ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

STUDY GROUP ON GOVERNANCE

Cluster I: Increasing the efficiency of the criminal process

Panel discussion on the Efficiency and Effectiveness of Court Proceedings, held at the tenth meeting of the fourteenth session of the Assembly of States Parties, in The Hague on 24 November 2015

1. At its thirteenth session the Assembly of States Parties declared the efficiency and effectiveness of Court proceedings a priority in strengthening the Rome Statute system and decided to include a specific item on this topic on the agenda of the following session.[1] In fulfilment of this mandate, a panel discussion on the efficiency and effectiveness of Court proceedings organized under the auspices of Cluster I of the Study Group on Governance[2] was held during the fourteenth session of the Assembly.

2. H.E. Ms María Teresa Infante Caffi (Chile) and H.E. Mr Masaru Tsuji (Japan), co-chairs of the Study Group on Governance, chaired the panel discussion and delivered opening and closing remarks, respectively. The panel comprised the President of the Court, Judge Silvia Fernández de Gurmendi, the Prosecutor, Ms Fatou Bensouda, Professor Carsten Stahn, University of Leiden, and Mr Richard Dicker, Director of the International Justice Program of Human Rights Watch. An interactive segment with States Parties and civil society organizations followed the panellists' interventions.

3. H.E. Mr Sidiki Kaba (Senegal), President of the Assembly of States Parties, gave opening remarks, stressing the importance of enhancing the efficiency and effectiveness of proceedings for the Court to fulfil its mandate and to deliver timely justice to victims because "justice delayed is justice denied".

4. Professor Stahn introduced the topic by explaining the concepts of effectiveness and efficiency. He highlighted that in the context of the Court, efficiency and effectiveness relate to expeditious, fair and transparent trials, protecting the rights of the accused and providing adequate access for the victims.

5. President Fernández de Gurmendi and Prosecutor Bensouda underlined that the Court's principals had undertaken great efforts to enhance the effectiveness and efficiencies of the Court's proceedings and operations, that this effort has been undertaken in a cooperative spirit amongst the organs of the Court, and in

[1] ICC-ASP/13/Res.5

[2] Co-focal Points of Cluster I, 'Increasing the efficiency of the criminal process': Mr Alfredo Fortes (Peru) and Ms Marisa MacPherson (New Zealand)

PURL: http://www.legal-tools.org/doc/0ab293/

this regard an inter-organ working group had been created in order to identify further synergies.

6. President Fernández de Gurmendi stated that a key aspect of the Court's sustainability was the quality of justice, and it was therefore essential that the Court address the perception that proceedings were too lengthy and not as efficient and effective as they could be. It was therefore her key priority to enhance the efficiency and effectiveness of the Court's operations. President Fernández de Gurmendi had taken the helm of the Working Group on Lessons Learnt in which she promoted a holistic approach: rather than a piecemeal approach to amending the Rules of Procedure and Evidence, the focus had been on identifying best practices and greater harmonization across Chambers and Divisions to achieve progress through a practice-based approach. A key achievement in this regard was the development of the Pre-Trial Manual, a living document, which reflected the agreement of the judges on practices and harmonization.[3] In the future, the Manual would be expanded to become a Chamber Manual, covering all phases of the proceedings. The President further indicated that an Inter-Divisional Committee on Drafting Style had been established to explore greater standardization in matters of drafting and style across Chambers and Divisions, and that this Committee was finalizing an ICC Chambers Style Guide, which also would be made publicly available.

7. President Fernández de Gurmendi underlined that the focus on improving practices did not rule out the possibility of amending the Rules of Procedure and Evidence and other texts. However, as the process of amending the Rules of Procedure and Evidence was often complex and difficult, the possibility of modifying the Rules in urgent cases according to article 51 (3) of the Rome Statute remained available to the judges. She further stressed that by the time amendment proposals to the Rules of Procedure and Evidence came before the States Parties, they had been considered carefully by the judges and agreed to also by all relevant stakeholders of the Court through the framework of the Advisory Committee on Legal Texts.

8. The President and the Prosecutor indicated that another important Court-wide process undertaken to enhance the efficiency and effectiveness of the proceedings was the development of performance indicators, which allow the Court to assess progress made. The Office of the Prosecutor had already developed a start-up set of specific indicators, which would be measured as of 2016.

9. The Prosecutor indicated that by applying the OTP's new investigative and prosecutorial strategies and by efficient use of the resources provided, her office was seeing positive results. These results were due to the focus of her office on the quality of its work, rather than trying to meet all the demands on the office.

[3] https://www.icc-cpi.int/iccdocs/other/Pre-Trial_practice_manual_(September_2015).pdf

PURL: http://www.legal-tools.org/doc/0ab293/

10. However, the Court officials also stressed that the ICC's efficiency and effectiveness also depended on external factors, beyond the control of the Court, in particular the cooperation of States Parties and the speed at which requests for assistance to States Parties were fulfilled.

