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Report of the Bureau on the scheduling of Assembly sessions

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I. Introduction

1. The present report is submitted pursuant to the mandate given to the Bureau for the topic “Scheduling of Assembly sessions” based on paragraph 102 of resolution ICC-ASP/18/Res.6, in which the Assembly of States Parties (“Assembly”) “[r]equest[ed] the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency”.¹ In paragraph 103 of the resolution, the Assembly “[r]equest[ed] also the Bureau to address in its report under paragraph 102 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled”.²

2. Following discussions that the Bureau had in 2019 and bearing in mind the “Report of the Bureau assessing the benefits and challenges with regard to current schedule of the Assembly sessions” (ICC-ASP/18/INF.6),³ the Bureau considered the topic in 2020 in its first and second meetings held respectively on 24 January and 25 February.⁴

3. On 25 March 2020, as an outcome of the prior discussions, the Bureau appointed via a silence procedure Mr. Fernando Andrés Marani (Argentina) as its focal point for the topic “Scheduling of Assembly sessions” to lead the consultations with all relevant stakeholders. He served in that capacity until 10 October.

4. On 26 June 2020, the focal point of the Bureau convened a meeting to consult States Parties, Observer States, the Court and civil society based on the “Interim report of the focal point of the Bureau on the general views of States Parties on the scheduling of Assembly sessions”,⁵ which reflected the comments received on the non-paper of the focal point on identifying the scope of the consultations and outlining the key issues on the topic (annex II). To mitigate the impact of the COVID-19 pandemic, the meeting was convened virtually via the Court’s WebEx platform.

II. Discussions in the Bureau

5. At the meeting held on 24 January 2020, the Bureau decided to consider the topic of the scheduling of Assembly session in 2020 with the aim of submitting to the nineteenth session of the Assembly a report assessing the benefits and challenges of the current schedule of the Assembly in accordance with the mandate given to the Bureau as contained in the omnibus resolution adopted at the eighteenth session (ICC-ASP/18/Res.6), while bearing in mind the previous report of the Bureau on the same topic (ICC-ASP/18/INF.6).⁶

6. At the second meeting held on 25 February, the Bureau noted that the following points were itemized in the relevant resolution (ICC-ASP/18/Res.6): the proposal to hold future Assembly sessions in the first six months of each calendar year; the proposal to shorten the length of the Assembly sessions; the location of the meetings of the Assembly and of the Bureau; and recommendations to improve efficiency. Different views were expressed with regard to the benefits and challenges of holding future Assembly meetings in the first six months of the calendar year, as well as the proposal to shorten their length. Some Bureau members considered that a shorter Assembly session would be desirable, while the point was made that each Assembly session was different and that it would be counterproductive to strictly limit the duration. It was suggested that discussions on this topic should take place in New York given the universal representation. A suggestion was made to appoint a Bureau member as a focal point to facilitate further discussions on the matters and produce a report

¹ ICC-ASP/18/Res.6, para. 102.

² ICC-ASP/18/Res.6, para. 103.

³ ICC-ASP/18/INF.6.

⁴ The agenda and decisions of the relevant meetings of the Bureau referred to in this paragraph are available at https://asp.icc-cpi.int/en_menus/asp/bureau/decisions/Pages/decisions.aspx.

⁵ The interim report was circulated to States Parties, Observer States, the Court and civil society on 15 June 2020.

⁶ See Agenda and decisions of the Bureau at its first meeting on 24 January 2020, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-Bureau-1.pdf.

with recommendations. The Bureau noted that the topic required further consultations, in particular regarding implications of holding Assembly sessions in the first half of the year for the adoption of the budget. The Bureau decided to continue its discussion of this agenda item at future meetings.

