



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fifth meeting

New York

7 June 2019

Agenda and decisions

The meeting was chaired by the President of the Assembly, H.E. O-Gon Kwon (Republic of Korea).

1. Committee for the Election of the Prosecutor

The President recalled that, under the Terms of Reference for the Election of the Prosecutor,¹ the Bureau was required to designate five members of the Committee on the Election of the Prosecutor and appoint a panel of five independent experts by the end of June 2019. To facilitate the process notes had been circulated to all States Parties on 12 April, with a deadline of 31 May, inviting regional group consultations on the Committee members and nominations for the panel of experts. A request for nominations for the panel of experts had also been sent to civil society. The nominations and information received by the President had been circulated to Bureau members on 4 and 6 June 2019.

The Bureau decided to designate the following persons as members of the Committee on the Election of the Prosecutor:

- a) Ambassador Marcin Czepelak (Poland);
- b) Mr. Lamin Faati (Gambia);
- c) Ambassador Andreas Mavroyiannis (Cyprus);
- d) Ambassador Sabine Nölke (Canada); and
- e) Ambassador Mario Oyarzábal (Argentina).

As regards the panel of experts, the Bureau discussed the nominations received from States Parties and civil society. The President noted that a different procedure had been followed for some civil society nominations, whereby the confirmation of the availability of those nominees had been submitted after the deadline of 31 May. Bureau members discussed the nominations received and the procedures followed. The President advised that informal consultations would be undertaken with a view to submitting a proposed panel for approval via silence procedure by Friday, 21 June 2019.

Regarding the costs of the Committee, the President noted that a Bureau decision was required on whether the costs incurred by the members and/or experts should be covered, and if so, on what terms. While the Assembly had decided at its seventeenth session that the costs in 2019 would be absorbed by Major Programme IV,² a decision was still required on which costs should be covered. The different issues, and the estimated cost implications, had been

¹Adopted by the Bureau on 3 April 2019. Subsequently issued as document ICC-ASP/18/INF.2, available at https://asp.icc-cpi.int/EN_menus/asp/elections/prosecutor/Pages/Prosecutor2020.aspx.

² ICC-ASP/17/20, vol I, Part II, para. 10.

set out in a paper which was originally circulated to the Bureau for its eighteenth meeting in December 2018, and re-circulated on 23 April 2019.

Some Bureau members considered that the travel costs of the Committee members should be covered by the States Parties which had nominated them. On the other hand, the point was made that both the members and experts were appointed in an independent capacity,³ and therefore it would be appropriate for their travel costs to be covered by the Court budget. It was noted that the costs should be kept as low as possible, and that the Committee and experts should make use of remote links to limit travel costs where feasible. Some Bureau members considered that economy class travel was appropriate, while others were of the view that a higher class of travel would be appropriate. A query was raised as to the entitlements for other experts, such as the members of the Advisory Committee on Nominations (ACN).

The Bureau deferred the decision on costs to its 14 June 2019 meeting in The Hague. The President advised that he would request the Secretariat to circulate updated information regarding the costs in advance of that meeting.

2. Briefing on a confidential issue of concern to the Assembly and the Court

The President briefed the Bureau on a confidential issue of concern to the Assembly and the Court.

3. Update on the Bureau retreat

The President noted that a Bureau retreat would take place in the Netherlands on 13 June 2019. A discussion paper for the retreat, prepared by the Assembly Presidency, had been circulated to States Parties on 6 June. The intention of the retreat was to gain a better understanding of the current challenges facing the Court and to examine the ways forward.

Bureau members welcomed the idea of the retreat and expressed appreciation for the discussion paper which had been prepared. The growing consensus regarding a review of the Court was noted, and preliminary views were exchanged on various aspects. It was noted that, in order to be successful, any such review would need to be transparent and inclusive, and would need the involvement of the Assembly. The point was made that States Parties should lead the process, while at the same time support was expressed for the involvement of independent experts. It was noted that the review would need to be respectful of the mandate and independence of the Court. The point was made that it would be useful for the review to include all aspects of the Court's performance, including the role of States Parties and other stakeholders, while various views were expressed with respect to the scope of the review to be conducted by independent experts. It was noted that while there may be a degree of urgency to justify taking action, the process should not be rushed. The point was made that different approaches might be appropriate for different elements of the review, for example some aspects might be best dealt with by the Court itself, whereas others might be more appropriately addressed by the Assembly rather than independent experts. As regards timing, the point was made that it would be helpful to have any outcomes adopted by the Assembly in December 2020 given the transition in the Court's leadership which would take place at that session.

