CHAPTER 13

The Role of the Assembly of States Parties for the ICC

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Summary

In what might be seen as a self-serving disclaimer, may we suggest that the question posed in this Forum is a difficult one? The note will argue that the question (or perhaps more accurately the answer thereto) is not about balancing the independence of the Court with the ASP, but rather about the role of that body within the Court. The argument made here is that the Independent Oversight Mechanism (IOM) debate cannot be seen in isolation. Nor can it be considered as merely a question of administrative functions. Rather, it must be situated within the broader question and possible future debate over the role of the ASP. For many African states that role implicates broader (and deeper) questions about the ASP as a possible political counterpoint to the UN Security Council.

Argument

Background: The Role of the ASP under the Rome Statute

The ASP was a relative latecomer in the negotiations leading up to the adoption of the Rome Statute. Bos notes that “only at the very end of the discussion in the PrepCom was serious attention given to...[its] establishment.”1 Even then, ongoing debate over the nature of the Court’s relationship with the UN meant it was not fully explored. Perhaps for this reason, in the final statute the ASP’s role is defined functionally—by what it does—not conceptually—by what it is. In particular, Article 112 sets out different tasks assigned to the ASP as well as how the body shall be constituted and operate. This provision is supplemented by other Articles that assign additional tasks to the ASP.2

It is in this sense a creature of necessity, defined by different, and diffused, tasks assigned to it. As a result, there is little in the Statute regarding what the ASP cannot do. What is more, the open ended catch-all clause in Article 112(2)(g) gives the ASP the power to “[p]erform any other function consistent with this Statute or the Rules of Procedure and Evidence.”

However, one limit on the ASP that was clearly a concern during the negotiations was the question of judicial independence. The debates concerning Article 112—and Article 119—show a deliberate choice to preclude the ASP from considering matters of a judicial nature.3 This was a clear and constant line in the sand.

The lack of a defined role has led to an oversimplification of the ASP (at least in the media) as the “political body” of the ICC. In fact, the numerous tasks assigned to the ASP under the statute can be divided into three categories: administrative, legislative, and operational.

**Administrative**

The administrative functions of the ASP are mostly set out in Article 112 and include: providing management oversight to the Presidency, the Prosecutor, and the Registrar regarding the administration of the Court; considering reports and activities of the bureau and taking appropriate action in regard thereto; budgetary matters; and the inspection, evaluation, and investigation of the Court, in order to enhance its efficiency and economy. The ASP is also responsible for a host of other administrative tasks under the Statute.4

The ASP’s administrative role is relatively uncontroversial in theory, although its functions have turned out to be less so in practice. In pursuance of its administrative functions the ASP established the IOM (discussed below).

**Legislative**

The ASP’s legislative functions are both specific and general. The ASP was assigned specific “legislative” tasks that could not be completed at Rome. In this sense it was the successor to the Conference (see Article 112(2)(a)) and certain “unfinished business” was expressly left to the ASP to conclude (including defining aggression). Other day-to-day legislative functions are also assigned to the ASP. In addition to these, the ASP has a general legislative authority that flows from the fact that the Rome Statute is a treaty and, as such,

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3 Bos, above note 1, at p. 305. Schabas, below note 4, at pp. 1121–2.