



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Tenth meeting

The Hague

12 November 2019

Agenda and decisions

The President of the Assembly, Mr O-Gon Kwon (Republic of Korea), chaired the meeting. Vice President Ambassador Jens-Otto Horslund (Denmark) attended.

1. Preparations for the eighteenth session of the Assembly

a) Programme of work

The Bureau adopted the revised programme of work, dated 6 November 2019, and agreed to include an additional point on the agenda of the fifth plenary meeting, on 4 December 2019, entitled “Statement by the Audit Committee”.

This had been suggested by the focal point for the topic of Budget Management Oversight, Ambassador Annika Markovic (Sweden), as a way for the Audit Committee to be more known by States Parties and to allow States to interact with the Committee.

The Bureau also agreed that a plenary meeting dedicated to a discussion of the Review of the International Criminal Court would be held on 4 December, following the plenary meeting dedicated to the budget.

b) Credentials Committee

The Bureau decided to recommend that the Assembly appoint Hungary and Romania (Eastern European group) to the Credentials Committee for the eighteenth session.

The President requested representatives of the other four regional groups to continue consultations in their respective groups and to inform him and the Secretariat in advance of the 28 November meeting of the Bureau.

c) Appointment of a Rapporteur

The President indicated the need for the Assembly to appoint a Rapporteur for the eighteenth session. The representative of Senegal informed the Bureau that the previous Rapporteur, Ms. Fatou Oumar Ndiaye (Senegal), who had served for the seventeenth session, would not be available to continue in this role for the eighteenth session. The President

invited the African and the Latin American and Caribbean groups¹ to identify a candidate whom the Bureau would recommend to the Assembly for appointment as Rapporteur.

2. Review of the Court

a) Matrix and draft Terms of Reference

The President noted that there had been much work done on this issue since the 13 June 2019 Bureau retreat and expressed appreciation to Vice-President Ambassador Horslund and his team for their very valuable contribution in advancing the work on these issues.

As regards the “Matrix over possible areas of strengthening the Court and Rome Statute system” (the Matrix), the President recall that, following the 13 June 2019 Bureau retreat, the Presidency had prepared this document as well as the draft Terms of Reference for the Independent Expert Review, which had been subsequently revised, taking account of the comments received from States Parties, the Court and civil society. He reiterated the importance that the Presidency had attached to the principles of inclusiveness and transparency throughout this process.

Vice-President Horslund briefed the Bureau on the Matrix and the draft Terms of Reference. He recalled that the Matrix was a living document. The Presidency was working on some minor technical changes and would circulate it once more to all stakeholders. He noted that in the draft resolution on the Review of the Court, the Assembly would note the Matrix, not approve it.

As regards the draft Terms of Reference for the Independent Expert Review, a few points remained to be agreed, i.e. on complementarity and on the budget for the Independent Expert Review. The latter would be finalized in the budget facilitation.

The President briefed the Bureau on the selection by the Presidency of the names of individuals to be recommended to the Assembly for appointment as experts to conduct the Independent Expert Review, as contained in the draft Terms of Reference. The Presidency had received more than 60 names, but as it had only more recently received the final updated table of names, needed additional time to review the names, qualifications and check the availability of the individuals.

In order to enable Bureau members to consult with capitals, the Presidency would submit the names to the Bureau on 25 November 2019. In the selection of experts, the Presidency would take into account the merit of individuals, while also striking a balance on the principal legal systems, regions, and gender.

Bureau members thanked the Presidency for its work on the Matrix, which they viewed as a good working document, and supported the President’s proposed way of proceeding. They welcomed the Presidency’s focus on the principles of transparency and inclusiveness in the process. Appreciation was also expressed for the work on the draft Terms of Reference.

In response to a query on whether it was the intention to identify three experts per cluster, or have some reserve experts, the President indicated that the Presidency had agreed not to present reserved names, but would present two or three per cluster, and would avoid a discussion on the selection of experts. A suggestion was made that brief biographies of the selected individuals should accompany the list of names.

¹ The practice of the Assembly is that the Rapporteur should be from a regional group not represented in the Presidency of the Assembly, i.e. the Asian, Eastern European, and Western Europe and other States groups, in the case of the current Presidency.

The Bureau took note of the briefing on the status of work on the Matrix and on the draft Terms of Reference, as well as of the status of the selection of individuals to be appointed as independent experts.

b) Draft resolution language

Vice President Ambassador Horslund briefed the Bureau on the draft resolution entitled “Review of the International Criminal Court and the Rome Statute system”, which has been prepared by the Presidency and elaborated in consultation with all States, the Court and civil society. He had circulated the latest revised draft on 11 November, and he was in discussions with interested delegations on a few points that remained open. The budget for the Independent Expert Review was still to be finalized. From the meetings of The Hague Working Group and in informal discussions with delegates, he had sensed that there was much willingness to compromise.

He reminded the Bureau that the issue of the Review would be on the agenda of the 14 November meeting of the New York Working Group. It was important that States Parties not represented in The Hague have the opportunity to comment on the documents. Therefore he would, together with some Court officials, brief the New York Working Group via video link on the draft resolution and other documents.

