



**BUREAU OF THE ASSEMBLY OF STATES PARTIES**

**Second meeting**

20 March 2013

Agenda and decisions

*The President of the Assembly, Ambassador Tiina Intelmann (Estonia), chaired the meeting.*

The President indicated that she was pleased to hold the Bureau meeting in The Hague, and proposed to continue this practice as far as possible, so as to ensure closer contact between delegations based in New York and The Hague.

**1. Briefing by The Hague Working Group Coordinator and the Chair of the Study Group on Governance**

*Briefing by the Coordinator of The Hague Working Group*

Ambassador Markus Börlin (Switzerland) informed the Bureau that the Working Group had held two meetings, on 31 January and 6 March 2013, where it had, inter alia, nominated facilitators and focal points for the issues within its mandate, as well as the Chair of the Study Group on Governance; heard presentations by the respective facilitators on their work plans for 2013; received a briefing by a representative of Price Waterhouse Coopers (PwC) on the project for the evaluation and review of the Court's organizational structure, as recommended by the Committee on Budget and Finance;<sup>1</sup> and heard a briefing from Second Vice-President of the Court, Judge Cuno Tarfusser, on the process for the election of the Registrar. The Working Group had also discussed the reform of the working methods of the Working Group<sup>2</sup> and received a briefing from the Chair of the Oversight Committee on permanent premises.

As regards Strategic Planning, the Coordinator was holding consultations to identify a facilitator, following the end of the term of the previous facilitator's posting in The Hague, Ambassador Ruthie Rono (Kenya).

As the Coordinator, he proposed to travel to New York in the first week of June, along with other facilitators, where a joint Hague Working Group/New York Working Group meeting could be held, recalling in this regard the importance of an improved working relationship between the Working Groups of the Bureau. Furthermore, he intended to meet as well with

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<sup>1</sup> The preliminary draft outcome had been circulated to the Court for consideration, and the final version would be conveyed to the Committee on Budget and Finance and then to The Hague Working Group.

<sup>2</sup> Proposals included the better sequencing and scheduling of meetings; better planning of meetings; holding fewer, shorter and more focused meetings; limiting demands for documentation from the Court and streamlining the reports of facilitators; the preparation of facilitators' guidance notes with practical recommendations regarding procedure and recommendations for report writing and drafting of resolutions; a possible retreat with all facilitators; and streamlining the work of the Secretariat, including by making relevant information for meetings available on the website.

representatives of international organizations, the CICC and other stakeholders. He also noted the importance of the work of the Committee on Budget and Finance being channelled into the work of States Parties and the Court.

A Bureau member recalled the proposal which it had made at the 12 February 2013 meeting for the establishment of a sub-group of the Working Group on Amendments, based in The Hague in order to facilitate the more efficient and expeditious consideration of the outcome of the Study Group's discussions on amendments to the Rules of Procedure and Evidence, as well as to ensure a direct dialogue in The Hague with the representatives of the Court's organs. It would also prevent a re-opening of the discussions held in The Hague in the Working Group on Amendments or the Assembly.

The Bureau concurred with the President's proposal that this issue be channelled to the review of the working methods of the Working Groups being conducted by the three *ad-country* focal points, i.e. Ghana, Sweden and Switzerland.

#### *Briefing by the Chair of the Study Group on Governance*

Ambassador Håkan Emsgård (Sweden) indicated that, on the basis of the mandates of the eleventh session of the Assembly, the Study Group would focus on two clusters in 2013: Cluster I, "Expediting the judicial process" and Cluster II "Budgetary process". It would also participate in the discussions on reform of the working methods of the Working Groups conducted by the three focal points.

The Study Group had held its first meeting on 15 March 2013, to discuss Cluster I, and would hold its second meeting on 20 March, on Cluster II.

