



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fifth meeting

10 May 2023

(via remote link)

Agenda and decisions

The meeting was chaired by the President, Ms. Silvia Fernández de Gurmendi. Vice-Presidents Ambassador Robert Rae (Canada) and Ambassador Kateřina Sequeñsová (Czech Republic) also participated.

1. Review Mechanism- update

A State Party representative on the Review Mechanism, Ambassador Michael Kanu (Sierra Leone), also on behalf of Ambassador Paul van den IJssel (Netherlands), briefed the Bureau on the work of the Review Mechanism.

The Review Mechanism had held a second roundtable on 25 April 2023. Discussions had focused on the implementation of IER recommendations R1-R13 (Unified governance), and IER recommendations R369-R370 (Secretariat of the ASP).

As regards the IER recommendations on Unified governance, recommendations R1 to R13,¹ he recalled that they had previously been negatively assessed and that the Court had indicated that the proposed three-layer governance model was not compatible with the Rome Statute. It had noted that this incompatibility did not mean, however, that the practical issues raised in the recommendations could not be addressed. In its overall response to the IER recommendations,² the Court had stressed the importance of implementing the practical aspects not in contradiction with the Rome Statute, while safeguarding the judicial and prosecutorial independence of the Court.

At the 25 April roundtable, the Court focal points briefed the meeting on the practical aspects of the implementation of those recommendations.³ Ambassador Kanu echoed the words of the IER Chair, Mr. Richard Goldstone and of IER Expert Mr. Ian Bonomy at the 25 April roundtable that, although the recommendations had been assessed negatively, they were “happy that the spirit of the recommendations was being taken into account by the Organs. This is what the IER had hoped for.” Ambassador Kanu stated that the Review Mechanism shared the view expressed by the IER and was pleased with the steps taken towards practical implementation of these recommendations so far. Updates would be provided by the Court on the implementation of those recommendations.

¹ Chapter I of the IER’s 30 September 2020 report, on “Governance”.

² https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/Overall%20Response%20of%20the%20ICC%20to%20the%20IER%20Final%20Report%20-%20ENG%20-%202014April21.pdf

³ The implementation of recommendations R1 to R13 as indicated by the Court will be reflected in the Review Mechanism’s report pursuant to ICC-ASP/21/Res.4, para. 12.

As regards recommendations R369 and R370,⁴ he recalled that the first part of R369 had been assessed positively at the 3 June 2022 meeting and was being implemented,⁵ while the second part of R369 and R370 had been assessed negatively.

As indicated in the “Matrix-progress in the assessment of the IER recommendations”,⁶ despite the negative assessment, States Parties wished to have more focused attention on issues concerning the Secretariat: “While the second part of the recommendation was assessed negatively, States Parties agreed that issues of governance, resources, effectiveness, streamlining of functions and geographical representation in the ASP Secretariat are to be considered”. This comment also applied to R370. He thanked the Director of the Secretariat for the information presented to the roundtable on measures being taken on the elements identified by States Parties.

At the roundtable, States Parties decided to bring to the attention of the Assembly President their request for the IOM to conduct an evaluation of the Secretariat, with a focus on the areas identified in the Matrix. On 28 April 2023, the Review Mechanism Ambassadors informed the President of the wish of States Parties that the IOM conduct an evaluation of the Secretariat on the areas identified. Ambassador Kanu stated that, as a practice, the Review Mechanism does not take a position on substantive issues. However, it was supportive of further work on the areas identified by States Parties regarding these recommendations, given the overall objective of the IER process.

As regards upcoming meetings, the Review Mechanism planned to hold two additional roundtables for the first semester of 2023. The third roundtable on “Remaining recommendations to be assessed by the Court”, would be held in the first half of June, after the judges’ retreat, while the fourth roundtable, which would focus on the implementation of recommendations concerning the Secretariat of the Trust Fund for Victims, would be held in the second half of June.

2. Request of States Parties for an IOM evaluation of the Secretariat

The President had received a letter, dated 28 April 2023, from the State Party representatives on the Review Mechanism informing her of the request of States Parties at the 25 April roundtable of the Review Mechanism for an evaluation by the IOM of the Secretariat of the Assembly. It was intended that the evaluation would address “issues of governance, resources, effectiveness, streamlining of functions and geographical representation in the ASP Secretariat”, as outlined in the Matrix.⁷ The President had subsequently written to the Head of the IOM, Mr. Saklaine Hedaraly, to enquire, in light of the current workload of the IOM, whether his office would be in a position to conduct such an evaluation within the current budget period. In his 5 May 2023 response, the Head of the IOM indicated the position of the IOM regarding its capacity and resources to conduct this evaluation, as well as the need to more clearly define the scope of the request.