As regards the budget for the independent experts, a draft budget² had been circulated. Differences of views remained on how the experts should be financed, i.e. whether they should work pro bono, be remunerated, etc. There was a good possibility that the Assembly would be able to utilize the surplus of the 2017 budget of the Court, most of which would be allocated to the Working Capital Fund, with the balance being sufficient to cover the proposed budget for the experts.

He hoped that a way forward would be found for funding the experts and assistance to the experts. He noted that States Parties would not allocate new funds for this purpose in 2020. He explained that professors of the Leiden University programme on international criminal law had identified three candidates, all capable PhD research students, who would work only to assist the experts. He hoped for the understanding of delegations, noted that some had a principled view on funding, but indicated that this option could be a compromise. The budget for the experts would be formally considered in the framework of the budget facilitation.

A Bureau member emphasized that the issue was pressing, given the approaching Assembly session, and hoped delegations would show a high degree of flexibility and compromise.

3. Independent Oversight Mechanism (IOM)

a) Annual report of the IOM

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, introduced the “Annual report of the Head of the Independent Oversight Mechanism” and a confidential addendum,³ which had been submitted pursuant to resolution ICC-ASP/12/Res.6.

He had completed one year as Head of the IOM, which had been a challenging year for the IOM, like the rest of the Court. Some of the issues faced by the IOM stemmed from its limited capacity. The review of the IOM mandate was ongoing, and it was noted that the 2018

² Dated 5 November 2019.

³ ICC-ASP/18/22 and Add.1.

amendment to rule 26 of the Rules of Procedure and Evidence⁴ was being put into question again. He reiterated in that regard that it was not for the IOM to decide whether it should have the authority to investigate elected officials, but that clarity was needed on this point. He hoped that the discussions regarding the investigatory power of the IOM would be further discussed next year, to strike the right balance between accountability for all staff and elected officials, and prosecutorial and judicial independence.

The Head of the IOM had committed to provide more details in the Annual Report than in the past regarding specific investigations, while respecting confidentiality and privacy rights of those involved. He referred to Table 1 of the report entitled “IOM’s Investigative Caseload, 1 October 2018 to 30 October 2019” and Table 2 entitled “Breakdown of cases by type of misconduct”. He noted that Table 2 sets out that workplace grievances such as harassment, abuse of authority, and retaliation are prominent, and he was fully in support of the establishment of an internal dispute mechanism, where such matters would be better suited for resolution.

As regards the resources of the IOM, most of its work was being carried out by two short-term staff members whom he had recruited with the support of the Assembly President. The IOM had 11 cases outstanding, and it was unlikely that they would all be completed by year’s end. Despite these additional resources, two cases had to be returned to the Registrar. He invited the Bureau to consider approving the resources requested for the IOM in the proposed programme budget for 2020. He noted that it was up to States Parties to decide how much they wanted the IOM to do; nevertheless, the IOM would continue to work with the highest level of professionalism and independence.

b) Evaluation of the Secretariat of the Trust Fund for Victims

The Head of the IOM informed the Bureau that the evaluation of the administration of the Secretariat of the Trust Fund for Victims, requested by the Assembly at its seventeenth session,⁵ had been completed and submitted to the Executive Director of the Secretariat and to the Chair of the Board of Directors. As soon as comments had been received, which were expected in the coming week, he would convey the evaluation report to the President.

4. Committee on the Election of the Prosecutor- Interim report of the Committee

The Bureau had before it the Interim Report of the Committee on the Election of the Prosecutor, dated 1 November 2019, which noted that a total of 116 applications for the position of Prosecutor had been received by the initial deadline of 31 October. The report provided a breakdown of the applications by regional group, gender and legal system. The Bureau took note of the report, which would be issued as a document of the eighteenth session of the Assembly. Bureau members welcomed the high number of applications, although the point was made that there were relatively few applications from some regions of the world.

The Bureau decided to invite Ambassador Marcin Czepelak (Poland) to provide a briefing on the work of the Committee at its eleventh meeting on 28 November, including an update on the applications received by the extended deadline.

⁴ Resolution ICC-ASP/17/Res.2.

⁵ ICC-ASP/17/Res.4, section L. para. 7: ‘...requests the Independent Oversight Mechanism to conduct an evaluation of the administration of the Secretariat of the Trust Fund for Victims with a view to increasing its efficiency and effectiveness in implementing its mandate as set out in resolution ICC-ASP/3/Res.7, and to report to the President of the Assembly, who shall share it with the Assembly in the first half of 2019’.

5. Adoption of reports of the working groups

a) Universality

The Bureau adopted the ‘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’, dated 5 November 2019, which The Hague Working Group had approved under a silence procedure on 11 November 2019.

b) Legal aid

The Bureau took note that the ‘Report of the Bureau on legal aid’, dated 3 October 2019, had been adopted by the Bureau under a silence procedure on 11 November 2019.

6. Performance objectives

The Bureau resumed consideration of the agenda item “Performance objectives”.