As regards Cluster I, the Study Group would proceed on the basis of the report of the Working Group on Lessons Learnt.<sup>3</sup> He noted that the Roadmap was an important tool in the process of these discussions, and referred to the timelines set out in the Roadmap, according to which the WGLL was expected to submit a report to the Study Group, by the end of March, containing a recommendation for amendment of the Rules of Procedure and Evidence. Following this report, the Study Group would hold technical substantive discussion of the proposal(s), and transmit its views or other recommendations to the WGLL at the end of May. Thus, May and June would be very intense in terms of work given the tight timelines, as this would allow the Study Group to transmit any recommendations on proposals to amend the Rules of Procedure and Evidence to the Working Group on Amendments sixty days before the start of the Assembly's session, i.e. 20 September. He also recalled that First Vice-President of the Court, Judge Sanji Monageng, had indicated that the judges could, additionally, submit other proposals for amendment.

He noted that the discussions on Cluster II would focus on improving the budgetary process, and would build on the work conducted in 2012.

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<sup>3</sup> ICC-ASP/11/31/Add.1

*Plan of action co-focal point appointment*

Based on the recommendation of The Hague Working Group, the Bureau proceeded to appoint the United Kingdom as *ad country* co-focal point for the Plan of action on achieving the universality of the Rome Statute.<sup>4</sup>

**2. Oversight Committee on permanent premises**

The Vice-Chair, Mr. Daniel Fieller (United Kingdom), provided a briefing to the Bureau on developments in the work of the Oversight Committee.<sup>5</sup>

**3. Other matters**

*a) Twelfth session of the Assembly*

*i) Judicial vacancy*

The President drew to the attention of the Bureau that a judicial vacancy had arisen as a result of the 18 March 2013 resignation of Judge Antony Thomas Aquinas Carmona, following his election as President of Trinidad and Tobago.

The President indicated that the Bureau would proceed, at a future meeting, to fix the nomination period to fill the judicial vacancy, which would open 12 weeks before the election. She recalled that the procedure governing elections to fill judicial vacancies was set out in section C of resolution ICC-ASP/3/Res.6. Furthermore, the agenda item titled "Election to fill a judicial vacancy" would thus be included in the provisional agenda for the twelfth session, and the Bureau would revert to its consideration of the provisional agenda at a future meeting.

*ii) Special invitee*

The President informed the Bureau that she intended to invite the Secretary-General of the Organisation internationale de la francophonie, Mr. Abdou Diouf, to address the Assembly at its opening meeting in November 2013. She recalled that Mr. Diouf had been the President of Senegal when it became the first State to ratify the Rome Statute and that as Secretary-General of the francophonie he had been instrumental in providing support and assistance to the Court to promote the Rome Statute system in various parts of the world, including by financing technical seminars in Africa.

*iii) Tentative reception for participants*

The President indicated that, as part of the preparations for the twelfth session, she had held some initial informal discussions with a view to organizing a reception for participants at the session. Given the need for financial contributions to that effect, she invited any State interested in making a contribution to contact her in the coming weeks, so that the concrete organization of the reception could be commenced.

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<sup>4</sup> Romania had been appointed focal point at a prior Bureau meeting.

<sup>5</sup> A copy of the presentation is annexed hereto.

*b) Advisory Committee on Nominations of judges*

The President confirmed that she would open the first meeting of the Advisory Committee on Nominations (ACN) on 19 April in The Hague. The ACN would, inter alia, elect its Chair and discuss its working methods.

*c) Bureau for the thirteenth to fifteenth sessions*

The President recalled that the Bureau of the Assembly had been elected for a three year term that included the tenth to twelfth sessions and that, in accordance with rule 29 of the Rules of Procedure of the Assembly, as amended by resolution ICC-ASP/3/Res.2, the Assembly was called upon to elect a new President at the twelfth session in November 2013, ie one year in advance of taking office.<sup>6</sup>

In this regard, President Intelmann indicated that the Vice-President of the Assembly, Ambassador Ken Kanda (Ghana), would conduct consultations to identify the President for the three year term covering the thirteenth to fifteenth sessions and that he would keep the Bureau updated on the progress of those consultations. A letter on this appointment would be conveyed to States Parties in the first part of April.

Furthermore, President Intelmann drew to the attention of the Bureau the need to appoint regional focal points from among Bureau members who would conduct consultations within their respective regional groups to identify future Bureau members. The Bureau would revert to this matter at a future meeting.

