

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

**TENTH SESSION  
NEW YORK, 12 - 21 DECEMBER 2011**

**OFFICIAL RECORDS  
VOLUME I**

*Note*

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Decision”.

Pursuant to resolution ICC-ASP/7/Res.6, volume I of the Official Records is available in all languages of the Assembly, while volume II is available in Arabic, English, French and Spanish.

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## Part I Proceedings

### A. Introduction

1. In accordance with the decision of the Assembly of States Parties to the Rome Statute of the International Criminal Court (hereinafter “the Assembly”), taken at the 5th meeting of its ninth session, on 10 December 2010, and on the basis of General Assembly decision 65/501, the Bureau fixed 12 to 21 December 2011 as the dates for the tenth session.
2. In accordance with the Rules of Procedure of the Assembly,<sup>1</sup> the President of the Assembly invited all States Parties to the Rome Statute to participate in the session. Other States that had signed the Statute or the Final Act were also invited to participate in the session as observers.
3. In accordance with rule 92 of the Rules of Procedure of the Assembly (hereinafter “the Rules of Procedure”), invitations to participate in the session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions,<sup>2</sup> as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.
4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or in consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Assembly, attended and participated in the work of the Assembly.
5. In addition, in accordance with rule 94 of the Rules of Procedure, the following States were invited to be present during the work of the Assembly: Bhutan, Democratic People's Republic of Korea, Equatorial Guinea, Kiribati, Lao People's Democratic Republic, Lebanon, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, Swaziland, Tonga, Turkmenistan and Tuvalu.
6. The list of delegations to the session is contained in document ICC-ASP/10/INF.1.
7. The session was opened by the President of the Assembly of States Parties, Mr. Christian Wenaweser (Liechtenstein), who had been elected for the period 2008-2011.
8. At its eleventh meeting on 26 July 2011, the Bureau decided to recommend that Ambassador Tiina Intelmann (Estonia) be elected President of the Assembly at the beginning of its tenth session. The Assembly elected Ambassador Tiina Intelmann as President by acclamation for the tenth to twelfth session.
9. The Assembly elected the Bureau at its first plenary meeting, on 12 December 2011, for a period of three years, as follows:

*President:*

Ms. Tiina Intelmann (Estonia)

*Vice-Presidents:*

Mr. Ken Kanda (Ghana)

Mr. Markus Börlin (Switzerland)

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part II.C.

<sup>2</sup> General Assembly resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53, 61/43, 61/259, 63/131, 63/132, 64/3, 64/121, 64/122, 64/123, 64/124 and decision 56/475.

*Rapporteur:*

Ms. Alejandra Quezada (Chile)

*Other members of the Bureau:*

Argentina, Belgium, Brazil, Canada, Chile, Czech Republic, Gabon, Finland, Hungary, Japan, Nigeria, Portugal, the Republic of Korea, Samoa, Slovakia, South Africa, Trinidad and Tobago and Uganda.

10. At its 1st meeting, on 12 December 2011, in accordance with rule 25 of the Rules of Procedure, the following States were appointed to serve on the Credentials Committee:

Belgium, Cook Islands, Czech Republic, Finland, Gabon, Hungary, Kenya, Peru and Panama.

11. The Director of the Secretariat of the Assembly, Mr. Renan Villacis, acted as Secretary of the Assembly. The Assembly was serviced by the Secretariat.

12. At its 1st meeting, on 12 December 2011, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure of the Assembly.

13. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/10/1):

1. Opening of the session by the President.
2. Silent prayer or meditation.
3. Adoption of the agenda.
4. States in arrears.
5. Credentials of representatives of States at the tenth session:
  - (a) Appointment of the Credentials Committee;
  - (b) Report of the Credentials Committee.
6. Organization of work.
7. General debate.
8. Report on the activities of the Bureau.
9. Report on the activities of the Court.
10. Report of the Board of Directors of the Trust Fund for Victims.
11. Election of the President of the Assembly of States Parties for the tenth to twelfth session.
12. Election of two Vice-Presidents and 18 members of the Bureau.
13. Election of six judges.
14. Election of the Prosecutor.
15. Election of six members of the Committee on Budget and Finance.
16. Consideration and adoption of the budget for the tenth financial year.
17. Consideration of the audit reports.
18. Appointment of the External Auditor.
19. Independent Oversight Mechanism.
20. Premises of the Court.
21. Amendments to the Rome Statute.
22. Review Conference follow-up.
23. Decision concerning the date of the next session of the Assembly of States Parties.
24. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance.
25. Other matters.

14. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/10/1/Add.1).

15. Also at its 1st meeting, the Assembly agreed on a programme of work and decided to meet in plenary session as well as in the working group format. The Assembly established a Working Group on the Programme Budget for 2012.

16. Mr. Klaus Korhonen (Finland) was appointed as Coordinator of the Working Group on the Programme Budget for 2012.

## **B. Consideration of issues on the agenda of the Assembly at its tenth session**

### **1. States in arrears**

17. At the 1st meeting, on 12 December 2011, the Assembly was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to five States Parties.

18. The President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The President also appealed to all States Parties to pay their assessed contributions for 2012 in a timely manner.

19. Pursuant to article 112, paragraph 8 of the Rome Statute, four States Parties in arrears submitted a request to the Assembly for exemption of the loss of their voting rights: Chad, Comoros, Gabon and Liberia with the Assembly approving their requests at its second plenary meeting.

### **2. Credentials of representatives of States Parties at the tenth session**

20. At its 10th meeting, on 21 December 2011, the Assembly adopted the report of the Credentials Committee (see annex I to this report).

