officer ("JPO") programmes, through targeted outreach initiatives and through the dissemination among relevant national institutions and organizations of the Court's vacancies;

122. *Welcomes* the establishment by the Court of a programme to fund, through voluntary contributions, the placement of interns and visiting professionals from developing regions with a particular focus on candidates from non-represented and under-represented States Parties, welcomes the voluntary contributions received thus far and calls upon States Parties to contribute to this programme;

123. *Requests* the Court to further devise mechanisms that can ensure in a more sustainable and systematic manner the funding of placements of interns and visiting professionals from developing regions, and *further requests* the Court to explore and propose modalities for implementing Junior Professional Officer (JPO) programmes for candidates from non- and under-represented States Parties, particularly from developing regions, to be funded through voluntary contributions;

124. *Invites* the Court to consider whether to introduce a rotation policy at the International Criminal Court and *further invites* the Court to share any outcome with States Parties;

<sup>27</sup> ICC-ASP/18/4.

<sup>28</sup> ICC-ASP/18/26.

125. *Welcomes* the Registry Strategic Plan for 2019-2021 and its three-year programme of action to improve the geographical representation and gender balance as one of the Registry's priorities;

## Q. Complementarity

126. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

127. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;

128. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;

129. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;

130. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development<sup>29</sup> and acknowledges the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

131. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and urges States to do so;

132. *Welcomes* the report of the Bureau on complementarity,<sup>30</sup> and requests the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

133. *Also welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes* further the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the nineteenth session of the Assembly;

134. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and further

<sup>29</sup> United Nations General Assembly resolution 70/1.

<sup>30</sup> ICC-ASP/18/25.

welcomes the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization<sup>31</sup> during the fourteenth session of the Assembly;

135. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while recalling the Court's limited role in strengthening national jurisdictions and also encourages continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

136. *Takes note* of the "Matrix over possible areas of strengthening the Court and the Rome Statute System", dated 27 November 2019, prepared by the Presidency of the Assembly, as well as the Terms of Reference for the Independent Expert Review, and notes that the Bureau may consider complementarity issues identified therein, among others;

## **R. Independent Oversight Mechanism**

137. *Welcomes* the discussions held during 2019 on the review of the work and operational mandate of the Independent Oversight Mechanism, and *stresses* the importance of completing that review and reporting to the Assembly at its nineteenth session;

138. *Notes* the initial draft for a revised operational mandate for the Independent Oversight Mechanism presented by its Head during the 2019 discussions; and *also notes* the comments on that draft received from the Court;

139. *Welcomes* the complementary initiatives undertaken by the Bureau, the Assembly oversight bodies and the Court to try to ensure that the different organs of the Court have streamlined and updated ethics charters/codes of conduct, which should be consistent to the extent possible;

140. *Reiterates* the critical importance of the Independent Oversight Mechanism in carrying out its work in an independent, transparent and impartial manner free from any undue influence;

141. *Reaffirms* the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;

142. *Emphasizes* the importance of adherence to the highest professional and ethics standards by all Court staff and elected officials, *notes* the need to further strengthen the professional and ethical framework for elected officials, *acknowledges* the essential role played and work done by the Independent Oversight Mechanism, *welcomes* the steps taken by the Court to investigate the potential impact on the Court's work in light of allegations of misconduct surrounding former officials and *welcomes* the Interim Report provided by the Office of the Prosecutor,<sup>32</sup> *notes* the Office of the Prosecutor's recommendation that the Assembly consider expanding the mandate of the Independent Oversight Mechanism to enable it to investigate the alleged conduct of former elected officials and staff both while they were in office and when they separated from service, and *urges* the Court to complete this investigation fully and transparently, to identify any necessary follow-up action for the Court and/or the Assembly, and to report to the Assembly in advance of its nineteenth session;

143. *Welcomes* the progress reported in formally aligning the Regulations of the Court with the mandate of the Independent Oversight Mechanism and *encourages* the Court, with the support of the Independent Oversight Mechanism, as necessary, to ensure that all relevant

<sup>31</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

<sup>32</sup> Interim Report provided by the Office of the Prosecutor in response to paragraph 140 of resolution ICC/ASP/17/Res.5 (ICC-ASP/18/INF.5).

documents are updated and aligned with the mandate of the Independent Oversight Mechanism in order to harmonize the applicable rules;

## S. Programme budget

144. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;

145. *Recalls* that, according to its Rules of Procedure,<sup>33</sup> the Committee shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications and *emphasizes* the importance of ensuring that the Committee is represented at all stages of the deliberations of the Assembly at which documents that contain financial or budgetary implications are considered;

146. *Takes note with concern* of the report of the Bureau on the arrears of States Parties;<sup>34</sup>

147. *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;

148. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court and *expresses its appreciation* to those that have done so;

## T. Review Conference

149. *Recalls* that at the successful first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, States Parties adopted amendments to the Rome Statute, in accordance with article 5, paragraph 2, of the Rome Statute to define the crime of aggression and to establish conditions under which the Court could exercise jurisdiction with respect to that crime<sup>35</sup> and adopted amendments to the Rome Statute to expand the jurisdiction of the Court to three additional war crimes when committed in armed conflicts not of an international character;<sup>36</sup>

150. *Notes* that those amendments are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Rome Statute, *notes with appreciation* the recent ratifications of the amendments<sup>37</sup> and *notes* that two States Parties have lodged declarations in accordance with article 15 *bis*, paragraph 4, of the Rome Statute;<sup>38</sup>

151. *Calls upon* all States Parties to consider ratifying or accepting these amendments;

152. *Welcomes* the activation of the International Criminal Court's jurisdiction over the crime of aggression as of 17 July 2018, as decided by consensus by the Assembly of States Parties in its resolution ICC-ASP/16/Res.5, marking the first time that a permanent international court has the authority to hold individuals accountable in respect of this crime, thereby completing the achievements of the Rome and Kampala Conferences of 1998 and 2010;

153. *Recalls* the discussions on the issue of peace and justice at the stock-taking exercise held at the Review Conference, *notes* the interest to resume the discussions on this issue and *invites* interested States Parties to do so;

154. *Recalls with appreciation* pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, *calls upon* these States

<sup>33</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.

<sup>34</sup> ICC-ASP/18/34.

<sup>35</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, RC/Res.6.

<sup>36</sup> *Ibid.*, RC/Res.5.

<sup>37</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-b&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&lang=en) and [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-a&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-a&chapter=18&clang=_en).

<sup>38</sup> <https://www.icc-cpi.int/resource-library#>.

and the regional organization to ensure the swift implementation of these pledges and *also calls upon* States and regional organizations to submit additional pledges and to report further at the nineteenth session of the Assembly, in written form or through their statement at the general debate on the implementation thereof;

## U. Consideration of amendments

155. *Welcomes* the report of the Working Group on Amendments;<sup>39</sup>

156. *Recognizes* the importance of the continued consideration of the impacts that successive amendments have on the relevance and integrity of the Rome Statute;

157. *Recognizes* in this regard that the crime referred to in article 8-2-e)-xix), is accepted by all States Parties as one that requires timely action by States Parties to address this crime in this context;

158. *Calls upon* all States Parties to ratify or accept the amendment to article 8 regarding the war crime of the starvation of civilians as a method of warfare in non-international armed conflict;

159. *Calls upon* all States Parties to ratify or accept the amendment to article 124;

160. *Also calls upon* all States Parties to ratify or accept the amendments to article 8 adopted at the sixteenth session of the Assembly;<sup>40</sup>

## V. Participation in the Assembly of States Parties

161. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely manner and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly and *expresses its appreciation* to those that have done so;

162. *Encourages* the continuation of efforts undertaken by the President of the Assembly to hold an on-going dialogue with all stakeholders, including regional organizations and *calls upon* all States Parties to support the President in his undertakings aimed at strengthening the Court, the independence of proceedings and the Rome Statute system as a whole;

163. *Recalls*, the long-term and continuing cooperation between the Assembly, States Parties, and non-governmental organizations of civil society, and *reaffirms* resolution ICC-ASP/2/Res.8 on recognition of the coordinating and facilitating role of the NGO Coalition for the ICC; and

164. *Decides* to entrust the Court, the President of the Assembly, the Bureau, the Advisory Committee on Nominations, the Working Group on Amendments, the Independent Oversight Mechanism, the Secretariat, and the Board of Directors and the Secretariat of the Trust Fund for Victims, as appropriate, with the mandates contained in the annex to the present resolution.

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<sup>39</sup> ICC-ASP/18/32.

<sup>40</sup> ICC-ASP/16/Res.4.



## Annex I

### Mandates of the Assembly of States Parties for the intersessional period

1. With regard to **universality of the Rome Statute**,
  - (a) *endorses* the recommendations of the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute; and
  - (b) *requests* the Bureau to continue to monitor the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute and to report thereon to the Assembly at its nineteenth session;
2. With regard to the **Agreement on Privileges and Immunities**, *requests* the Bureau to continue to support the ratification of the Agreement;
3. With regard to **cooperation**,
  - (a) *urges* the Bureau, through The Hague Working Group, to continue the discussions on the proposals resulting from the seminar of the co-facilitation held in The Hague on 7 November 2018 entitled “Arrests: a key challenge in the fight against impunity”;
  - (b) *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its nineteenth session;
  - (c) *invites* the Bureau, through its Working Groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities;
  - (d) *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance, including by considering consultations with the State Party concerned when necessary;
  - (e) *requests* the Bureau, through its Working Groups, to speed up its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>1</sup> in close cooperation with the Court, where appropriate;
  - (f) *requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;
  - (g) *requests* the Bureau, through the facilitation on cooperation, bearing in mind the process launched for the review and the strengthening of the Court, to examine the issues and challenges related to cooperation, with a view to identify concrete measures and follow-up action in order to address those challenges and to report thereon to the Assembly at its nineteenth session;
  - (h) *requests* the Court to continue to submit an updated report on cooperation to the Assembly at its annual session and to present in that report disaggregated data over the responses provided by States Parties, including highlighting the main challenges;
  - (i) *mandates* the Bureau, through its Working Groups, to continue discussions on cooperation on financial investigations and the freezing and seizing of assets as set out in the Declaration of Paris;
  - (j) *requests* the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly;

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<sup>1</sup> ICC-ASP/6/Res.2, annex II.