*d) Rationalization of the term of the Bureau*

President Intelmann also recalled that discussions led by Mr. João Miguel Madureira (Portugal) were on-going in New York on the rationalization of the term of the Bureau. In essence the proposals under consideration would allow an incoming President of the Assembly and Bureau members to commence preparations for the next Assembly well in advance of the date of that session. The proposed amendments to the Assembly's Rules of Procedure were under consideration in the capitals of Bureau members and would subsequently be conveyed to States Parties for consideration at the twelfth session of the Assembly. The proposed amendments, if adopted, would enter into force as of the fourteenth session of the Assembly, in November 2015.

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<sup>6</sup> 1. The Assembly shall have a Bureau consisting of the President, who shall preside, two Vice-Presidents and eighteen members elected by the Assembly from among the representatives of the States Parties for three-year terms. Should the regular session of the Assembly marking the end of the Bureau's term of office be held later in the calendar year than the previous regular session, the Bureau shall continue to serve until the beginning of that session. Unless the Assembly decides otherwise, the Assembly shall elect a President at the last regular session prior to the end of the term of office of the President. The President so elected shall assume his or her functions only at the beginning of the session for which he or she is elected and shall hold office until the end of his or her term. The Bureau shall assist the Assembly in the discharge of its responsibilities.

2. The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

3. The Bureau shall meet as often as necessary, but at least once a year.

*e) Legal aid*

The Bureau took note that the Court had submitted to the Bureau in a timely manner the report entitled “Registry’s single policy document on the Court’s legal aid system”.

The facilitator on legal aid, Ambassador Gyula Sümeghy (Hungary) indicated that he had commenced consultations with different stakeholders and that a meeting of The Hague Working Group was scheduled for 27 March to consider the report submitted by the Court, while further meetings would take place after the Court submits its report on a comprehensive review of the legal aid system, expected by 1 April.

*f) Activities of the President*

*i) Non-cooperation*

In relation to the visit of Sudanese President, Omar Al-Bashir to Ndjamena, Chad, on 16 February, President Intelmann informed the Bureau about the demarches she had undertaken to try to prevent a new instance of non-cooperation with the Court. In this connection, she had made two demarches to Chad, in Brussels and in New York, reminding the obligations of Chad under the Rome Statute and urging Chad to cooperate with the Court. On 13 February 2013, she had written a letter to the Minister of Foreign Affairs of Chad, H.E. Moussa Faki Mahmat, on the matter. The President had also issued a statement on 20 February 2013, regretting that the visit of the Sudanese President to Chad had taken place.

President Intelmann expressed her appreciation to those States Parties and international organizations which had made similar demarches to Chad or issued statements regretting the visit. She encouraged the involvement of all States Parties in trying to prevent future instances of non-cooperation, even in cases where such visits are made on a very short notice.

In connection with the visit to Chad by the President of Sudan, President Intelmann indicated that it had been drawn to her attention that a senior United Nations representative in Chad had not followed the United Nations policy of limiting contact with persons subject to an arrest warrant of the ICC to what is strictly necessary for carrying out UN-mandated activities. She had written a letter to the United Nations Secretary-General, Mr. Ban Ki-moon, on the matter, inter alia, welcoming that the UN would take measures to avoid a re-occurrence of such situations. President Intelmann indicated that she had a planned meeting with a senior United Nations official to further discuss the implementation of the policy of the Organization.

Furthermore, President Intelmann recalled that the New York Working Group had met on 8 March to discuss the issue of non-cooperation, in particular efforts to prevent the visit of President Al Bashir to Chad, as well as future visits, and to reflect on the Assembly procedures on non-cooperation.

President Intelmann also recalled the Assembly procedures on non-cooperation whereby the Bureau could appoint four, or if so requested, five focal points, from among States Parties, to assist the President. On 29 May 2012, the Bureau had appointed Japan as the regional focal point for cooperation for the Asia-Pacific States. The President indicated that she would welcome receiving expressions of interest of other States Parties to assume the roles of focal points for the other regions, and that she had so far received one indication to that effect.

*ii) Travel*

President Intelmann briefed the Bureau members on her meetings in Arusha, from 28 February to 1 March, where she participated in a seminar entitled "Africa and the ICC: 10 Years On" and, inter alia, had met with senior officials of the International Criminal Tribunal for Rwanda and the Residual Mechanism.

