



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Ninth meeting

24 November 2021

(via remote link)

Agenda and decisions

The meeting was chaired by the President of the Assembly, Ms. Silvia Fernández de Gurmendi (Argentina). The Vice-Presidents of the Assembly, Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequensová (Czech Republic), also participated.

1. Review Mechanism- update

Ambassador Michael Imran Kanu (Sierra Leone), a State Party representative on the Review Mechanism, briefed the Bureau on the work of the Review Mechanism, also on behalf of Ambassador Paul van den IJssel (Netherlands).

Since the 3 November meeting of the Bureau, the New York Working Group and The Hague Working Group had been briefed, on 16 November and 19 November, respectively. The Review Mechanism had been focusing its work on three points:

- a) Finalizing a report, which the Assembly requested in paragraph 9 of resolution ICC-ASP/19/Res.7. The three-part report included a procedural part, an overview on the assessments and the next steps. The mechanism expected to circulate that report soon for States Parties to consider it in advance of the twentieth session of the Assembly.
- b) A draft stand-alone resolution to which a matrix would be annexed indicating the status of the assessment and/or implementation of those IER recommendations with an assessment timeline of the end of 2021. The facilitator highlighted that the Review Mechanism did not intend to negotiate the matrix to avoid re-opening discussions that took place in the facilitation meetings, and on which reports has already been adopted. The matrix would be purely factual and would contain information on the positive/negative assessment of recommendations and the reasons why, as well as an indication where agreement on a recommendation was not reached.
- c) A plenary on the review process at the Assembly, which provide additional information on the report and where the Court focal points could present their views. The plenary session would also be useful to hear the views and comments of States Parties and all relevant stakeholders.

2. Preparations for the twentieth session of the Assembly

a) Update by the Secretariat

The Bureau received an update regarding deteriorating situation in the Netherlands regarding the COVID-19 pandemic, indicating that the Government of the Netherlands would announce additional measures on 26 November.

In the light of the latest developments, the Bureau agreed to the following key changes regarding access:

There will be 1.5 meter distancing between delegations (but not within delegations of States Parties).

States Parties: two per State Party on the main floor with a microphone and table with no social distancing within a delegation.

Observer/Invited States: two per State, with one delegate on the main floor with a microphone and table, while the second delegate would be seated at the balcony.

Court: four per organ and a total of four for subsidiary bodies – some would have to be seated at the balcony.

Intergovernmental organizations (IGOs): 10 - one per IGO: each with a microphone and table.

NGOs: 16 – some would have to be seated at the balcony.

Press: five – seated at the balcony.

The Bureau decided to formally request the Ministry of Foreign Affairs of the Netherlands for an exemption from the Dutch coronavirus entry pass system, as indicated in the 10 November 2021 note verbal from the Ministry of Foreign Affairs sent to international organizations.

The Bureau further decided to adopt the following coronavirus pass entry system for the twentieth session:

Registered participants could access the World Forum Convention Center with the presentation of:

- a) the European Union digital COVID certificate (DCC)¹ or Dutch COVID-19 entry pass system with QR codes, which includes:
 - i) full vaccination;
 - ii) recovery certificate; or
- b) written paper proof of vaccination with vaccines approved by the European Medicines Agency (EMA) or on the Emergency Use Listing of the World Health Organization (WHO).² The Secretariat of the Assembly would provide an ASP20 pass to delegates who submit the written proof of vaccination so that they do not need to show the written proof again during the week of ASP20.

¹ https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en; 22 non-EU countries (and territories) have joined the EU Digital COVID certificate system and the COVID certificates issued in those countries are accepted in the EU.

² <https://www.government.nl/topics/coronavirus-covid-19/visiting-the-netherlands-from-abroad/requirements-for-proof-of-vaccination>.

