



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Eleventh meeting

New York

9 July 2018

Agenda and decisions

1. Issues arising from confidential matters.

The Bureau continued its consideration of confidential matters of concern to the Assembly and the Court.

2. Seventeenth session of the Assembly

Elections: Update on nominations

Further to its 29 January 2018 decision to open the nomination period for the elections at the seventeenth session for the five members of the Board of Directors of the Trust Fund for Victims and the nine members of the Advisory Committee on Nominations, the Bureau took note of the status of nominations as at 4 July 2018 as follows:

a) Trust Fund for Victims

Three candidatures had been presented: African group: one candidate; Latin American and Caribbean group: one candidate; and Western Europe and other States group: one candidate.

The President requested the Bureau members of the Asia-Pacific and Eastern European groups to encourage the States Parties in their respective groups to nominate candidates before the close of the nomination period on 28 August.

b) Advisory Committee on Nominations (ACN)

The Bureau took note that no nominations had been received by the Secretariat. The President encouraged all States Parties to consider nominating appropriately qualified candidates before the close of the nomination period.

Working group of the Bureau

The President noted that the Terms of reference of the ACN¹ required that the ACN members should be designated by the Assembly by consensus on a recommendation made by the Bureau, also made by consensus, and that the composition of the ACN should reflect the principal legal systems of the world, as well as geographical and gender balance.² In this regard, he recalled the Bureau's 29 January decision to follow past practice and to establish a working group of the Bureau, comprising one member from each regional group, which would be tasked with identifying nine candidates which the Bureau would recommend for election to the Assembly. He requested Bureau members to convey their expressions of interest in participating in the working group to him via the Secretariat as soon as possible.

3. Interpretation for Bureau meetings

The President recalled that some delegations based in The Hague had requested interpretation into French for Bureau meetings on the basis of rules 38 and 39 of the Rules of Procedure of the Assembly of States Parties. Further, some Bureau members had pointed out that there were other official and working languages of the Assembly.

The Registrar had indicated on 1 March that it would not be possible for the Registry to provide interpretation as the Court did not have the necessary resources. The new Registrar had reconsidered this position and had been able to provide interpretation into French for meetings held so far in 2018, relying on the Registry interpreters if they were not occupied in the courtroom. However, he intended to reduce the Registry's 2019 budget for interpretation to reflect the reduced need foreseen in 2019 for court interpreters. He had stated that, if the Bureau required interpretation in 2019, the necessary resources should be included in the budget of the Secretariat. The Secretariat and the Registry would prepare cost estimates for interpretation for Bureau meetings into the four languages used by the Assembly, for meetings in both The Hague and New York. The President noted that for New York there would be the added complication of securing a meeting room with interpretation booths. He sought the views of Bureau members based in New York on this issue.

It was stated that, given the tight budgetary situation of the Court, the Bureau should lead by example and, in light of the need to ensure efficient use of resources, it was not necessary to request interpretation. Some Bureau members noted that the situation in New York was different from The Hague. They stressed the need for the Bureau to be flexible, given that there were no Court interpreters in New York and, further, given the difficulty of obtaining meeting rooms with interpretation facilities. The importance of delegations being able to participate fully in meetings was noted and if interpretation was necessary, it would then be requested. One member added that Arabic would not be required for Bureau meetings held in New York.

Appreciation was expressed to the Registrar for providing interpretation for Bureau meetings in The Hague and it was suggested that the Bureau explore with the United Nations Department for General Assembly and Conference Management (DGACM) the possibility of interpretation for Bureau meetings. On the other hand, it was pointed out that DGACM was trying to ensure savings and, further, that there was sometimes no interpretation for meetings held at United Nations Headquarters.

A request was made for the cost estimates for interpretation for Bureau meetings in New York to be provided to the Bureau.

¹ 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).

² *Ibid.*, para. 1.

The President would convey the views expressed to the Bureau at its 16 July meeting in The Hague.

4. Arrears

The Bureau took note that the Court could face a liquidity shortfall by November 2018, which might hamper the Court's operations.

The facilitator for arrears, Mr. Mohammad Humayun Kabir (Bangladesh), indicated that the latest status of contributions³ indicated a positive trend of payment of contributions by the end of June in comparison with the same date over the last three years. By June 2015, the figure was 70%; by June 2016, 63%; by June 2017, 83%; by June 2018, 86%. On the other hand, there was a downward trend during the entire calendar year: in 2015 and 2016, 90% of assessed contributions had been paid; in 2017, 87%. Thirteen States Parties were currently ineligible to vote; 16 additional States were in arrears; 29 were overdue; and 65 had paid in full. In 2018, the total assessed contribution was €147 million. As of 2 July, the total outstanding contributions were €20 million; and if arrears were included, that figure rose to €44 million. The top ten States Parties with outstanding contributions comprised 97% of total outstanding contributions and the figure was approximately €43 million. The facilitator indicated that Mexico proposed to pay in full by September.

The facilitator noted that the Committee on Budget and Finance (the Committee) had considered the issue of a possible liquidity shortfall at its April 2018 session and had made some recommendations thereon.⁴ In particular, the Committee had recommended that the Assembly consider establishing a mechanism to deal with liquidity issues. It had also recommended that if a liquidity shortfall arose before the session of the Assembly in December, the Bureau, in discharge of the responsibilities of the Assembly and upon recommendation of the Committee, consider all possible options to deal with the situation.

