

Part II

External audit, programme budget for 2012 and related documents

A. Introduction

1. The Assembly of States Parties (the Assembly) had before it the 2012 proposed programme budget published by the Court on 21 July 2011,¹ the reports of the sixteenth² and seventeenth sessions³ of the Committee on Budget and Finance (the Committee), the financial statements for the period 1 January to 31 December 2010,⁴ and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2010.⁵ The Assembly also had before it annex V of the report of the Committee on the work of its seventeenth session, in which the Court outline the budgetary implications of the Committee's recommendations on the budgets of major programmes.

2. The Assembly also had before it the proposed supplementary budget submitted by the Court on 6 December 2011.⁶ The Chair of the Committee, Mr. Santiago Wins (Uruguay), in his statement to the Assembly at its fifth plenary meeting on 15 December 2011, detailed inter alia the Committee's recommendations thereto.⁷

3. At the same plenary meeting, the Assembly heard the statements made by the Registrar of the Court, Ms. Silvana Arbia, and the representative of the External Auditor (the National Audit Office of the United Kingdom of Great Britain and Northern Ireland).

4. Delegations made general comments on the budget at the fifth plenary meeting. The Working Group on the Programme Budget met on 15, 16, 17, 20 and 21 December. Informal consultations on the budget were held on 14 and 18 December 2011. The Working Group was assisted in its work by the Chair, the Vice Chair and three members of the Committee.

B. General statements

5. All delegations expressed their full support to the Court and their commitment to its mandate and the cause of international criminal justice, while acknowledging, at the same time, the current financial constraints facing most delegations.

6. There was general appreciation of the valuable work performed by the Committee in providing technical advice on the Court's proposed programme budget.

7. Divergent views were expressed between those delegations that supported the adoption of the budget submitted by the Court, one resulting from applying the Committee's recommendations, or even considered these recommendations as an absolute limit to reduce the budget, and those that supported a budget at the same level as in the approved 2011 budget, or with a small variation. Other delegations were not opposed, in principle, to considering limited reductions in the 2012 proposed programme budget beyond the Committee's recommendations provided that any proposal in that regard be technically justified and do not affect the ability of the Court to fulfil its mandate. The Court observed that the Committee's recommendations posed a challenge to its ability to fulfil its increased workload. Some delegations supported the 2012 proposed programme budget submitted by the Court.

C. External audit

8. The Assembly noted with appreciation the reports of the External Auditor and related comments of the Committee contained in the report on the work of its seventeenth

¹ *Official Records...Tenth session...2011*, (ICC-ASP/10/20), vol. II, part A.

² *Ibid.*, part B.1.

³ *Ibid.*, part B.2.

⁴ *Ibid.*, part C.1.

⁵ *Ibid.*, part C.2.

⁶ ICC-ASP/10/10/Add.2.

⁷ *Official Records ... Tenth session ... 2011*, (ICC-ASP/10/20), vol. I, annex III.

session. The Assembly noted that the Committee had endorsed the External Auditor's recommendations.

D. Appointment of the External Auditor

9. The Committee recommended to the Assembly the appointment of the proposed External Auditor and confirmed that the procedure had been fully observed by the Court taking also into account the Committee's previous recommendation on the importance of rotation of the external auditor.

10. The Assembly endorsed the Committee's recommendation to appoint *la Cour des comptes* (France) as the new External Auditor of the International Criminal Court and the Trust Fund for Victims for four years starting with the financial year 2012.

E. Supplementary budget

11. On 6 December 2011, the Court submitted a proposed supplementary budget in the amount of €5.3 million to cover the costs for the situation in Côte d'Ivoire (€4.4 million) and 2gv and other related costs of the permanent premises project (€0.9 million).

12. The Chair of the Committee, in his statement to the Assembly, on 15 December 2011, provided the elements on which the Committee had based its recommendations to reduce the supplementary budget submitted by the Court. The Committee also provided the Assembly with a table (annex) detailing the adjustments recommended by the Committee by major programmes.

F. Libya situation

13. In the 2012 proposed programme budget the Court identified a need for €7.2 million to cover the Libya situation and later revised down its estimates to €6.4 million.

14. The Registry submitted a revised 2012 budget assumption for Libya⁸ on 9 December 2011. The Committee proposed to put into a trigger two scenarios of €2.1 million (in relation to the Libya 1 and Libya 2 cases) which, if materialized, should be funded through the Contingency Fund, and €1.2 million (for the Libya 3 case) to be funded in 2013 should it materialize.