11. Mr. Dicker pointed to the rapidly changing international landscape within which the ICC was situated. As a result of changed circumstances, such as the increase in armed conflicts and the current economic realities, all stakeholders involved had a common interest in ensuring that the Court's proceedings be as efficient and effective as possible. However, in his view, States Parties were pursuing a "short-term thinking of false economies" by not adequately resourcing the Court, as a lack of resources lead to greater inefficiencies as trials were being slowed down, inter alia due to a lack of staff.

12. During the interactive segment, States Parties commended the President and the Prosecutor on the steps taken and the progress made in the past year to enhance the efficiency and effectiveness of the Court. Speakers mentioned that with the growing demand for accountability, the enhancement of the efficiency and effectiveness of Court proceedings was a responsibility that States Parties share with the Court. States Parties acknowledged the important role that their cooperation with the Court played with regards to the efficiency and effectiveness of proceedings.

13. States Parties welcomed the holistic and practice-based approach adopted by the Working Group on Lessons Learnt. They expressed their support for the Court's measures to identify best practices, streamline procedures and ensure greater harmonisation across Chambers and Divisions, including the Pre-Trial Practice Manual.

14. States Parties also welcomed efforts to develop performance indicators. Some speakers highlighted the difficulty of establishing Court-wide indicators, due to the unique nature of the Court and the complexity of cases. It was suggested to develop organ-specific performance indicators, drawing on the synergies between organs.

15. Speakers further addressed the link between efficiency and continuing work on amendments to the Rules of Procedure and Evidence. Several States encouraged constructive engagement when discussing amendments of the Rules of Procedure and Evidence, especially when such amendments were proposed by the Court. Reference was made to proposed amendments to rules 76(3), 101(3) and 144(2)(b) (the so-called "language cluster")[4], and suggested amendments to rule 165, aimed at reducing the number of judges involved in article 70 offences at pre-trial, trial and appeal.[5] States Parties expressed support to consider amendments proposed by the Court.

[4] ICC-ASP/11/31/Add.1.
[5] ICC-ASP/14/30, paras. 71-72.

PURL: http://www.legal-tools.org/doc/0ab293/

16. States Parties underscored the importance of the rights of the accused in the pursuit of efficiency and effectiveness. It was noted that efficiency and effectiveness should be regarded as complementary, rather than competing objectives, in light of the right of the accused to be tried without undue delay. Speakers also stressed the need to reconcile efficiency and effectiveness with protection of fair trial standards.

17. States Parties highlighted the link between efficiency and effectiveness and the role of victims as a unique feature of the Court. It was emphasized that victims' participation and reparations are essential in order to bridge the gap between The Hague and affected communities in situation countries. Speakers agreed on the crucial importance of efficient and effective proceedings to ensure meaningful justice but cautioned that efficiencies should not undermine the quality of Court proceedings and should not come at the expense of the victims. The challenge of ensuring meaningful participation while at the same time guaranteeing an expeditious trial was also noted.

18. States Parties further reflected critically upon the necessity to improve and streamline the Assembly's working methods. Speakers mentioned the relationship between the Working Group on Amendments, located in New York, and the Study Group on Governance, based in The Hague, the need to avoid duplication of work, and the need to have more systematic working documents and draft resolutions to facilitate efficiency.

19. Speakers noted that the topic of the plenary discussion was crucial for the future development of the Court. The plethora of work done on the issue of efficiency and effectiveness of the Court proceedings in the form of studies, expert papers, and conference reports[6] was mentioned. Their usefulness in informing the discussion on this topic in general and in the Study Group on Governance and the Working Group on Lessons Learnt in particular, was underlined.

20. It was agreed that States Parties should continue to support the Court's efforts to enhance the efficiency and effectiveness of proceedings, and that the Bureau should consider including, if appropriate, a specific item on this issue on the agenda of the fifteenth session of the Assembly[7].

---

[6] Such as the Report of the Retreat on the Future of the International Criminal Court (ICC-ASP/10/INF.3, 1 December 2011), http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-INF.3-ENG.pdf; the Informal Summary, Study Group on Governance: Dialogue on institutional review of the governance framework of the Assembly of States Parties (ICC-ASP/10/INF.4, 1 December 2011) http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-INF.4-ENG.pdf; the Executive Summary of the Seminar on ICC Procedures organized by the Foreign and Commonwealth Office on 14 July 2014, https://www.gov.uk/government/publications/fco-seminar-on-icc-procedures-executive-summary; the Chair's summary of the Retreat on Strengthening the Proceedings at the International Criminal Court, organized by the Federal Department of Foreign Affairs on 3-5 September 2014, https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/voelkerrecht/dfa_aussenpolitik_voelkerrecht_Chair_Summary_%20ICC%20Retreat_en.pdf

[7] ICC-ASP/14/Res.4, Annex I, para. 8 (c)

PURL: http://www.legal-tools.org/doc/0ab293/