- c) negative test result (a QR code of the Dutch COVID-19 entry pass system is acceptable). On-site antigen testing will be available for free for delegates/participants who do not fall under the first two groups indicated in paragraphs a) and b) or that wish to undertake the test in order to access other venues in The Hague. The test would be valid for 24 hours and would need to be undertaken on a daily basis. This would allow individuals to receive a QR code which could be uploaded to the CoronaCheck app or to receive a paper certificate valid for 24 hours, including for entry to the other venues, such as restaurants, bars, etc.

As regards the modalities for the Bureau meetings to be held during the Assembly, the Bureau decided to hold its meetings in-person, with only one delegate per Bureau member, respecting the 1.5 meter social distancing and wearing masks, in the Amazon room at the World Forum.

The Bureau adopted a revised programme of work for the twentieth session, dated 21 November 2021,³ on the understanding that the work programme would be adapted in light of developments at the Assembly.

b) Elections

(i) Advisory Committee on Nominations of Judges

The Bureau recalled that the terms of reference of the Advisory Committee provided that the Committee should be designated by the Assembly by consensus on recommendation made by the Bureau of the Assembly also made by consensus.⁴

The Bureau was informed that within the Eastern European group, there was one objection voiced regarding one candidate. Nonetheless, the point was made that not all the possibilities had been exhausted and that perhaps consensus was attainable at the Assembly. The Bureau agreed to recommend to the Assembly the election by acclamation of nine candidates that have been presented for the nine positions: Mr. Dennis Dominic Adjei (Ghana); Mr. Julian Fernandez (France); Ms. Lucy Muthoni Kambuni (Kenya); Ms. Milica Kolaković-Bojović (Serbia); Mr. Erkki Kourula (Finland); Ms. Sanji Mmasenono Monageng (Botswana); Mr. Mauro Politi (Italy); Mr. Eduardo Rodríguez Veltzé (Bolivia) and Mr. Sang-Hyun Song, (Republic of Korea).

c) Credentials Committee

The Bureau recommended that the Assembly appoint as members of the Credentials Committee, Cyprus, El Salvador, Hungary, Mexico and Romania. The President invited the other regional groups to submit the names of the four additional members who could be part of the Committee.

d) Nomination of national tellers

The Bureau recommended that the Assembly appoint two national tellers, namely Ms. Anahi Aguirre (Uruguay) and Paulina Dudzik (Poland). The President invited the other regional groups to submit the names of the three additional national tellers who could be considered to be part of the tellers at the twentieth session of the Assembly.

³ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/ASP20.ProvWP.pdf

⁴ Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court (ICC-ASP/10/36), annex, para.1.

e) Nomination of a Rapporteur for the twentieth session

The President encouraged the Asia-Pacific group and the African group⁵ to continue consultations, with a view to presenting a candidate for appointment as Rapporteur for the twentieth session, and to inform the Secretariat as soon as possible.

f) Appointment of Coordinators for the twentieth session

The Bureau agreed to recommend to the Assembly the appointment of two coordinators for the twentieth session as follows:

- Working Group on the Programme Budget- Ambassador Frances-Galatia Lanitou Williams (Cyprus).
- Omnibus resolution- Mr. Vincent Rittener (Switzerland).

3. Oral report of the Bureau

The Bureau took note that it would receive in the coming days the draft report of the Bureau, which the President would present orally at the first plenary meeting on 6 December 2021.

4. Bureau- rotation of seats

At its seventeenth meeting, on 12 January 2021, the Bureau had taken note of the seat-sharing arrangements agreed to by the Asia-Pacific group and the Western European and other States Group for the term of the 2021-2023 Bureau. In order to ensure a seamless transition of Bureau members where there has been an internal seat-sharing arrangement, and to dispense with having an election of some Bureau members at each session of the Assembly, the Bureau agreed to recommend to the twentieth session of the Assembly that the following members of the Bureau be elected, according to the internal agreement as follows:

In the Asia-Pacific group:

- Bangladesh would be elected for 2023;
- Japan and the Republic of Korea would be elected for 2022-2023, and

In the Western European and other States Group:

- Germany would be elected for 2022-2023 as of 13 February 2022.