15. The Committee, at the tenth session of the Assembly, also recommended to put into a trigger €0.8 million from Major Programme III. In total, the overall reduction of the 2012 proposed programme budget for Libya was €4.1 million.

G. Legal aid

16. The Assembly noted that the legal aid system of the Court was one of the main cost drivers for the rapid increase in the 2012 proposed programme budget. The expenditure for legal aid would increase from €2.72 million in 2011 to an estimated €7.6 million in the 2012 proposed programme budget representing an increase of €4.9 million equivalent to 180 per cent.

17. The Committee provided possibilities for potential changes in the legal aid system in annex III to its report on the work of its seventeenth session.⁹ An explanation thereof was provided to the Assembly by a member of the Committee on 19 December 2011.

18. The Registry presented a discussion paper dated 7 December 2011 and noted that it was not a proposal to the Assembly but a very preliminary study, subject to further consultations inside and outside the Court, after which it would be submitted for advice to the Committee at its April 2012 session. The Registry cautioned against implementing any change without respecting the consultation process provided for in the Rules of Procedure and Evidence.

⁸ ASP10/01P28.

⁹ *Official Records ... Tenth session ... 2011*, (ICC-ASP/10/20), vol. II, part B 2.

19. While noting the recommendations of the Committee, which highlighted the significant increase in legal aid expenses, there was general agreement among delegations to underscore the fundamental role of the Court's legal aid system both for defendants and victims and the need to uphold and not to hinder the rights of the accused as set out in the Rome Statute.

20. The Assembly requested the Registrar to consult with the relevant stakeholders, as appropriate, on a revised legal aid system and to report to the Bureau before 15 February 2012, and mandated the Bureau to decide on the implementation of the revised legal aid system before 1 March 2012 with a view to allowing for its application, as of 1 April 2012, to cases currently before the Court and future cases. The Court and the Bureau would continue its review and report their findings to the Assembly at its eleventh session. States Parties considered that there was no legal or financial impediment to the implementation of these proposals.

21. Should the implementation of the revised legal aid system as foreseen by the Assembly prove not to be possible, it was understood that the Court could have access to the Contingency Fund, in line with existing financial regulations.

H. Personnel costs

1. Number of staff

22. The Committee had identified staff costs as the major cost driver of the Court, representing more than two thirds of the annual budget, and continued to recommend that the freeze on established posts remain in place until the Court conducts a study on its staffing structure with adequate justifications.

23. The Assembly discussed the vacancy rate applied by the Court in different major programmes as well as positions that had been vacant for more than 12 consecutive months.

2. Conditions of service

24. The Committee had observed that there was an overall proposed increase in staff costs of €2.96 million, which was mainly due to increments in salaries (step increases) in the amount of €2.2 million, and the decision of the Court to enhance the conditions of service for professional staff serving in the field, in the amount of €0.4 million, and had recommended that they be absorbed within each major programme, including for General Temporary Assistance (GTA) staff.

25. The Registry indicated that it was bound by contractual obligations to grant the annual step increase based on satisfactory performance, which in 2011 applied to more than 99.5 per cent of the staff, while an accelerated step increase (every 10 months) is granted to staff upon demonstrated proficiency in another official language of the Court. The Registry stressed that in order to absorb these costs the Court would have to lay off GTA staff, which could result in liability for the Court before the International Labour Organization Administrative Tribunal.

26. Some delegations noted that a satisfactory performance rate of more than 99.5 per cent appeared to be somewhat elevated and wondered whether the performance appraisal system of the Court could be improved.

27. The Vice Chairperson of the International Civil Service Commission (ICSC), Mr. Wolfgang Stöckl, answered questions from delegations at the 19 December 2011 meeting of the Assembly. He indicated that the Court must follow the United Nations Common System of salaries, allowances and benefits since it is part of the United Nations Joint Staff Pension Fund (UNJSPF). The Vice Chairperson explained that there was little room of manoeuvre within the common system for member organizations (i.e. travel allowances). He also indicated that there was no possibility at the moment for member organizations to opt out in respect of salary increases and that any departure from the system could give rise to legal challenges. However, he mentioned the case of an organization that had departed from a salary increase adopted in the common system and which continued to be part of the pension scheme.