(k) *requests* that any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued be promptly shared with the Court by the focal points on non-cooperation; and

(l) *requests* the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its nineteenth session;

4. With regard to the **relationship with the United Nations**,

(a) *invites* the Court to continue its institutional dialogue with the United Nations, based on the Relationship Agreement between the United Nations and the International Criminal Court; and

(b) *requests* the Registry to update its report on the approximate costs allocated so far within the Court in relation to referrals by the Security Council<sup>2</sup> ahead of the nineteenth session of the Assembly;

5. With regard to **relationships with other international organizations and bodies**, *invites* the Court to include in its annual report to the United Nations General Assembly a section on the status and implementation of specific agreements on cooperation with other international organizations;

6. With regard to **elections**,

(a) *decides* to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, 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 report;<sup>3</sup> and

(b) *requests* the Bureau to update the Assembly, at its nineteenth session, on the progress of the review of the procedure for the nomination and election of judges;

7. With regard to the **Secretariat**, *invites* the President to report to the nineteenth session of the Assembly on the implementation of the recommendations contained in the report of the Bureau on the assessment of the Secretariat;<sup>4</sup>

8. With regard to **legal aid**,

(a) *mindful* of the recommendation of the Committee on Budget and Finance that the Court make every effort to present a reform that can be achieved within existing resources by exploring opportunities to contain the administrative burden without jeopardizing the need for accountability and by setting priorities accordingly, *requests* the Court to continue its review of the functioning of the legal aid system and to present, following further consultation with States Parties, proposals for adjustments to the legal aid remuneration policy for the consideration of the Assembly, through the Committee, at its nineteenth session;

(b) *requests* the Bureau to continue its work on legal aid to discuss the proposals from the Court and, as appropriate, recommendations arising from the integral review process surrounding the legal aid policy, and report to the Assembly thereon at its nineteenth session; and

(c) *encourages* further consultations between the Court and the host State regarding issues related to the taxation of legal aid counsel and support staff;

9. With regard to the **Study Group on Governance**,

(a) *invites* the Court to further engage in a structured dialogue with States Parties with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

<sup>2</sup> ICC-ASP/18/28.

<sup>3</sup> Report to the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/18/31).

<sup>4</sup> ICC-ASP/17/39.

(b) *requests* the Study Group to continue the dialogue with the Court on performance indicators;

(c) *encourages* the Court to continue to share with the Study Group any update on the development of qualitative and quantitative indicators;

(d) *invites* the Court to monitor the use of intermediaries through its Working Group on Intermediaries with a view to safeguarding the integrity of the judicial process and the rights of the accused;

(e) *requests* the Court to inform States Parties, when appropriate, about important developments pertaining to the use of intermediaries, which might require the Court to amend the Guidelines; and

(f) *invites* the Study Group to consider the following issues listed in the Matrix, mindful of work of the Group of Independent Experts, and to report thereon to the nineteenth session of the Assembly:

- (i) 1.4 Election of Registrar;
- (ii) 1.8 Performance indicators;
- (iii) 1.13 Procedure for amending Rules of Procedure and Evidence; and
- (iv) 2.9 Management of transitions in the judiciary.

10. With regard to **proceedings of the Court**,

(a) *invites* the Court to intensify its efforts to enhance the efficiency and effectiveness of proceedings including by adopting further changes of practice;

(b) *encourages* the Bureau, including through the two working groups and the Study Group on Governance, to continue to support the Court's efforts to enhance the efficiency and effectiveness of proceedings;

(c) *encourages* the Court to take note of the best practices of relevant international and national organizations, tribunals, and mechanisms related to sexual and gender-based crimes, including practices related to investigation, prosecution and training, in solving challenges related to crimes under the Rome Statute, including sexual and gender-based crimes, while reiterating its respect for the independence of the Court; and

(d) *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the nineteenth session of the Assembly;

11. With regard to the **working methods review**,

(a) *decides* that its annual session shall have a duration of seven working days with a possible extension of up to two additional days in election years, as required, and to focus, in such cases, the first two days on the elections of judges;

(b) *also decides* that its annual sessions shall include one or two plenary segments on specific agenda items;

(c) *invites* the facilitators and focal points, when appropriate, to present their work to the Assembly;

(d) *also invites* the facilitators and focal points to commit themselves for a period of up to three years considering the particularities and the complexity of each mandate and to submit, in addition to their regular reports, a final written report to the Assembly at the end of their mandate, including lessons learnt;

(e) *invites* the Bureau to implement the recommendations of the 2013 working methods report;<sup>5</sup>

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<sup>5</sup> ICC-ASP/12/59.

(f) *requests* the Bureau to establish facilitations only if the mandate requires open-ended consultations, and the matter cannot be addressed by a less resource-intensive mechanism, such as a rapporteur or a focal point;<sup>6</sup>

(g) *invites* the Bureau to use existing technologies such as video-conferencing in order to ensure participation of members of the Bureau not represented at the venue of the Bureau meeting;

(h) *requests* the Bureau to continue conducting evaluations of the established mandates and, where appropriate, consider the inclusion of end-dates and that it prepare recommendations on the reduction of the number and length of reports;

(i) *requests* the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau, and to make recommendations to improve efficiency; and

(j) *requests* all facilitators and focal points, in consultation with States Parties, to undertake an exercise to streamline the present resolution for the nineteenth session;

12. With regard to **victims and affected communities, reparations and the Trust Fund for Victims**,

(a) *requests* the Court to continue to establish principles relating to reparations in accordance with article 75, paragraph 1, of the Rome Statute as a priority in the context of its judicial proceedings;

(b) *encourages* the Board of Directors and the Secretariat of the Trust Fund for Victims to continue to strengthen its on-going dialogue with the organs of the Court, States Parties and the wider international community, including donors as well as non-governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact and ensure the continuity and sustainability of the Fund's interventions;

(c) *requests* the Court and the Trust Fund for Victims to continue developing a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;

(d) *decides* to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and that the continued positive impact of the Rome Statute system on victims and affected communities is sustainable;

(e) *requests* the Court to submit an updated Revised Strategy in Relation to Victims, including measurable and time-bound objectives, to the Assembly at its nineteenth session;

(f) *mandates* the Bureau to continue considering victims-related issues as necessary or as they arise, having recourse to any appropriate process or mechanism; and

(g) *requests* the Court to make available to the Assembly appropriate statistics in relation to victims admitted to participate in proceedings before the Court when these are publicly submitted to the respective Chambers in the context of the judicial proceedings; such statistics may include, as appropriate, information on gender, criminal offense and situation, among other pertinent criteria as determined by the relevant Chamber;

13. With regard to **recruitment of staff**,

(a) *endorses* the recommendations of the Committee on Budget and Finance in relation to geographical representation and gender balance contained in the report of its

<sup>6</sup> As outlined, e.g., in paras. 21(a) and 23(b) of the report on the Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau (ICC-ASP/12/59).

thirty-second and thirty-third sessions<sup>7</sup> and urges the Court to take the necessary steps to implement them;

(b) *requests* the Court to submit a comprehensive report on human resources to the Assembly at its nineteenth session, which would include an update on the implementation of the recommendations on the topic, which would be made by the Committee in 2020;

(c) *requests* the Court to submit a report on its efforts to improve the recruitment process in seeking equitable geographical representation with a particular focus on candidates from non-represented and underrepresented States Parties and gender balance, including annual recruitment data to the Assembly at its nineteenth session;

(d) *requests* the Bureau to continue engaging with the Court to identify ways to improve equitable geographical representation and gender balance in professional posts, as well as to remain seized of the issue of geographical representation and gender balance, and to report thereon to the nineteenth session of the Assembly; and

(e) *urges* the Court to continue to seize the opportunities of the outstanding and future recruitment processes to implement measures that would contribute to the efforts of meeting the desirable ranges of geographical representation and gender balance;

14. With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes; and

(b) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the nineteenth session of the Assembly;

15. With regard to the **Independent Oversight Mechanism**,

(a) *requests* the Bureau to complete the review of the work and the operational mandate of the Independent Oversight Mechanism, including the consideration of amendments to the mandate to cover investigations of allegations against former officials, and to report thereon to the Assembly at its nineteenth session;

16. With regard to the **programme budget**,

(a) *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements to ensure that the Committee is represented at all stages of the deliberations of the Assembly at which documents that contain financial or budgetary implications are considered;

(b) *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 annual facilitation on the topic of arrears, report thereon to the Assembly at its nineteenth session; and

(c) *requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;

<sup>7</sup> *Official Records ... Eighteenth session ... 2019* (ICC-ASP/18/20), vol. II, parts B.1 and B.2.

17. With regard to the **Review Conference**, *requests* the Secretariat to make publicly available on the Court's website information provided by States and regional organizations on the pledges of increased assistance to the Court made in Kampala;

18. With regard to **consideration of amendments**,

(a) *invites* the Working Group on Amendments to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group; and

(b) *requests* the Working Group to submit a report for the consideration of the Assembly at its nineteenth session;

19. With regard to **participation in the Assembly of States Parties**,

(a) *decides* that the Committee on Budget and Finance shall hold its thirty-fourth session from 4 to 8 May 2020 and its thirty-fifth session from 14 to 25 September 2020; and

(b) *also decides* that the Assembly shall hold its nineteenth session in New York from 7 to 17 December 2020, and its twentieth session in The Hague.

## Annex II

### **The text of rule 29 of the Rules of Procedure of the Assembly of States Parties is amended as follows:**

*Insert the following text after rule 29, paragraph 1, of the Rules of Procedure:*

*1bis.* Where the post of Vice-President of the Assembly falls vacant during the intersessional period, the Bureau may elect an individual who is a national of a State Party in the Bureau to hold office on an interim basis until the election of a new Vice-President by the Assembly of States Parties. At its next session, the Assembly shall, on the recommendation of the Bureau, elect a Vice-President to serve on the Bureau for the remainder of the predecessor's term.