### **3. General debate**

21. At the 1st plenary meeting, the United Nations Deputy Secretary-General, Ms. Asha-Rose Migiro, the United Nations High Commissioner for Human Rights, Ms. Navi Pillay, and the President of Botswana, H.E. Mr. Ian Khama, addressed the Assembly. At the 5th plenary meeting, on 15 December 2011, the Prime Minister of Côte d'Ivoire, Hon. Mr. Guillaume Soro, addressed the Assembly. At the 3rd, 4th and 5th plenary meetings, on 14 and 15 December 2011, statements were made by the representatives of Argentina, Australia [on behalf of CANZ], Austria, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burkina Faso, Central African Republic, Colombia, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Finland, France, Gambia, Germany, Ghana, Guatemala, Hungary, Italy, Japan, Jordan, Kenya, Lesotho, Liechtenstein, Luxembourg, Malaysia, Maldives, Mexico, Namibia, Netherlands, Nigeria, Norway, Peru, Philippines, Poland [on behalf of the European Union], Republic of Korea, Samoa, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America. Statements were also made by Afghanistan Watch, Amnesty International, CDI Coalition, Coalition for the ICC, FIDH, Georgian Young Lawyers Association, Human Rights Research and Promotion Centre of Honduras, Human Rights Watch, Open Society Initiative, Parliamentarians for Global Action, REDRESS and Tunisian Civil Society.

### **4. Report on the activities of the Bureau**

22. At its 1st meeting, on 12 December 2011, the Assembly took note of the oral report on the activities of the Bureau, delivered by the President, Mr. Christian Wenaweser (Liechtenstein). The President noted that, since the ninth session, the Bureau had held 20 meetings in order to assist the Assembly in carrying out its activities under the Rome Statute.

23. The Working Group in The Hague had made considerable progress on the issues within its mandate, including on the issue of cooperation. It recommended, inter alia, that the Assembly includes a specific item on cooperation on the agenda of its eleventh session.

24. The Study Group on Governance had considered the priority issues it had identified, and had made recommendations to the Assembly, including on the amendment of the Rules of Procedure and Evidence. In addition, the Study Group considered the issue of reparations and made recommendations to the Assembly on this issue.

25. The Working Group in New York had conducted its deliberations on the issues assigned to it. This had enabled the Bureau to submit for the Assembly's consideration the respective reports and recommendations on the issues within its mandate.

26. In the context of the Assembly's responsibility under article 112, paragraph 2, of the Rome Statute to consider, pursuant to article 87 of the Statute, any question relating to non-cooperation, and given the decisions of the Pre-Trial Chamber in this regard, the Bureau had considered, under the leadership of Mr. Stefan Barriga (Liechtenstein), possible procedures to address instances of non-cooperation. The Bureau had made recommendations on possible procedures to address non-cooperation.

27. The Secretariat of the Assembly of States Parties had continued to carry out its mandate in assisting the work of the Assembly and its subsidiary bodies, in accordance with resolution ICC-ASP/2/Res.3. In addition, the Secretariat had endeavoured to coordinate, as appropriate, with the different organs of the Court on the issues on the agenda of the Assembly, and on other matters which are of relevance to the work of the Assembly.

28. The Secretariat of the Assembly of States Parties had continued to provide The Hague Working Group, the Study Group on Governance, the Committee on Budget and Finance, as well as the Oversight Committee on permanent premises, with independent substantive servicing, as well as administrative and technical assistance in the discharge of their responsibilities. The Secretariat assisted in coordinating the work of the Bureau and of the New York Working Group and facilitated the travel of the President of the Assembly and the dissemination of information and communications.

29. Following the mandate of resolution RC/1 of the Review Conference entitled "Complementarity", the Secretariat had also taken measures to facilitate the exchange of information between the Court, States Parties, and other stakeholders.<sup>3</sup> This included the designation of a focal point on complementarity, the establishment of contacts with key complementarity actors, as well as the establishment of an Extranet on complementarity. Furthermore, the Secretariat had continued to fulfill its mandate regarding the Plan of action.

30. In addition, the President shared some personal reflections, which are reflected in the full text of his address at the following website address: <http://tinyurl.com/ASP10-CW-CL>.

## **5. Report on the activities of the Court**

31. At its 1st meeting, on 12 December 2011, the Assembly heard statements by Judge Sang-Hyun Song, President of the Court, and by Mr. Luis Moreno-Ocampo, Prosecutor of the Court. At the same meeting, the Assembly took note of the report on the activities of the Court.<sup>4</sup>

## **6. Report of the Board of Directors for the Trust Fund for Victims**

32. At its 1st meeting, on 12 December 2011, the Assembly heard a statement by Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the Trust Fund for Victims. The Assembly considered and took note of the report on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2010 to 30 June 2011.<sup>5</sup>

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<sup>3</sup> Press Release: Complementarity; 02.08.2011 (ICC-ASP-20110802-PR707).

<sup>4</sup> ICC-ASP/10/39.

<sup>5</sup> ICC-ASP/10/14.

**7. Election of the President of the Assembly of States Parties for the tenth to twelfth session**

33. In accordance with rule 29 of the Rules of Procedure and Evidence of the Assembly of States Parties, the Assembly, at its first plenary meeting on 12 December 2011, elected Ms. Tiina Intelmann (Estonia) by acclamation as President of the Assembly for the tenth to twelfth session.

**8. Election of two Vice-Presidents and 18 members of the Bureau**

34. Pursuant to rule 29 of the Rules of Procedure of the Assembly, the Assembly elected two Vice-Presidents and 18 members for the triennium 2011-2013, covering the tenth to twelfth sessions of the Assembly, as follows:

*Vice-Presidents:*

Mr. Ken Kanda (Ghana)

Mr. Markus Börlin (Switzerland)

*Rapporteur:*

Ms. Alejandra Quezada (Chile)

*Other members of the Bureau:*

Argentina, Belgium, Brazil, Canada, Chile, Czech Republic, Gabon, Finland, Hungary, Japan, Nigeria, Portugal, the Republic of Korea, Samoa, Slovakia, South Africa, Trinidad and Tobago and Uganda.