5. ASP20- requests for waiver of loss of voting rights

The Bureau took note that as at 31 October 2021, a total of nine States Parties were subject to article 112, paragraph 8, thus not eligible to vote during the Assembly. The Bureau also took note that no requests for a waiver of loss of voting rights had been received.

The point was made, while understanding the current difficult situation due to COVID-19 but also taking into account the longstanding issue of liquidity, that any Bureau recommendation for waivers for loss of voting rights be accompanied by a reference to the fact that the matter of liquidity and outstanding contributions remains a serious concern to the Assembly as highlighted by the Committee on Budget and Finance and the Independent Expert Review, and that this issue would remain under consideration by the Assembly over the period ahead.

⁵ The Rapporteur should be from a regional group not represented in the Presidency of the Assembly, and should also preferably be available for the twenty-first and twenty-second sessions of the Assembly.

The Bureau took note of the point made and agreed to recommend that the Assembly to grant the waiver requests due to the exceptional COVID-19 circumstances in 2021, while indicating that this practice should change in 2022, if such circumstances improve.

6. List of meetings of subsidiary bodies of the Bureau held in private in 2021

Pursuant to the “Understanding on the participation of Observer States in meetings of the Assembly of States Parties”,⁶ which the Bureau adopted on 18 October 2017, the Bureau took note of a list of meetings in 2021, which were either wholly or partially open to States Parties only.

7. Election of the Deputy Prosecutor- update

Further to the Bureau discussions held at its 15 November meeting, the Presidency had organized a roundtable with two segments, one for the three candidates of list A and one for the three candidates of list B. This was an excellent opportunity for States Parties, civil society and the public to familiarize themselves with the candidates.

The Bureau took note of the Guide for the fourth election of the Deputy Prosecutors prepared by the Secretariat, which was disseminated to States Parties and posted on the Assembly website as an official document (ICC-ASP/20/37). The President informed the Bureau that the election was planned to take place on 10 December at 15:00 and, if need be, continue on 11 December at 10:00.

Further to the Bureau’s agreement of 6 July 2021 on having a due diligence process for candidates for Deputy Prosecutor which included the possibility of conveying allegations of misconduct to the Independent Oversight Mechanism (IOM), the President informed the Bureau that the IOM had submitted a report to the President of the Assembly and the Prosecutor on 18 November. In the report, the IOM concluded that there was no evidence of misconduct that warranted informing the Assembly as to the risks that any candidate may not be of high moral character as required by the Statute. The President informed the Bureau that upon consideration of the report, the Presidency accepted the conclusions of the IOM and considered that no further action was required. The Bureau took note of the oral report made by the Presidency on the report of the IOM on this matter.

The point was made that elections should take place in New York where there is universal representation of all States Parties and that although for the election of the two Deputy Prosecutors at the twentieth session in The Hague the preparations were quite advanced, it was important to have future elections at United Nations Headquarters.

Since it was the first time that the Assembly was going to elect two Deputy Prosecutors at the same session, the Bureau had a discussion on the procedure to be followed in the preparation of the respective ballot(s). Bureau members raised questions regarding the legal basis for the election procedure and had divergent views on the interpretation of article 42(4) of the Rome Statute, in particular whether one list of six candidates or two separate lists of three candidates should be on the ballot(s). In light of the division of views on this point, the President indicated that the matter would be further discussed at the Presidency in order to determine the way forward to be proposed.

⁶ https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf

The “Understanding on the participation of Observer States in meetings of the Assembly of States Parties” states inter alia:

“4. Bearing in mind the provisions of rule 42 of the Rules of Procedure of the Assembly of States Parties, according to which it is up to States Parties of the concerned subsidiary body with general membership to decide whether the in-principle public meetings shall be held in private, and thus whether interested Observer States shall not be allowed to participate in such meetings:

(a) The chairpersons and facilitators of the Assembly are requested to communicate to the Bureau any decision made by State Parties within their respective processes to hold meetings in private, without prejudice to case-by-case deviations as may be decided by the States Parties of the respective processes;

(b) The Bureau shall keep a list of such decisions.”

