



**BUREAU OF THE ASSEMBLY OF STATES PARTIES**

**Eighth meeting**

**The Hague**

17 September 2019

9:00 – 11:00

Agenda and decisions

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

**1. Preparations for the eighteenth session of the Assembly**

*a) Seating arrangements*

In accordance with Assembly decision ICC-ASP/1/Decision.4, the President drew lots to determine the State Party that would occupy the first desk on the Assembly floor: Suriname.

*b) Programme of work*

The Bureau agreed a programme of work for the eighteenth session, dated 12 September 2019,<sup>1</sup> on the understanding that it would be updated in the coming weeks and may also be subject to modification during the session itself to take account of developments and any needs which may arise.

*c) General debate*

The Bureau requested the President to inform States that the General debate would open on Monday, 2 December 2019 at 15:00 hours, that ministerial-level representatives would speak first, and that the General debate would continue during the morning and afternoon sessions of Tuesday, 3 December 2019. The General debate will conclude on Tuesday, 3 December 2019.

The Bureau decided that the list of speakers for the General debate would open on 21 October 2019 (Central European Time).

*(i) Time limits*

The Bureau recommended, on the basis of rule 50 of the Rules of Procedure of the Assembly of States Parties and previous decisions of the Assembly, that the Assembly request speakers to observe a time limit of five minutes.

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<sup>1</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ASP18-WP.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ASP18-WP.pdf)

*(ii) Participation of observers and non-governmental organizations*

On the basis of previous Assembly decisions, the Bureau recommended that the Assembly allocate 45 minutes for the participation in the general debate of observers pursuant to rule 92 of the Rules of Procedure of the Assembly.

The Bureau also recommended that 45 minutes be allocated to non-governmental organizations for the delivery of statements at the end of the general debate.

*d) Trust Fund for the participation of least developed countries and other developing States*

The Bureau took note that, at its current level, the Fund could support the participation of approximately five delegates in the eighteenth session of the Assembly. The Bureau encouraged States that were able to do so to contribute to the Fund before the end of October 2019.

*e) Credentials Committee*

The President recalled that representatives of nine States Parties were required to compose the Credentials Committee<sup>2</sup> at the eighteenth session of the Assembly and in that connection requested that Bureau members raise this issue in their regional groups so as to indicate, preferably before the end of November, the States Parties that wished to serve on the Credentials Committee for the eighteenth session.

*f) Elections- status of nominations*

*(i) Committee on Budget and Finance*

*Election of six members of the Committee*

Since the number of candidates corresponded to the number of vacant seats, the Bureau decided, pursuant to resolution ICC-ASP/1/Res.5,<sup>3</sup> to recommend that the Assembly elect the following six candidates to the Committee on Budget and Finance at its eighteenth session,<sup>4</sup> for a three-year term commencing on 21 April 2020:

- Ms. Carolina Maria Fernandez-Opazo (Mexico)
- Mr. Urmet Lee (Estonia)
- Mr. Loudon Overson Mattiya (Malawi)
- Mr. Daniel McDonnell (United Kingdom of Great Britain and Northern Ireland),
- Mr. Klaus Stein (Germany)
- Mr. Richard Veneau (France)

*Election to fill one vacancy on the Committee*

Since the number of candidates corresponded to the number of vacant seats, the Bureau decided, pursuant to resolution ICC-ASP/1/Res.5, to recommend that the Assembly elect Mr. Werner Druml (Austria) to fill the vacancy. The candidate would be elected for the remainder of the term of the member who had resigned on 18 March 2019, i.e. until 20 April 2021, and would be eligible for re-election.<sup>5</sup>

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<sup>2</sup> Rule 25 of the Rules of Procedure of the Assembly of States Parties.

<sup>3</sup> Procedure for the nomination and election of members of the Committee on Budget and Finance; see para. 9.

<sup>4</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-18-7-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-7-ENG.pdf)

<sup>5</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-18-8-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-8-ENG.pdf)

*(ii) Advisory Committee on the Nominations of Judges*

Since the number of candidates corresponded to the number of vacant seats, the Bureau decided to recommend that the Assembly designate Mr. Sang-Hyun Song (Republic of Korea) as a member of the Committee. In accordance with the recommendation of the Bureau to the seventeenth session,<sup>6</sup> the candidate appointed would serve for the remainder of the three-year term, i.e. until 2021, with the possibility of being re-elected only once.