28. The ICSC Vice Chairperson clarified that step increases are granted to staff throughout the system based on “satisfactory” performance, which means that the staff member “meets the requirements” of the position, and, as an example, indicated that step increases had been granted to approximately 99 per cent of the UN staff in 2011. He also pointed out, upon enquiry, that it was up to each individual organization in the system to determine its own appraisal system, and to define the criteria of satisfactory performance. Although the Commission provided guidelines, the responsibility for the performance evaluation lay within each organization.

29. Finally, the Vice Chairperson of the ICSC stressed that discussions on the level of salaries and other conditions of service in the United Nations common system were currently being held at the United Nations General Assembly, which included the consideration of a freeze or reduction of post adjustment, which would lead to a freeze or reduction of overall salaries. In his opinion, any such change decided by the United Nations General Assembly would be valid for the entire system. The Vice Chair explained that the ICSC reported on implementation of the common system by its member organizations every two years to the United Nations General Assembly. He further clarified that the next General Service Salary Survey for The Hague duty station is planned for 2015.

I. Contingency Fund

30. The Assembly noted that the Registrar reported that the implementation for the 2011 approved budget is estimated to be 98.8 per cent, equivalent to €102.3 million. In addition, notifications regarding access to the Contingency Fund during 2011 amounted to €8.5 million with an implementation rate of 61.9 per cent, or €5.3 million. The two figures resulted in a combined estimated expenditure for the Court of €107.6 million in 2011, representing an excess of €4 million over the 2011 approved budget. States Parties would need to replenish the Contingency Fund in €2.2 million in order to keep it at the minimum €7 million at the beginning of 2012.

31. The Assembly recommended keeping the minimum level of the Contingency Fund at €7 million, since it provides an essential operational buffer, which is considered particularly important in 2012 in view of the uncertainties surrounding the Libya situation and the trigger budget mechanism in place.

32. The Committee had recommended that, following established practice, the Assembly should authorize the Court to transfer funds between major programmes at year end if the costs of unforeseen activities could not be absorbed within one major programme while a surplus existed in other major programmes, to ensure that all appropriations for 2011 were exhausted before accessing the Contingency Fund.¹⁰ The Court indicated that approximately €1.3 million would be transferred among major programmes in 2011.

J. Major Programmes

33. Some delegations supporting no increase or a minimal increase of the budget stressed that the Assembly was sovereign to consider and reduce the budget even beyond the Committee’s recommendations. However, other delegations stressed that they considered the 2012 proposed programme budget submitted by the Court as the starting point for discussions.

34. The Assembly considered the following areas in order to identify possible savings that the Court could achieve in the understanding that such savings would not hamper its ability to fulfil its mandate or affect its judicial activities, inter alia, on travel, hospitality, capital replacement, supplies, equipment, training, consultants, contractual services and/or general temporary assistance (GTA).

K. Amount of appropriation

35. The Court’s 2012 proposed programme budget amounted to €117.7 million. This was a 13.6 per cent increase over the 2011 approved budget.

¹⁰ Ibid., para. 43.

36. The Committee's first examination of the Court's 2012 proposed programme budget, at its seventeenth session, found a number of areas where, based on actual and forecast expenditure, as well as actual experience, a number of savings could be made. Accordingly, the Committee had recommended that the budget allocation be reduced to a total of €112.1 million.

37. A further examination by the Committee, at the tenth session of the Assembly, of the Court's 2012 proposed programme budget, related to the Libya situation, resulted in a recommendation for an additional reduction of the budget in the amount of €4.1 million decreasing the total amount to €107.9 million. The Assembly accepted the Committee's recommendation consisting in deferring part of the costs to the 2013 budget in combination with a trigger approach to access the Contingency Fund in case of need.

38. In addition to the 2012 proposed programme budget, the Court had submitted a proposed supplementary budget on 6 December 2011, covering the situation in Côte d'Ivoire and costs related to the permanent premises project. The Committee also recommended a number of savings that could be made amounting to €1.3 million.

39. The Assembly decided a budget appropriation for 2012 of €108.8 million, representing a 5 per cent increase compared to the 2011 approved budget.