III. Consultations with States Parties

7. On 1 May 2020, the focal point of the Bureau called for general comments from States Parties on the topic of the scheduling of Assembly sessions based upon the non-paper on identifying the scope of the consultations and outlining the key issues in considering the topic (annex II). On 15 June, he circulated the “Interim report of the focal point of the Bureau on the general views of States Parties on the scheduling of Assembly sessions” reflecting the general comments received. On 26 June, the focal point convened a meeting to consult States Parties, Observer States, the Court and civil society about the interim report.

8. At the meeting held on 26 June, delegations expressed their willingness to consider the possibility of holding Assembly sessions in the first half of the year, especially from March to June, in consideration mainly of the busy schedule in New York and The Hague and also restraints in attracting high-level participants in December.

9. Some delegations stated that the efficiency and effectiveness of the work of the Assembly was the most important in considering the scheduling of Assembly sessions, and therefore should prevail over discussions pertaining to the budget, which would need to take place in a separate forum and manner. Other delegations stated that the adoption of the budget comprised an important part of the efficiency of the Assembly’s work. A view was further expressed that the issue of budget had been foundational in settling the current scheduling of Assembly sessions, and thus might also be essential to any changes. One delegation proposed to consider a biennial budget cycle for the efficient management of the agenda that the Assembly would have to deal with.

10. Regarding the length of Assembly sessions, while promoting the idea of concise duration of Assembly sessions, some delegations valued flexibility, rather than mandating a fixed duration, given that duration may depend upon the number and nature of the agenda items a particular session has to deal with. Some tended to lean towards the option of shortening the duration as much as possible. On the other hand, a delegation pointed out that the durational issue had already been decided upon after a lengthy discussion by the Assembly in its sixteenth session. Delegations generally recognized needs for a longer duration if elections would take place.

11. Regarding the issue of participation, views were expressed that it was important to design Assembly sessions in a way to promote the political level of participation, including ministerial participation. Some delegations indicated that the duration of sessions would need to be reduced and we should avoid the busiest season towards the end of the year. A delegation requested that the Secretariat of the Assembly provide the attendance record of past Assembly sessions, including that of States Parties, Observer States and civil society organizations, as well as the information about the degree of presence at the beginning of each session and towards the end. The same delegation pointed out that the absence of interpretation had posed serious questions when Bureau meetings or Assembly sessions took place in New York, including in particular the sixteenth session held in 2017, in which the Assembly adopted important amendments in relation to the crime of aggression.

12. Regarding the location of Assembly sessions and Bureau meetings, some delegations pointed out that distinction be made in the mandates of New York and The Hague. They also mentioned that the rotation of venue for Assembly sessions was grounded on the Rome Statute itself and particularly elections should continue to take place in New York, as was the case with other multilateral systems, given that a number of States do not have representation at The Hague. A view was expressed that while both locations should receive respective mandates, it is necessary to avoid repetitions in order to improve efficiency. A concern was raised that the level of attendance at a meeting should not be a decisive factor in considering the co-location of the work of the Assembly.

13. Delegations requested more information from the Registry and the Secretariat of the Assembly, including about budgetary implications, consequences to the Court’s business and

the mandates of the Assembly, if sessions would take place in the first half of the year. A delegation recognized the need for thorough assessments with all the branches of the Court.

14. Delegations indicated that in considering the scheduling of Assembly sessions, the Assembly might have to be mindful of possible changes in the format and modality of its meetings due to the COVID-19 pandemic. A view was also expressed that the focus of this year had been to overcome paralyzed situations caused by the pandemic, and thus States might be able to discuss the topic of scheduling Assembly sessions at a later stage.

15. The focal point noted that the consultation process was open to all stakeholders and invited civil society organizations to provide comments on the topic in future consultations.

16. A paper containing replies from the Court and the Secretariat of the Assembly to questions posed in the course of the discussions was circulated on 3 December 2020.

IV. Conclusions and recommendations

17. The Bureau recommends that it continue the consideration of the topic of the scheduling of Assembly sessions at future meetings in 2021, taking into account the relevant recommendations made by the Group of Independent Experts, and report thereon to the twentieth session of the Assembly.