The President requested the Secretariat to circulate the draft report of the Bureau on the Advisory Committee on Nominations for adoption under a silence procedure.

**2. Follow-up to the Bureau retreat**

The Bureau had before it the revised compilation of comments on the Matrix, dated 13 September 2019. The President thanked all States and other stakeholders that had provided comments. The Matrix document would be revised in light of the comments received and would be disseminated for discussion by the Bureau's working groups.

As regards the draft Terms of Reference for the Independent Expert Review of the Court (ToR), dated 12 September 2019, the President noted that it was an initial draft and would form the basis of further discussion. The President stated that it was envisaged that all the final decisions regarding the Independent Expert Review would be taken by the Assembly. However, the Presidency hoped that much of the detail could be agreed informally, in advance, through discussions in the working groups and in the Bureau, according to the standard working procedure, and in order to save time. This would allow States to strike the right balance between the wish to move quickly and the need to have the appropriate decision-making body take the final decisions.

As regards the independent experts who would undertake the review, the President proposed that the Assembly Presidency would nominate the experts, based on the profiles to be set out in the draft ToR by mid-October. States Parties and civil society may informally submit names to the Presidency.

He noted that the draft ToR contained proposals which required consideration by States Parties, including an overall coordinating role for the Assembly Presidency, as well as some options regarding financing.

As regards a possible budget, he noted that the maximum sum of €300,000 was a preliminary estimate, which would be developed further. The Presidency was consulting with the Court on the technical details of different financing options.

The President described the steps to be taken in the lead-up to the Assembly session as follows: (i) once they had been reviewed by the Bureau, the draft ToR would be referred to The Hague Working Group and New York Working Group for consideration and further revision. This would involve all stakeholders, including the Court and civil society; (ii) the Presidency would invite names for the experts to undertake the review, assess them against the profiles set out in the draft ToR, and submit nominations to the Bureau for consideration at a later meeting; (iii) the Bureau would agree a report to the Assembly, including the draft ToR, draft resolution text, and a recommended list of experts; and (iv) the Assembly would consider and approve the draft texts and the names recommended by the Bureau.

The President informed the Bureau that he and the Vice-President had met with officials of the Court's organs on 16 September, who had made some observations on the process. The Chef de

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<sup>6</sup> Report of the Bureau on the Advisory Committee on Nominations (ICC-ASP/17/21), para. 13.

Cabinet, Mr. Hiran Abtahi, informed the Bureau of the preliminary views of the President of the Court.

The President responded to queries on his meeting with the President of the Court, noting that, as stated at the Bureau retreat, the review would be a State-driven process carried out in consultation with the Court and other stakeholders. It was important to ensure that the process was conducted in cooperative manner with all stakeholders.

### *General comments*

Bureau members thanked and commended the President and Vice-President for their work on the Matrix and on the draft ToR. Bureau welcomed the efforts to ensure transparency by sharing the document with the Bureau's working groups.

Bureau members reiterated that the review process would be a State-driven process, and would be the combined efforts of States Parties, the Court, and stakeholders from the wider international community, as stated at the 13 June Bureau retreat. The process would not be carried out solely by experts, but their advice and recommendations would be considered by States Parties. The Bureau retreat had suggested that the review be conducted under a mixed system of States Parties and experts, which Bureau members reaffirmed.

As regards the Matrix, there was support for submitting the document to the Assembly for discussion. A point was made that it contained several elements, many of which would need to be considered by the experts. However, the experts were not the only actors since the process was State-driven, and the Assembly had the discretion whether to accept the experts' recommendations.

As regards the draft ToR, States viewed the document as a good basis to begin discussions, and support was expressed for the number of subjects identified therein. There was some concern regarding the possibility that issues could evolve as the work in each cluster progressed.<sup>7</sup> It was noted that the list of issues was non-exhaustive and that the Bureau should encourage the experts to set priorities.

It was suggested that the Assembly should conduct an assessment of itself in the review process. While the experts would assist on some points, the Assembly review process should be done mainly by States Parties. It was suggested that the Bureau resume its previous consideration of the item on Reform of the working methods of the Assembly.<sup>8</sup>

Regarding the experts, Bureau members stressed the importance of appointment on the basis of merit and not on the basis of political considerations. It was hoped that the expert review would be focused, and not expanded or overstretched. A concern was expressed that the experts could reject proposals for review made by States Parties, and in that regard, it was important to recall that States Parties were the body responsible for the review.