Regarding the capacity and resources of the IOM, the President recalled that, at its 2 December 2022 meeting, the Bureau had tasked the IOM with conducting an evaluation in 2023 on “Theme 1: Evaluation of the Strategic Plan of the Office of the Prosecutor (2019 - 2021/2022).” It had recommended that the IOM report to the Bureau after completion of the first evaluation and, if time and resources allowed, then start with Theme 2, “Evaluation of the

⁴ Chapter XIX of the IER’s 30 September 2020 report, on “Oversight bodies”.

⁵ R369 states, in part: An office and focal point should be appointed within the Registry to coordinate with the different services of the Court to provide all necessary support for the ASP.

⁶ https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-21-34-Rev.1-Add.1-ENG.pdf

⁷ Ibid.

Court's Socio-Political and Country Analysis Capacity". There were now therefore three requests for evaluation.

The Head of the IOM noted that the issues of scope, resources and timeline were interlinked, and that while the request was framed narrowly, it was actually broad in scope. He noted that the typical approach would require the preparation of Terms of Reference in consultation with stakeholders, i.e. States Parties, the Review Mechanism and the Presidency of the Assembly, and he highlighted the critical role of the Director of the Secretariat in this process. He emphasized that an evaluation was not an investigation and did not seek to place blame or find fault, but rather to identify issues and improve processes. In this regard, he noted it would be important to have a clear understanding of what States Parties required from the Secretariat, in order to analyse issues of effectiveness, functioning and resourcing. He indicated that it would be helpful to have external expertise in this regard. Regarding the timeline, if the evaluation was to be carried out before the 2023 session of the Assembly, it would have to start at the earliest in September since the IOM already had an ongoing evaluation. He added that if time was limited, the scope would need to be defined more clearly. This would be important due to the fact that the IOM had no budget allocated for another evaluation in 2023. The first step would therefore be a decision and mandate from the Bureau to carry out the evaluation, and then the IOM would work closely with key stakeholders to define the Terms of Reference.

A discussion followed on the matter, including on the drafting of the Terms of Reference, the issue of geographical representation, the timeline for the evaluation, and the need to take proper consideration of potential budget implications.

The President concluded that the Bureau agreed to request the IOM to conduct an evaluation of the Secretariat, but that a determination of a more precise scope was needed. She thanked Germany for offering to assist the work in this regard and proposed that, together with other interested stakeholders, they work closely with the IOM to bring a proposal to the Bureau for discussion as soon as possible. She noted that once there was a better idea of the scope of the evaluation, a decision could be made as to when to commence the evaluation, and whether external expertise was required.

3. IOM interim report

The Head of the Independent Oversight Mechanism (IOM), Mr. Saklaine Hedaraly, introduced the "Interim Report of the Independent Oversight Mechanism for the period 1 October 2022 to 31 March 2023", dated 19 April 2023.

He updated the Bureau on the investigations workload of the IOM and drew attention to the statistics relating to cases it had investigated. He expressed appreciation to the Assembly for approving the additional position of Investigator, which had assisted the IOM's ability to streamline.

As regards the Due diligence process for the 2023 judicial elections, the IOM Head indicated that this was on-going and the IOM had recruited a person to assist in this process. The IOM had identified a number of points that could be improved upon from the previous vetting processes (i.e. the Deputy Prosecutors and the Registrar). He might contact some nominating States Parties under this process. He would keep the President and the Bureau updated.

The Bureau took note of the Interim report of the IOM for the period 1 October 2022 to 31 March 2023.

4. Twenty-fifth anniversary of the adoption of the Rome Statute- update

The President updated the Bureau on preparations for the commemorative events to mark the twenty-fifth anniversary of the adoption of the Rome Statute.

Regarding the commemorative event to be held in New York on 17 July, the United Nations confirmed the availability of the Trusteeship Council Chamber at United Nations Headquarters for the event, and indicated that the Secretariat would continue engaging with the United Nations to ensure the logistics for the event. Most speakers and panellists had confirmed their participation, including the Principals of the Court and the Chair of the Board of the Trust Fund for Victims. The programme for the event to be held in New York would be circulated by Friday 12 May.

States Parties would also be informed of the opening of the speakers' list of the Ministerial Roundtable to be held during the commemorative event on 17 July 2023, entitled "Strategic vision for the next decade – how to ensure consistent and sustainable support for the ICC", in which the President called upon Bureau Members to encourage the participation of their Ministers, including those who would attend the High Level Political Forum for Sustainable Development.

Discussions were also ongoing to organize other events in parallel to the 17 July commemorative event in New York. The President indicated that there had been conversations on the possibility of holding an Arria-formula meeting of the United Nations Security Council on 18 July, as well as engagement with the Presidency of ECOSOC on the possibility of holding a side event in the margins of the ministerial segment of the High Level Political Forum on Sustainable Development, with the aim of highlighting the work of the Trust Fund for Victims.