**9. Election of six judges**

35. At the 2nd meeting, on 12 December 2011, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of the Assembly should continue until as many candidates as were required for all seats to be filled had obtained, in one or more ballots, the highest number of votes and a two-thirds majority of the States Parties present and voting. Consequently, all candidates elected as judges should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days.

36. At the same meeting, the Assembly recommended that the candidates should not be present in the conference room when the Assembly was engaged in the process of voting.

37. At its 2nd meeting, held from 12 to 16 December 2011, the Assembly proceeded to elect six judges of the International Criminal Court in accordance with the relevant provisions of the Rome Statute, as well as of resolution ICC-ASP/3/Res.6.

38. The following candidates were elected judges of the International Criminal Court:

- (a) Anthony Thomas Aquinas Carmona (GRULAC, list A, M);
- (b) Miriam Defensor-Santiago (ASIA, list B, F);
- (c) Chile Eboe-Osuji (AFR, list A, M);
- (d) Robert Fremr (EE, list A, M);
- (e) Olga Venecia Herrera Carbuccia (GRULAC, list A, F); and
- (f) Howard Morrison (WEO, list A, M).<sup>6</sup>

39. The Assembly conducted 15 ballots. In the first round, 117 ballots were cast, of which 13 were invalid and 104 were valid; the number of States Parties voting was 104 and the required two-thirds majority was 70. The following candidates obtained the highest number of votes and a two-thirds majority of the States Parties present and voting: Miriam Defensor-Santiago (79) and Anthony Thomas Aquinas Carmona (72).

<sup>6</sup> WEO = Western European and other States;

AFR = African States;

ASIA = Asian States;

EE = Eastern European States;

GRULAC = Group of Latin American and Caribbean States;

M = male; and

F = female.

40. In the second round, 116 ballots were cast, of which nine were invalid and 107 were valid; the number of States Parties voting was 107 and the required two-thirds majority was 72. Robert Fremr (Czech Republic) obtained the highest number of votes (77) and a two-thirds majority of the States Parties present and voting.

41. In the 12th round, 109 ballots were cast, of which none was invalid and 109 were valid; the number of States Parties voting was 109 and the required two-thirds majority was 73. Olga Venecia Herrera Carbuccia (Dominican Republic) obtained the highest number of votes (77) and a two-thirds majority of the States Parties present and voting.

42. In the 13th round, 107 ballots were cast, of which two were invalid and 105 were valid; the number of States Parties voting was 105 and the required two-thirds majority was 70. Howard Morrison (United Kingdom) obtained the highest number of votes (72) and a two-thirds majority of the States Parties present and voting.

43. In the 15th round, 114 ballots were cast, of which none was invalid and 114 were valid; the number of abstentions was 12; the number of States Parties voting was 102 and the required two-thirds majority was 68. Chile Eboe-Osuji (Nigeria) obtained 102 votes and a two-thirds majority of the States Parties present and voting.

*Commencement of terms of office of judges*

44. At the 2nd meeting, on 12 December 2011, the Assembly, on the recommendation of the Bureau, decided that the terms of office of judges of the International Criminal Court elected by the Assembly shall begin to run as from 11 March following the date of their election.

## **10. Election of the Prosecutor**

45. On 1 February 2011, the Bureau decided to open the nomination period for the election of the Prosecutor of the International Criminal Court, in accordance with resolution ICC-ASP/1/Res.2, as amended by resolution ICC-ASP/3/Res.6. The nomination period was open between 13 July and 2 September 2011 and was extended, by the decision of the President of the Assembly, until 9 December 2011. The Bureau agreed that the nomination process would be supplemented by the work of the Search Committee for the position of the Prosecutor of the International Criminal Court, which was established by the Bureau during the ninth session of the Assembly. According to its terms of reference, the Search Committee was mandated to “facilitate the nomination and election, by consensus, of the next Prosecutor”.<sup>7</sup> The Search Committee submitted its report to the Bureau on 25 October 2011. The Search Committee received or otherwise identified expressions of interest from or recommendations for consideration in respect of 51 individuals. From the 51 names on the candidates list, the Search Committee interviewed eight candidates and, with a view to nominate a consensus candidate through an informal consultation process, presented to the Bureau a shortlist of the following four candidates:

- (a) Ms. Fatou B. Bensouda (The Gambia);
- (b) Mr. Andrew T. Cayley (United Kingdom of Great Britain and Northern Ireland);
- (c) Mr. Mohamed Chande Othman (United Republic of Tanzania); and
- (d) Mr. Robert Petit (Canada).

46. During the informal consultation process, which ended on 30 November 2011, it became clear there was a strong desire among States Parties to see the next Prosecutor elected by consensus, if at all possible, and that the most qualified person should be elected. In addition, the consultations resulted in a general agreement that the next Prosecutor should come from Africa. The consultations led to an informal agreement among the States Parties to nominate a consensus candidate, Ms. Fatou B. Bensouda, from The Gambia, for consideration by the Assembly of States Parties. Ms. Bensouda was nominated by The Gambia and her nomination was cosponsored by the following States Parties: Albania, Andorra, Argentina, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia

<sup>7</sup> Bureau of the Assembly of States Parties: Search Committee for the position of the Prosecutor of the International Criminal Court: Terms of Reference (ICC-ASP/9/INF.2), para. 5.

(Plurinational State of),<sup>8</sup> Brazil, Burkina Faso, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Costa Rica, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Finland, France, Gabon, Gambia, Germany, Ghana, Guinea, Greece, Ireland, Italy, Japan, Kenya, Lesotho, Liberia, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Peru, Portugal, Philippines, Republic of Korea, Romania, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Tunisia, Uganda, United Kingdom, United Republic of Tanzania, Venezuela (Bolivarian Republic of) and Zambia.

47. Ms. Bensouda was elected, on 12 December 2011, by acclamation, as the Prosecutor of the International Criminal Court for a period of nine years starting from 16 June 2012.