Another concern expressed was that although for this review process there was a need to bear in mind the urgency of moving forward, the process for the appointment of experts could set a precedent for other appointments, and might result in inadequate procedures for those appointments in future. In addition, the need for transparency in the appointment of experts and in determining the number of experts was highlighted.

It was suggested that a Chief expert be appointed, who could help the experts resolve any difficult issues. This option would avoid criticism that the independent expert review was not truly

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<sup>7</sup> Terms of Reference, annex II.

<sup>8</sup> Report of the Bureau: Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau (ICC-ASP/12/59).

independent. On the other hand, it was suggested that the experts themselves elect their own chairperson, and the ToR could foresee a Chairperson with whom the Court could interact.

As regards the budget for the experts, States were of the view that it should be kept to a minimum and within a reasonable frame, surplus funds of the 2017 budget should be used, there should be good management of finances, and no additional financial burden should arise for States Parties. Further, the financing of the process should not affect the regular work of the Court.

The President clarified that the process for the appointment of experts was not an election process. The Presidency aimed to propose names to the Bureau at its 12 November meeting.

As regards the timeline, States felt that the process should not be protracted and the work should begin as early as possible, and States should ensure that the process for the start of the review is established at the eighteenth session. The process should itself be exemplary in terms of governance.

Vice-President Horslund recalled that the matrix was a living document that would continue to exist. While there may be prioritization of issues, this would not mean that some issues would not be considered. He hoped that in 2020 it would be possible to agree to solutions to the issues raised in the matrix. The proposal for the appointment of a chief expert over all the clusters would be considered but this might not be in line with a process that was State driven, and could create big group of experts. The appointment of a chief expert could also be a long process. In the recommendation of experts on the basis of the informal submission of names, the Presidency would seek to find the right geographical and gender balance.

Further, the process should, as far as possible proceed at the same time in both the New York Working Group and The Hague Working Group. It was important to ensure the involvement of New York-based delegates.

It was recalled that the review was a common project with the common aim of strengthening the Court. While it would be State-driven, the experts would be involved where necessary. The mixed system discussed at the Bureau retreat would apply.

Bureau members were asked to submit their comments on the draft ToR in writing to the Presidency by 24 September 2019. After receiving any comments, the Presidency would send the revised consolidated draft ToR to all States Parties, for discussion in the working groups in early October.

### **3. Update on the work of the Committee on the Election of the Prosecutor**

The President recalled that the vacancy announcement for the position of Prosecutor had been published on the website of the Court and circulated to States Parties and other stakeholders on 2 August 2019 and that he had issued a press release,<sup>9</sup> dated 6 August 2019, welcoming its publication. He noted that the initial deadline for applications was 31 October 2019, although the Bureau might consider an extension if necessary.

The Bureau had before it a letter from the Chair of the Committee on the Election of the Prosecutor (CEP), Ambassador Sabine Nölke (Canada), dated 12 September, which included a proposed budget for the work of the Committee. The Chair's letter indicated that the experts had carefully considered the requirements of the ToR, and in order to fulfil their mandate in the most cost-effective and efficient way, have proposed to hold three meetings.<sup>10</sup> The total estimated cost for these

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<sup>9</sup> [https://asp.icc-cpi.int/en\\_menus/asp/press%20releases/Pages/PR1476.aspx](https://asp.icc-cpi.int/en_menus/asp/press%20releases/Pages/PR1476.aspx)

<sup>10</sup> (i) a two-day meeting of the panel members in The Hague in December, for the experts to paper-sift the applications and determine the longlist; (ii) a two-day meeting of the Committee members in New York in February 2020, to review the panel's assessments and decide on

three meetings would be €56,770, which included the costs for the meeting in December, which would have to be absorbed by Major Programme IV. The costs for 2020 would therefore be a maximum of €44,510. The final sum was likely to be lower since some members and experts might participate by video-link.

The President noted that the Committee's request was consistent with the requirements set out in the ToR. The Bureau agreed to approve the request of the Committee.

#### **4. Performance objectives**

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

#### **5. Independent Oversight Mechanism: IOM Activity Report to the Bureau, 1 April to 15 August 2019**

The Bureau members took note of the "IOM Activity Report to the Bureau of the Assembly of States Parties, 1 April to 15 August 2019", dated 21 August 2019, and a briefing note on the workload of the IOM, which the Head of the Independent Oversight Mechanism (IOM), presented.