8. Independent Oversight Mechanism

a) Annual report

The Bureau received a presentation by the Head of the IOM and decided to welcome the Annual report of the Head of the IOM.⁷

b) Proposed annual programme of evaluation

The Bureau took note of the proposed annual programme of evaluation, dated 17 November 2021, submitted by the Head of the IOM and his indication that in order to carry out the evaluation of theme I, additional resources in the range of 30,000 euros would be needed for the respective consultant. The Bureau agreed to request the IOM to conduct an evaluation of theme 1 (Evaluation of the workplace culture in the Judicial Divisions (Chambers) of the International Criminal Court - requested by the President of the Court) as proposed in the annual programme of evaluation. The Bureau would revert to consideration of the other themes suggested at a future meeting.

9. Status of contributions

The Bureau took note that no major changes had occurred regarding the status of contributions it had been informed of at its 3 November 2021 meeting.

10. Adoption of reports

The Bureau adopted the following reports submitted by the Assembly mandate-holders:

- a) report of the Bureau on the Study Group on Governance, dated 4 November 2021.
- b) report on the topic of Budget Management Oversight on the IER related recommendations, dated 8 November 2021.
- c) report on the topic of Review of the work and operational mandate of the Independent Oversight Mechanism on the IER related recommendations, dated 29 October 2021.
- d) report on the topic of Complementarity on the IER related recommendations, dated 1 November 2021.
- e) report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, dated 10 November 2021.
- f) report of the Bureau on legal aid, dated 12 November 2021.
- g) report of the Bureau on the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court, dated 23 November 2021.
- h) report of the Bureau on the scheduling of Assembly sessions, dated 17 November 2021.
- i) report of the Bureau on non-cooperation, dated 18 November 2021.
- j) report of the Bureau on arrears, dated 23 November 2021.
- k) report of the Bureau on Complementarity, dated 23 November 2021.

The Bureau would consider adoption of other reports submitted after its meeting via silence procedure.

11. Other matters

a) Situation in Afghanistan- update

The Bureau took note of the Memorandum, dated 9 November 2021, titled “Notification of documents registered in the Situation in the Islamic Republic of Afghanistan for onward transmission

⁷ ICC-ASP/20/16.

to the Bureau of the Assembly of States Parties”, from the Director, Division of External Operations, addressed to the Director of the Secretariat of the Assembly of States Parties in relation to: Transmission of Communications Submitted by the United Nations and the Bureau of the Assembly of States Parties pursuant to Pre-Trial Chamber II’s Decision ICC-02/17-165 of 8 October 2021” (ICC-02/17-169) together with its two annexes (ICC-02/17-169-AnxI + ICC-02/17-169-AnxII), submitted by the Registry on 5 November 2021.

b) Lessons learnt on the election of the Prosecutor

The President informed the Bureau that the Ambassadors Ksenija Milenković (Serbia) and Alexander Marschik (Austria) had received the key reports and other documents, which would provide them the required background to start their work in the near future. The President further informed that she would have a virtual meeting with them to discuss the timelines they envision and some administrative aspects of the work they would commence.

c) Forthcoming meetings of the Bureau

The Bureau took note that the Government of the Netherlands was planning to announce some additional measures related to the pandemic on 26 November in the evening. The Bureau agreed to convene on an urgent basis if the measures had an impact on the Assembly session, so to agree on a course of action and to inform all participants.

The Bureau agreed in order to reduce health risks, only one delegate per Bureau member would attend the Bureau meetings during the Assembly, which will include social distancing and the use of masks. The Bureau agreed in principle and depending on the need to meet every day as of Tues. 7 December at 08:15 Hague time until the end of the twentieth session.