40. The Assembly urged the Court to exercise fiscal restraint and to continue to identify efficiency gains.

41. It was recalled that in December 2010 the Assembly had requested the Court to draw up budget options for 2012, which costed the full range of the core Court activities (investigations, prosecutions and trials) and also costed those other important activities, which could be achieved within the same budget allocation as 2011. This request had the intention to assist the Court and the Assembly in making decisions on funding priorities. Some delegations expressed reservations about taking such an avenue.

42. The Court indicated that it had submitted a paper, dated 1 November 2011 instead, containing the list of its mandates, and pointed out that, in order to be able to submit a budget option with no growth or a minimum one, States Parties should first prioritize among the Court's different mandates and identify those that should be reduced or eliminated.

L. Costs arising from Security Council referrals

43. The Assembly discussed the issue of costs arising from Security Council referrals. It was noted that under article 115 (b) of the Rome Statute, such funds shall be provided by the United Nations, subject to the approval of the General Assembly, and that under article 13 (1) of the Relationship Agreement,¹¹ the conditions under which such funds could be provided by decisions of the General Assembly shall be subject to separate arrangements. Noting the absence of such arrangements, the Assembly discussed whether the Assembly should mandate the Court to conclude such arrangements.

M. The Court's budgeting process

44. The Committee had recommended that the Court produce a medium term expenditure forecast as an annex to the 2012 proposed programme budget and for each annual budget thereafter. The Committee had also recommended that the Court develop its process for preparing the proposed programme budget. The Assembly endorsed the recommendation of the Committee.

45. The Assembly requested the Study Group on Governance to engage with the Court and the Committee on a strategic approach to increase the predictability and transparency of the Court's budgetary process as included in the draft resolution.

¹¹ *Official Records... Third session ... 2004* (ICC-ASP/3/25), part III, ICC-ASP/3/Res.1, annex.

Annex

Recommendations of the Committee on Budget and Finance on the supplementary budget (in euros)

<i>Budget line item</i>	<i>Proposed budget</i>	<i>Recommended savings</i>	<i>Adjusted budget</i>
MP I			
General temporary assistance	415,400.00	69,230.00	346,170.00
<i>Sub-total other staff</i>	<i>415,400.00</i>	<i>69,230.00</i>	<i>346,170.00</i>
Total	415,400.00	69,230.00	346,170.00
MP II			
General temporary assistance	1,442,600.00	202,700.00	1,239,900.00
Consultants	20,100.00	2,010.00	18,090.00
<i>Sub-total other staff</i>	<i>1,462,700.00</i>	<i>204,710.00</i>	<i>1,257,990.00</i>
Travel	284,400.00	28,440.00	255,960.00
Contractual services	15,000.00	0.00	15,000.00
<i>Sub-total non-staff</i>	<i>299,400.00</i>	<i>28,440.00</i>	<i>270,960.00</i>
Total	1,762,100.00	233,150.00	1,528,950.00
MP III			
Profesional staff	99,800.00	99,800.00	0.00
General services staff	126,000.00	126,000.00	0.00
<i>Sub-total staff</i>	<i>225,800.00</i>	<i>225,800.00</i>	<i>0.00</i>
General temporary assistance	440,400.00	220,200.00	220,200.00
Temporary assistance for meetings	33,200.00	0.00	33,200.00
Consultants	45,000.00	4,500.00	40,500.00
<i>Sub-total other staff</i>	<i>518,600.00</i>	<i>224,700.00</i>	<i>293,900.00</i>
Travel	324,600.00	32,460.00	292,140.00
Contractual services	144,600.00	72,300.00	72,300.00
Counsel for defence	27,600.00	0.00	27,600.00
Counsel for Victims	576,900.00	288,450.00	288,450.00
General operating expenses	396,400.00	99,100.00	297,300.00
Supplies and materials	32,200.00	32,200.00	0.00
<i>Sub-total non-staff</i>	<i>1,502,300.00</i>	<i>524,510.00</i>	<i>977,790.00</i>
Total	2,246,700.00	975,010.00	1,271,690.00
MP VII-1			
General temporary assistance	456,300.00	0.00	456,300.00
<i>Sub-total other staff</i>	<i>456,300.00</i>	<i>0.00</i>	<i>456,300.00</i>
Contractual services	447,800.00	60,000.00	387,800.00
<i>Sub-total non-staff</i>	<i>447,800.00</i>	<i>60,000.00</i>	<i>387,800.00</i>
Total	904,100.00	60,000.00	844,100.00
Total proposed budget	5,328,300.00	1,337,390.00	3,990,910.00