## 11. Election of six members of the Committee on Budget and Finance

48. In a note dated 23 November 2011, the Secretariat submitted to the Assembly a list of seven candidates nominated by States Parties for election to the Committee on Budget and Finance.<sup>9</sup> On 19 December 2011 Uganda announced the withdrawal of its candidature.

49. At its 6th meeting, on 19 December 2011, the Assembly elected the following six members of the Committee on Budget and Finance, in accordance with resolution ICC-ASP/1/Res.5<sup>10</sup> of 12 September 2003:

- (a) Mr. Hugh Adsett (Canada)
- (b) Mr. Fawzi Gharaibeh (Jordan)
- (c) Mr. Samuel P.O. Itam (Sierra Leone)
- (d) Ms. Mónica Sánchez Izquierdo (Ecuador)
- (e) Ms. Elena Sopková (Slovakia)
- (f) Mr. Masatoshi Sugiura (Japan).

50. In accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, the Assembly dispensed with a secret ballot and elected the six members of the Committee on Budget and Finance by consensus. The term of office of the six members shall begin to run on 21 April 2012.

## 12. Consideration and adoption of the budget for the tenth financial year

51. The Assembly, through its Working Group, considered the 2012 proposed programme budget on the basis of the draft proposal submitted by the Registrar, the reports of the Committee on Budget and Finance and the reports of the External Auditor.

52. At its 8th meeting, on 21 December 2011, the Assembly took note of the report of the Working Group on the programme budget (ICC-ASP/10/WGPB/CRP.1), wherein it, inter alia, conveyed the recommendation of the Working Group, that the Assembly endorse the recommendations of the Committee on Budget and Finance at its seventeenth session<sup>11</sup> and those recommendations made on the supplementary budget as indicated in the statement of the Chair of the Committee. In addition, the Assembly made further adjustments to reach a total appropriation of €11.0 million, with €08.8 million for the major programmes and €2.2 million as replenishment of the Contingency Fund.

53. At the same meeting, the Assembly also considered and approved, by consensus, the programme budget for 2012.

54. At the 9th meeting, the Assembly adopted, by consensus, resolution ICC-ASP/10/Res.4, concerning the programme budget in relation to the following:

- (a) Programme budget for the year 2012, including appropriations totalling €08.8 million for the major programmes and staffing tables for each of the major programmes;

<sup>8</sup> Bolivia cosponsored the nomination in the course of the tenth session of the Assembly.

<sup>9</sup> ICC-ASP/10/21.

<sup>10</sup> As amended by resolution ICC-ASP/2/Res.4.

<sup>11</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part B.2.

- (b) Working Capital Fund for 2012;
- (c) Scale of assessments for the apportionment of the expenses of the International Criminal Court;
- (d) Financing of appropriations for the year 2012;
- (e) Contingency Fund;
- (f) Transfer of funds between major programmes under the 2011 approved programme budget;
- (g) Referrals by the Security Council;
- (h) A strategic approach to an improved budgetary process;
- (i) Review of personnel conditions;
- (j) Legal aid;
- (k) Interim premises of the Court.

### **13. Consideration of audit reports**

55. At the 5th meeting, the Assembly took note with appreciation of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 January to 31 December 2010<sup>12</sup> and of the Trust Fund for Victims for the same period.<sup>13</sup>

### **14. Amendments to the Rome Statute**

56. Pursuant to the report of the Working Group on Amendments<sup>14</sup> the Assembly decided to hold informal consultations in New York between its tenth and eleventh sessions, during which delegations could discuss the draft procedural guidelines for the Working Group on amendments.<sup>15</sup>

57. At its 8th meeting on 21 December 2011, the Assembly adopted, by consensus, resolution ICC-ASP/10/Res.1 containing an amendment to rule 4 of the Rules of Procedure and Evidence, which transfers the decision on the assignment of judges to divisions from the plenary of judges to the Presidency.

### **15. Review Conference follow-up**

58. At its 7th meeting, on 20 December 2011, the Assembly adopted resolution ICC-ASP/10/Res.2, entitled "Cooperation", whereby it, inter alia, addressed the timely and effective cooperation and assistance from States Parties and other States under an obligation to cooperate with the Court; focused requests for cooperation and assistance from the Court; the need for ratification to be matched by national implementation of obligations; called upon States Parties and other States, where possible, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court; encouraged the Court to continue its work in the areas of framework agreements or arrangements or any other means such as interim release, final release, witness relocation and sentence enforcement; and welcomed the establishment of the Special Fund for Relocations. The Assembly also requested the Bureau to establish a facilitation of the Assembly of States Parties.

59. Also at its 7th meeting, the Assembly adopted resolution ICC-ASP/10/Res.3, whereby it, inter alia, requested the Court to ensure that Court-wide coherent principles relating to reparations are established in accordance with article 75, paragraph 1, of the Rome Statute; highlighted issues relating to the funding of reparations awards; and the freezing and identification of assets of the convicted person for the purpose of reparations.

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<sup>12</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part C.1.

<sup>13</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part C.2.

<sup>14</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II.

<sup>15</sup> ICC-ASP/10/32.

## 16. Premises of the Court

60. At its 1st meeting, on 12 December 2011, the Assembly took note of the oral report of the Chairperson of the Oversight Committee on permanent premises, Mr. Roberto Bellelli (Italy), and of the report on the activities of the Oversight Committee,<sup>16</sup> which highlighted that the permanent premises construction project remains within the €190 million approved by the Assembly and that the estimated completion date for the project is September 2015. The report also indicated that the final design was completed on 1 November 2011, and that the project entered the tendering stage and selection of the general contractor, which should end on 1 September 2012 with the signature of the construction contract. Regarding the newly quantified costs related to the project but not related to the construction (the so called Box 4 costs), the report further highlighted that the Oversight Committee had decided to submit the 2gv costs (non-integrated elements) annually to the Assembly for approval, while the 3gv costs (integrated elements) would be absorbed within the overall construction budget.

