



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Sixth meeting

The Hague

17 April 2018

Agenda and decisions

The President of the Assembly, H.E. O-Gon Kwon (Republic of Korea) chaired the meeting.

1. Seventeenth session of the Assembly

a) Revised provisional agenda

The Bureau approved the revised provisional agenda for the seventeenth session of the Assembly, to include the agenda item “Election of a Vice-President”. The revision was necessary following the resignation of the Vice-President of the Assembly, Ambassador Momar Diop (Senegal), as of 19 March 2018, due to the end of his term in the Netherlands and given that article 112 of the Rome Statute and rule 29 of the Rules of Procedure of the Assembly provide that the President, Vice-Presidents and Bureau members are to be elected by the Assembly.

2. Independent Oversight Mechanism

a) Quarterly activity report

The Bureau took note of the “Quarterly activity report to the Bureau: January to March 2018”, submitted in accordance with resolution ICC-ASP/12/Res.6, which the Acting Head of the Independent Oversight Mechanism (IOM),¹Ms. Judi Jankovic, introduced. A view was expressed that the format of the IOM reports should be more like the reports submitted by the United Nations Office of Internal Oversight Services (OIOS), a point the IOM indicated it would take into account in the preparation of future reports.

The Acting Head responded to a number of queries that Bureau members raised concerning issues contained in the report.

In relation to an investigation concerning a former Head of Organ, the Acting Head indicated that the investigation had been the subject of a prior 2017 report of the IOM and, due to confidentiality, the details could not be divulged. In response to a query, she stated that no legal provisions existed to address the situation of a case pending against a Head of Organ who had concluded his/her mandate and noted that the issue needed to be considered further. She would raise this point with the President of the Court. A request was made that she

¹ “Acting Head”.

inform the Bureau at a forthcoming meeting of the outcome of her discussions with the President of the Court.

Further, the investigation of five complaints conducted in the context of regulation 119 of the Regulations of the Court² had been concluded in 2017 and the report sent to the relevant Head of Organ. It was the responsibility of that Head of Organ to decide on any action to be taken on the basis of the investigation reports. Therefore, should the Bureau wish to receive such reports, it should request them from the respective Head of Organ as the IOM was bound by confidentiality not to disseminate the report. The IOM could, however, share generic data on cases, i.e. the nature and number of the complaints. The IOM also indicated that six months after the submission of the outcome of its investigation to a Head of Organ it would conduct a follow up to see what action may have taken.

Regarding the closure of a case due to lack of cooperation by a party,³ the Acting Head clarified that a failure of staff to cooperate with the IOM constituted misconduct but that the IOM could not compel staff to cooperate. As regards the closure of a case due to perceived conflict of interest,⁴ it was stated that the IOM had the mandate to outsource investigations in such circumstances and should inform the Bureau if there was a lack of resources to proceed in that manner.

The Bureau took note, regarding the deferral of five cases due to lack of investigative capacity,⁵ and bearing in mind the Bureau's 12 March 2018 discussion on the need to strengthen the investigative capacity of the IOM, that the Acting Head was in the process of recruiting a senior investigator on a short-term appointment in order to consider these cases.

As regards the confidentiality of IOM reports on the outcome of investigations, the view was expressed that they should be shared with the Bureau, while the Acting Head cited rule 26 of the Rules of Procedure and Evidence and Assembly resolution ICC-ASP/12/Res.6 as the legal basis for maintaining their confidentiality. The Acting Head was requested to provide to the Bureau in writing the precise legal provision governing the confidentiality of IOM reports, since rule 26 referred only to the confidentiality of the complaint.

b) IOM Head: recruitment update

The Bureau took note of the 12 April 2018 letter of the Chair of the recruitment panel, Ambassador Sergio Ugalde (Costa Rica), which provided an update on the status of recruitment of the Head of the IOM, i.e. that the panel was advancing with its work on the preparation of the short-list of candidates and that, in terms of a time-line, a recommendation could be made to the Bureau in early June.

As regards the Panel's possible consideration of qualified candidates from non-States Parties only if qualified candidates from States Parties were not available,⁶ Bureau members expressed their hope that sufficient qualified candidates could be found from the nationals of the 123 States Parties.

A request was made for further details on the experts who would do the assessment of candidates, the number of candidates and the expected timeline for the different phases.

