



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Eleventh meeting

The Hague

28 November 2019

Agenda and decisions

The President welcomed the 26 November 2019 accession of Kiribati to the Rome Statute of the International Criminal Court and noted that the Statute would enter into force for Kiribati on 1 February 2020, pursuant to article 126 of the Statute. This was a positive development ahead of the eighteenth session, and he hoped that it would give impetus to other States in the process of considering becoming Parties. He also encouraged States Parties to support the newest State Party in its journey with the Assembly and the Court.

A Bureau member welcomed the fact that the new State Party was a member of the Asia-Pacific group, the group that holds the Presidency of the Assembly.

1. Committee on the Election of the Prosecutor

Ambassador Marcin Czepelak (Poland) briefed the Bureau¹ on the work of the Committee on the Election of the Prosecutor (CEP), including an update on the applications received by the extended deadline.

Ambassador Czepelak recalled the two previous reports from the Chair of the Committee, Ambassador Sabine Nölke (Canada), as well as the interim report of the Committee which had been issued as a document of the eighteenth session of the Assembly.²

Ambassador Czepelak noted that there were two stages in the application process: an online application form (step 1), followed by the submission of additional documentation (step 2). The Committee had received 144 applications, of which 67 were complete, i.e. the applicants had completed steps 1 and 2. Of the remaining applications, some applicants³ had not responded to repeated requests to complete their applications, so the Committee would consider them abandoned. The remaining applicants⁴ were still expected to submit some parts of their applications, and the Committee had set a final deadline of 29 November for receipt thereof.

Ambassador Czepelak indicated that the panel of experts would meet in The Hague on 2 and 3 December to consider the applications and submit their assessment to the Committee for further consideration.

¹ Further to the 12 November 2019 decision of the Bureau.

² Interim report of the Committee on the Election of the Prosecutor (ICC-ASP/18/INF.4 and Add.1).

³ Approximately 20.

⁴ Approximately 50.

2. Preparations for the eighteenth session of the Assembly

a) *Election of a Bureau member*

The Bureau decided to recommend to the Assembly the election of the State of Palestine to replace Japan on the Bureau, from the day after the conclusion of eighteenth session until the conclusion of the nineteenth session. The recommendation was pursuant to an internal agreement among three States Parties of the Asia-Pacific group for the sharing of seats on the Bureau.⁵

b) *Credentials Committee*

The Bureau decided to recommend to the Assembly that Austria, Japan and New Zealand be appointed to the Credentials Committee for the eighteenth session, pursuant to rule 25 of the Rules of Procedure.⁶

The President encouraged States to step up their efforts to identify a candidate for appointment to the remaining seats on the Credentials Committee.

c) *Appointment of a Rapporteur*

The President encouraged the African and Latin American and Caribbean groups to make every effort to identify a candidate for appointment as the Rapporteur for the eighteenth session.

d) *Organization of work*

(i) *Appointment of Chairpersons and Coordinators*

The Bureau recommended that the Assembly appoint the following Coordinators for the respective topics for the eighteenth session:

- Working Group on the Programme Budget – Ambassador Marlene Bonnici (Malta)
- Omnibus consultations – Mr. Vincent Rittener (Switzerland)
- Review of the procedure for the nomination and election of judges- Mr. Luke Roughton (New Zealand), if consultations are necessary.

(ii) *Programme of work*

The Bureau adopted the revised programme of work, dated 28 November 2019, as amended.

(iii) *Statements delivered at the Assembly*

Further to its 17 September recommendation on the speaking time in the General debate for States Parties, Observers and representatives of non-governmental organizations, the Bureau recommended that the Assembly continue its practice of requesting the principals and all Court officials to deliver statements of no longer than 15 minutes each at the eighteenth session.

⁵ *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.I, part I, para. 17 and *Official Records...Seventeenth session ...2018* (ICC-ASP/17/20), vol.I, part I, para. 16. See also “Agenda and decisions” of the 4 December 2017 meeting of the Bureau: https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2017-Bureau-07.pdf

⁶ At its 12 November meeting, the Bureau decided to recommend that the Assembly appoint Hungary and Romania to the Committee.

