



**BUREAU OF THE ASSEMBLY OF STATES PARTIES**

**Third meeting**

*via WebEx remote-link*

28 May 2020

Agenda and decisions

*The meeting was chaired by the President of the Assembly, Mr. O-Gon Kwon (Republic of Korea). The Vice-Presidents of the Assembly, Ambassador Jens-Otto Horslund (Denmark) and Ambassador Michal Mlynár (Slovakia) also attended.*

**1. Court policy on COVID-19**

The Bureau took note that, due to the COVID-19 pandemic, the Court had physically closed the ICC headquarters as of 17 March, and that the Principals had decided to extend the physical closure of the Court's headquarters and by implication the remote working arrangements, until the end of May 2020. The Court would begin re-opening as of the beginning of June in a staggered manner, with most staff members continuing to work remotely. The Court had adopted measures to ensure business continuity and fulfilment of its mandate while protecting staff and their families.

The Bureau took note that the fact that meetings of subsidiary bodies of the Assembly were being held as virtual meetings had resulted in budgetary savings for 2020 in respect of the Committee on Budget and Finance, the Advisory Committee on Nominations of Judges, the Judicial Remuneration Panel, the Committee on the Election of the Prosecutor, and the Group of Independent Experts.

**2. Update on subsidiary bodies of the Assembly**

The Bureau took note of the updates on the work of subsidiary bodies of the Assembly.

*a) Committee on Budget and Finance*

The Committee on Budget and Finance had held its thirty-fourth session on 18 and 19 May 2020 via remote-link. The session was not yet finalized and could possibly continue in early June, depending on the submission of additional information from the Court and the availability of all members.

The facilitator for the budget, Ambassador Andrés Terán (Ecuador), indicated that he had met with the Committee and had conveyed the questions posed by a number of States on its work. He would discuss with the Chair of the Committee the possibility of a briefing to States Parties after the conclusion of its session.

*b) Advisory Committee on Nominations of Judges*

The Bureau took note that the nomination period for the election of judges had closed on 14 May 2020 since all the minimum nomination requirements had been met by that deadline.<sup>1</sup> The Secretariat had posted the nominations on the webpage of the Assembly as soon as possible after receiving them, in accordance with resolution ICC-ASP/3/Res.6, paragraph 8.

Since the nomination period had closed, the Advisory Committee on Nominations of Judges (ACN) was in a position to begin its work and would hold its seventh meeting, an organizational meeting, on 4 June 2020, via remote link, which the President of the Assembly would open.

The need for States Parties to elect the most suitable and qualified candidates as judges of the Court was stressed and, in that regard, support was expressed for the work of the ACN. The point was made that the ACN should hopefully be able to consider the background of the candidates, and not just their qualifications.

The Bureau further took note that Open Society Justice Initiative (OSJI) had offered a peer-to-peer workshop for the members of the ACN on 27 and 29 May, entitled “Electing the best: strengthening the role of the Advisory Committee on Nominations of Judges of the International Criminal Court”. The workshop provided the opportunity for ACN members to discuss with experts best practices in the selection of judges of other international jurisdictions. The President commended OSJI for its very timely and relevant initiative.

*c) Judicial Remuneration Panel*

An initial meeting of the members of the Judicial Remuneration Panel (JRP) took place via remote link on 8 April 2020. The JRP commenced its work in accordance with its mandate, and also decided to appoint Ambassador Horslund as its Chair. Further meetings were held on 7 and 14 May 2020.

Vice-President Horslund indicated that the JRP had invited the judges of the Court to its 14 May meeting in order to hear their views. He assured the Bureau that the JRP was keenly aware of the budgetary situation. At the same time, the JRP intended to do its utmost best to provide a recommendation to the Assembly that would be stable and sustainable.

The JRP was not in a position to report at the end of May, the timeline set out in the resolution, since the COVID-19 measures had made its work more difficult. The Panel would do its best to complete its work and report to the Bureau and States Parties, with a recommendation that would not require the issues to be reconsidered regularly.