## Resolution ICC-ASP/18/Res.7

*Adopted at the 9th plenary meeting, on 6 December 2019, by consensus*

### ICC-ASP/18/Res.7

#### **Review of the International Criminal Court and the Rome Statute system**

*The Assembly of States Parties,*

*Recognizing* the Court's central role in the fight against impunity at the international level, as the only permanent International Criminal Court, based on the principle of complementarity,

*Recognizing also* the achievements made by the international community in the fight against impunity since the entry into force of the Rome Statute and the essential contribution of the International Criminal Court in this respect,

*Reaffirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that effective prosecution must be ensured by taking measures at the national level and enhancing international cooperation,

*Reaffirming also* its determination to end impunity for the perpetrators and bring justice to the victims of these crimes and thus contribute to the prevention of such crimes,

*Recalling* that the International Criminal Court is complementary to national criminal jurisdictions and that States have primary responsibility for genuinely investigating and prosecuting the crimes in the Statute,

*Emphasizing* that efficient and effective investigations, prosecutions and judicial proceedings are essential in fulfilling the mandate of the Court,

*Recognizing* that the full cooperation as well as diplomatic and political support by all States Parties are essential for the effective functioning of the Court,

*Recognizing also* the importance of good governance and accountability in the administration of the Court,

*Gravely concerned* by the multifaceted challenges facing the International Criminal Court and the Rome Statute system in ending impunity and preventing future crimes,

*Mindful* of the fact that those challenges have multiple causes and of the need for all stakeholders to undertake joint action to ensure the effectiveness of the International Criminal Court in the global fight against impunity,

*Committed* to further strengthening the Court and the Rome Statute system as a means to end impunity for the perpetrators and bring justice to the victims of these crimes and thus contribute to the prevention of such crimes as well as to achieve lasting and universal adherence to the Statute,

*Stressing the importance of* judicial and prosecutorial independence enshrined in the Statute,

*Emphasizing also* the responsibility of the Assembly of States Parties in providing management oversight regarding the administration of the Court,

1. *Welcomes* the efforts undertaken by the Bureau and its working groups in strengthening the operational performance of the Rome Statute system and the Court as set out in the report of the Bureau on its activities;
2. *Takes note* of the Bureau working document entitled "Matrix over possible areas of strengthening the Court and Rome Statute system", dated 27 November 2019, (Matrix) as a starting point for a comprehensive dialogue on a review of the Court and its status as a living document;
3. *Welcomes* the continuous efforts of the Court in strengthening its effectiveness and efficiency and the constructive dialogue with the Assembly in this regard;

4. *Decides* to establish a transparent, inclusive State-Party driven process for identifying and implementing measures to strengthen the Court and improve its performance, and *underlines* that, for this process to be successful, it must involve all States Parties, the Court and other relevant stakeholders;
5. *Underlines* that this process must fully respect the statutory independence of the Court;

## A. Independent Expert Review

6. *Decides* to commission an Independent Expert Review starting 1 January 2020 in accordance with the Terms of Reference contained in annex I to this resolution, with a view to making concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole, taking full account of the working languages of the Court, and submit those to the Assembly and the Court for consideration;
7. *Appoints* a Group of Independent Experts composed of the persons set out in annex II to the present resolution;
8. *Decides* to fund the Independent Expert Review as set out in the budget resolution;<sup>1</sup>
9. *Requests* the Chair of the Group of Independent Experts to keep States Parties, the Court and other relevant stakeholders informed of progress, through the Bureau and its Working Groups, to update States Parties and other relevant stakeholders on the progress and coordination of their work by the end of June 2020, and to submit no later than 30 September 2020 the final report and recommendations;
10. *Requests* the Court and the Presidency of the Assembly to undertake all necessary preparations for the Independent Expert Review immediately after the conclusion of the eighteenth session of the Assembly, including logistical requirements of and unhindered access for the Group of Independent Experts, subject to statutory and regulatory requirements, and appropriate confidentiality arrangements;
11. *Requests* the Court and States Parties to cooperate fully with the Group of Independent Experts, and *calls on* all other relevant stakeholders to do the same;
12. *Requests* the Bureau to take additional measures as necessary and reasonable to facilitate an expeditious conclusion of the Independent Expert Review;

## B. Assembly of States Parties and Court

13. *Welcomes* the engagement of the Court and States Parties as well as other relevant stakeholders in the process of reviewing and strengthening the Court and the Rome Statute system;
14. *Also welcomes* the steps already taken by the Court<sup>2</sup> and *underlines* the need for continuous improvement in its operations;
15. *Welcomes* the resolution on the review of the procedure for the nomination and election of judges;<sup>3</sup>
16. *Reaffirms* that States Parties have an important role in ensuring the efficiency and effectiveness of the Court and shall assume their responsibility and obligations as provided for by the Rome Statute;
17. *Notes* that a number of issues identified by States Parties and set out in the Matrix must be addressed by the Assembly, or the Assembly and the Court, together with other relevant stakeholders;

<sup>1</sup> ICC-ASP/18/Res.1.

<sup>2</sup> Court Strategic Plan 2019/2021, OTP Strategic Plan 2019-2021, Registry Strategic Plan 2019-2021, and the outcomes of the judges' retreat held on 2-3 October 2019.

<sup>3</sup> ICC-ASP/18/Res.4.



18. *Requests* the Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates, commencing consultations at the beginning of the year, and to report back to the Assembly at its next regular session on progress achieved:

- (a) Strengthening cooperation,
- (b) Non-cooperation,
- (c) Complementarity, and the relationship between national jurisdictions and the Court,
- (d) Equitable geographical representation and gender balance;

19. *Also requests* the Bureau through its working groups and facilitations to examine any remaining issues to be addressed, with a view to identifying concrete measures to be taken and to report back to the Presidency of the Assembly as part of the preparations for the nineteenth session;

20. *Further requests* the Bureau and its working groups to remain seized of the overall review process and to make, in close coordination with the Court, all necessary preparations for the Assembly to consider the recommendations of the Independent Expert Review at its nineteenth session, with a view to taking further action as appropriate, while noting that the Court will also be responsible for considering those recommendations, within the Court's statutory mandate.

## **Annex I**

### **Terms of Reference for the Independent Expert Review of the International Criminal Court**

#### **A. Mandate**

1. The overall objective of the Independent Expert Review shall be to identify ways to strengthen the International Criminal Court and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning, while upholding the key principles enshrined in the Statute, including those of complementarity, integrity and judicial and prosecutorial independence. To this end the independent expert review shall make concrete, achievable, actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole. This shall be achieved through a thorough review of a technical nature of processes, procedures, practices, and the organization of and framework for the Court's operations as set out in the Statute. The results shall be submitted to the Assembly of States Parties for its consideration.

2. A Group of Independent Experts shall be mandated to make recommendations to the Assembly of States Parties and the Court on specific complex technical issues under the following clusters of issues:

- (a) Governance;
- (b) Judiciary; and
- (c) Investigations and prosecutions.

3. The specific legal and technical issues to be covered within each cluster are set out in appendix II to these Terms of Reference. Appendix II is not a fully exhaustive list of issues to be covered, and each cluster may modify the content in the course of its work and findings, bearing in mind the need to prioritize the issues set out in appendix II and in conformity with the mandate and the appendix.

4. The mandate of the Group of Independent Experts shall be of limited duration and shall run until they submit the final report to the Bureau, the Assembly of States Parties and the Court in accordance with section E below.

5. The Independent Expert Review is part of a wider State Party-driven review process with the Court. The experts shall endeavour to avoid overlap and seek synergies in line with the mandate given by the Assembly, lest their recommendations duplicate current activities undertaken by States Parties as specified in appendix II, some of which are of a political nature. The experts shall be mindful of on-going efforts by the Court to strengthen the efficiency and effectiveness of its operations.

#### **B. Composition**

6. The Bureau shall recommend to the Assembly of States Parties, on the nomination of the Presidency of the Assembly of States Parties, by consensus six to nine experts to undertake an independent review of the International Criminal Court pursuant to the mandate set out in these Terms of Reference.

7. For a period of three years after the end of the submission of the report, anyone who was an expert shall not be nominated as a candidate for the election to the Court nor apply for any post at the Court.

8. The Presidency shall nominate two to three experts for each cluster of issues as set out in section A and in accordance with the criteria contained in appendix I. The Assembly shall appoint the experts on the basis of the recommendation of the Bureau.

9. The experts shall be nationals of States Parties. The nomination and appointment of experts shall, to the extent possible, reflect the principal legal systems of the world, equitable

geographical representation and gender balance, with competence and expertise being the guiding principle.

10. The experts shall serve independently and in their personal expert capacity, and shall not take instructions from States Parties, the Court or any other organization or individual.

### **C. Working methods**

11. The Group of Independent Experts shall be organized in three clusters as set out in paragraph 2, working in close coordination. The experts shall appoint among themselves a Chair, who will act as contact point for the experts. The Chair shall act as overall coordinator for the three clusters, ensuring coherence, adherence to timelines, proper handling of cross-cutting issues, access to and cooperation from the Court, uniform reporting in terms of form, and other administrative matters. The Presidency of the Assembly shall facilitate the work of the Group of Independent Experts but shall not engage in or advise on matters of substance.

12. Each cluster of the Group of Independent Experts shall, under the coordination of the chair, organize its own work and shall complete its work stream as soon as feasible and within the timeframe set out in section E. As a matter of priority, taking into consideration confidentiality requirements, the Group of Independent Experts shall establish the modalities for access to and interaction with the Court, its elected officials and staff, counsel for the defence and victims and the Court's Staff Union Council. The Group of Independent Experts shall, through the Chair, inform the Presidency of the Assembly of the organization of its work and notify the Presidency of the Assembly prior to making any modifications to the list of topics for the three clusters set out in appendix II. The Court shall cooperate fully with the experts.

13. Prior to commencing the actual work, each expert shall familiarize him or herself with relevant documentation, analysis, and background material, including relevant Assembly, Bureau and working group documents as well as previous expert reviews of the Court, and informal documents forming part of the current review discussions.

14. The experts shall meet as often as necessary and may meet in person, by correspondence, or via remote links, as appropriate and in a cost-efficient manner. Electronic means of communication shall be used to the extent possible to facilitate the work.

15. With the assistance of the Court, the experts shall ensure the confidentiality of all communications, discussions, and documentation during and after the review in compliance with the requirements in the Statute and all relevant rules and regulations of the Court.

16. Each cluster of experts shall consult widely with all relevant stakeholders, including States Parties, the Court and civil society, on their designated cluster of issues. To facilitate such consultations, the experts shall work closely with the Court officials and have unhindered access to all staff and materials as required, subject to statutory and regulatory requirements, and appropriate confidentiality arrangements during and beyond their mandate, to be stipulated in coordination with the Court.

17. Consultations with States Parties, the Court, civil society and other stakeholders may be oral, in writing or a combination thereof. Timely consideration shall be given to establishing appropriate procedures for each cluster in this respect, such as written consultations, possible working group meetings, etc.

18. The three clusters shall coordinate their work and present a comprehensive report containing a single set of recommendations. Particular attention shall be paid to issues or problems of a cross-cutting nature and all efforts shall be made to address such issues in a uniform way and avoid duplication.