² "Quarterly activity report to the Bureau: January to March 2018", pg. 1.

³ Ibid, pg. 2.

⁴ Ibid.

⁵ Ibid.

⁶ In accordance with resolution ICC-ASP/1/Res.10.

3. Assessment of the Secretariat

The President proposed that the Secretariat Director's 16 April 2018 report together with the 2015 *Revision* report⁷ be discussed at the next meetings of the Bureau, to be held in New York on 4 May and The Hague in early June.

As regards the possibility of appointing a focal point in each of these two cities, some Bureau members saw no need for such an appointment since the mandate had been given to the Bureau, which should first take up the assessment itself before deciding if a broader consultation process would constitute the way forward thereon. On the other hand, some members were of the view that since the Secretariat served all States Parties, it was important that the views of non-Bureau members also be sought.

Further, a suggestion was made that the Secretariat report on the implementation of the recommendations contained in the *ReVision* report.

4. Al Bashir case: ICC Appeals Chamber's invitation for submission of observations

The President noted that States had been informed of the Appeals Chamber's 29 March 2018 order in the Al-Bashir case.⁸

5. 20th anniversary of the adoption of the Rome Statute

The President took note that the Court was considering the possibility of organizing an event in The Hague on 17 July, while there might also be events organized in New York and elsewhere on the same date. In light of the approaching date, there was an urgent need to coordinate the respective events scheduled, while any adjustment to possible events would need to be taken into account once the planning of those events was confirmed. In that regard, he would meet with a group of interested States and Court officials to discuss the tentative events.

Ecuador, France,⁹ Senegal, Slovenia and Uganda provided information on respective proposed events to mark the 20th anniversary, while Argentina provided information on a high-level event held in Buenos Aires on 9 April. The Netherlands indicated that its participation in events on 17 July would be limited, but that it would organize commemorative activities on other dates.

The Bureau recalled that the website of the Assembly of States Parties contained a link listing the planned activities that had been conveyed to the Secretariat.¹⁰

6. Other matters

a) Interpretation

The President recalled that, at the 9 March meeting, France had made a request for interpretation into French for the meetings of the Bureau, as well as of The Hague Working Group on cooperation.

⁷ ICC-ASP/16/INF.3.

⁸ See ICC Press release of 29 March 2018 entitled "Al Bashir case: ICC Appeals Chamber invites observations from International Organisations, States Parties and Professors of International Law on legal matters raised by Jordan" : <https://www.icc-cpi.int/Pages/item.aspx?name=pr1375>

⁹ France indicated that it was organizing the event jointly with Senegal.

¹⁰ https://asp.icc-cpi.int/en_menus/asp/asp%20events/20a/Pages/default.aspx

The President informed the Bureau that in response to the request about possible provision of interpretation which he had conveyed to the Registrar, Mr. Herman von Hebel had replied that the Registry had limited capacity to do so without compromising its servicing of ongoing judicial proceedings. Bearing in mind that the new Registrar would assume duties on 17 April and would therefore require time to familiarize himself with the issues on his agenda, the President proposed that the Bureau continue the discussion at its June meeting in The Hague.

The President would convey the following questions to the Registrar:

- a) Whether the Registry could provide English-French interpretation for meetings of the Bureau and of The Hague Working Group, under the current circumstances without taking any further budgetary measures?
- b) If not, what further measures are necessary and to what extent?

The President also enquired of Bureau members their views on:

- a) What about Arabic/Spanish interpretation?
- b) What about the Bureau meetings held in New York?

France stated that the question of interpretation was not a budgetary issue but was a question of principle and of respect for the rules of the Assembly and, further, that rules 38 and 39 of the Rules of Procedure of the Assembly applied equally to meetings of the Bureau. Further, the provision of interpretation by the Registry for Bureau meetings held in The Hague during the previous Presidency of the Assembly from 2014 to 2017 was, in fact, the application of the Assembly's rules.

The President agreed that interpretation for official meetings was a matter of principle and noted that it might have budgetary implications. The President would try to find a solution as soon as possible.

b) *Appointment of the new coordinator of The Hague Working Group*

The President congratulated Ambassador Jens-Otto Horslund (Denmark) for his appointment as Coordinator of The Hague Working Group and thanked him for his willingness to take up this responsibility.

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