*d) Independent Expert Review*

The Bureau took note that on 8 May 2020, the Chair of the Independent Experts, Mr. Richard Goldstone had notified the Presidency, pursuant to paragraph 12 of annex I to resolution ICC-ASP/18/Res.7, that in each of the three clusters, the experts had identified issues they wished to consider that might fall outside the list of issues set out in appendix II to annex I.<sup>2</sup>

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<sup>1</sup> There had been an emergency extension of the nomination period until 30 April 2020, in light of the challenges faced by States Parties due to the COVID-19 pandemic, followed by one subsequent extension until 14 May, pursuant to resolution ICC-ASP/3/Res.6.

<sup>2</sup> ICC-ASP/18/Res.7.

The Presidency took note of the IER's intention to modify the lists of topics, without commenting on the substance. The Presidency also drew to the experts' attention that the resolution emphasized that the topics listed therein<sup>3</sup> should be given priority. The Presidency also noted the need to avoid overlap and exploit synergies with existing efforts, and not include new topics at the expense of identified priorities.

Vice-President Horslund recalled that in the negotiation of resolution ICC-ASP/18/Res.7, States had discussed whether the Presidency should play a greater role and had decided against it. It was important for States Parties to live up to the resolutions they had adopted.

Some Bureau members stressed the need to allow the Independent Experts some margin of flexibility and noted that the topics they had proposed fell within the scope of the mandate of the Group of Independent Experts. Further, the list of topics was not exhaustive.

In response to a query, the Vice-President indicated that the Independent Experts expected to submit their interim report by the end of June, in accordance with the timeline set out in the resolution.<sup>4</sup>

### **3. ASP19 preparations**

The President indicated that the preparations for the nineteenth session of the Assembly, scheduled to take place from 7 to 17 December at United Nations Headquarters in New York, Conference Room 2, were ongoing.

He recalled the letter of the United Nations Secretary-General to the President of the General Assembly, dated 18 May 2020, on what might be feasible with regard to the seventy-fifth session of the General Assembly and the other mandated high-level meetings scheduled to be held at the United Nations in New York in September 2020, stating that the ongoing developments should also be borne in mind for the remainder of 2020.<sup>5</sup>

Furthermore, the President noted that there were possible limitations related to the social distancing measures in the conference rooms, and for which there were as yet no guidelines by the United Nations. The United Nations had indicated that such measures were being assessed and they would inform the Secretariat when such guidelines had been issued.

The President indicated that, given the uncertainties about the impact of the COVID-19 pandemic, it would be necessary to undertake contingency planning. The Presidency of the Assembly had thus requested the Secretariat to look into possible scenarios and options thereon, including on shortening the duration of the session, its format, and the venue. The Presidency would then come back to the Bureau with a proposal, if the need arose.

It was noted that despite the ever-changing environment, the importance of side events should be kept in mind. Some members indicated that it was important to discuss various options and plans on how to proceed, while monitoring the public health situation in New York closely; they noted that holding an in-person session and elections in New York was very important, also because of the political climate, as is the preservation of the integrity of the Assembly in all its aspects, to the extent feasible. In this regards, the experience of other organizations/conferences, particularly those with similarities to the Assembly, should be borne in mind. It was suggested that there were various ways to adapt to the situation and streamline the session. It was also stated that States Parties were aware of the scheduling

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<sup>3</sup> Ibid., annex I, appendix II.

<sup>4</sup> Para. 9.

<sup>5</sup> Letter by the United Nations Secretary-General, dated 11 May 2020 regarding the telecommuting arrangements at the Headquarters in New York in effect through 30 June 2020.

challenges faced by the United Nations and that they would support engagement of the Secretariat of the Assembly with the UN Secretariat with regard to the session. Lastly, it was also pointed out that, even though it may not be an issue to be dealt with at the moment, the divided governance arrangement between The Hague and New York has made coordination among States Parties difficult.

The President indicated that this topic would require ongoing considerations in the coming weeks.

#### **4. Election of the President and Bureau for the twentieth to twenty-second sessions**

The President recalled that, on 28 November 2019, he had encouraged the Group of Latin American and Caribbean States (GRULAC) to begin its consultations to identify a candidate that the Bureau would recommend to the Assembly for election as the President for the next period. He had also noted that all regional groups should begin internal consultations in order to identify the members that would sit on the next Bureau.