61. At its 8th meeting, on 21 December 2011, the Assembly adopted, by consensus, resolution ICC-ASP/10/Res.6, whereby it, inter alia, welcomed the completion of the final design stage and formally approved the new governance structure of the project, and the renewed composition of the Oversight Committee, contained in annex II to the resolution. The Assembly also, inter alia, authorized the Oversight Committee to review the design and/or the functionality requirements, as needed, in order to ensure a good quality building while keeping the budget within the approved costs. The Assembly requested the Project Director, Design Team and the Court to take into account any future operating costs of the premises when making decisions about the design, and approved the revised cash-flow table contained in annex I to the resolution.

## 17. Decision concerning dates of the next session of the Assembly of States Parties

62. At its 9th meeting, on 21 December 2011, the Assembly decided to hold its eleventh session in The Hague from 14 to 22 November 2012, and decided further to hold its twelfth, thirteenth and fourteenth sessions in The Hague and New York, alternately.

## 18. Decisions concerning dates and venue of the next sessions of the Committee on Budget and Finance

63. At its ninth meeting, on 21 December 2011, the Assembly decided that the Committee on Budget and Finance would hold its eighteenth session from 23 to 27 April 2012 and its nineteenth session from 24 September to 3 October 2012, in The Hague.<sup>17</sup>

## 19. Other matters

### (a) Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly

64. The Assembly expressed its appreciation to Australia, Ireland, Luxembourg and Poland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly.

65. The Assembly noted with satisfaction that 16 delegations had made use of the Trust Fund to attend the tenth session of the Assembly.

### (b) Review of the pension regime applicable to two judges

66. The representative of Uganda raised the issue of the review of the pension regime applicable to two judges who had been elected at the sixth session in 2007 to fill two judicial vacancies. In that regard, she remarked that in the view of her delegation, document ICC-ASP/10/17, dated 16 March 2011, had not been sufficiently addressed by the Assembly.

<sup>16</sup> ICC-ASP/10/22.

<sup>17</sup> *Official Records... Tenth session... 2011* (ICC-ASP/10/20), vol. II, part. B.2, para. 144.

## 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,<sup>1</sup> the reports of the sixteenth<sup>2</sup> and seventeenth sessions<sup>3</sup> of the Committee on Budget and Finance (the Committee), the financial statements for the period 1 January to 31 December 2010,<sup>4</sup> and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2010.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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

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

<sup>2</sup> *Ibid.*, part B.1.

<sup>3</sup> *Ibid.*, part B.2.

<sup>4</sup> *Ibid.*, part C.1.

<sup>5</sup> *Ibid.*, part C.2.

<sup>6</sup> ICC-ASP/10/10/Add.2.

<sup>7</sup> *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 Libya<sup>8</sup> 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.<sup>9</sup> 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.

<sup>8</sup> ASP10/01P28.

<sup>9</sup> *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.<sup>10</sup> 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 €17.7 million. This was a 13.6 per cent increase over the 2011 approved budget.

<sup>10</sup> 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 €12.1 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 €1.1 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,<sup>11</sup> 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.

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<sup>11</sup> *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>
<b>MP I</b>			
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>
<b>Total</b>	<b>415,400.00</b>	<b>69,230.00</b>	<b>346,170.00</b>
<b>MP II</b>			
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>
<b>Total</b>	<b>1,762,100.00</b>	<b>233,150.00</b>	<b>1,528,950.00</b>
<b>MP III</b>			
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>
<b>Total</b>	<b>2,246,700.00</b>	<b>975,010.00</b>	<b>1,271,690.00</b>
<b>MP VII-1</b>			
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>
<b>Total</b>	<b>904,100.00</b>	<b>60,000.00</b>	<b>844,100.00</b>
<b>Total proposed budget</b>	<b>5,328,300.00</b>	<b>1,337,390.00</b>	<b>3,990,910.00</b>

## Part III

### Resolutions adopted by the Assembly of States Parties

#### Resolution ICC-ASP/10/Res.1

*Adopted at the 7th plenary meeting, on 20 December 2011, by consensus*

#### ICC-ASP/10/Res.1

#### Amendments to rule 4 of the Rules of Procedure and Evidence

*The Assembly of States Parties,*

*Recalling* the need to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence,

*Recognizing* that enhancing the efficiency and effectiveness of the Court is of a common interest both for the Assembly of States Parties and the Court,

*Recalling* operative paragraphs 1 and 2 of resolution ICC-ASP/9/Res.2<sup>1</sup> and article 51 of the Rome Statute,

1. *Decides* that rule 4, paragraph 1, of the Rules of Procedure and Evidence<sup>2</sup> is replaced as follows:

“Rule 4  
Plenary sessions

1. The judges shall meet in plenary session after having made their solemn undertaking, in conformity with rule 5. At that session the judges shall elect the President and Vice-Presidents.”

2. *Further decides* that the following rule 4 *bis* is inserted after rule 4:

“Rule 4 *bis*  
The Presidency

1. Pursuant to article 38, paragraph 3, the Presidency is established upon election by the plenary session of the judges.

2. As soon as possible following its establishment, the Presidency shall, after consultation with the judges, decide on the assignment of judges to divisions in accordance with article 39, paragraph 1.”

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<sup>1</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I.