The President thanked Bureau members for their views, which would be taken into consideration at the retreat. All States Parties would be informed of the outcome of the discussions.

³ Terms of Reference for the Election of the Prosecutor (ICC-ASP/18/INF.2), paragraphs 4 and 7.

4. Letter from the President of the Court, dated 10 May 2019

The President recalled the letter of 10 May 2019 from the President of the Court, on behalf of the heads of organs, calling for an independent comprehensive expert review of the Court's performance. The President noted that this issue would be considered at the Bureau retreat.

5. Other matters

a) Opening of the nomination period for elections during the eighteenth session

The Bureau took note of the opening of the nomination period for the presentation of candidates for elections to be held during the eighteenth session of the Assembly. Elections would be held for (a) six members of the Committee on Budget and Finance; (b) one vacancy on the Committee on Budget and Finance; and (c) one member of the Advisory Committee on the Nomination of Judges. Pursuant to the Bureau decisions of 26 February 2019 and 7 May 2019, the nomination period had opened on 3 June 2019 and would run until 25 August 2019 (Central European Time). The President encouraged States Parties considering presenting candidates for election to these bodies to convey their nominations to the Secretariat as soon as possible.

b) New York Liaison Office

The Bureau took note that the Head of the New York Liaison Office, Ms. Karen Mosoti, had resumed her functions as of 3 June 2019. The President advised that he was in discussions with the Registry regarding the draft "Understanding on the servicing of the ASP in New York", which set out how the New York Office might continue to assist the Assembly.⁴ The President advised that he would continue to coordinate closely with Vice-President Mlynár and that an update would be provided to the New York Working Group when available.

c) Malaysia's withdrawal of its instrument of accession to the Rome Statute

The Bureau took note with regret of the withdrawal by Malaysia on 15 May 2019 of its instrument of accession to the Rome Statute, which it had deposited with the United Nations Secretary-General on 4 March 2019.

d) Status of contributions

The President informed the Bureau that, as at 31 May 2019, the Court had received €108.9 million (or 73 per cent) of the total budget of €148 million approved for 2019. The total amount of outstanding contributions, for 2019 and for prior years, stood at €58.7 million. Thirty-two States Parties had outstanding contributions of more than one year, and 13 of those were ineligible to vote under article 112, paragraph 8 of the Rome Statute. The President called on all States Parties with outstanding contributions to make every effort to pay their contributions as soon as possible.

e) List of meetings limited to States Parties

Pursuant to the 18 October 2017 decision of the Bureau entitled "Understanding on the participation of Observer States in meetings of the Assembly of States Parties", the Bureau took note of the list of meetings held in private dated 28 May 2019.

⁴ The New York Liaison Office was established by resolution ICC-ASP/4/Res.4 to carry out the functions stated in that resolution and in an "Option paper by the Bureau on the Establishment of a New York Liaison Office of the Court" (ICC-ASP/4/6), including some functions in support of the Assembly and the Bureau.

f) Amendments to the Regulations of the Court

The Bureau took note of the amendments to the Regulations of the Court addressing procedural issues arising in connection with the activation of the jurisdiction of the Court over the crime of aggression, which were adopted by the judges of the Court, in plenary session, on 20 November 2018. States had been invited, pursuant to article 52(3) of the Rome Statute, to submit comments to the Court within a six-month period. As that period had closed on 20 May 2019 and no comments were received by the Court, the Bureau took note that the amendments remained in force.

g) Activities of the President

The President briefed the Bureau on an event in which he had participated on 31 May 2019: the *Pacific Islands Roundtable on the Ratification and Implementation of the Rome Statute of the ICC* in Port Vila, Vanuatu. The event was organized by Parliamentarians for Global Action (PGA) with the support of the government of Vanuatu, in cooperation with the Republic of Korea and the Court, and in partnership with the European External Action Service. The President expressed his appreciation to all those involved in the event.

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