From 5 to 6 March, the President visited Brussels upon an invitation to participate in the COJUR-ICC meeting, met with a group of ICC friends among European Parliamentarians and also held meetings with high officials of the European Commission and the European External Action Service.

Furthermore, the President indicated that she would be visiting Addis Ababa the week of 15 April to meet with officials of the African Union Commission and other stakeholders.

*Next Bureau meeting*

The next Bureau meeting would tentatively be held the week of 22 April 2013.

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## ANNEX

Briefing by the Vice-Chair of the Oversight Committee,  
Mr. Daniel Fieller (United Kingdom)

There are three main themes to the Oversight Committee's work and the status of the project:

1. The construction project remains on time and under budget. The associated risks are being mitigated against, monitored, and are budgeted for.
2. The transition programme, its governance and the effect of this on its costs (the so called 2gv costs) are an area of concern. The Committee, the CBF and Court are likely to have to take decisions in the next month to ensure that the programme's process of cost reduction is kept on track.
3. The Committee is suggesting changes to the one-time payment option to make it more accessible to States Parties. This should lower costs.

### **(1) Status of the project**

The Project now has a full, valid permit as the two legal challenges filed by two different residents' groups did not affect the construction of the main building. No suspension order was requested and the handling of the challenges should not result in any delay to the project schedule. The Committee expects these two challenges, on car parking spaces and biodiversity corridors, to be ruled on by the end of the year. Their possible consequences have already been factored into the risk register.

On 16 April 2013, we will hold the ICC Permanent Premises' ground breaking ceremony to mark the official start of construction. We expect the President of the Court, the Secretary General of the Dutch Ministry of Foreign Affairs, the Mayor of The Hague and Representatives of the ASP and the Committee to attend.

The estimated completion date for the project remains September 2015, with readiness for the Court to move into the new premises by December 2015.

### **(2) Construction costs reduction process**

The Committee maintains a cautious approach to the financial aspects of the project until its final completion. The Committee has initiated a review of possible savings presented by the Project Director, made up of variants to the construction process suggested by the contractor and those that bid for the contract. The proposed savings list is under review by the general contractor and the design team before being presented to the Committee in the coming weeks. These savings will only be realised at the end of the project, in 2015

### **(3) Project related issues**

#### **a) Working Group on the Total Cost of Ownership (WGTCO)**

The TCO is made up of 3 main components

- i) Financial costs;

- ii) Operating costs; and
- iii) Depreciation costs or amortization.

This includes all the future costs for using and owning the new premises and the site. Such costs are currently estimated to impact from 2016 (first full year of occupation) and the following financial years in a range between €13.3 and €14.8 million. But this is a complex area which needs due consideration.

On 18 March 2013, pursuant to resolution ICC-ASP/11/Res.3<sup>1</sup>, the Committee decided to establish a Working Group on the Total Cost of Ownership, based on Terms of Reference, dated 15 March 2013. Any interested State Party may take part in the meetings of the Working Group as observer.

### **b) Transition programme**

2013 is a crucial year for establishing the transition programme and reducing its costs (the 2gv costs). The Committee considered that its mandate allowed it to address issues that affected the construction project's completion and other related aspects, that affect the Court's ability to take up occupancy on the new building.

You will recall that the Assembly, at its 11th session, requested the Court, in conjunction with the Project Director,

“to take all preparatory measures needed to ensure its readiness to take occupation of the permanent premises by not later than December 2015 in order to avoid any additional expenditures for the States Parties, and to report thereon in detail to the Bureau and to the twentieth session of the Committee on Budget and Finance;”<sup>2</sup>

Based on a preliminary assessment of the transition programme the Committee decided to appoint its two independent experts, Mr. Ken Jeavons and Mr. Pierre Gilliot, to assess the governance structures in place for the programme. On 12 February 2013, the experts submitted their recommendations, based on interviews conducted with representatives of the three organs of the Court. Meanwhile, the Court made available a draft concept paper. This proposed an alternative governance structure for the transition programme.

Consultations with the Court are fruitful but ongoing, in order to ensure that the governance of the construction project aligns with the governance of the transition programme. The Committee will also be engaging the CBF on this issue.