19. The Chair of the Group of Independent Experts and the Presidency of the Assembly shall regularly report on progress in the review through meetings of the Bureau and its working groups. The Group of Independent Experts shall submit an interim report or in the alternative, if a written report is not feasible, brief States Parties on the status of work.

20. As soon as the Group of Independent Experts has completed its work, it shall prepare a written report thereon and submit it to the Bureau, the Assembly of States Parties and the

Court. The detailed findings of each cluster can be presented in the annexes to the report. The report will be a public document, subject to appropriate confidentiality measures.

21. The emphasis of the reporting shall be on providing concrete, practical and realistic solutions and the reports shall be as concise as possible. Priority shall be given to the issues with the greatest impact on performance, efficiency and effectiveness of the Court.

22. Following submission of the final report, the Presidency may call on the experts to provide further explanations in an appropriate form on specific aspects, conclusions or recommendations of particular interest.

23. Subject to available resources, each cluster may in coordination with the Presidency of the Assembly, be provided with such assistance as necessary for research, drafting and administrative purposes. The Secretariat of the Assembly shall provide logistical support as necessary.

## **D. Financing**

24. The cost for the Independent Expert Review shall be kept at a minimum without compromising on competence. The experts and assistance shall be remunerated and other costs covered as set out in the budget resolution.<sup>1</sup>

## **E. Timeline**

25. Upon adoption of a decision by the eighteenth session of the Assembly of States Parties, the experts may commence their work immediately as follows:

- (a) **January 2020: Preparation and organization of work.**
- (b) **Feb-Mar 2020: Consultations with States Parties, Court officials, and civil society.**
- (c) **Apr-Aug 2020: Analyzing information gathered and drafting reports.**
- (d) **June-July 2020: Interim report or briefing to States Parties.**
- (e) **Sep 2020: Submission of final report to the Bureau and Assembly of States Parties.**

26. The final report shall be submitted to the nineteenth session of the Assembly of States Parties through the Bureau, in strict accordance with the set timelines. Should modifications to the timelines be required due to severe, unforeseen circumstances, the experts shall inform the Presidency of the Assembly without delay, including if changes are made to the scope of work. The Presidency shall bring delays to the attention of the Bureau for appropriate action.

27. The Bureau may decide to commission further work on specific issues if required after the submission of the final report. This shall be done in coordination with the respective Bureau working groups and facilitations.

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<sup>1</sup> ICC-ASP/18/Res.1.

## Appendix I

### Profiles of experts for the three clusters

1. The Independent Expert Review shall be organized in three separate clusters as set out in section A of the Terms of Reference. The three clusters shall endeavour to work in coordination, in particular on cross-cutting issues, and bear in mind work undertaken by State Parties and the Court. The experts shall be eminent individuals of high moral character. The appointment of experts shall reflect the principal legal systems of the world, equitable geographical representation, and gender balance, with competence and expertise being the guiding principle. The experts shall not previously have served at the Court and shall be well respected and able to work independently and swiftly. The Presidency of the Assembly shall recommend experts to the Bureau based on the following criteria:

#### A. Cluster 1: Governance

2. Two to three internationally renowned experts in governance of international organizations:

(a) established expertise in and experience with governance of international organizations, in particular international criminal jurisdictions;

(b) established expertise in and experience with complex legal/judicial/political environments and constraints;

(c) established experience in international human resource management and leadership, preferably from working with other well-established international organizations;

(d) proven track-record in providing advice to public organizations in complex political environments; and

(e) established practical experience with successfully managing a comparable international organization, preferably including implementing a comprehensive review/reform-programme and change-management.

#### B. Cluster 2: Judiciary and the judicial process

3. Two to three internationally renowned experts with established expertise in and experience with international judicial criminal institutions:

(a) proven in-depth knowledge of international criminal law and procedure as well as trial-management at the national or international level, preferably including on issues relating to defence and victims' rights and sexual and gender-based crimes (SGBC);

(b) established practical experience with serving successfully in an international criminal jurisdiction as judge or equivalent, including positions of leadership or trust within a judicial college; and

(c) established practical experience with serving successfully in a multicultural, complex, and multifaceted international judicial organization.

#### C. Cluster 3: Preliminary examinations, investigations and prosecutions

4. Two to three internationally renowned experts in investigating and prosecuting international crimes:

(a) proven, extensive knowledge of and executive experience with large-scale investigations and prosecutions of international crimes at the national or international level, including issues relating to defence and victims' rights and SGBC;

(b) experience in formulating and implementing investigative and prosecutorial policies, preferably for atrocity crimes or crimes resulting from conflict situations, in complex operational and political environments; and

- (c) experience in investigating and prosecuting politically sensitive crimes in complex environments.

## Appendix II

### List of legal and technical issues to be covered in each cluster

1. The point of departure for the experts shall be the informal document summarizing the discussions among States Parties, the Court, and other stakeholders so far – the so-called “Matrix”<sup>1</sup>. The Matrix sets out a number of issues that States Parties wish the experts to consider. The issues are not exhaustive and can evolve as the work progresses. Priority shall be given to the issues listed below and those with the greatest impact on performance, efficiency and effectiveness of the Court. In addition, the experts shall familiarize themselves with the comments on the Matrix submitted by the Court, and other submitted comments. The topics drawn from the revised Matrix are listed in numerical order.

#### A. Cluster 1: Governance

2. The experts in cluster 1 shall review the governance framework and inter-organ coordination and cooperation as well as management policies and leadership culture paying special attention to:

- 1.5. Management and governance culture
- 1.6. Administrative role of the Registrar (promoting uniform and transparent administrative processes and procedures)
- 1.7. Unified Governance and Leadership (one-Court principle, shared values)
- 1.9. Staff Engagement
- 1.10. Adequate qualitative and quantitative human resources (including secondments, recruitment policies).
- 1.11. Flexibility and scalability in staffing levels
- 1.12. Establishment of Ombudsman /internal grievance procedures
- 1.16. Strengthening performance appraisal framework
- 3.8. ASP oversight and audit bodies (minimise overlap, exploit synergies).
- 1.19. Mandate and functioning of the Trust Fund for Victims
- 1.18. The budget process of the Court
- 2.13. Fair Trial, Defence and Legal Aid
- X.X. Strengthening public awareness and image of the Court

#### B. Cluster 2: Judiciary and the judicial process

3. The experts in cluster 2 shall, respecting the judicial independence of the Court, review the structure, organization, management, staffing and working methods of the judiciary paying special attention to:

- 1.3. Election of the President and the Vice-Presidents of the Court
- 2.7. Efficiency of the judicial process (at all stages, including role of pre-trial, timelines and limits)
- 2.8. Development of process and procedures to promote coherent and accessible jurisprudence and decision-making, including through learning from best

<sup>1</sup> “Matrix over possible areas of strengthening the Court and the Rome Statute system”, dated 27 November 2019.

practices from other jurisdictions, while respecting the judicial independence and powers of the judiciary.

- 2.10. Working methods of the judiciary (calling of newly-elected judges, training, collegiality, mechanisms for exchanging best practices with other international and national judges)
- 2.11. Victims (participation)
- 2.12. Reparations

### **C. Cluster 3: Preliminary examinations, investigations and prosecutions**

4. The experts in cluster 3 shall, respecting the prosecutorial independence of the Court, review the structure, organization, management, staffing and working methods of the Office of the Prosecutor paying special attention to:

- 1.2. (partial) Number and function of Deputy Prosecutors.
- 2.1. Preliminary examinations.
- 2.3. Prosecutorial strategies, including on case selection and prioritization.
- 2.4. Investigations and case-preparations (including investigative techniques, strategies and tools, financial investigations).
- 2.5. Structure of the OTP (including staffing levels and competences).
- 2.6. Completion strategies (focus on mechanism for closure).

5. The experts shall be aware that the States Parties are intending to address, where appropriate through dialogue with the Court, and in accordance with the mandates of the relevant facilitations and working groups, issues relating to the election of Judges (1.1.), Prosecutor (1.2.), and Registrar (1.4.), procedure for amending the Rules of Procedure and Evidence (1.13.), improvements in gender and geographical balance of staff (1.14), management of transitions in the judiciary (2.9.), Complementarity and the relationship between national jurisdictions and the Court (2.2.), state cooperation (3.1.), implementation of arrest warrants (3.2.), non-cooperation (3.3.), and reviewing Assembly working methods (3.7.).

## **Annex II**

### **List of independent experts**

#### **A. Cluster 1: Governance**

- Mr. Nicolas Guillou (France)
- Ms. Mónica Pinto (Argentina)
- Mr. Mike Smith (Australia)

#### **B. Cluster 2: Judiciary**

- Ms. Anna Bednarek (Poland)
- Mr. Iain Bonomy (United Kingdom of Great Britain and Northern Ireland)
- Mr. Mohamed Chande Othman (United Republic of Tanzania)

#### **C. Cluster 3: Prosecution and investigation**

- Mr. Richard Goldstone (South Africa)
- Mr. Hassan Jallow (The Gambia)
- Ms. Cristina Schwansee Romano (Brazil)



## Annexes

### Annex I

#### Report of the Credentials Committee

*Chairperson: Ms. Acsamary Guzmán Nina (Dominican Republic)*

1. At its first and seventh plenary meetings, on 2 and 5 December 2019 respectively, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, appointed a Credentials Committee for its eighteenth session, consisting of the following States Parties: Austria, Dominican Republic, Hungary, Japan, Mexico, New Zealand, Romania, South Africa and the State of Palestine.
2. The Credentials Committee held three meetings, on 2, 5 and 6 December 2019.
3. At its meeting on 2 December 2019, the Credentials Committee had before it a memorandum by the Secretariat, dated 2 December 2019, concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the eighteenth session of the Assembly of States Parties.
4. At its meeting on 5 December 2019, the Credentials Committee appointed by consensus its chair and received an updated memorandum by the Secretariat, dated 5 December 2019. The Credentials Committee requested the Secretariat to convey a reminder via an electronic communication to those States Parties that had not yet submitted their original credentials to do so as soon as possible.
5. Formal credentials of representatives to the eighteenth session of the Assembly of States Parties, in the form required by rule 24 of the Rules of Procedure, had been received as at the time of the 6 December 2019 meeting of the Credentials Committee from the following 75 States Parties: Albania, Andorra, Argentina, Australia, Austria, Belgium, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Gambia, Georgia, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Latvia, Lesotho, Lithuania, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Malta, Mexico, Mongolia, the Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of North Macedonia, Romania, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, State of Palestine, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of) and Zambia.
6. Information concerning the appointment of the representatives of States Parties to the eighteenth session of the Assembly of States Parties had been communicated to the Secretariat, as at the time of the 6 December 2019 meeting of the Credentials Committee, by means of a cable, telefax or other electronic communication from the Head of State or Government or the Minister for Foreign Affairs, by the following 21 States Parties: Afghanistan, Bangladesh, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, Ecuador, Ghana, Honduras, Kenya, Madagascar, Mauritius, Namibia, Nigeria, Panama, Republic of Moldova, Sierra Leone, Uganda, United Republic of Tanzania and Vanuatu.
7. During the meeting held on 6 December 2019, the Chairperson recommended that the Committee accept the credentials of the representatives of all States Parties mentioned in the present report, on the understanding that formal credentials for representatives of the States Parties referred to in paragraph 6 of the present report would be communicated to the Secretariat as soon as possible.