The facilitator had earlier that day briefed the budget working group in The Hague. The group was discussing how the Court could engage with States in arrears and what efforts could be undertaken in light of the Committee's recommendations. It was considering the option of the Court accessing the Working Capital Fund or, alternatively, the credit line. However, efforts should first be concentrated on diplomatic outreach, which could avoid the Court needing to access the Working Capital Fund or the credit line.

As regards his work, the facilitator had communicated the latest status of contributions to States Parties and planned to discuss the issue with relevant States. He noted that efforts at the expert level might not be enough and had therefore suggested that his Permanent Representative work with Assembly Vice President, Ambassador Michal Mlynár (Slovakia), to raise the issue with the States in arrears. He suggested that the President might also consider raising the issue in capitals. He sought the guidance of the Bureau on whether action on this issue should be raised to the higher political level.

In response to the facilitator's presentation, a suggestion was made that Bureau members contact their counterparts in The Hague and capitals and, further, that the President write a letter to the capitals. It was recommended that the Assembly be cautious when granting exemptions from loss of voting rights.

The President indicated that he had already written such a letter and, if necessary, he would pay a visit to the respective States Parties together with the Registrar. The President called upon all States

³ As at 2 July 2018.

⁴ Report of the Committee on Budget and Finance on the work of its thirtieth session: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/ICC-ASP-17-5-ENG.pdf

Parties that were in arrears and had outstanding assessed contributions to make every effort to begin paying those contributions, and thanked those States that had paid their contributions.

5. Election of the next Prosecutor of the International Criminal Court

The President recalled that resolution ICC-ASP/1/Res.2⁵ required that “[e]very effort shall be made to elect the Prosecutor by consensus.” He invited the Bureau to begin thinking about how it would proceed to assist the Assembly in its quest to select a new Prosecutor by consensus at its nineteenth session, in 2020.

Bureau members welcomed the President’s early focus of this issue and noted that it would be one of the most important items on the Bureau’s agenda. They highlighted that it was essential to have a transparent process and to agree as early as possible on a well-defined timeline, as well as on the procedure to select a highly qualified individual. Further, it was important to depoliticize the election process and the candidate should be selected on the basis of merit and enjoy the full support of all States Parties. In this regard, Bureau members stressed the importance of consensus in the nomination of the next Prosecutor. It was suggested that the Bureau should also have a role in the selection of the Deputy Prosecutor.

A proposal was made that a committee comprising technical and professional expertise and reflecting regional and gender balance be composed for this purpose.

As regards location, a suggestion was made that the work be centered in New York.

It was recommended that the Bureau draw lessons from the report on the evaluation of the process on the election of the previous Prosecutor.⁶ It was noted that while it was a positive step that the former Prosecutor Search Committee had been proactive, some were of the view that process had not been transparent. It was therefore essential to widen the pool of participants and to ensure that States Parties had a sense of inclusion, e.g. through consultation with the committee, and that the Bureau play a role.

The President would consider the proposals and would also consult the current Prosecutor on the way forward and share the outcome with the Bureau.

6. Activities of the President

a) Quito seminar

The President had attended a regional seminar held in Quito on 7 and 8 June 2018, in which the President of the Court, Judge Chile Eboe-Osuji, and the Registrar, Mr. Peter Lewis, had also participated. The seminar addressed the challenges faced by the Rome Statute system, with a special focus on the topic of cooperation with the Court. The meeting adopted the Quito Declaration. The President had invited H.E. Ms. Maria Fernanda Espinosa, Foreign Minister of Ecuador, to participate in the seventeenth session of the Assembly as a key-note speaker, in her capacity as President of the United Nations General Assembly, and she had responded positively.

⁵ Entitled “Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court”, para. 29.

⁶ ICC-ASP/12/58.

Some Bureau members expressed appreciation to Ecuador for hosting the seminar and welcomed its focus on cooperation.

b) Arria formula meeting

The President informed the Bureau that on 6 July, members of the Security Council had held an Arria formula meeting that focused on the relationship between the ICC and the Security Council. It was the first such meeting on the Court to take place in six years. The President had addressed the meeting as a briefer for the first time in the history of the International Criminal Court.

The Netherlands, as Bureau focal point for the Security Council, indicated that the Arria formula meeting had been effective and successful and that overall reactions had been very positive. The Netherlands intended to issue a report in late July/early August containing the recommendations made at the meeting to further strengthen the relationship between the Court and the Security Council

Bureau members expressed appreciation to the Netherlands for organizing the Arria formula meeting and emphasized the importance of the cooperative relationship between the Court and the Security Council. The debate was described as useful, informative and productive, and the format of a panel discussion interesting. It was proposed that such meetings be held more frequently than every six years. A Bureau member congratulated the President for participating in the Arria formula meeting as a briefer for the first time in the Court's history.

7. Other matters

a) Twentieth anniversary of the adoption of the Rome Statute

The President noted that efforts were being made in both New York and The Hague⁷ to ensure that appropriate events were held to mark the 20th anniversary of the adoption of the Rome Statute and thanked all those States and other stakeholders that had held or were planning to hold events.

The President also briefed the Bureau on the events to be held in The Hague on 16 and 17 July and wished States Parties around the world every success in the events where they were planning to mark this key date in the development of international criminal justice.

b) Assessment of the Secretariat

The President was in the process of consulting and gathering information on this issue and would revert to this topic at a later date with some concrete suggestions, after his further consultations.

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⁷ https://asp.icc-cpi.int/en_menus/asp/asp%20events/ICJD/Pages/default.aspx