The Committee noted that one of its main responsibilities was to maintain the timeliness and cost effectiveness of the construction project. Furthermore, the Assembly has explicitly requested that preparatory measures have to be taken “to ensure [the Court's] readiness to take occupation of the permanent premises by not later than December 2015 in order to avoid additional expenditures for the States Parties”.<sup>3</sup>

The Committee thinks that the period between September and December 2015 should be managed so as to complete the transition of the Court to the new premises. This should allow for the handover of the interim premises to the landlord, by the time the permanent premises is expected to become fully operational, i.e. by 31 December 2015. The Committee suggests that

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<sup>1</sup> Resolution ICC-ASP/11/Res.3, para 8.

<sup>2</sup> Ibid, para.10.

<sup>3</sup> Ibid, para. 11.



negotiations with the owner of the interim premises be resumed in order to include a flexibility clause in the contract, in order to allow for an earlier (or later) termination date as necessary.

#### **c) Review of the transition programme costs (2gv costs)**

In addition, and in relation to its review of the transition programme, the Committee requested the Court to provide updated figures on transition programme's costs (2gv elements), as the last cost estimate was made in September 2011<sup>4</sup> The Committee would consider the costs in light of the CBF's recommendation and the decision of the Assembly at its eleventh session.

The review conducted by the Court on 11 March 2013<sup>5</sup> established the need for future expenditures on 2gv costs of €17.78 million,<sup>6</sup> and foresaw that estimates for the 2014 and 2015 financial years were expected to become available only at the time of the annual budget presentation (July 2013 and 2014).

#### **d) One –time payments**

You will recall that the Assembly decided to extend the deadline for the selection of the option of one-time payments until 31 December 2014, while any such payments should be received in full by not later than 15 June 2015.

A number of States Parties have so far opted into the system of advance payments, and others have expressed an interest in potentially doing so. The Committee has adopted a further revised approach to one-time payments, with a view to attracting as many States Parties as possible. The Project Director is now developing a new database, which will allow States Parties to assess the contributions not on the provisional basis of the 2009 scale of assessment (until the completion of the project) which is the way it is currently calculated but against the current scale of assessment. No prejudice would be suffered by States Parties which contributed under the previous scheme, as at the project end there will be a re-balancing of contributions to ensure the overall fairness of the system. The revised approach is expected to bring in substantial contributions which could delay access to the loan. To achieve this objective, interested States Parties should be offered the new calculations, based on the 2013 scale of assessment, in time for them to make decisions and contribute before August 2013, when it is currently foreseen that the loan would need to be accessed in case there are no further contributions.

The Committee understands that this further development of the one-time payment scheme is not only in the common interest of all States Parties but is also fully in line with the established policy of the Assembly as regards the financing of the project. The Committee stresses the importance that the legal framework be interpreted in a manner which allows the court not to miss the narrow window of opportunity offered before August 2013, so as to attract as many contributions as possible.

The Committee understands that the hybrid system of one-time payments approved by the Assembly at its eleventh session enables States Parties to also opt-in to the scheme by paying under the 2013 scale of assessment, instead of the 2009 scale, subject to the adjustments to be made at the completion of the project. Payments under the current scale of assessment would, in fact, be "partial one-time payments", in the sense that they would remain provisional until a further revised scheme is explicitly approved by the Assembly at its twelfth session and, finally, until the completion of the project.

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<sup>4</sup> Ibid.

<sup>5</sup> IPMMC/POPP document dated 11 March 2013.

<sup>6</sup> That is, with an increase of €0.28 million above the previous estimates of €17.5 million.

#### **e) Representational features**

The Committee considered the issue of “representational features”, for which a budget of €1.2 million was originally allocated. Based on a proposal of the Project Director, the Committee revised the elements for a policy on representational features, integrated art, monuments and memorials. The Committee decided to maintain the existing budget of €1.2 million, while trying to produce savings through possible sponsorships. The policy on representational features should be finalized in the coming months, while an offer from the Municipality of The Hague to establish a *garden of remembrance* in the public area of the permanent premises has already been presented and is under consideration.

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