3. Oral report of the Bureau

The Bureau adopted the oral report of the Bureau, dated 26 November 2019, and requested the President to present it under agenda item 9, “Report on the activities of the Bureau”.

4. Review of the Court

Further to his 12 November briefing, Vice-President of the Assembly, Ambassador Jens-Otto Horslund (Denmark), briefed the Bureau on the progress of discussions on the draft Terms of Reference for the Independent Expert Review (ToR), and on the draft resolution “Review of the International Criminal Court and the Rome Statute system”, both dated 27 November 2019.

As regards the “Matrix over possible areas of strengthening the Court and the Rome Statute system” (Matrix), dated 27 November 2019, there had been technical updates to ensure consistency with the draft ToR and draft resolution, which had evolved since they were first drafted.

In the draft ToR, most paragraphs had been agreed, with the exception of the text on the budget for the Independent Expert Review (IER). That point was being discussed in the budget facilitation and the outcome thereof would be reflected in the ToR as well as in the draft resolution.

The draft resolution on the “Review of the International Criminal Court and the Rome Statute system” had been discussed in both The Hague and New York, and Vice-President Horslund had participated via video link in the 21 November meeting of the New York Working Group. In his view, the outstanding issues were not difficult and he was consulting with interested States. He noted that the discussions on the draft resolution during the eighteenth session would benefit from the presence of delegates from New York, The Hague and capitals.

The President welcomed Vice President Horslund’s participation in the meeting of the New York Working Group, which reflected the principles of inclusiveness and transparency that underpinned the review.

In commenting, some delegations welcomed that the draft resolution was at an advanced stage, with agreement pending on only a few points. They highlighted the importance of concluding negotiations as soon as possible.

In response to a query on the process for future discussions on the outstanding issues, the Vice-President stated that he planned to hold open negotiations as early as possible during the Assembly session, and noted that it was important to ensure that delegations not represented in The Hague were able to participate. He would follow-up with bilateral discussions on outstanding points, as necessary.

As regards the budget for the IER, there was broad consensus that the 2017 surplus should be used for this purpose, and the relevant technical budgetary requirements were under discussion. He noted that there would be no additional costs for States Parties.

5. Independent Expert Review - recommendation on the appointment of independent experts

The President briefed the Bureau on the Presidency’s efforts to identify individuals whom they would recommend for appointment as independent experts to conduct the

Independent Expert Review. The Presidency was not yet in a position to present the names to the Bureau, as the process of assessing the individuals had been made more difficult for reasons that included the unavailability of some individuals, and the lack of information on availability or contact details of a number of individuals, which had hampered the Presidency's task. The Presidency was nevertheless mindful of the timelines and planned to draw up a list of names as soon as feasible.

Of the more than 60 names received, 40 were male and 20 female. As regards regional representation, it seemed likely that the experts would not include representatives from two regional groups, due to unavailability or that the persons were nationals of non-States Parties.⁷ The gender balance of the nine individuals being considered was six males to three females.

Bureau members expressed appreciation for the Presidency's work and efforts in narrowing down the number of experts, and recognized the difficulties faced by the Presidency in completing the task in a relatively short time and in a complex process.

As regards regional balance, the importance of having a diversity of views on the panels was noted, and it was suggested that flexibility be shown in order to encourage additional candidates from groups with no possibility of experts. States nevertheless recalled that time was of the essence and stressed that the Presidency should focus on competence.

A view was expressed that it was important to select experts proposed by States Parties since the initiative had come from them.

Regarding the timelines for the way forward, the Presidency was in the final stages of drawing up the list of experts, and would inform the Bureau when it had a complete list, hopefully in a couple of days. The Bureau would take a decision on the list at its 4 December meeting. The request was made to receive the list well in advance, to consider it.

Vice-President Horslund indicated that, in response to the Presidency's request to professors of Leiden University's International criminal law programme, three names of PhD candidates had been recommended as assistants to the experts. Two of them had previously been interns at the Court and the other, a case manager. One was from a non-State Party from the Asia-Pacific group. The assistants would be working for the experts, not on their own behalf. The Presidency would bear confidentiality requirements in mind when recruiting the assistants.

