

**SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES**

**New York Working Group of the Bureau**

10 June 2011

Briefing by the Coordinator of the Search Committee for the position of  
Prosecutor of the International Criminal Court

Summary

*The President of the Assembly, H.E. Ambassador Christian Wenaweser (Liechtenstein) chaired the meeting.*

The President recalled the terms of reference for the Search Committee for the position of the Prosecutor of the International Criminal Court, adopted by the Bureau of the Assembly.<sup>1</sup> He indicated that the term of the current Prosecutor would expire in June 2011 at the end of his nine-year tenure. The past nine years had made clear the importance of the position and the importance of the ICC in the international system. A mechanism with terms of reference had been agreed to find the best possible successor to the incumbent Prosecutor.

The Coordinator of the Search Committee stressed the trust necessary between States Parties and the Search Committee if its work was to succeed in the consensual election of an individual of high moral character, with extensive practical experience in the prosecution or trial of criminal cases and with excellent knowledge of and fluency in at least one of the working languages of the Court.<sup>2</sup> The Search Committee was guided by the explicit statutory requirements stated in article 42, paragraph 3, as well as those suggested in article 42, paragraph 2, of the Rome Statute. All expressions of interest were examined through the lens of article 42. The Coordinator stressed that the Search Committee was not a selection committee, as the final decision was to be made by the Assembly itself. The Search Committee had a comprehensive approach and would actively seek potential candidates. In that spirit, the Coordinator would attend the International Association of Prosecutors annual meeting and the Summit of Solicitors General in Seoul at the beginning of July.

The Coordinator stated that the Search Committee would operate solely based on consensus, and in accordance with the terms of reference given to it by the Bureau. The Search Committee would disclose what information it could to the Bureau and through briefings to the regional groups, unless candidates had indicated that they would prefer otherwise. Confidentiality would only be possible up to a certain point in the Committee's procedure, however. The Search Committee's work would be divided into two phases. During the first, from March to September, the Search Committee would receive expressions of interest and look for potential candidates. The second phase would last from September to mid-October and would begin with the compilation of a "long short-list" of around 10 potential candidates, each of whom would be subjected to one or more rounds of interviews. The Search Committee would adopt guidelines prior to those interviews, which would hopefully assist in determining the ability of applicants. It

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<sup>1</sup> "Bureau of the Assembly of States Parties: Search Committee for the position of the Prosecutor of the International Criminal Court: Terms of Reference", ICC-ASP/9/INF.2

<sup>2</sup> See article 42, paragraph 3 of the Rome Statute.

was hoped that that the Search Committee would be able to present the Bureau with a short-list of at least three potential candidates by mid-October.

During the first phase, potential candidates were divided into three categories: promising, could be promising and not promising. “Promising” candidates were those that clearly fulfilled the statutory requirements while “not promising” candidates were those that clearly fell short. The “could be promising” category had been divided into two levels. The upper level indicated that more information might strengthen the position of the potential candidate. The lower level indicated that this would be unlikely.

In formulating the long short-list, further considerations would also be taken into account, which would be discussed beforehand by the Search Committee.

The Coordinator stressed that in order for a consensual candidate to emerge, all expressions of interest had to be informal. Only once a candidate was selected should her or his State of nationality make a formal nomination in advance of the December session of the Assembly. Any previous nomination by a State Party would be damaging to the process of the Search Committee. The Coordinator stated that the nomination period runs from 13 June to 2 September. Thereafter, with no formal candidates, the nomination period would be extended two weeks at a time in accordance with paragraph 12 of the annex of resolution ICC-ASP/3/Res.6, in order to allow the Search Committee to continue its work. The Search Committee would now enter its final phase and, by the end of October, present the Bureau with a short-list of at least three names. Hopefully, there would be agreement on the prosecutor by the middle of November. A sole nomination would then be presented with the support of all States Parties, to be elected by consensus at the tenth session of the Assembly.

The Coordinator emphasized the importance of the Search Committee knowing it has the full support of the Assembly. To that extent, a short statement of support by the Working Group would be useful.

In the discussion, strong support for the work of the Search Committee was expressed, and the importance of selecting the best-qualified individual underscored.

It was noted that all members of the Assembly should have equal access to the Search Committee. The hope was expressed that the spirit as well as the letter of the Statute be taken into account, and that a selection would be made that reflects the diversity of the Assembly with regard for matters of rotation as well as cultural and regional sensitivities, as well as merit and performance. The future prosecutor should be truly exemplary in her or his past work.

The Coordinator stressed the need for the involvement of all States Parties in suggesting names to be considered by the Search Committee. The Search Committee for its part would go beyond the record presented and interviews would be conducted to discover the reputation of individuals under consideration.

The question of the role of non-States Parties was raised, and it was stated that non-States Parties should have no role in selecting senior Court Officials. The President emphasized that the election of the Prosecutor was a decision of all States Parties. The Statute, at the same time, did not preclude nationals of non-States Parties from serving as Prosecutor. However, even a non-State Party national would need to be nominated by a State Party. The President underscored that the Search Committee was equally accessible to all States Parties. Members of the Search

Committee conducted outreach work by briefing regional groups and the Bureau after each Search Committee meeting and were available to all delegations on an individual basis.

It was suggested that the Search Committee and potential candidates limit their contact with the media as much as possible, as such contacts might create a bias. It was suggested that the Coordinator warn candidates to limit their relationship with the media. The Coordinator noted that media would play a crucial role. In the interview process, the Search Committee would likely come across controversial cases, and would have to address whether these were controversial because of circumstances relating to the trial, or because of the individual in question. The goal was to approach the Bureau and the Assembly with as much detail as possible.

The question was raised whether a list of applicants existed, and whether this could be shared with the Working Group. The Coordinator noted that, due to considerations of confidentiality and privacy, this would not be possible at the current stage, in order not to discourage any potential applicants.

It was stated that States Parties should be careful in respecting the Search Committee process and avoiding any action that could be interpreted as rushing it.

The question was raised whether consensus was required. The Coordinator responded that while resolution ICC-ASP/3/Res.6 in its paragraph 33 stated that “every effort shall be made to elect the Prosecutor by consensus”, paragraph 34 of the same resolution allowed for an election by absolute majority should a consensual election be possible.

The President concluded by stating that, as suggested by the Coordinator, a draft statement of support would be circulated, with a view to adopting it by silence procedure.

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