



**BUREAU OF THE ASSEMBLY OF STATES PARTIES**

**Sixth meeting**

*via WebEx remote-link*

4 August 2020

Agenda and decisions

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

**1. Election of the Prosecutor – the way forward**

The Bureau considered the way forward regarding the election of the Prosecutor following the public hearings with the candidates shortlisted by the Committee on the Election of the Prosecutor<sup>1</sup> which were held on 29 and 30 July 2020.

The President recalled that the hearings had taken place through the Court's *Interactio* platform, and had been streamed on the Court's website. Recordings of the hearings had also been made available online, and a transcript was under preparation. Simultaneous interpretation in English and French had been provided with the support of the Registry. The hearings had been co-moderated by Vice-President Mlynár and Vice-President Horslund, along with two representatives of civil society: Ms. Amal Nassar (Fédération internationale pour des droits humains or FIDH) and Mr. George Kegoro (Kenya Human Rights Commission). States Parties had been invited to submit questions to be posed to the candidates.

The President noted that technical issues relating to internet connectivity had caused some disruptions during the hearings, despite testing having been undertaken with all candidates and moderators in advance. As a result, on the first day Vice-President Horslund had to moderate on behalf of Vice-President Mlynár, and on the second day one of the candidates had lost connectivity at several points. The President noted, however, that the candidate had been able to reconnect, and all four candidates had answered all of the questions which the moderators had been able to pose within the time available.

Bureau members expressed their appreciation to the Presidency, the Secretariat and the Registry for the arrangement of the hearings, as well as to the candidates for their participation.

As regards the way forward, the President noted that the Terms of Reference for the Election of the Prosecutor envisaged a consultation process, led by the President in consultation with the Bureau, to identify a consensus candidate.<sup>2</sup> The Bureau discussed the

<sup>1</sup> ICC-ASP/19/INF.2, Add.1 and Add.2.

<sup>2</sup> ICC-ASP/18/INF.2, para. 28.

modalities for that consultation process and different views were expressed on the possible options, including the venue for consultations. It was emphasized that all States Parties should be actively consulted, and that consultations should be transparent, efficient, and preferably bilateral. It was noted that the use of focal points could be helpful.

The President advised that the consultation process would be structured, efficient, inclusive and transparent. The consultations would be held under the leadership of Ambassador Mlynár, in close coordination with the President and Vice-President Horslund. While the point of entry for the consultations would be in New York, where all States Parties were represented, it would be for each State Party to determine its participation. In order to ensure that all States Parties could be actively and transparently consulted within a short timeframe, the Presidency would first consider holding consultations with groups of States Parties. The first round of consultations would commence in due course, and the President would provide an update at a Bureau meeting to be convened in the second week of September, prior to further bilateral consultations. Some Bureau members highlighted the importance of a clear timeframe for the consultations and the process.

In response to a query, President Kwon noted that States Parties were welcome to engage bilaterally with the shortlisted candidates, and that their contact details would be distributed by the Secretariat.

## **2. Advisory Committee on Nominations of Judges: update**

The Bureau took note that the Advisory Committee on Nominations of Judges would proceed with its work on the basis of the decision of the Bureau reflected in the 20 July 2020 letter of the President, in which he indicated that the Bureau had agreed to extend the deadline for the submission of the Committee's report until 30 September 2020. The Bureau noted that the Advisory Committee intended to hold virtual interviews with all candidates.

The President indicated, regarding the roundtable discussions foreseen in annex I to resolution ICC-ASP/18/Res.4, that the facilitation on the Review of the procedure for the election of judges was considering the possible modalities for the conduct of the roundtable. The Bureau would await the outcome of those discussions on the way forward.

## **3. ASP19 preparations**

The Secretariat informed that the preparations to hold the nineteenth session of the Assembly from 7 to 17 December in New York continued. In that connection, and bearing in mind the developments regarding the COVID-19 pandemic, on 3 August the UN Secretariat and the Netherlands had provided information about some key aspects for holding in-person meetings.<sup>3</sup>

## **4. Other matters**

### *a) Election of judges- status of nominations*

The Bureau took note of the 29 July 2020 withdrawal by the Government of Bangladesh of its candidate for election as a judge, and took note further that, in accordance with resolution ICC-ASP/3/Res.6, paragraph 20 (b),<sup>4</sup> there shall be no minimum voting requirement for the Asia-Pacific group.

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<sup>3</sup> Annex.

<sup>4</sup> Paragraph 20 (b) provides as follows:

(b) Each Party shall vote for a minimum number of candidates from each regional group. This number shall be 2 minus the number of judges from that regional group remaining in office or elected in previous ballots.

The Bureau approved the draft note verbale regarding the adjusted minimum voting requirements for the Asia-Pacific group, dated 3 August 2020, and requested the Secretariat to disseminate it to all States Parties.

*b) Twelfth session of the Audit Committee*

The Bureau took note that the Audit Committee had held its twelfth session virtually, on 27 to 29 July 2020.

*c) Activity report of the Independent Oversight Mechanism*

The Bureau took note that, in view of the absence of the Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, the quarterly report of the IOM would be submitted in early August 2020 instead of in accordance with the timeline specified in resolution ICC-ASP/12/Res.6.<sup>5</sup>

The Bureau requested the Head of the IOM to continue to submit quarterly activity reports directly to the Bureau and to submit a consolidated annual report on its operations to the Assembly, in accordance with paragraph 46 of the annex to resolution ICC-ASP/12/Res.6.