Plenary session on the Review of the Court

The Bureau decided to allocate a period of two hours to the 4 December plenary on the Review of the Court, from 11:00 to 13:00 hours. Bureau recalled that States Parties had previously called for Assembly sessions of a more substantive nature, and noted that the review topic was the most substantive issue currently facing the Assembly.

The Bureau recommended that the Assembly proceed as follows for the plenary:

- 1) The three Heads of organ be invited to join the Assembly Presidency at the podium. This would give them an opportunity to indicate briefly their support for the Review process and to indicate the steps the Court had already taken, as well as its future plans.
- 2) There should be the opportunity for statements on the Review.

⁷ Para. 8 of the draft Terms of Reference states: "The experts shall be nationals of States Parties".

Speakers would follow the same structure as for the general debate, i.e. States Parties, Observer States, international organizations, and NGOs. They would be invited to deliver statements no longer than three minutes, while the Heads of organ were allocated five minutes. Speakers were encouraged to submit their fuller statements to the Secretariat for posting on the ASP website.

- 3) The Secretariat would inform States and other stakeholders in the usual manner about the opening of a speakers list.
- 4) The Presidency would introduce the draft resolution on “Review of the International Criminal Court and the Rome Statute system” at this plenary. The Terms of Reference as well as the list of individuals who will conduct the independent experts review would also be introduced. These documents would be adopted at a later plenary.

6. Independent Oversight Mechanism

Evaluation of the Secretariat of the Trust Fund for Victims

The Bureau had before it the report entitled “Evaluation of the Administration of the Secretariat of the Trust Fund for Victims”,⁸ as well as a 28 November 2019 letter addressed to the President and the Bureau from the Executive Director of the Secretariat of the Trust Fund for Victims (STFV), and a statement by the Executive Director of the Secretariat of the Trust Fund for Victims in relation to the evaluation report.

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, introduced the report entitled “Evaluation of the Administration of the Secretariat of the Trust Fund for Victims”, which he had submitted to the President on 26 November 2019. He expressed regret that it had not been possible for the IOM to submit the report as earlier requested and explained the challenges which the office had faced in the preparation of the report, including staffing, data collection, and the number of substantive issues that arose.

The report focused on three broad areas: the strategic focus of the Trust Fund for Victims; its accountability; and management and organizational structure of the STFV. The first area included the relationship between the assistance and reparations mandates, and how, in light of limited resources, to have clear priorities and try, where possible, to have the two mandates have more relationship with each other. The issues identified therein were flagged up as meriting attention and the IOM did not propose a particular solution. That section also focused on risk, and monitoring and evaluation. The second area looked at the capacity and preparedness of the Board of Directors to properly oversee the work of the Secretariat, and noted that the relationship between the Board and the Secretariat required a degree of flexibility, and a baseline of expectations, roles and responsibilities. The IOM highlighted that what was required was a determination by States Parties of what type of Board was needed, and making sure it had the tools, including regulatory, to perform the role required. Finally, the third area considered the organizational structure and the management of the STFV, and how it may affect issues such as responsiveness to Court decisions, as well as internal human resources matters and communication. The report noted the need for a better structure with clear roles and responsibilities.

The Head of the IOM noted that the evaluation recognized the enormity and complexity of the work of the STFV, and that its work was largely unprecedented, so that the IOM’s observations must be viewed in their proper context. He noted that the task of the Trust Fund was not an easy one, and the IOM hoped that its report would help guide the discussion in a way that will benefit the work of the Trust Fund, the Court, and ultimately, be able to reach the victims of the crimes under the Court’s jurisdiction.

⁸ Requested by the Assembly in resolution ICC-ASP/17/Res.4, section L. para. 7.

In Bureau members' comments, it was noted that the availability of the report a few days before the start of the Assembly session made it difficult for States Parties to discuss it. The evaluation had been requested as a means of improving the functioning of the STFV and some of the conclusions were a source of concern. There was therefore an urgent need for States to consider, in early 2020, measures that could be taken in response. Further, it was noted that certain aspects of the functioning of the Trust Fund would be part of the Review of the Court, so the report should be taken into account.