<sup>2</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

## Resolution ICC-ASP/10/Res.2

*Adopted at the 7th plenary meeting, on 20 December 2011, by consensus*

### ICC-ASP/10/Res.2 Cooperation

*The Assembly of States Parties,*

*Recalling* the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, and the sixty-six recommendations annexed to ICC-ASP/6/Res.2,

*Stressing* the importance of effective and comprehensive cooperation and assistance by States Parties, other States, and international and regional organizations, to enable the Court to fully fulfil its mandate,

*Taking note* of the report prepared by the Court<sup>1</sup> on the issue of cooperation and *looking forward* to a continuing dialogue with the Court on the issues raised in the report,<sup>2</sup>

1. *Welcomes* the acknowledgement in paragraph 2 of the report of the Court that “cooperation with the Court has generally been forthcoming”;<sup>3</sup>
2. *Emphasizes* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation to cooperate with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court, and *notes* the impact that non-execution of Court requests can have on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants;
3. *Notes* that focused requests for cooperation and assistance from the Court to States Parties and other States will enhance the capacity of States to respond expeditiously to requests from the Court;
4. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation and adopting appropriate measures at the national level and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and other measures so as to ensure that they can fully meet their obligations under the Rome Statute;
5. *Emphasizes* the need for States Parties to cooperate with the Court in such areas as preserving and providing evidence, securing the arrest and surrender to the Court of persons for whom arrest warrants have been issued, sharing information<sup>4</sup> and protecting victims;
6. *Calls* upon all States Parties and other States, where possible, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court or any other means concerning, inter alia, protective measures for witnesses who are at risk and sentence enforcement;
7. *Commends* the work of the Court on framework agreements or arrangements or any other means in areas such as interim release, final release, witness relocation and sentence enforcement, *encourages* the Court to continue its work in this regard, and *encourages* all States Parties to consider, where possible, strengthening voluntary cooperation in these areas;

<sup>1</sup> ICC-ASP/10/40.

<sup>2</sup> See para. 7 of the report of the Bureau on cooperation (ICC/ASP/10/28): “The Working Group had a preliminary discussion of the Court’s report. Some States Parties expressed their concerns about some aspects of the report. There may be merit in a more thorough discussion of the report in 2012.”

<sup>3</sup> Report of the Court on cooperation (ICC/ASP/10/28), para. 2.

<sup>4</sup> In accordance with articles 72 and 93, paragraph 1 (l), of the Rome Statute.

8. *Underlines* the need for a proactive approach by the Court in developing, in consultation with States Parties, effective strategies to facilitate cooperation by States Parties and other States to identify, track, freeze or seize proceeds, property and assets, and the corresponding obligation of States Parties to comply with such requests by the Court, as envisaged in article 93, paragraph 1 (k), of the Rome Statute, for the purposes set out in the Statute;<sup>5</sup>
9. *Welcomes* the establishment of the Special Fund for Relocations and *encourages* all States Parties to consider, where possible, entering into relocation agreements or arrangements with the Court, including on a cost neutral basis and to consider making voluntary contributions to the Special Fund for Relocations;
10. *Stresses* the importance of States Parties responding, to the extent possible, to requests for assistance on behalf of defence teams and *notes* that the Court may facilitate the communication of such requests, when appropriate;
11. *Welcomes* the increased cooperation between the Court and the United Nations, and other international and regional organizations, and other inter-governmental institutions;
12. *Emphasizes* the importance of States Parties enhancing support for the Court at the international level;
13. *Requests* the Bureau to establish a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court and non-governmental organizations, as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court;
14. *Decides* that the Assembly of States Parties shall continue to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation; to this end, *decides* that the Assembly will include a specific item on cooperation on the agenda of its eleventh session;
15. *Requests* the Bureau to report on significant developments to the Assembly of States Parties at its eleventh session and *further requests* the Court to submit an updated report on cooperation to the Assembly at its twelfth session.

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<sup>5</sup> Articles 77 (2); 79 (2); 93 (1) (k); and 109 (2), of the Rome Statute.

## Resolution ICC-ASP/10/Res.3

*Adopted at the 7th plenary meeting, on 20 December 2011, by consensus*

### ICC-ASP/10/Res.3 Reparations

*The Assembly of States Parties,*

*Recalling* article 75, paragraph 1, and article 112, paragraph 2 (g), of the Rome Statute,

*Mindful* that reparations to the victims of the most serious international crimes are critical components of the Rome Statute and that it is therefore essential that the relevant provisions of the Rome Statute are efficiently and effectively implemented,

*Noting* with concern that the Court has not yet established principles relating to reparations, on which any determination of the extent and scope of any damage, loss and injury to, or in respect of, victims is to be based, in accordance with article 75, paragraph 1, and that in the absence of such principles pre-established by the Court practical inconsistency and unequal treatment of victims may occur,

*Recognizing* that, under article 75, paragraph 2, a reparations order may be made directly against a convicted person while the award for reparations may be made through the Trust Fund for Victims,

*Acknowledging* that the full panel of the Trial Chamber is expected to handle reparations pursuant to article 39, paragraph 2 (b),

*Concluding* that guidance and clarification from States Parties are essential in order to ensure the effective and efficient implementation of the reparations provisions,

1. *Requests* the Court to ensure that Court-wide coherent principles relating to reparations shall be established in accordance with article 75, paragraph 1, based on which the Court may issue individual orders for reparations, and further *requests* the Court to report back to the Assembly at its eleventh session;
2. *Stresses* that as liability for reparations is exclusively based on the individual criminal responsibility of a convicted person, under no circumstances shall States be ordered to utilize their properties and assets, including the assessed contributions of States Parties, for funding reparations awards, including in situations where an individual holds, or has held, any official position;
3. *Underlines* that as the freezing and identification of any assets of the convicted person, which are indispensable for reparations, is of paramount importance the Court should seek to take all measures to that end, including effective communication with relevant States so that they are in a position to provide timely and effective assistance pursuant to article 93, paragraph 1 (k), where possible, in all cases and at as early a stage of the proceedings as possible, irrespective of the declaration of indigence for the purpose of legal aid which bears no relevance to the ability of the accused to provide reparations;
4. *Recognizes* that as adjudication on the individual criminal responsibility shall remain the focus of the judicial mandate of the Court, evidence concerning reparations may be taken during trial hearings so as to ensure that the judicial phase of reparations is streamlined and does not result in any delay thereof;
5. *Invites* the Bureau to report to the Assembly at the next session on reparations and any appropriate measures.