18. The Bureau concludes its intersessional work by recommending to the Assembly the inclusion of language in the omnibus resolution (annex I).

Annex I

Draft text for the omnibus resolution

1. Paragraph 102 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) remains unchanged, reading:

“Requests the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;”

2. Paragraph 103 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) remains unchanged, reading:

“Requests also the Bureau to address in its report under paragraph 102 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled;”

3. Paragraph 11 (i) of annex I (mandates) of the 2019 omnibus resolution (ICC-ASP/18/Res.6) remains unchanged, reading:

“(i) requests the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau, and to make recommendations to improve efficiency; and”

Annex II

Non-paper of the focal point of the Bureau on identifying the scope of the consultations and outlining the key issues in considering the scheduling of Assembly sessions

In paragraph 102 of ICC-ASP/18/Res.6 (the omnibus resolution), and paragraph 11 (i) of annex I thereto, the Bureau was mandated, “in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report, by the next session of the Assembly, assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first six months of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency”.

Additionally, in paragraph 103 of the said resolution, the Assembly also requested the Bureau “to address in its report under paragraph 102 the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled”.

Following previous discussions held in the Bureau during 2019 and 2020, including the “Report of the Bureau assessing the benefits and challenges with regard to current schedule of the Assembly sessions” (ICC-ASP/18/INF.6), dated 29 November 2019, the Presidency decided to identify a focal point of the Bureau for leading the consultations with all relevant stakeholders on the question of “Scheduling of Assembly sessions”. The Bureau appointed the focal point¹ on 25 March 2020.

In order to start the consultation process, the focal point has identified the following issues to be addressed:

1. Scope of the mandate

In paragraphs 102 and 103 of ICC-ASP/18/Res.6, the Bureau is requested to submit a report by the nineteenth session of the Assembly of States Parties² assessing the benefits and challenges with regard to 1) schedule, 2) length, and 3) location of the Assembly meetings.

Regarding the question of schedule, the report should also address the proposal to hold the future Assembly meetings in the first six months of each calendar year.

Regarding the length, the report should also address the proposal to shorten the Assembly session, including in particular the proposal to hold the Assembly sessions as a rule with a length of up to six days, preferably over one calendar week, unless judicial or prosecutorial elections are scheduled.

Regarding the location, the report should address the location of the meetings of both the Assembly and the Bureau.

Finally, the report should make recommendations to improve efficiency.

2. Scope of the consultations

The mandate included in paragraph 102 of ICC-ASP/18/Res.6 and paragraph 11 (i) of the annex thereto, states that consultations should be held with all States Parties, the Court and civil society, both in New York and The Hague.

¹ Mr. Fernando Andrés Marani (Argentina).

² 7 – 17 December 2020.

3. Way forward

To advance the gathering of information from all relevant stakeholders, as a starting point of the consultations, the focal point on the question of “Scheduling of Assembly sessions” has invited all States Parties, the Court and civil society to address the questions below and to send comments and views to him at fmr@mrecic.gov.ar and copied to the Secretariat at asp@icc-cpi.int by the end of Monday, 18 May 2020.

4. Questions to be addressed

- a) *Which are the benefits and challenges of the current schedule of the meetings of the Assembly of States Parties?*
 - b) *What is your view on the proposal to hold the future Assembly sessions in the first six months of each calendar year?*
 - c) *Which are the benefits and challenges of the current length of the sessions of the Assembly of States Parties?*
 - d) *What is your view on the proposal to shorten the duration of the sessions?*
 - e) *Would you support holding, as a rule, the Assembly sessions with a length of up to six days, unless judicial or prosecutorial elections are scheduled? If yes, would you support that the session takes place over one calendar week?*
 - f) *Which are the benefits and challenges of the current locations for the meetings of the Assembly and of the Bureau?*
 - g) *Is there any other issue related to the scheduling of the Assembly sessions that you would like to address?*
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