8. On the proposal of the Chairperson, the Committee adopted the following draft resolution:

*“The Credentials Committee,*

*Having examined* the credentials of the representatives to the eighteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, referred to in paragraphs 5 and 6 of the present report;

*Accepts* the credentials of the representatives of the States Parties concerned.”

9. The draft resolution proposed by the Chairperson was adopted without a vote.
10. The Chairperson then proposed that the Committee recommend to the Assembly of States Parties the adoption of a draft resolution (see paragraph 12 below). The proposal was adopted without a vote.
11. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

### **Recommendation of the Credentials Committee**

12. The Credentials Committee recommends to the Assembly of States Parties to the Rome Statute of the International Criminal Court the adoption of the following draft resolution:

**“Credentials of representatives to the eighteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court**

*The Assembly of States Parties to the Rome Statute of the International Criminal Court,*

*Having considered* the report of the Credentials Committee on the credentials of representatives to the eighteenth session of the Assembly and the recommendation contained therein,

*Approves* the report of the Credentials Committee.”

## Annex II

### **Oral report on the activities of the Bureau, presented by the President of the Assembly at the 1st plenary meeting of the eighteenth session of the Assembly, on 2 December 2019**

1. As the President of the Assembly, I have the honor to report to the Assembly of States Parties on the activities carried out by its Bureau during the inter-sessional period 2018-2019.

#### **A. Meetings and mandates**

2. Since the seventeenth session of the Assembly, the Bureau has, in 2019, held 11 meetings to assist the Assembly in the discharge of its responsibilities under the Rome Statute.

3. Pursuant to the mandates given to the Bureau by the seventeenth session of the Assembly in December 2018, the Bureau assigned mandates to its working groups and appointed, on the basis of recommendations of the working groups, the facilitators and focal points for 2019.

4. The Bureau is pleased with the work conducted by its working groups during 2019, as they have successfully carried out the mandates of the Assembly.

5. I wish to express my appreciation for the work carried out by the two Vice- Presidents of the Assembly, Ambassador Michal Mlynár (Slovakia) and Ambassador Jens-Otto Horslund (Denmark).

#### **B. Independent Oversight Mechanism**

6. In accordance with the mandate of the Assembly, the Independent Oversight Mechanism (IOM) has submitted periodic reports to the Bureau and the “Annual report of the Head of the Independent Oversight Mechanism to the Assembly”.<sup>1</sup> In addition, the Assembly requested the IOM to prepare an evaluation of the Secretariat of the Trust Fund for Victims, which was submitted to the Bureau on 26 November 2019.

7. The review of the mandate of the IOM continued in 2019 but will require additional consultations in 2020.<sup>2</sup>

#### **C. Working methods**

8. Pursuant to the “Understanding on the participation of Observer States in meetings of the Assembly”, which was adopted by a Bureau decision of 18 October 2017, the Bureau took note, at its eleventh meeting, on 28 November 2019, of a list of meetings of the Assembly and its subsidiary bodies with general membership which had been held in private in 2019.

#### **D. Non-cooperation/UNSC**

9. It is the responsibility of Assembly under article 112, paragraph 2, of the Rome Statute to consider, pursuant to article 87 of the Statute, any question relating to non-cooperation. As requested by the Assembly, I will continue to engage actively and constructively with all relevant stakeholders in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly.

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<sup>1</sup> ICC-ASP/18/22 and Add.1 (confidential).

<sup>2</sup> ICC-ASP/18/29.

10. Throughout the past year, I have, together with the focal points on non-cooperation, closely monitored and reacted to instances of travels of persons sought by the Court to States Parties and non-States Parties, including but not limited to consultations with the authorities of the United Nations Secretariat in charge of establishing and overseeing policies in relation to non-essential contacts with those persons by the high-level officials of the United Nations. In particular, I have shared relevant information with the members of the Bureau in coordination with the United Nations Secretariat, and through the ex officio focal point. I have also encouraged that the Secretariat of the Assembly may take a further active role in sharing information with broader States Parties in accordance with the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation. The Bureau ought to continue to engage in the application of these procedures, especially their formal aspects, which are triggered once there is a judicial finding on non-cooperation.

## **E. Arrears**

11. I thank those States Parties which have paid their contributions in a timely manner. Unfortunately, as was the case the prior year, the Bureau took note that the Court could face a liquidity shortfall by December 2019. As it had done in 2018, the Committee on Budget and Finance (“the Committee”) had considered the issue of a possible liquidity shortfall and had made some recommendations thereon, including the establishment of a mechanism to deal with liquidity issues. The recommendations have been considered by States Parties but require further consultations in 2020.

12. Such a situation would not exist nor would the establishment of such a mechanism be required if all States Parties would pay their outstanding assessed contributions in a timely manner. I thus urge once more all States Parties with outstanding contributions to make every effort to pay those contributions, including via the payment plans which have been proposed and will be formalized via one of the resolutions the Assembly will adopt during this session.

## **F. Secretariat of the Assembly**

13. Throughout the year, the Secretariat of the Assembly of States Parties has continued to carry out its mandate in assisting the Assembly and its subsidiary bodies both in The Hague and New York, in accordance with resolution ICC-ASP/2/Res.3.

14. The Assembly, through its Bureau assisted by the Secretariat, has engaged in dialogue with the Court on an increasing number of issues, some of them very complex, which has led to a greater appreciation of the respective responsibilities.

15. The Secretariat continued to support the collection of information on the promotion of universality and the full implementation of the Rome Statute. As of 26 November, the Secretariat had received 3 responses to the questionnaire concerning the Plan of action for achieving universality and full implementation of the Rome Statute.<sup>3</sup>

16. Further to the year-long assessment of the Secretariat which the Bureau conducted in 2018, the Secretariat has been implementing the measures foreseen in the respective Bureau report.<sup>4</sup> An updated Extranet for States Parties, which includes a database with contact information of States Parties, was launched on 18 November 2019.

## **G. Election of the next Prosecutor of the International Criminal Court**

17. Pursuant to the discussions held in 2018, the Bureau continued its consideration of the process for the election of the next Prosecutor. The Terms of Reference for the Election of the Prosecutor<sup>5</sup> were adopted by the Bureau on 3 April 2019. Under those Terms of Reference, the Bureau decided to designate one representative per regional group, based on

<sup>3</sup> See at: [https://asp.icc-cpi.int/en\\_menus/asp/sessions/plan%20of%20action/Pages/2019-Plan-of-Action.aspx](https://asp.icc-cpi.int/en_menus/asp/sessions/plan%20of%20action/Pages/2019-Plan-of-Action.aspx).

<sup>4</sup> ICC-ASP/17/39.

<sup>5</sup> ICC-ASP/18/INF.2.

consultations with the regional groups, as members of a Committee on the Election of the Prosecutor. The mandate of the Committee was to facilitate the nomination and election of the next Prosecutor of the International Criminal Court in accordance with the working methods set out in the Terms of Reference. In addition, the Bureau decided that it would appoint a panel of five independent experts, one per regional group, to assist the Committee in carrying out its mandate. Accordingly, on 7 June 2019, the Bureau designated the members of the Committee on the Election of the Prosecutor, and on 27 June 2019, the Bureau appointed the panel of experts to assist the Committee in carrying out its mandate. On 23 July 2019, the Committee designated Ambassador Sabine Nölke (Canada) as its Chair and Ambassador Andreas Mavroyiannis (Cyprus) as its Vice-Chair, and in order to facilitate coordination between the Committee and the panel of experts, the experts designated Professor Charles C. Jalloh as their Chair.

18. The Committee met by video-conference on several occasions in 2019, including with the participation of the panel of experts. On 31 July 2019 the Bureau approved the vacancy announcement drafted by the panel of experts and reviewed by the Committee; it was published on the website of the Court on 2 August 2019, with a deadline for applications of 31 October 2019. Following a recommendation of the Committee, the Bureau decided to extend the deadline to 25 November. The Bureau has received updates from the Committee on the status of applications, including a briefing on 28 November by Ambassador Marcin Czepelak (Poland).

19. On 2 and 3 December 2019, the panel of experts meets in The Hague to paper-sift the applications received and prepare a recommended longlist and to propose interview questions for the Committee. The Committee members will have a two-day meeting in New York in February 2020 to review the panel's assessments, establish a list of candidates to be interviewed, and determine the interview questions and modalities. A three-day meeting for both the Committee and the panel of experts will be held in The Hague in April 2020 in order to conduct interviews and determine the substance of the final report of the Committee, including the shortlist of candidates to be recommended to States Parties.

20. The interim report of the Committee, dated 1 November 2019, has been issued as document ICC-ASP/18/INF.4. An addendum to the interim report is being issued, which includes the status of applications as of the extended deadline of 25 November 2019.

21. The Committee will continue to keep the Bureau and States Parties fully informed as the process continues. It is anticipated that the final report of the Committee will be submitted by the end of May 2020.

## **H. Review of the Court**

22. The topic of the challenges facing the Court and how they may be addressed had been engaging the attention of States Parties and the Bureau for the greater part of 2019, and they also noted that some of those challenges had been the focus of media and academic interest. The Court itself has also acknowledged the challenges it faces and the need to address them. Therefore, at its retreat held on 13 June 2019 in the Netherlands, the Bureau began to consider the review of the Court. The topic of discussion at the retreat was "Meeting the challenges of today for a stronger Court tomorrow". The Bureau noted that the Court was active in many situations across many regions, and was developing its jurisprudence and, further, that a number of challenges had arisen since it began its operations. In the retreat, Bureau members focused on the following specific topics: Governance, management and leadership; Investigations prosecutions and the judicial process; and the external environment.

