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Report of the Bureau on the arrears of States Parties

Note by the Secretariat

Pursuant to paragraph 48 of resolution ICC-ASP/6/Res.2, of 14 December 2007, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the arrears of States Parties. The attached report reflects the outcome of the informal consultations held by the New York Working Group of the Bureau.

Report of the Bureau on the arrears of States Parties

Introduction

1. The present report is submitted pursuant to the mandate given to the facilitator on the issue of arrears, Ms. Polly Ioannou (Cyprus), upon her appointment by the Bureau of the Assembly of States Parties (“the Assembly”) at its 18th meeting, on 14 December 2007. The report follows also the submission of reports to the fourth, fifth and sixth sessions of the Assembly by the previous facilitator on the same issue and aims to build on their findings and recommendations. It should thus be read in conjunction with the said reports, whose recommendations have been endorsed by the Assembly. The facilitator held informal consultations with the New York Working Group on 22 July 2008.

2. The facilitation on the issue of arrears has a number of objectives:
- 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 which have not met their financial obligations in order to reverse any outstanding balances;
 - c) To examine what could be done in cases where 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 State Party in question;
 - d) To keep under review the mechanism allowing States Parties to seek exemptions to article 112;¹ and
 - e) To enhance communication between the Assembly, the Court and the States Parties in arrears, so as to tackle the issue of outstanding assessed contributions more effectively.

3. In addition to endorsing the recommendations of the Bureau on the arrears of States Parties,² the Assembly, at its sixth session, “urge[d] all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions”³ and “decide[d] that the Bureau should review on a regular basis the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate.”⁴

Status of contributions as at 1 October 2008

4. Currently, eight States Parties are in arrears. The total amount of outstanding contributions to the Court by the States Parties that are in arrears stands at €164,905, while the total outstanding contributions by all States Parties since 2002 amount to €3,465,780. Eight additional States will be required to make a minimum payment before the first resumption of

¹ Article 112, paragraph 8, of the Rome Statute provides as follows: “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 proceeding 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.”

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.2, paragraph 48 and annex III.

³ *Ibid.*, paragraph 46.

⁴ *Ibid.*, paragraph 48.

the seventh session of the Assembly (19 to 23 January 2009) so as to avoid falling under the scope of article 112 of the Rome Statute.

5. The total outstanding contributions by all States Parties to the 2008 budget amounts to €2,028,571, i.e. 2.24 per cent of the budget of € 90,382,100.

Informal consultations

6. The main views expressed by States Parties during the informal consultations held on 22 July 2008 are outlined hereunder:

- a) The most crucial function of the examination of the issue of arrears by the New York Working Group is to provide insight on the existence and extent of outstanding contributions to the Court.
- b) Our priority should be to see how States Parties can fulfil their financial obligations and focus on what course of action could be followed in the absence of payment.
- c) The current practice of waving the application of article 112 of the Rome Statute of the International Criminal Court should be maintained.
- d) Others stressed the importance of submitting an explanation or justification by States in arrears concerning their outstanding contributions and maintained that the Assembly should not grant exemptions to article 112 when a request to that effect has not been submitted.
- e) Regional groups may play an enhanced role in promoting financial discipline, given also the different patterns of arrears observed in different regional groups. For example, a number of countries in a particular region may owe a small amount of contributions while a smaller number of countries in a different region may owe larger sums to the Court.
- f) In cases where the outstanding amount is small, ways to improve communication with the State Party in question should be contemplated, as that might be the primary reason why a financial obligation has not been met.
- g) Lastly, it was suggested that communication concerning arrears be increased, for example, through the Court addressing more frequent letters to States in arrears in order to inform/remind them of unfulfilled financial obligations.

Conclusions

7. Finding ways to encourage and assist the submission of unpaid contributions to the Court remains the priority of States Parties in their strategy to combat arrears. This cannot be achieved through a confrontational or punitive manner but rather, through a balanced approach of cooperation and enhanced communication with each State facing difficulties in meeting its financial obligations. Considering the insignificant amount, in absolute numbers, of unpaid contributions subject to article 112, equal attention must be given to those outstanding contributions falling outside the scope of article 112, which amount to much larger sums in real terms. It is suggested that this exercise focus as much on States falling under article 112 as on those not covered by the provisions of the said article. Lastly, there are differing views on the mechanism for seeking article 112 waivers, so recommendations are made below to this end in order to improve current practice.

Recommendations

1. The Assembly of States Parties should continue to monitor the arrears situation of the Court through the appointment of a facilitator by the Bureau and continue to engage in dialogue with States in arrears.
2. The Court should also monitor the arrears situation and engage with States having outstanding financial obligations, as well as observe any relevant patterns that may help the Assembly tackle the issue more successfully. It is suggested that the Court also establish permanent contact with States that are chronically in arrears.
3. The Assembly and the Court should take all necessary measures to ensure the implementation of the recommendations previously endorsed by the Assembly on this issue.
4. It is suggested that the case of each State Party in arrears be approached individually and that a customized plan be worked out for the fulfilment of outstanding financial obligations by each of them, separately. Such a plan may include options of submitting contributions in a piecemeal manner over time and/or other possibilities based also on the input of States in arrears themselves.
5. States Parties and the Court should also consider an improved mechanism for reaching out to States in arrears and comprehending the reasons for their outstanding obligations, keeping them aware of their dues and looking into ways of helping them meet these obligations. Beyond establishing enhanced communication with States in arrears however, it is crucial to enlighten all States with regard to their assessed contributions to the Court and to be proactive.
6. Within the context of improving communication, States Parties may wish to contemplate the following recommendation to become themselves more involved in dialogue with States in arrears, although this has not been discussed before. For example, States Parties with diplomatic representation in those States Parties that are in arrears could volunteer their representation's contribution in the dialogue between the Assembly, the Court and States in arrears. By volunteering to designate themselves as "contact points on arrears", these States Parties could convey messages to States in arrears on behalf of the Assembly and the Court in respect of outstanding financial obligations.
7. While it must be the priority of the Assembly to cultivate a culture of financial discipline and do its utmost to assist States facing difficulties in this respect, experience has shown that there are a number of States Parties for whom article 112 applies in the run up to each Assembly session. It thus becomes necessary to consider, without prejudice to the obligations of States Parties emanating from the Rome Statute, what would constitute the best mechanism for dealing with the issue of arrears in the context of a session of the Assembly.
8. In cases where failure to meet financial obligations towards the Court is due to circumstances beyond the control of a State, it is suggested that the Assembly revisit the mechanism through which States Parties may request to be exempted from the provisions of article 112 of the Rome Statute. Currently, States Parties are required to submit extensive information to support the claim that failure to make necessary payments is attributable to conditions beyond their control, one month prior to the session of the Committee on Budget and Finance ("the Committee"), so as to allow the Committee to advise the Assembly before the

latter decides on any requests for exemption.⁵ This practice, however, has not been effected properly and exemption requests have reached the Bureau belatedly and without a recommendation by the Committee, while on other occasions, waiver requests have not been submitted at all. It is suggested that the Committee designate a contact point to examine any requests for waivers submitted by States Parties at a time when the Committee is not in session, while the Assembly may wish to consider not granting a waiver if the relevant communication submitted by the State in arrears does not provide any explanation/justification as to why it has not met its financial obligations towards the Court. It is also suggested that States Parties consider not granting article 112 waivers in cases where a relevant request has not been submitted at all.

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⁵*Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32) part III, resolution ICC-ASP/4/Res. 4, paragraphs 42-44.