The IOM Head stated that, with the support of temporary assistance, the IOM had completed all its 2018 investigations and had only 2019 cases before it, some of which related to elected officials. Further, in relation to questions raised on the work of the IOM in relation to other mechanisms, e.g. other dispute settlement mechanisms, he noted that the cases related to the Registry had been, for the most part, been completed.

The evaluation of the Secretariat of the Trust Fund for Victims requested by the Assembly<sup>11</sup> was on-going and he would present the outcome to the Board of Directors of the Trust Fund for Victims and to the Assembly President in a few weeks. He would welcome comments from the Court and States Parties.

In response to a query on how the statistics on oversight and special investigation related to other international organizations, the IOM Head stated that he had not come across any data showing that statistics for the Court were disproportionately higher. He would provide a break-down of statistics in the end of year report to the Assembly.

The IOM Head also provided an explanation of how the IOM treated with frivolous reports, and noted that the fact that some cases investigated did not merit proceeding against the staff member, did not render them frivolous.

The Bureau agreed that since the issue of the workload of the IOM was related to the budget discussions, the IOM budget for 2020 would be discussed in the budget facilitation of The Hague Working Group.

#### **6. Contingency Fund notifications**

The Bureau took note of the following Contingency Fund notifications submitted by the Registrar,<sup>12</sup> Mr. Peter Lewis, to the Chair of the Committee on Budget and Finance, Mr. Hitoshi Kozaki:

- a) A 24 July 2019 letter in which the Registrar submitted a budget notification in the sum of €130,700 with regard to the unforeseen and unavoidable costs

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the candidates to be interviewed as well as the interview questions and modalities; and (iii) a three-day meeting of the Committee and the panel in The Hague in April 2020 to conduct the interviews and agree on the shortlist to be recommended to States Parties.

<sup>11</sup> ICC-ASP/17/Res.4, Part L, para. 7.

<sup>12</sup> Pursuant to regulation 6.7 of the Financial Regulations and Rules of the International Criminal Court.

associated with the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* in the situation in Côte d'Ivoire.

- b) A 31 July 2019 letter in which the Registrar submitted a budget notification in the sum of €1,989,200 with regard to the unforeseen and unavoidable costs associated with the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (Yekatom and Ngaïssona) in the situation in the Central African Republic (CAR) II.

## 7. Other matters

### *a) Depositary notification*

The Bureau took note of Depositary notification reference C.N.399.2019,<sup>13</sup> dated 30 August 2019, by which Switzerland had communicated to the United Nations Secretary-General, in his capacity as depositary of the Rome Statute, the text of a proposed amendment to article 8 of the Rome Statute. The purpose of the proposed amendment is to make the starvation of civilians a war crime punishable before the Court when committed in non-international armed conflicts. The Bureau noted that the proposed amendments would be considered by the Working Group on Amendments.

### *b) Appointment of a co-facilitator and co-focal point*

The Bureau appointed Ambassador Luis Vassy (France) as the co-facilitator for cooperation, and also appointed Mr. Jan Christoph Nemitz (Germany) as a co-focal point for the Study Group on Governance.

### *c) Proposal by the Board of Directors of the Trust Fund for Victims (TFV) for amendments to the resolutions pertaining to the TFV*

The Bureau had before it a letter, dated 5 September 2019, containing proposals from the Board of Directors of the TFV for amendments to Assembly resolutions relating to the TFV.

The Bureau decided to refer the amendment proposals to The Hague Working Group for consideration and a recommendation to the Assembly. The Bureau further requested the Board of Directors to present the rationale for each of the amendment proposals.

### *d) Burundi – outstanding contribution to host State loan*

The Bureau took note of the Registrar's communication to the President regarding the outstanding contribution of Burundi towards the host State loan in which the Registrar had, inter alia, requested the Assembly to consider possible ways to resolve the issue of securing payment of the host State loan in such circumstances.

The Bureau noted that the issue was related to the budget and requested The Hague Working Group to consider it in the budget facilitation.

### *e) Upcoming Bureau meetings*

The following Bureau meetings would be held in New York on 24 October, and in The Hague on 12 November, and on 28/29 November 2019 in The Hague.

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<sup>13</sup> <https://treaties.un.org/doc/Publication/CN/2019/CN.399.2019-Eng.pdf>