He had requested that Bureau members begin consultations in their respective groups in order to identify the President, as well as 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. He requested the regional groups to inform the Bureau at its next meeting of the progress on this matter.

A Bureau member from GRULAC informed that consultations were proceeding in the group, and that it was attempting to identify a consensus candidate. The Bureau would be updated on the progress thereon.

#### **5. Election of the Prosecutor: nomination period**

The President recalled that the Bureau had received a written update from the Chair of the Committee on the Election of the Prosecutor, dated 29 April 2020, which had outlined the Committee's intention to proceed with video interviews in light of the COVID-19 pandemic. The President had also subsequently circulated some additional information from the Chair about the vetting process to be undertaken, the purpose of which was to enable the Committee to complete due diligence with regard to the "high moral character" standard in article 42 of the Rome Statute. The President highlighted the fact that the 29 April update indicated only the potential shortlist of candidates would be subject to the vetting process, but he had since been advised that the Committee and Panel of Experts had decided to vet all of the candidates being interviewed. The President also noted that the Committee still anticipated submitting its report on time, by the end of June 2020. The President recalled that, as indicated in his message to the Bureau of 20 May, the Presidency had welcomed the procedures outlined by the Committee and invited them to proceed accordingly.

The Bureau also considered the matter of the formal nomination process for the election of the Prosecutor. The President noted that the applicable Assembly resolution required the Bureau to apply the procedure for the nominations of candidates for judges, *mutatis mutandis*.<sup>6</sup> The President noted that the situation was not straightforward, as it required the Bureau to reconcile the formal nomination process set out in the Assembly resolution with the informal process established by the Bureau under the Terms of Reference for the Election of the Prosecutor.<sup>7</sup> Accordingly a draft note verbale had been prepared to notify States Parties of the opening of the nomination period, but it strongly encouraged States Parties to refrain from submitting nominations until the process set out in the Terms of

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<sup>6</sup> See paragraph 28 of resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6.

<sup>7</sup> ICC-ASP/18/INF.2.

Reference had been completed, with a view to arriving at a consensus candidate. The proposed nomination period was the standard period set out under the resolution: it would open 26 weeks before the election, on 8 June, and run for 12 weeks. There would be extensions every two weeks until consensus has been reached. The President noted that any State Party would be entitled to submit a nomination during the formal nomination period. However, States Parties were expected to refrain from exercising that right, based on the supplementary process established by the Bureau, until the conclusion of the consultations.

The President advised the Bureau that the Chair of the Committee had approached the Presidency to highlight potential issues which could arise as a result of opening the formal nomination period on 8 June, given the report of the Committee was not expected until the end of June.

Bureau members agreed that it was necessary to find a solution which complied with the Assembly resolution while also reflecting the process established by the Bureau under the Terms of Reference. The point was made that the overall goal of a single consensus nomination needed to be borne in mind, and that the note verbale could be more explicit in this regard. It was also noted that it would be important to ensure that the form and timing of the note verbale did not cause complications in relation to the process that had been established.

The President invited Bureau members to submit written comments on the draft note verbale via the Secretariat before the end of 4 June 2020. The Presidency would then undertake informal consultations with a view to submitting a revised draft for approval via silence procedure.

## **6. Budget expenditure: sub-programme 4600: Assembly-mandated bodies for 2020**

### *a) Independent Expert Review*

The Bureau took note that, at 22 May 2020, the total expenditure of the budget<sup>8</sup> for the Independent Expert Review stood at €195,168.49, with a balance of €239,931.51. The full remuneration for the experts and their assistants remained to be paid, according to the timetable agreed.

It appeared likely that there would be a significant underspend of this budget, in view of the need to cancel the trips of the experts to The Hague and New York, as a result of the COVID-19 pandemic. Their meetings had been taking place virtually.

### *b) Committee on the Election of the Prosecutor*

As regards the Committee on the Election of the Prosecutor, the Bureau took note that, as at 20 May 2020, the total expenditure was €10,900. The Assembly had approved a budget of €44,600 for the Committee on the Election of the Prosecutor in 2020. It was likely there would be a significant underspend as a result of the interviews taking place by video-conference.