23. On the basis of those discussions, the Assembly Presidency prepared a "Matrix over possible areas of strengthening the Court and the Rome Statute System" (the Matrix), which was drawn up with the benefit of the input of all stakeholders: States, the Court, civil society. The Matrix is a living document, and attempts to distil a number of concrete and actionable issues based on discussions among all stakeholders. It identifies issues for further discussion, and the relevant fora/working groups for those discussions. The Matrix is the starting point for a comprehensive dialogue and review aimed at strengthening the Court and the Rome

Statute system. The Presidency has, throughout the process, emphasized the principles of inclusivity and transparent and the need for the review to be conducted in close cooperation with the Court.

24. In their discussions on the Matrix, State Parties have noted that many issues identified can be addressed by the Court itself. They also agreed that there were issues that could be addressed by States Parties themselves, while at the same time recognizing the need for an independent expert review of certain legal and complex issues. The Presidency therefore prepared draft Terms of Reference for an Independent Expert Review (IER), taking into account the views of States, the Court and a number of civil society organizations. The Presidency also prepared a draft resolution entitled “Review of the Court and the Rome Statute system” and ensured consultations with delegations based both in The Hague and New York. The Presidency intends to introduce the draft resolution at one of the plenary meetings of the Assembly to be held this week.

25. The draft Terms of Reference for the IER, which the Bureau hopes would be adopted at the current session of the Assembly, set out the legal and technical issues to be covered within each of three clusters: Governance; Judiciary and the judicial process; and preliminary examinations, investigations and prosecutions. The drafts Terms of Reference describe the mandate, composition, working methods, financing, and the timeline for the work of the independent experts. According to that timeline, the preparation and organization of work are envisaged to begin in January 2020; consultations with stakeholders between February to March; the period April to August would be dedicated to analysis of information and drafting of reports; in June to July, States Parties will receive the interim report or a briefing; and the final report is expected to be submitted in September 2020.

26. The Assembly Presidency hopes that the Assembly would, at this session, take the important decisions on the way forward for a thorough and meaningful review of the Court, one that would ultimately strengthen the Court and enable it to successfully confront the challenges that it faces today, twenty-one years after adoption of the Rome Statute.

## **I. Overview of the President’s activities**

27. I participated in several meetings throughout the year where cooperation, complementarity and universality were major themes of discussion. I also held a series of meetings and was present in events as a keynote speaker or panellist throughout the year, including those held at The Hague, New York, Seoul and Vanuatu. At those meetings, I particularly encouraged Observer States to become Parties to the Rome Statute and the Agreement on Privileges and Immunities of the International Criminal Court by listening to challenges associated with their prospective decision to become parties and to discuss ways to overcome them, and stressed the importance for States to have implementing legislation at the national level.

28. In this endeavour, I had meetings with delegates of Asia-Pacific countries, and participated as a keynote speaker in the Pacific Islands roundtable on the ratification and implementation of the Rome Statute held in Vanuatu, where I shared my focus to promote the universality of the Statute. I also took part in two Ambassadorial working luncheons on the International Criminal Court and the Pacific region, where I had interactive discussions on concerns raised by the delegations of the Pacific Islands countries. In this context, I am happy to note that Kiribati acceded to the Rome Statute on Tuesday, 26 November 2019. I sincerely congratulate Kiribati for taking this step and welcome them to the Rome Statute family. I also wish to express my appreciation for the strong support and efforts made by States Parties and civil society, including Australia, the Republic of Korea, the Coalition for the International Criminal Court and Parliamentarians for Global Action.

29. Throughout the year, I actively reached out to different NGOs and bar associations to bring the perspectives of civil society to the work of the Assembly and the Court. This included regularly meeting them to discuss the ongoing issues and challenges that the Court faces.

30. I am heartened by the continuous and strengthened show of support to the Rome Statute system which the different stakeholders have reiterated during the year, including the Court's commitment to continued improvement in how it carries out its essential mandate. I fully trust that this eighteenth session of the Assembly will contribute to that common objective of combatting impunity for the most egregious crimes, while defending the principles and values enshrined in the Rome Statute.

## Annex III

### Statement of the Chair of the Committee on Budget and Finance to the Assembly at the 8th plenary meeting of the eighteenth session of the Assembly, on 4 December 2019

1. It is an honour to present the main outcomes of the thirty-second and thirty-third sessions of the Committee on Budget and Finance.
2. At the outset, I would like to take this opportunity to thank my fellow colleagues from the Committee for their devotion and hard work in the course of the last two sessions, as well as to the Executive Secretary, his team and the Secretariat of the Assembly for their outstanding support. I would like also to thank the Court for their support.
3. During its thirty-third session, which was held from 26 August to 6 September, the Committee focused on the consideration of the 2020 proposed programme budget of the Court. I will now briefly outline the budget performance for 2019 and the main outcomes of our discussions on the recommended resources for 2020.

#### A. Budget performance

4. As regards the **budget performance**, the Committee noted that the forecast implementation rate for the Court, at the end of 2019, including the interest and capital repayments on the premises, is expected to be 99.4 per cent, or €147.3 million, against the 2019 approved budget of €148.14 million.
5. The Committee had received three Contingency Fund notifications so far in 2019 in the total amount of €2.45 million. Two of those notifications were related to Gbagbo/Blé Goudé (situation in Côte d'Ivoire). The third notification was related to the Yekatom/Ngaïssona (situation in the Central African Republic). The Committee requested that the Court make every effort to absorb these unforeseen expenditures within the regular budget.

#### B. Considerations regarding the liquidity issue

6. The Committee considered the status of contributions as at 31 August 2019 and was provided with the latest cash flow projections by the Court. To avoid a liquidity shortfall and to mitigate the risks for the operations and reputation of the Court, the Committee recommended an increase of the notional level of the WCF to €12.3 million to cover for one month of the Court's expenditures. Additionally, the Committee recommended that the surplus of €3 million from the financial year 2017 be utilized to replenish the WCF.
7. Furthermore, the Committee welcomed recommendation no. 9<sup>1</sup> by the External Auditor in his audit report on the Court's budget process that the Assembly delegate some responsibility to the Bureau, as previously recommended by the Committee, with a view to mitigate financial and reputational consequences in case of a liquidity shortfall.

<sup>1</sup> ICC-ASP/18/2/Rev.1, Recommendation n.9:

"So as to avoid adverse financial and reputational consequences in case of a liquidity shortfall, the Auditor recommends the ASP to delegate some responsibility to the Bureau, in order:

(i) to announce, in due time (i.e. leaving a reasonable period, such as two/three weeks – needing to be more precisely defined – before the forecasted available cash only represents less than one standard month of payments), that the Court will be exceptionally authorized to use the Contingency Fund, and/or, in case there is no sufficient cash available in the fund, to pre-negotiate a credit line;

(ii) to allow the Court to effectively use either or both facilities only if and when the liquidity crisis becomes obviously unavoidable (for instance, when only one or two days of cash are left), this delay also needing to be very precisely defined in advance);

(iii) to provide for an immediate reporting of the situation to the States Parties for both previous decisions."



## **C. Review of the AI on Classification and Reclassification of Posts**

8. The Committee welcomed that the Registry is constantly monitoring the AI as a “living document” and will review the AI in 2021 or earlier, as appropriate.

9. The Committee scrutinized the reclassification requests put forward for 2020 under the current AI and reiterated its previous recommendation that nine out of the requested 12 reclassifications be approved. At the same time, the Committee recommended that no new requests for reclassification should be submitted by the Court until the new review of the AI is finalized and all processes and financial risks are fully mitigated.

## **D. Consideration of the 2020 proposed programme budget**

10. The Committee scrutinized the Court’s 2020 proposed programme budget, which amounts to €146.9million (excluding the instalments for the host State loan of €3.6 million). This represents a total requested increase of €2.4 million (or 1.7 per cent) over the 2019 approved budget, excluding the host State loan.

## **E. Recommendations for the main major programmes**

11. I will now briefly touch upon the Committee’s key recommendations for the main major programmes as contained in the Report of the Committee on the work at its thirty-third session (ICC-ASP/18/15).

### **1. Major Programme I (Presidency)**

12. The Committee recommended minor reductions to the requested resources for Major Programme I.

### **2. Major Programme II (Office of the Prosecutor)**

13. The proposed budget for 2020 amounted to €47.9 million, representing an increase of €1.1 million (2.4 per cent) against the 2019 approved budget.

14. The overall assumptions in OTP in 2020 remain largely unchanged with respect to 2019. Staff costs increases are due to the application of the UN Common System (€722 thousand).

15. The Committee observed that the non-staff costs for the OTP were requested at the same level of the previous year. Emphasizing that all requests for resources should be based on robust forecasts, the Committee requested to be updated on ways to integrate such an approach in the budget coordination process including reprioritization of activities, as well as to discuss processes of redeployment and ways to consider requests for new staff resources against existing allocations at the next budget workshop in May 2020.

16. After scrutinizing all staff and non-staff costs, the Committee recommended reductions of €552.9 thousand. The Committee thus recommended the Assembly approves a total of €47.4 million for Major Programme II.

### **3. Major Programme III (Registry)**

17. The 2020 proposed budget amounted to €76.1 million, representing a decrease of €500 thousand (or -0.7 per cent) against the 2019 approved budget. The Committee welcomed the approach taken by Registry with regard to its proposed budget, resulting in a zero-nominal-growth request, which was achieved by offsetting increases through the reallocation of resources, savings and efficiencies, as well as through non-recurrent costs and cost reductions. As service requirements for trials have been reduced, the Registry was able to reallocate resources and absorb financial pressures resulting from the application of the UNCS.

18. The Committee commended the Registry for absorbing the increase for Major Programme III (Registry) in a total amount of €230.7 thousand under the Counsel for Defence budget line item for the case of Mr. Al Hassan.

19. After scrutinizing all staff and non-staff costs, taking into account the increases in staff costs, which were related to supporting an intensification of operations in the Central African Republic (CAR) and Mali, the Committee recommended total reductions in the amount of €217 thousand. The Committee thus recommended the Assembly approve a total of €75.9 million for Major Programme III.

#### **4. Major Programme IV (Secretariat of the Assembly of States Parties)**

20. On 28 November 2019, the Committee was notified of a second addendum to the Proposed Programme Budget following developments in relation to two bodies mandated by the Assembly; the Independent Expert Review of the Court, with the amount of €435.1 thousands and the Committee on the Election of the Prosecutor with an amount of €44.6 thousands. The Committee pointed the best value for money that could be achieved should the Court select the experts following a procurement process.

