



Assembly of States Parties

Distr.: General
30 November 2021

Original: English

Twentieth session

The Hague, 6 – 11 December 2021

Report of the Bureau on the arrears of States Parties

I. Introduction

1. Pursuant to articles 112, 115 and 117 of the Rome Statute, the expenses of the Court and of the Assembly of States Parties (“the Assembly”), as outlined in the budget considered and decided by the Assembly, shall be provided by, inter alia, contributions made by States Parties. The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

2. Pursuant to regulation 105.1 of the Financial Regulations and Rules, “assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later.” For the purposes of this report, lack of full payment within this timeframe is considered an “outstanding contribution.” Pursuant to the same regulation, “[a]s of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.” Further, as per article 112, paragraph 8, of the Rome Statute, “a State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.”

3. The Assembly has regularly “emphasize[d] the importance of endowing the Court with the necessary financial resources, and urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly.”¹

4. At its nineteenth session, the Assembly decided “that the Bureau, through the President of the Assembly, the Coordinator of the working group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and via the annual facilitation on the topic of arrears, report thereon to the Assembly at its twentieth session.”²

¹ ICC-ASP/12/Res.8, para.60; ICC-ASP/13/Res.5, para.86.; ICC-ASP/14/Res.4, para.100; ICC-ASP/15/Res.5, para.117; ICC-ASP/16/Res.6, para.127; ICC-ASP/17/Res.5, para.144; ICC-ASP/18/Res.6, para.147; ICC-ASP/19/Res.6, para.151.

² ICC-ASP/19/Res.6, annex 1, para.16 (b).

5. Also at its nineteenth session, in the resolution on the budget³, the Assembly urged all States Parties to make timely payments of assessed contributions and requested the Court and States Parties to make serious efforts and take necessary steps to reduce the level of arrears and outstanding contributions as far as possible to avoid liquidity issues for the Court, and further requested the Court to communicate to the Committee all information concerning outstanding contributions in advance of the twentieth session of the Assembly of States Parties.⁴ The Assembly also welcomed the Court's development of guidelines, consistent with existing rules and regulations, for States Parties which are in arrears and subject to the provisions of article 112, paragraph 8, of the Rome Statute, and which face significant economic hardship, to enter into voluntary and sustainable payment plans and further requested the Court to keep States Parties informed of any such payment plans and their implementation through The Hague Working Group facilitation on the budget, including via the monthly financial reports provided to States.⁵

6. The Bureau allocated the mandate for the topic of arrears to the New York Working Group on 18 February 2021, and on 8 April appointed Ambassador Rodrigo Carazo Zeledón (Costa Rica) as the facilitator for the topic of arrears.

7. The objectives of the facilitation on the topic of arrears are as follows:

a) To find ways to ensure that no assessed contributions to the Court remain outstanding, by promoting a culture of financial discipline;

b) To seek ways of cooperating with States Parties that have not met their financial obligations in order to reverse any outstanding balances;

c) To examine what could be done in the cases in which these outstanding contributions amount to arrears under article 112 of the Rome Statute and/or when obligations have not been met due to circumstances beyond the control of the States Parties in question;

d) To keep under review the mechanism allowing States Parties to seek exemptions from article 112; and

e) To enhance communication among the Assembly, the Court and States Parties in arrears, so as to address the issue of outstanding assessed contributions more effectively.

II. Status of contributions and arrears

8. As of 31 October 2021, the total outstanding contributions, including for the regular budget, the Working Capital Fund, the Contingency Fund, and the host State loan, stood at €49.9 million.

9. As of 31 October 2021, 26 States Parties had outstanding contributions for the 2021 budget, nine of which were ineligible to vote and were required to make a minimum payment in order to avoid the application of article 112, paragraph 8, of the Rome Statute.

10. In the report on the work of its thirty-seventh session,⁶ the Committee on Budget and Finance reviewed the status of contributions and arrears and recommended that States Parties who are behind with the payment of their respective contribution for more than the current year should settle their accounts with the Court as soon as possible, and if necessary establish with the Court a realistic and affordable, but also reliable, payment plan to settle the outstanding contributions.

11. The Committee recommended that in order to strengthen the process of recovering outstanding contributions, States in arrears for the preceding two full years should only be allowed to vote once the payment schedule is fulfilled, and that requests for exemption should only be granted once a minimum amount identified has been paid and once a payment plan for the remaining balance is presented.

³ ICC-ASP/19/Res.1.

⁴ ICC-ASP/19/Res.1, section C, para.1.

⁵ ICC-ASP/19/Res.1, section C, para.2.

⁶ ICC-ASP/20/15/, paras. 208 to 214.

III. Independent Expert Review

12. As regards recommendation 140 of the Independent Expert Review,⁷ which notes the concerning state of arrears and the potential liquidity crisis facing the Court, a joint meeting of the New York Working Group and The Hague Working Group of the Bureau was held on 28 October 2021. States Parties expressed wide support for the further consideration of the issue of liquidity and arrears as a strategic priority for the future of the Court. Some States Parties noted that further consideration of this recommendation should not include any additional measures other than those already provided for in the Rome Statute, while a number of States Parties emphasized the need to consider possible further measures and, in this regard, to look into the practices of other relevant international organizations, as recommended by the IER. To this end, the budget facilitator will engage with the Secretariat of the Assembly to discuss the modalities for such a comparative analysis.

IV. Consultations and sharing of information

13. As in previous years, information on the status of contributions to the Court was annexed to the reports of the two sessions of the Committee.⁸ In addition, as mandated by the Assembly at its seventeenth session,⁹ States Parties received a monthly financial report from the Court which included information on the status of contributions.

14. The Secretariat periodically updated the facilitator on the status of contributions and arrears. During 2021, the facilitator approached relevant State Party delegations from Permanent Missions to the United Nations, particularly those with significant outstanding contributions, to discuss both the amount and status of their arrears. The facilitator also reached out to delegations from States Parties that are currently subject to article 112, paragraph 8, of the Statute, and urged them to restore their voting rights by settling their arrears.

15. Despite restrictions on in-person meetings due to the COVID-19 pandemic, the facilitator continued to reach out to the States Parties in New York. The facilitator also kept the New York Working Group regularly updated on those efforts and outcomes.

V. Conclusions and recommendations

16. Bearing in mind the worrisome state of outstanding contributions and arrears, the status of contributions should be kept under close observation. The Assembly must continue to undertake focused efforts to ensure that no assessed contributions to the Court remain outstanding and to ensure that the requests for payment are acted upon by all States Parties. For this reason the facilitator recommends that the Assembly continue to have an annual facilitation on the matter of arrears.

17. The facilitator concludes his inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of the paragraphs contained in the annex to this report.

⁷ ICC-ASP/19/16.

⁸ ICC-ASP/20/5 and ICC-ASP/20/15.

⁹ ICC-ASP/17/Res.4, section N, para. 10.

Annex

Draft text for the omnibus resolution

1 Paragraph 150 of the 2020 omnibus resolution (ICC-ASP/19/Res.6) is maintained:
“*Takes note with concern* of the report of the Bureau on the arrears of States Parties.”¹”

2 Paragraph 151 of the 2020 omnibus resolution (ICC-ASP/19/Res.6) is maintained:
“*Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;”

3 The following paragraphs are to be included in the Mandates section of the 2021 omnibus resolution:

With regard to the **programme budget**,

“*Decides* that the Bureau, through the President of the Assembly, the Coordinator of the working group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and, via the annual facilitation on the topic of arrears, report thereon to the Assembly at its twenty-**first** session;”

“*Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;”

¹ ICC-ASP/20/27.