## Resolution ICC-ASP/10/Res.4

Adopted at the 9th plenary meeting, on 21 December 2011, by consensus

### ICC-ASP/10/Res.4

#### Programme budget for 2012, the Working Capital Fund for 2012, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2012 and the Contingency Fund

The Assembly of States Parties,

Having considered the 2012 proposed programme budget and the 2012 proposed supplementary budget of the International Criminal Court ('the Court') and the related conclusions and recommendations on the 2012 proposed programme budget for the Court contained in the report of the Committee on Budget and Finance on the work of its sixteenth and seventeenth sessions and the statement made by the Chair of the Committee on Budget and Finance ("the Committee") at the plenary meeting on 15 December 2011.

#### A. Programme budget for 2012

The Assembly of States Parties,

1. Approves appropriations totalling €111,000,000 with €108,800,000 for the budget and €2,200,000 to replenish the Contingency Fund. The €108,800,000 is for the following appropriation sections:

Appropriation section	Thousands of euros
Major Programme I - Judiciary	10,284.0
Major Programme II - Office of the Prosecutor	27,723.7
Major Programme III - Registry	65,041.7
Major Programme IV - Secretariat of the Assembly of States Parties	2,777.3
Major Programme VI - Secretariat of the Trust Fund for Victims	1,450.6
Major Programme VII-1 - Project Director's Office (permanent premises)	1,337.2
Major Programme VII-5 - Independent Oversight Mechanism	185.5
<b>Total</b>	<b>€108,800.0</b>

2. Further approves the following staffing tables for each of the above appropriation sections:

	Office of the Judiciary	Office of the Prosecutor	Registry	Secretariat Assembly of States Parties	Secretariat Trust Fund for Victims	Project Director's Office	Independent Oversight Mechanism	Total
USG		1						1
ASG		2	1					3
D-2								0
D-1		2	4	1	1	1		9
P-5	3	12	17	1	1			34
P-4	3	29	39	1		1	1	74
P-3	21	44	66	1	3			135
P-2	5	47	61	1			1	115
P-1		17	7					24
<i>Subtotal</i>	<i>32</i>	<i>154</i>	<i>195</i>	<i>5</i>	<i>5</i>	<i>2</i>	<i>2</i>	<i>395</i>

	<i>Judiciary</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Secretariat Assembly of States Parties</i>	<i>Secretariat Trust Fund for Victims</i>	<i>Project Director's Office</i>	<i>Independent Oversight Mechanism</i>	<i>Total</i>
GS-PL	1	1	17	2				21
GS-OL	15	63	267	2	2	1		350
<i>Subtotal</i>	<i>16</i>	<i>64</i>	<i>284</i>	<i>4</i>	<i>2</i>	<i>1</i>		<i>371</i>
<b>Total</b>	<b>48</b>	<b>218</b>	<b>479</b>	<b>9</b>	<b>7</b>	<b>3</b>	<b>2</b>	<b>766</b>

## B. Working Capital Fund for 2012

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2012 shall be established in the amount of €7,405,983, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court.

## C. Scale of assessment for the apportionment of expenses of the Court

*The Assembly of States Parties,*

1. *Decides* that, for 2012, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for 2012 and adjusted in accordance with the principles on which that scale is based,<sup>1</sup>

2. *Notes* that, in addition, any maximum assessment rate for the largest contributors applicable for the United Nations regular budget will apply to the Court's scale of assessments.

## D. Financing appropriations for 2012

*The Assembly of States Parties,*

*Resolves* that, for 2012, budget appropriations amounting to €108,800,000 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part I, paragraph 1, and part II, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.

## E. Contingency Fund

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res. 4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res. 4 requesting the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Taking note* of the advice of the Committee in the reports on the work of its eleventh and thirteenth sessions,

*Taking note* that the Fund should be replenished up to an amount the Assembly deems appropriate, but no less than €7 million,

*Taking note* that the Fund will reach a level below €7 million by the end of 2011,

1. *Decides* to maintain the Contingency Fund at the level of €7 million for 2012;
2. *Decides* to replenish the Fund in the amount of €2.2 million in 2012;<sup>2</sup>
3. *Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

<sup>1</sup> Rome Statute of the International Criminal Court, article 117.

<sup>2</sup> The suggested exact amount of replenishment will be communicated by the Court after the closure of the accounts of the financial period.

## **F. Transfer of funds between major programmes under the 2011 approved programme budget**

*The Assembly of States Parties,*

*Noting* that in 2011 the Court will make recourse to the Contingency Fund,

*Recognizing* that under Financial Regulation 4.8, no transfer between appropriation sections may be made without authorization by the Assembly,

*Decides* that, in line with established practice, the Court may transfer funds between major programmes at the conclusion of 2011 should costs for activities which were unforeseen or could not be accurately estimated be unable to be absorbed within one major programme, whilst a surplus exists in other major programmes, in order to ensure that appropriations for each major programme are exhausted prior to accessing the Contingency Fund.

## **G. Referrals by the Security Council**

*The Assembly of States Parties,*

*Noting* the financial implications of the situations referred to the Court by Security Council resolutions 1593 and 1970,

*Recalling* that, pursuant to article 115 of the Rome Statute, expenses of the Court and the Assembly shall be provided, inter alia, by funds of the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council,

*Mindful* that, pursuant to article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations, the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations shall be subject to separate arrangements,

*Invites* the Court to include this matter in its institutional dialogue with the United Nations and to report thereon to the eleventh session of the Assembly.

## **H. A strategic approach to an improved budgetary process**

*The Assembly of States Parties,*

*Stressing* that the Court's budgetary process and its interface with the Committee would benefit from more strategic and consolidated approach so as to identify further efficiencies,

1. *Requests* the Study Group on Governance, in consultation with The Hague Working Group, to engage with the Court and the Committee, with a view to enhancing the transparency and predictability of the budgetary process and to present its preliminary recommendations to the Bureau before August 2012,

2. *Requests* in this regard the Court to prepare, if it proposes any increase of the budget for 2013, a paper which details the Court's options where reductions would be made in order to bring the level of the approved budget for 2013 in line with the level of the approved budget for 2012, as well as how those reductions would impact on the Court's activities.