The Bureau took note of the evaluation report and would revert to the issue at a later meeting, including a decision on a recommendation to the Assembly in respect of future work.

The President indicated that the evaluation report had been shared with the Registrar, who participates in the sessions of the Board in an advisory capacity.⁹ The Bureau agreed that the President would also share the report with the other two Heads of organ, along with any follow-up comments from the Board of Directors and the Executive Director of the Secretariat.

7. Adoption of reports of the working groups

The Bureau adopted the following draft reports, which had been adopted by The Hague Working group on 25, 26 and 27 November, respectively, via silence procedures:

- Draft report of the Bureau on complementarity, dated 20 November 2019; and
- Draft report of the Bureau on cooperation, dated 22 November 2019.
- Draft report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises, dated 27 November 2019.

The Bureau took note of the adoption of the following reports on 27 November 2019 via a Bureau silence procedure:

- Report of the Bureau on geographical representation and gender balance in the recruitment of staff of the Court.
- Report of the Bureau on the arrears of States Parties.
- Report of the Bureau on the review of the work and the Operational Mandate of the IOM.

The Bureau agreed that the draft report on the review of the procedure for the nomination and election of judges, which had been concluded the previous evening in New York, would be placed under a shorter silence procedure, until the end of 1 December 2019.¹⁰

8. Election of the President and Bureau for the twentieth to twenty-second sessions

The Bureau took note that under rule 29 of the Rules of Procedure of the Assembly of States Parties, the future Bureau would assume its functions at the conclusion of the session at which it is elected, i.e. at the end of the nineteenth session, in 2020. Further, according to the Assembly's practice of regional rotation, the role of President for the twentieth to twenty-second sessions would fall to the Latin American and Caribbean group (GRULAC).

The President encouraged the GRULAC to begin its consultations to identify a candidate that the Bureau would recommend to the Assembly for election as the President for

⁹ Regulation 7 of the Regulations of the Trust Fund for Victims.

¹⁰ The draft report of the Bureau on non-cooperation, dated 25 November 2019, and the draft report of the Working Group on the Revision of the Judges' Remuneration, dated 29 November 2019, are currently subject to silence procedures until 1 December and 2 December 2019, respectively.

the next period. In addition, all regional groups should begin internal consultations in order to identify the members that would sit on the next Bureau. He requested that Bureau members begin consultations in their respective groups in order to identify the President and the States that would serve on the Bureau. They should also keep in mind the need to identify two candidates for election as Vice-Presidents, once more taking into account the principle of regional rotation.

9. Accreditation of a new NGO

The Bureau decided not to recommend that the Assembly accredit an NGO, Wildlife Justice Commissions (WJC), to the sessions of the Assembly as it did not fulfil the criteria set out in rule 93 of the Rules of Procedure of the Assembly of States Parties.

10. States in arrears

The President informed the Bureau that, as of 26 November 2019, 12 States Parties had arrears which equalled or exceeded the amount of contributions due from them for the preceding two full years. Those 12 States Parties were therefore 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.

11. Other matters

a) Current schedule of Assembly sessions

The Bureau took note of the views of the Court presented by the Chef de Cabinet of the President.¹¹ The Bureau also had before it the comments submitted by some NGOs.

The President indicated that a report of the Bureau assessing the benefits and challenges with regard to current schedule of the Assembly sessions would be prepared¹² and discussions on the matter would continue in 2020.

The President would consult with the two Vice-Presidents on the best way forward during the Assembly session, bearing in mind that as part of the Review process the Assembly would also consider how to improve how it work. The Bureau would discuss how to carry out that work in 2020.

b) List of meetings limited to States Parties

The Bureau took note of the list of meetings held wholly or partly in private in 2019, dated 25 November 2019.¹³

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¹¹ See ICC-ASP/18/INF.6.

¹² As requested by the Assembly in resolution ICC-ASP/17/Res.5, annex I, para. 11(i).

¹³ Pursuant to the "Understanding on the participation of Observer States in meetings of the Assembly of States Parties", adopted by the Bureau on 18 October 2017, the Bureau shall keep a list of decisions to hold meetings in private.