*d) Briefing on the Presidency's meeting with the Court's Principals*

The President informed the Bureau that he and the Assembly Vice-Presidents, Ambassador Jens-Otto Horslund (Denmark) and Ambassador Michal Mlynár (Slovakia), had met with the Principals of the Court, who had informed them of the seriousness of the threats faced by the Court. The President invited States Parties to consider including statements of support for the Court at the general debate of the 75<sup>th</sup> session of the United Nations General Assembly and in other fora.

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If the number of States Parties of any given regional group is higher than 16 at that moment, the minimum voting requirement for that group shall be adjusted by adding 1.

If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that regional group (rounded up to the nearest whole number where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that group.

<sup>5</sup> Resolution ICC-ASP/12/Res.6, annex, para. 46 provides as follows: The Independent Oversight Mechanism will submit quarterly activity reports directly to the Bureau and will submit a consolidated annual report on its operations to the Assembly. Within this annual report, the IOM shall also provide the Assembly with a comprehensive section on the internal evaluations carried out by the Court during that year;

## Annex

### ASP19 preparations

The Secretariat informed Bureau members that the preparations to hold the nineteenth session of the Assembly from 7 to 17 December in New York continued. In that connection, and bearing in mind the developments regarding the COVID-19 pandemic, on 3 August the UN Secretariat had indicated that as of 24 August it would enter phase 2 of the return to the workplace at UNHQ, which foresees having up to 40 per cent of the staff back in the office. The UN was still assessing the extent to which this would allow in-person meetings to be held. Bearing in mind the social distancing requirements, the UN estimated that only 70 delegates would be able to be seated in conference room 2 on equal conditions (ie with a table and a microphone); it would thus be necessary for any large meetings at UNHQ to make use of a set of conference rooms, so as to allow for the participation of all UN Member States. A calendar of meetings of the six UN General Assembly Committees, which would have to share the set of conference rooms, would be developed in the course of the following weeks; an indication of the use of the sets of conference rooms and whether their work could be concluded by the end of November would be ready after mid-September. That would allow the UN Secretariat to indicate what conference rooms and services<sup>6</sup> would be available for the nineteenth session of the Assembly, as it was clear that having the Assembly take place in one conference room, as in the case of past Assembly sessions at UNHQ, would not be feasible.<sup>7</sup>

The Secretariat also recalled that the travel restrictions to New York and quarantine requirements upon arrival were subject to the decisions of the respective United States authorities<sup>8</sup> while access to UNHQ is subject to UN decisions. Furthermore, the Secretariat noted that given the social-distancing requirements in place, the modality for holding a secret ballot for the election of six judges would seem to require following what the UN had done on 17 June 2020 for the elections to the UN Security Council.<sup>9</sup>

As regards the possibility of holding the nineteenth session of the Assembly, or part thereof, in The Hague at the World Forum Convention Center (WFCC), the Secretariat indicated that the WFCC had availability of the main conference room for three working days (from 14 to 16 December 2020), which could accommodate 194 States Parties in equal conditions (i.e. with a table and microphone), and that additional conference rooms would also be available to accommodate additional delegates or to use for the balloting. The WFCC has estimated the cost of the three day session to be €490,000; this includes a virtual platform designed for the Assembly session with a cost of €100,000. An additional €50,000 may be needed to cover the cost of security.<sup>10</sup>

For its part, the Netherlands, as host State to the ICC, had on 3 August indicated that it had implemented a policy whereby “diplomats can enter the Netherlands irrespective of the purpose of their travel”. As regards “other participants” there is a procedure in place whereby

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<sup>6</sup> The services would include the possibility of using remote simultaneous interpretation as, given the COVID-19 restrictions, the UN has to ascertain if it can hire the usual large number of interpreters for its own mandated meetings, as well as for outside meetings, such as the Assembly.

<sup>7</sup> Once the UN calendar of conferences for the remaining months of 2020 is agreed to, the UN General Assembly would formally consider the request by the Assembly of States Parties to the Rome Statute to hold its nineteenth session at UNHQ from 7 to 17 December 2020.

<sup>8</sup> The situation vis-à-vis delegates of UN Member States is reflected in note verbale HC-36-20, dated 13 July 2020, from the United States Mission to the United Nations, which indicates, inter alia, that travel restrictions remain in place for travelers to the United States from several countries/regions but that “Diplomats with an A or G visa entering from any of these countries/regions are waived in. However, such diplomats may be medically screened, and where appropriate quarantined for up to a 14-day period to prevent the spread of the virus”. This exemption from the travel restrictions does not however cover ICC officials.

<sup>9</sup> This modality would require having a conference room for groups of pre-registered delegates to pick up and drop off their ballot in groups staggered over several hours.

<sup>10</sup> A reference was made to the possibility that the Netherlands could give positive consideration to finance an Assembly session in The Hague, if there was a decision thereon.

the Dutch Ministry of Foreign Affairs assesses if the request by an international organization for the participation of such persons in a conference/hearing is well substantiated; if that is the case, then they are considered to be part of the exception category of persons to whom the travel restrictions do not apply and they are consequently allowed to enter the Netherlands.

The point was made that indeed the COVID-19 situation changes every day, all around the world, that the UN would be holding several elections in September and that therefore it was premature to consider a change of venue of the nineteenth session of the Assembly. Bearing in mind the importance of allowing all States Parties to participate in the Assembly and especially in the elections, it was suggested to explore the options for elections via secret ballot in New York, while considering the modalities for other agenda items.

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