21. As this is an exceptional project to be implemented during the course of 2020 only, and taking into consideration the efficiency that might be achieved, the Committee recommended a total amount of €435.1 thousand be approved by the Assembly to be added to the budget of Major Programme IV. Further, the Committee recommended that the usage of this exceptional budget be limited to the purpose of the Expert Review. Any surplus from this amount should go to the miscellaneous income account.

22. As regard to the work of the Committee on the Election of the Prosecutor, the Committee considered the additional information provided and recommended the Assembly to approve a total amount of €44.6 thousand. The Committee requested separate reports on the actual expenditure incurred on each of those two bodies to be submitted at its thirty-fourth session.

#### **5. Major Programme V (Premises)**

23. The 2020 proposed budget amounted to €3.1 million, representing an increase of €1.3 million (71.6 per cent) against the 2019 approved budget.

24. The Committee was of the view that capital replacement should be commenced starting in 2020. In light of the technical analysis provided by the Court and the main contractor, the Committee emphasized that delay in the commencement of capital replacement would not only raise overall maintenance and replacement costs in the long run and reduce the asset value of the premise, but would also raise security and operational risks for the Court. From the financial point of view, the Committee highlighted the importance of securing funding for long-term capital replacement in a predictable manner without unnecessary fluctuation of annual budgets.

25. The Committee recommended total reductions in the amount of €313.1 thousand. The Committee thus recommended that the Assembly approve a total of €2.8 million for Major Programme V.

#### **6. Major Programme VI (Secretariat of the Trust Fund for Victims)**

26. The 2020 proposed budget amounted to €3.3 million, representing an increase of €203 thousand (6.5 per cent) against the 2019 approved budget. The requested increase resulted mainly from increases related to the UN Common System (€105.9 thousand) and staff costs (€96.8 thousand).

27. The Committee noted with concern the constant under-implementation of the Major Programme, and believed that this created room for the MP to absorb the increases related to the UN Common System.

28. After scrutinizing all staff and non-staff costs, the Committee recommended total reductions in the amount of €107 thousand. The Committee thus recommended that the Assembly approve a total of €3.2 million for Major Programme VI.

## **7. Major Programme VII-5 (Independent Oversight Mechanism)**

29. The Committee, after careful review, recommended total reductions in the amount of €233 thousand. The Committee thus recommended that the Assembly approve a total of €551.1 thousand for Major Programme VII-5.

30. As regards to the **Other major programmes**, the Committee took note of the requested resources.

31. After carefully scrutinizing the 2020 proposed programme budget, its addendum and the justifications provided, the Committee recommended that total reductions could be achieved of €1.4 million. The adjusted 2020 proposed programme budget would thus amount to €146 million (or €149.6 million with host State loan). This represents an increase of €1.4 million (or 1 per cent) compared to the 2019 approved budget.

## **F. Review of the Oversight bodies of the Court by the External Auditor**

32. The Committee supports this review and may wish to highlight the issue of a potential conflict of interest having the current External Auditor conducting this review being part of the oversight mechanism of the Court. However, we are willing to assist the External Auditor during this review in order to overcome this potential risk. I would also like to emphasize the importance of including the Committee in all the discussions about the review of the oversight bodies and be kept informed at all stages.

## **G. Amendments proposed by the Committee with regard to its own Rules of Procedure**

33. As an advisory body to the Assembly, the Committee is continuously striving to improve its internal processes and procedures to ensure compliance with the evolution of internal best practices with a view to providing timely and quality advice to the Assembly, while tackling a continuously growing workload.

34. The Committee worked for the last two years to update its Rules of Procedure, which were adopted by the Assembly in 2003. The Committee reached consensus at its thirtieth session in April 2018 on amendments reflecting improvements in its internal practices and relevant decisions taken by the Assembly. Fully aware that the final decision-making pertains to the Assembly, an amendment proposal was submitted for consideration and approval by the Assembly.

35. I would like to stress that a review of the Rules of Procedure is a good internal governance practice. Let me also emphasize that the proposed amendments neither have budgetary implications nor are they aimed at creating a new governance structure nor damaging, in any way, the unity of the Secretariat of the Assembly. The proposed amendments are based on the decisions of the Assembly, which created the current workable setup that allows the Committee to deliver quality advice to the Assembly and to the Court. The proposed amendments are also a reflection of the established practices of the Committee from similar international organizations such as the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the United Nations Administrative and Budgetary Committee (Fifth Committee). The Committee emphasizes that dedicated services provided by the Executive Secretary who is responsible and accountable to the Committee has always been required to keep delivering quality advice to the Assembly and to the Court. Changing the current setup without full consideration, would weaken the efficacy of the work of the Committee and could run the risk of reducing the ability of the Committee to provide technically sound quality advice to the Assembly in a timely matter.

## **Annex IV**

### **Statements to the Assembly concerning the adoption of the budget resolution at its 9th plenary meeting, on 6 December 2019**

#### **A. Statement by Belgium after adoption**

1. On behalf of Argentina, Belgium, Costa Rica, Finland, Ireland, Liechtenstein, Luxembourg, Slovenia, Sweden and The Netherlands we wish to express our disappointment with the program budget for 2020.
2. Last year's call made on 12 December 2018 after the adoption of the Budget Program for the current year 2019 remained unheard. Let us thus reiterate this call.
3. Our delegations would have liked a budget more in line with the needs of the Court and a negotiation process that is conducive to forging the unified front among States Parties that is necessary to defend the independence of the Court and the mission of the Rome Statute system.
4. Indeed, we regret that the decision adopted by the Assembly of States Parties is lower than the recommendation of the Committee on Budget and Finance, the technical expert body established by States Parties to examine financial, budgetary, and administrative documents submitted by the International Criminal Court to the ASP. The recommended 0.81 per cent increase was already very modest and does not even cover the inflation rate in the Netherlands in 2019. Even worse, it will indeed imply a real decrease of the budgetary resources of the Court. Our fear is that the operational capacity of the Court will be negatively impacted and that the budget process will result, year after year, in insufficient funding to allow the Court to effectively manage the fight against impunity. In our view, it is essential to find the right balance between the search for efficiency in the use of resources and an adequate budget to enable the Court to implement its mandate.
5. The budget finally approved sends a signal that does not match the support for the Court expressed in various debates during this Assembly. We regret that this outcome might be partially due to too much micro-management.
6. We also wish to reiterate our concern about the fragile situation the Court is facing in terms of liquidity. For several years, the Court, the Committee on Budget and Finance and auditors have warned States Parties of the Court's vulnerable cash flow situation. Ensuring sufficient precautionary reserves is a matter of responsible fiscal management.
7. The level of the Contingency Fund, initially set at €10 million by the Assembly, is currently at €5.2 million, its lowest historical level. We regret that replenishing the Fund is no longer a concern for some States Parties.
8. Originally, States ratifying the Rome Statute had a common vision of what international criminal justice should be. Today, in a difficult context, we must ensure that the Court has adequate resources to meet the growing demand for justice in order to ensure that victims have access to the justice they deserve.
9. Finally, we would like to thank the facilitator and her team for their commitment and excellent work.
10. Thank you and please consider this statement as an official document of the Assembly.

## **B. Statement by Japan after adoption**

1. I am making this statement on behalf of Canada, France, Germany, Italy, Japan, Spain and the United Kingdom.
2. I would like to begin my remarks by thanking the budget facilitator, the Ambassador of Malta, for her dedicated work. Ambassador Bonnici has successfully steered our discussion through the budget negotiations to enable us to adopt the 2020 budget today by consensus. Let me also express my appreciation for the expert work of the Committee on Budget and Finance (CBF).
3. Reflecting on this year's budget process, please allow me to highlight some issues, which are of importance to us.
4. First, that the alignment of the budgetary process with strategic goals would help States Parties to better understand the priorities for resource allocation and financial needs of the Court. Further prioritization within the Court's budget is strongly encouraged under the one court principle.
5. Noting the fact that the International Criminal Court has enjoyed continuously increasing budgets over the past years as well as the financial constraints that States Parties are currently facing, we underscore the importance of financial prudence, and urge the Court to exercise strict budgetary discipline in all organs. In this regard, we have seen some positive developments under the leadership of the Registrar, which we heartily welcome. We encourage all organs of the Court to further work on saving, efficiency and effectiveness.
6. To end my remarks, I would like to remind all of the importance of efficient, transparent and accountable implementation of the Court's budget.

## Annex V

### **Statement to the Assembly concerning the adoption of the resolution on the review of the procedure for the nomination and election of judges at its 9th plenary meeting, on 6 December 2019**

#### **A. Statement by Uruguay after adoption**

1. The delegation of Uruguay considers this decision, which aims to enhance the performance of the ICC in relation to the procedure for the nomination and election of judges before the 2020 process, which is governed by article 36 of the Rome Statute, to be timely.
2. I would add that it is laudable that the importance of equitable geographical representation and gender balance in the organs of the Court is emphasized in preambular paragraph seven of the procedural resolution adopted. It is laudable as a matter of fair and necessary representation in the composition of the Court, as provided under article 36(8)(a) of the Rome Statute. And also because, as with any system of quotas, the minimum voting requirements established in resolution ICC-ASP/3/Res.6 of 2004 do not necessarily guarantee such balanced representation.
3. Article 36(8)(a) of the Rome Statute sets out three criteria to be considered, referring to the need, within the membership of the Court, for “the representation of the principal legal systems of the world”.
4. Were we to fully apply article 36, States Parties would have a clear overview of the full membership of the Court at every stage leading up to the election of judges, together with information provided by the Secretariat on the three necessary representation criteria.
5. The different phases of the process are: sending out invitations for nominations of judges, preparing the meeting of the Advisory Committee on the Nomination of Judges, sending out the report with the Committee’s assessment, and preparing the final phase of the elections at the Assembly of States Parties.
6. An international criminal court aspiring to be universal and which is seized of situations and cases in a large number of countries must ensure sufficient representation of the principal legal systems of the world.
7. This will give the Court greater legitimacy, and also enrich for the substantive legal analysis, on which to base a more robust judicial decision.

## Annex VI

### **Statements to the Assembly concerning the adoption of the resolution on amendments to article 8 of the Rome Statute of the International Criminal Court at its 9th plenary meeting, on 6 December 2019**

#### **A. Statement by Venezuela (Bolivarian Republic of) before adoption**

1. Our delegation wishes to put forward its position on the amendment to article 8 of the Rome Statute of the International Criminal Court in view of the addition of a new paragraph to this article.

2. As stated by Switzerland, which submitted the proposal in a letter dated 28 August 2019 addressed to the Secretary-General of the United Nations, the amendment seeks to include under the jurisdiction of the ICC the starvation of a civilian population as a war crime in the context of a non-international armed conflict.