The Bureau had before it the following documents: a) Performance objectives for the 2019-2020 performance appraisal cycle, Post: Director of the Secretariat of the Assembly of States Parties, dated 10 June 2019; and b) IOM Performance objectives, dated 7 June 2019, both prepared by the President; as well as c) comments submitted by Serbia pursuant to the President’s 17 July 2019 invitation to Bureau members to submit comments on the performance objectives for both posts.

a) Director of the Secretariat

The Bureau accepted the proposals submitted by Serbia and retained objective 7 of the President’s proposal.

b) Head of the IOM

The Bureau approved the objectives contained in the President’s proposal and decided to consider how the points raised by Serbia should be monitored or appraised.

7. Amendment to the Rules of Procedure of the Assembly of States Parties: election of an interim Vice-President

The Bureau had before it a paper entitled “Draft amendments to the Rules of Procedure of the Assembly of States Parties: vacancy on the Bureau (Vice-President)”, dated 15 October 2018.

The Bureau agreed, on the basis of its prior 22 October 2018 decision,⁶ to recommend to the eighteenth session the inclusion of the proposed amendment to rule 29 of the Rules of Procedure of the Assembly in the omnibus resolution. By the amendment, the Assembly would entrust the Bureau with the election of a Vice-President of the Assembly, on an interim basis, until the election of a new Vice-President by the Assembly, should a vacancy arise during the intersessional period.

⁶ https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2018-Bureau-15.pdf

8. Election of the members of the Committee on Budget and Finance: change of commencement of terms

The Bureau had before it a recommendation of the Committee on Budget and Finance contained in the report of the Committee on the work of its thirty-third session,⁷ “that the Assembly adopt a starting date of 1 January and an end date of 31 December for the terms of office of Committee members, with a phase-in procedure to avoid any overlap with the terms of the existing members of the Committee.”

The Bureau approved the Committee’s recommendation and agreed to recommend that the Assembly vary its practice relating to the date of the start of the terms of office of members of the Committee on Budget and Finance as of the eighteenth session as follows:

- The members of the Committee on Budget and Finance to be elected at the eighteenth session will be elected for terms beginning on 21 April 2020 and ending on 31 December 2022.
- That the members to be elected at the nineteenth session be elected for terms beginning on 21 April 2021 and ending on 31 December 2023.
- For subsequent elections, Committee members would be elected for a three-year term commencing on 1 January of the year after their election.

9. Report of the International Criminal Court Bar Association (ICCBA)

The Bureau took note of the “Report on the Constitution and Activities of the International Criminal Court Bar Association (ICCBA)”, submitted pursuant to resolution ICC-ASP/17/Res.5.⁸ As regards the draft resolution text proposed in the annex to the report entitled “Counsel”, some States indicated that there was a need for additional time for greater analysis of the draft resolution text.

The point was made that introducing a reference to an NGO in Assembly statements/resolutions should be done with extreme caution, otherwise it could create a precedent that opens the door to other types of NGOs. The Assembly should maintain its resolutions at that level. States would have the opportunity for more in-depth study of the draft text in the negotiations.

The Bureau decided to request the facilitator of the omnibus resolution, Mr. Vincent Rittener (Switzerland), to include the draft resolution text contained in the annex to the report for the consideration of States, bearing in mind the discussion in the Bureau.

10. Other matters

a) Accreditation of new NGOs

The Bureau decided to accredit one non-governmental organization as its activities are relevant to the activities of the Court pursuant to rule 93 of the Rules of Procedure of the Assembly of States Parties.

The Bureau will consider the request for the accreditation of the second non-governmental organization after receiving further information about its activities.

⁷ ICC-ASP/18/15, paras. 270-271.

⁸ Para. 83.

b) Current schedule of Assembly sessions

The Bureau deferred its discussion to the next meeting, awaiting comments by the Court. The Bureau took note of the tentative dates for the Assembly sessions for the period 2020 to 2024 in The Hague and New York. The Bureau was informed that given contractual commitments of the World Forum Convention Centre in The Hague, the Assembly sessions were tentatively scheduled for a period of six working days, including Saturday. It was further noted that the sessions in New York require additional working days due to the election of six judges. Some Bureau members supported a shorter duration of the sessions.

c) Status of contributions

The President informed the Bureau of the status of contributions to the approved budget of the Court as at 31 October 2019. As of that date, the Court had received 87 per cent of the approved budget for 2019. The total amount of outstanding contributions, for 2019 and for prior years, stood at €37.5 million. A total of 25 States Parties had outstanding contributions of more than one year, and 12 of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute.

He encouraged all States Parties that had outstanding contributions to the budget of the Court to make every effort to pay them at the earliest opportunity.

d) Next meeting of the Bureau

The next meeting of the Bureau will be held on Thursday, 28 November 2019 from 13:00 to 15:00 hours at the Court. The final Bureau meeting before the opening of the eighteenth session of the Assembly session would allow the Bureau to take decisions related to the eighteenth session, as well as the recommendation on the identification of the experts to conduct the Independent Expert Review.

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