## **7. Status of contributions**

The Bureau took note of the status of contributions to the approved budget of the Court as at 30 April 2020. As of that date, the Court had received €98.52 million of the contributions for 2020 (or 66 per cent). The total amount of outstanding contributions, for 2020 and for previous years, stood at €72.98 million. A total of 29 States Parties had

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<sup>8</sup> The approved a budget was €435,100.00. See resolutions ICC-ASP/18/Res.1 and ICC-ASP/18/Res.7.

outstanding contributions of more than one year, and 12 of those were ineligible to vote under article 112, paragraph 8 of the Rome Statute.

The President encouraged all States Parties that had outstanding contributions to make every effort to pay them at the earliest opportunity.

## **8. Other matters**

### *a) Election to fill a vacancy on the Board of Directors of the Trust Fund for Victims*

The Bureau took a decision on the election to fill the vacancy on the Board of Directors of the Trust Fund for Victims that arose upon the passing of Mr. Felipe Michelini (Uruguay) on 19 April 2020. The Bureau decided, pursuant to resolution ICC-ASP/1/Res.6,<sup>9</sup> that it would proceed to elect the member, in order to ensure that the Board could continue to operate at full capacity, given the importance of its role. The Bureau decided to open the nomination period to run from 1 to 30 June 2020, and noted that since Mr. Michelini held the seat on the Board of Directors allocated to the Latin American and Caribbean group, nominations were open only to that regional group.

### *b) Independent Oversight Mechanism- evaluation proposals*

The Bureau recalled the 17 March 2020 letter from the Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, addressed to the President, containing three themes for the consideration of the Bureau, so that it may request the IOM to conduct an evaluation of one of these themes in 2020. On the basis of the views expressed, the Bureau decided to request the IOM to conduct an evaluation of Theme 1, “*Evaluation of the interaction of victims with the International Criminal Court*” and to report no later than 31 October 2020<sup>10</sup> to the nineteenth session of the Assembly of States Parties.

A view was expressed that the IOM could also consider merging Theme 3: “*Evaluation of Developing Internal Capacity to Applying the Policy on Sexual and Gender-Based Crimes (SGBC) in the Office of the Prosecutor of the International Criminal Court*” with Theme 1: “*Interactions with the victims*”, as there were related elements in each of the two themes. The President noted that this matter had a bearing on the resources of the IOM and that he would convey to the IOM the view expressed.

### *c) Letter from the Minister of Foreign Affairs and Expatriates of the State of Palestine*

The Bureau took note of a letter, dated 20 May 2020, from H.E. Mr. Riad Malki, Minister of Foreign Affairs and Expatriates of the State of Palestine, in which he expressed concern regarding, inter alia, threats against the Court and staff of the Court, and urged States Parties to take proactive and concrete steps to protect the Court, its proceedings and its staff.

The President recalled that he had issued a press release on 25 March 2020 in which he had reiterated that the Court and its staff had the strong support of the Assembly of States Parties. He had reaffirmed the Assembly’s full confidence in the Court as an independent and impartial judicial institution, and reiterated their strong commitment to upholding and defending the principles and values enshrined in the Rome Statute, and to preserving its integrity undeterred by any threats against the Court. He had also reiterated the call on all States to respect the judicial and prosecutorial independence of the Court and to work together towards our common aim of fighting impunity.

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<sup>9</sup> Annex, paragraph 3 (b).

<sup>10</sup> The President clarified that this date referred to an interim report and that the IOM would finalize the evaluation by 31 March 2021.

He assured the Bureau that the Presidency continued to closely follow developments in that regard and would carefully consider the options for response in the future.

Appreciation was expressed for the President's efforts on this issue, and the point was made that States Parties themselves should also make statements individually and collectively.

The Bureau would keep this issue on the agenda and continue its consideration on the way forward.

*d) Multilingualism*

The point was made that although the COVID-19 pandemic had affected how work could be undertaken, there was a deep desire to return to multilingualism in the Bureau as the technological means for doing so should have been found given the time which has transpired since the physical closure of the Court.

*e) List of Bureau mandates*

Reference was made for the need to have a list of mandates the Bureau had been entrusted with. This would allow for example for greater and more timely focus on some matters, such as the geographical representation in the Bureau.<sup>11</sup>

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<sup>11</sup> ICC-ASP/18/Res.6, para. 101.