The President recalled her 26 April letter encouraging States to join the Rome Statute system, and States Parties to consider using this opportunity to ratify the Amendments to the Rome Statute and to sign voluntary cooperation agreements with the Court. She encouraged States that wished to deposit instruments of ratification or sign voluntary cooperation agreements with the Court to inform the Secretariat as soon as possible, by 15 June 2023, to ensure the appropriate arrangements for the treaty ceremony.

The President was in discussions with the Siracusa International Institute for Criminal Justice and Human Rights concerning the two-day hybrid commemorative event to be held in October 2023 in Siracusa, Italy. She also recalled the 12 July opening of the exhibit "Life After Conflict", to be hosted by the host State at The Hague City Hall Atrium.

The President recalled that the Bureau had invited all stakeholders to organize commemorative events throughout the year and to inform the Secretariat of any such events, so that they could be posted on the dedicated webpage of the Assembly.⁸ In addition, the University of Vienna Law School would host an event titled "25th Anniversary of the Rome Statute: Conference on possible future amendments of the Rome Statute", scheduled for 6-7 October 2023.

Germany informed the Bureau of the intention of its Minister of Foreign Affairs to attend the commemorative event to be held in New York.

5. Status of contributions

The President informed the Bureau that, as at 30 April 2023, the Court had received 69 per cent of the assessed contributions to the approved budget for 2023. The total amount of

⁸ <https://asp.icc-cpi.int/asp-events/25a-Adoption-RS>

outstanding contributions, for 2023 and for prior years, was €77.3 million. A total of 34 States Parties had outstanding contributions of more than one year, and 15 of those were ineligible to vote under article 112, paragraph 8, of the Rome Statute.

A Bureau member informed the Bureau that the payment of its 2023 assessed contributions had been held up by a payment systems error, but the issue had been resolved and payment received by the Court. The Bureau member restated the importance it attaches to the timely payment of contributions and the issue of arrears, and apologized to the Court for any inconvenience.

The President expressed her appreciation to those States Parties that had paid their assessed contributions and called on those who had not yet done so to make their contributions as soon as possible. The Presidency would continue to deploy all efforts to obtain the timely payment of contributions in consultation and coordination with the Court and with the facilitator for arrears, once appointed.

6. Other matters

a) Extension of contract of Head of the IOM

The matter was extensively discussed and the Bureau decided to return to this matter at its next meeting.

b) Election of judges- update

The President recalled that, at the end of the initial nomination period on 26 March 2023, not all the minimum nomination requirements had been met and it had therefore been necessary for her to extend the nomination period three times.⁹ The nomination period could not be extended any further. At the end of the final extension, on 7 May 2023, the Secretariat had received 15 nominations.¹⁰ On that date, not all the minimum nomination requirements of four candidates for the Asia-pacific group had been met, since this regional group had submitted a total of three candidates. Therefore, the provisions of paragraph 20 (b) of resolution ICC-ASP/3/Res.6 would apply to the Asia-Pacific group:

“(b) Each Party shall vote for a minimum number of candidates from each regional group. This number shall be 2 minus the number of judges from that regional group remaining in office or elected in previous ballots.

If the number of States Parties of any given regional group is higher than 16 at that moment, the minimum voting requirement for that group shall be adjusted by adding 1.

If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that regional group (rounded up to the nearest whole number 4 where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that group.”

⁹ Pursuant to resolution ICC-ASP/3/Res.6, para. 11.

¹⁰ All nominations received are posted on the webpage of the Assembly: <https://asp.icc-cpi.int/elections/judges/2023>

The Secretariat will prepare a Note by the Secretariat which would contain a compilation of the nominations received and would be issued as an official document of the Assembly.

c) Start of the mandate of the Executive Director of the Secretariat of the Trust Fund for Victims

The President welcomed the appointment of Ms. Deborah Ruiz Verduzco, who had, on 1 May 2023, assumed duty as the Executive Director of the Secretariat of the Trust Fund for Victims. She also recalled the appreciation expressed by the Chair of the Board of Directors of the Trust Fund for Victims, Ms. Minou Josefina Tavárez Mirabal, for the role of the Bureau and the Assembly in the recruitment process.

d) Appointment of a mandate holder

The Bureau appointed the following facilitator for Legal aid, on the recommendation of The Hague Working Group:

- Mr. Peter Nagy (Slovakia).

e) Co-facilitators for the permanent due diligence mechanism

In addition, the President indicated that consultations were ongoing to identify two co-facilitators for the Assembly's discussions on the permanent due diligence mechanism. One would be based in New York and the other in The Hague.¹¹

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¹¹ On 31 May 2023, the Bureau appointed Mr. Nicolás E. Ortiz Marín (Ecuador) and Mr. José Juan Hernández Chávez (Chile) as the Bureau co-facilitators for the establishment of a permanent due diligence process for elected officials.