3. It is common knowledge that the starvation of a civilian population is currently deemed to be a war crime in the context of international armed conflicts under the Rome Statute.

4. However, it is useful to point out that the standards established by the Geneva Conventions apply to both international armed conflicts and non-international armed conflicts.

5. Yet the authors of the proposed amendment state that there is currently a legal vacuum, alleging that most contemporary armed conflicts are non-international armed conflicts.

6. Nevertheless, as we have pointed out respectively to the delegations of Switzerland and Mexico, as facilitator of the Working Group on Amendments, our concerns relate to the language used to draft the proposed text of the amendment in question, and specifically the addition of several essential elements of a criminal nature which have a very broad definition and which could lead to a whole series of interpretations which could potentially be used to criminalize facts, the nature of which has not been defined.

7. In addition, and based on recent experiences, we would like to cite as an example the event which occurred in February this year. A staged event took place at one of our land borders for purely political purposes to influence public opinion concerning hindrances to the distribution of what was claimed to be humanitarian aid, even though the national and international rules for such an operation to take place were not adhered to.

8. But this event proved to be very useful for supporters of the operation to demonstrate, through the media, social networks and other open sources of information, how the so-called “humanitarian aid” was not only banned from entering the country but in addition that it was burnt or set on fire in plain view, whilst initially failing to mention that supporters of the event were responsible for setting fire to the afore-mentioned aid products.

9. The Government of Venezuela was widely criticized by public opinion, however, and was hastily condemned for an action it had neither ordered nor carried out, as confirmed by the New York Times newspaper when it published its investigation into the incident, which showed that the fire involving humanitarian aid had not been started by the Venezuelan authorities.

10. Situations such as this undoubtedly provide further cause for concern given that they may recur and lead to misrepresentation of the facts and then fuel the information leaked by various media, whether these include the press or other open sources, regardless of whether it is true or not. It can be used to justify an accusation, an investigation or a preliminary examination which is what occurs, according to certain claims, when the Office of the Prosecutor of the ICC affords value to certain information, including that which is available from open sources.

11. Our country therefore believes that the proposed amendment could be used as a suitable façade by some for their own political and economic interests and they could then use this amendment to incriminate the authorities of a State Party by setting up an operation under a false flag to achieve their ends.

12. For all these reasons our delegation will not be supporting the adoption of the proposed amendment and we would like our position to be recorded. However, as proof of our commitment to the Rome Statute and our support for the International Criminal Court, and as we have informed the Swiss and Mexican delegations, we will not obstruct the consensus



## **B. Statement by Australia after adoption**

1. Australia welcomes the adoption of this amendment to article 8, to insert into the Rome Statute the crime of the use of the deliberate starvation of civilians as a method of warfare in non-international armed conflict: a method we have seen employed, with horrendous consequences, in contemporary non-international armed conflicts.
2. Australia's support for this amendment to article 8 is based on our commitment to the humanitarian objectives underpinning the substance of the amendment. It is Australia's understanding that the amendment is directed at conduct that deliberately and intentionally results in the starvation of the civilian population as a method of warfare.
3. We also reiterate our concern about amendments that seek to criminalize specific means or methods of warfare, including specific weapons or technologies, as opposed to conduct or behaviour in armed conflict that results in intolerable outcomes. We remain concerned that a possible consequence of identifying the use of certain means or methods of warfare as war crimes is to create an inference that the use of those means or methods of warfare not so identified is condoned. This is surely not our collective intention – and risks taking us away from the foundations of the Rome Statute.

## **C. Statement by Switzerland after adoption**

1. Switzerland is delighted that the resolution on the amendment to article 8 of the Rome Statute to include starvation in non-international armed conflicts has been adopted. This amendment strengthens the protection afforded to civilians during armed conflicts and gives victims the prospect of justice. It fills a legal gap in the Rome Statute. It improves the coherence of the Statute by harmonizing the jurisdiction of the International Criminal Court in terms of war crimes committed in both international and non-international armed conflicts.
2. Over 800 million people are affected by famine today. Most of them are living in conflict zones. The starvation of civilians as a method of warfare is a major issue during these conflicts. As a result, the amendment adopted today is of fundamental importance.
3. Its adoption would not have been possible without the strong support of other States Parties and civilian society. I would like to seize this opportunity to thank the facilitator of the Working Group on Amendments, along with the 21 States which co-sponsored our proposed amendment: Argentina, Austria, Belgium, Benin, Colombia, Costa Rica, Cyprus, the Czech Republic, Estonia, Greece, Ireland, Liechtenstein, Luxembourg, the Netherlands, Nigeria, North Macedonia, Portugal, Romania, Slovenia, Spain and Vanuatu. Switzerland also wishes to thank all the States Parties for contributing towards the adoption of this amendment in a constructive manner since the associated proposal was launched in April 2018.
4. This amendment to article 8 of the Rome Statute will only enter into force for those States Parties that have ratified it. It is therefore essential that as many States Parties as possible ratify it as quickly as possible. Switzerland is determined to proceed with ratification very swiftly. We urge all the other States Parties to do the same in order to help protect civilians in armed conflicts.

## **Annex VII**

### **Statement to the Assembly concerning the adoption of the resolution on the review of the International Criminal Court at its 9th plenary meeting, on 6 December 2019**

#### **A. Statement by Sierra Leone after adoption**

1. I have the honour to deliver this explanation of position on behalf of the African States Parties to the Rome Statute of the International Criminal Court.
2. The African States Parties to the Rome Statute welcome the adoption of the resolution on the “Review of the International Criminal Court and the Rome Statute system”, the Terms of Reference for the Independent Expert Review and the list of independent experts as annexes I and II, respectively.
3. Let me use this opportunity to thank you and the Vice Presidents for your leadership in the negotiation of the resolution on the review, the Bureau and its Working Groups for the hard work.
4. We joined consensus and wish to only advance our understanding of operative paragraph 10 of the resolution, more so the caveat thereto in this explanation of position. We welcome the request made to the Court and the Presidency of the Assembly to undertake all necessary preparations, “including logistical requirements of and unhindered access” for the Group of Independent Experts, and we therefore understand the caveat on “appropriate confidentiality arrangements” to only mean that the Independent Experts are not to disclose confidential information. Access, therefore, will remain unhindered as required by the Independent Experts throughout the review process.
5. We look forward to actionable recommendations from the review to strengthen the Court and the Rome Statute system.

## Annex VIII

### List of documents

Document symbol	Title
ICC-ASP/18/1/Rev.1	Provisional agenda
ICC-ASP/18/1/Add.1	Annotated list of items included in the provisional agenda
ICC-ASP/18/2/Rev.1	Final audit report on the budget process of the International Criminal Court
ICC-ASP/18/3	Report on activities and programme performance of the International Criminal Court for the year 2018
ICC-ASP/18/4	Report of the Court on Human Resources Management
ICC-ASP/18/5	Report of the Committee on Budget and Finance on the work of its thirty-second session
ICC-ASP/18/6	Report of the Court on payment plans for assessed contributions
ICC-ASP/18/7	Election of members of the Committee on Budget and Finance
ICC-ASP/18/8	Election to fill a vacancy on the Committee on Budget and Finance
ICC-ASP/18/9	Report on the activities of the International Criminal Court
ICC-ASP/18/10	Proposed Programme Budget for 2020 of the International Criminal Court
ICC-ASP/18/10/Add.1	Proposed Programme Budget for 2020 of the International Criminal Court - Addendum
ICC-ASP/18/10/Add.2	Proposed Programme Budget for 2020 of the International Criminal Court - Addendum
ICC-ASP/18/11	Report of the Bureau on legal aid
ICC-ASP/18/12	Financial statements of the International Criminal Court for the year ended 31 December 2018
ICC-ASP/18/13	Financial statements of the Trust Fund for Victims for the year ended 31 December 2018
ICC-ASP/18/14	Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2018 to 30 June 2019
ICC-ASP/18/15	Report of the Committee on Budget and Finance on the work of its thirty-third session
ICC-ASP/18/16	Report of the Court on cooperation
ICC-ASP/18/16/Corr.1	Report of the Court on cooperation - Corrigendum
ICC-ASP/18/17	Report of the Bureau on cooperation
ICC-ASP/18/18	Designation of a member of the Advisory Committee on Nominations
ICC-ASP/18/19	Report of the Bureau on the Advisory Committee on Nominations
ICC-ASP/18/21	Report on the Constitution and Activities of the International Criminal Court Bar Association
ICC-ASP/18/22	Annual report of the Head of the Independent Oversight Mechanism
ICC-ASP/18/22/Add.1	Annual report of the Head of the Independent Oversight Mechanism - Addendum ( <i>Confidential</i> )
ICC-ASP/18/23	Report of the Bureau on non-cooperation
ICC-ASP/18/24	Report of the Bureau on the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court
ICC-ASP/18/25	Report of the Bureau on complementarity
ICC-ASP/18/26	Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court
ICC-ASP/18/27	Report of the Bureau on the Study Group on Governance
ICC-ASP/18/28	Report of the Registry on the Approximate Costs Allocated so far within the Court in Relation to Referrals by the Security Council
ICC-ASP/18/29	Report of the Bureau on the Review of the work and the Operational Mandate of the Independent Oversight Mechanism
ICC-ASP/18/30	Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises

Document symbol	Title
ICC-ASP/18/31	Report of the Bureau on the review of the procedure for the nomination and election of judges
ICC-ASP/18/32	Report of the Working Group on Amendments
ICC-ASP/18/33	Report of the Working Group on the Revision of the Judges' Remuneration
ICC-ASP/18/34	Report of the Bureau on the arrears of States Parties
ICC-ASP/18/INF.1	Delegations to the Eighteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court
ICC-ASP/18/INF.2	Bureau of the Assembly of States Parties: Election of the Prosecutor - Terms of Reference
ICC-ASP/18/INF.3	Proposed Programme Budget for 2020 of the International Criminal Court - Executive Summary
ICC-ASP/18/INF.4	Interim report of the Committee on the Election of the Prosecutor
ICC-ASP/18/INF.4/ Add.1	Interim report of the Committee on the Election of the Prosecutor - Addendum
ICC-ASP/18/INF.5	Interim Report of the Office of the Prosecutor in response to paragraph 140 of resolution ICC/ASP/17/Res.5
ICC-ASP/18/INF.6	Report of the Bureau assessing the benefits and challenges with regard to current schedule of the Assembly sessions