



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Sixth meeting

The Hague

14 June 2019

10:00 – 11:30

Agenda and decisions

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

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

The Registrar briefed the Bureau on a development regarding a confidential issue of concern to the Assembly and the Court.

2. Follow-up to the Bureau retreat

The President recalled that, at its retreat on 13 June 2019, the Bureau had considered issues affecting the Assembly and the Court under the following clusters: “Governance, management and leadership”; “Investigations, prosecutions and the judicial process”; and “The external environment”.

The President thanked Bureau members for their frankness and openness at the retreat, and the positive spirit in which they had conducted the discussions, and recalled that the intention was not to exclude non-Bureau members or for the Bureau to monopolize the issue. The process would be State-driven, inclusive and transparent. He noted that, since the Bureau was the only body competent to take decisions in the inter-sessional period, it may be in a position to make some decisions on possible ways forward, in areas where there was broad agreement among States Parties. Some measures could be taken up immediately, e.g. the elections process for judges, whereas for other topics, it may be necessary to engage external experts, in consultation with the Court, States Parties and civil society.

The Bureau authorized that, as a first step, the Assembly Presidency prepare a draft matrix or roadmap which would identify the respective issues to be considered, by whom, and the relevant timeframe. For technical matters, such as those regarding investigation, prosecution and the judicial process, independent external experts might be requested, as appropriate, to review the issues identified by the Bureau. The President would consult with the principals of the Court, States Parties and civil society with a view to identifying those issues, as well as identifying possible experts. States Parties and civil society would be invited

to propose the names of such experts. Support was expressed for a mixed system, of State representatives and experts which had been suggested at the retreat.

The Bureau requested that the preparation of the matrix proceed immediately, since that was the outcome of the retreat.

The President clarified that the matrix and roadmap would form the basis for future work on this topic, with a view to adoption by the Bureau.

As regards the timeline, the Bureau would discuss the matrix at a meeting to be held in July in The Hague.

3. Update on the Committee for the Election of the Prosecutor

The President advised that informal consultations were underway regarding the panel of experts to assist the Committee for the Election of the Prosecutor. The decision of the Bureau on the budgetary implications associated with the Committee was deferred to the next meeting.

4. Independent Oversight Mechanism

The President recalled that, at its 12 March 2018 meeting, the Bureau had taken note of a request from a delegation to formally request the Presidency of the Court to issue a Presidential Directive to implement the IOM structure within the legal framework of the Court. At the 7 May 2019 meeting, the representative of the Presidency of the Court had informed the Bureau that the matter was before the Presidency but he was not in a position to discuss it since it was linked to a case.

The Bureau had before it a letter from the President of the Court addressed to the Assembly President, dated 16 May 2019, which stated the legal position of the Presidency of the Court on this matter. It also had before it the legal opinion which the Head of the IOM had commissioned, entitled “Legal opinion: Legal basis of the ICC Independent Oversight Mechanism”.

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, noted that Presidential Directives did not affect the hierarchy of norms of the Court, i.e. the Rome Statute and Assembly resolutions, and that the Court’s administrative issuances were a lower norm.

In response to a query on how the Court would ensure that the Administrative Tribunal of the International Labour Organisation (ILOAT) was apprised of its legal position as set out in the 16 May 2019 letter, the Head of the IOM noted that the ILOAT judgment¹ referred to by the International Criminal Court Bar Association (ICCBA) did not have any bearing on the establishment of the IOM. Further, the Registrar noted that the Assembly resolutions were of superior rank and that the administrative norms of the Court had to be amended and harmonized in light of the establishment of the IOM by an Assembly resolution. He indicated that the Court would update the ILOAT on its legal position in pleadings filed before the tribunal.

5. Performance evaluation and objectives

The Bureau deferred its consideration of this agenda item to its next meeting.

¹ ILOAT judgment no. 3907.

6. Contingency Fund notification

The Bureau deferred its consideration of this agenda item to its next meeting.