## **I. Review of Personnel Conditions**

*The Assembly of States Parties,*

*Recalling* the recommendations of the fourth,<sup>3</sup> twelfth<sup>4</sup> and fourteenth<sup>5</sup> sessions of the Committee concerning the appraisal system of staff within the Court,

<sup>3</sup> *Official Records ... Fourth session ... 2005* (ICC-ASP/4/32) part II.6(a), section E, para. 46.

*Recalling* the discussions between States Parties and the International Civil Service Commission at the tenth session of the Assembly,

*Calls* upon the Court to review the appraisal system, including through a consideration of different options by which satisfactory performance is assessed, and the discretionary elements of terms and conditions of service within the United Nations common system, and to report back to the Committee at its eighteenth session.

## **J. Legal aid**

*The Assembly of States Parties,*

*Noting* the fundamental importance of the legal aid system to ensure the fairness of proceedings, including in particular the rights of the defendants and victims,

*Taking* into account the analysis and proposals of the Committee at its seventeenth session for the mitigation of the increasing costs of legal aid,

*Noting* the Registrar's discussion paper on legal aid<sup>6</sup> and the options contained therein,

1. *Requests* the Registrar to finalize the ongoing consultations, as appropriate, with the stakeholders on the discussion paper, in accordance with rule 20.3 of the Rules of Procedure and Evidence, and to present a proposal for a review of the legal aid system to the Bureau before 15 February 2012;
2. *Mandates* the Bureau to decide on the implementation of the revised legal aid system and requests it to do so 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;
3. *Requests* the Court and the Bureau to continue reviewing the legal aid system, including its application pursuant to paragraph 2 above and to report their findings to the Assembly at its eleventh session;
4. *Invites* further the Court to continue to monitor and assess the performance of the legal aid system in consultation with States Parties and, as appropriate, other relevant stakeholders and, as appropriate, to propose measures to further enhance the efficiency of the system.

## **K. Interim premises of the Court**

*The Assembly of States Parties,*

1. *Takes note* of the Court's report to the Assembly as transmitted by the Bureau to the Assembly<sup>7</sup> and *adopts* the recommendations therein,
2. *Authorizes* the Court, through the Registrar, to conclude a rental agreement for its current interim premises on the basis of the terms outlined in the report.

<sup>4</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), part B.2, section G: para. 57.

<sup>5</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), part B.2, section G: para. 63.

<sup>6</sup> ASP10/01P13 and Add.1.

<sup>7</sup> ICC-ASP/10/41.

## Resolution ICC-ASP/10/Res.5

*Adopted at the 9th plenary meeting, on 21 December 2011, by consensus*

### ICC-ASP/10/Res.5

## Strengthening the International Criminal Court and the Assembly of States Parties

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent the most serious crimes of concern to the international community and to put an end to the impunity of the perpetrators of such crimes is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law, as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

*Convinced further* that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court's central role as the only permanent international criminal court within an evolving system of international criminal justice,

*Underscoring* the importance of the tenth anniversary of the entry into force of the Rome Statute and the establishment of the International Criminal Court in 2012 and the contribution of the International Criminal Court to guarantee lasting respect for and the enforcement of the international justice,

*Noting* the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

*Underscoring* its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of its judicial decisions,

*Taking note with appreciation* of the annual United Nations General Assembly resolutions concerning the Court,

*Recalling* the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, as well as the renewed spirit of cooperation and solidarity and the firm commitment to fighting impunity for the most serious crimes of international concern to guarantee lasting respect for the enforcement of international criminal justice, reaffirmed by the States Parties in the Kampala Declaration,

*Recalling* the decision by the Assembly of States Parties (“the Assembly”) to establish a representation of the Court at the African Union Headquarters in Addis Ababa,<sup>1</sup>

*Noting* that it is the decision of the African Union Summit<sup>2</sup> to reject for now the opening of a liaison office of the Court to the African Union Headquarters in Addis Ababa, and *reiterating* that the presence of such a liaison office at the Headquarters of the African

<sup>1</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.3, para. 28.

<sup>2</sup> 15th African Union Summit decision: Kampala, Uganda, from 19 to 27 July 2010.

Union in Addis Ababa would promote dialogue with the Court and the understanding of its mission within the African Union and among African States, individually and collectively,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Conscious* of the importance of equitable geographical representation in the organs of the Court, and in the work of the Assembly and its subsidiary bodies,

*Conscious also* of the importance of gender balance in the organs of the Court, and to the extent possible, in the work of the Assembly and its subsidiary bodies,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly and to ensure the broadest visibility of the Court and the Assembly,

*Recognizing* that victims' rights to equal and effective access to justice protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice, and *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the Court towards victims,

*Conscious of* the vital role of field operations in the Court's work in situation countries,

*Conscious* of the risks faced by personnel of the Court in the field,

*Recalling* that the Court acts within the constraints of an annual programme budget approved by the Assembly,

#### **Rome Statute of the International Criminal Court**

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the ninth session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;

2. *Decides* to keep the status of ratifications under review and to monitor developments in the field of implementing legislation, inter alia, with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;

3. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and judicial cooperation with the Court and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority and *encourages* the adoption of victims-related provisions, as appropriate;

4. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,<sup>3</sup> *notes with appreciation* the efforts of the Court's President, the Office of the Prosecutor, the President of the Assembly of States Parties, the Assembly of States Parties, States Parties, and of the civil society to enhance the effectiveness of universality related efforts and to encourage States to become parties to the Rome Statute, *endorses* the recommendations of the report, and requests the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its eleventh session;

5. *Invites* all parties to commemorate the contribution of the International Criminal Court to guarantee lasting respect for and the enforcement of international justice at the tenth anniversary of the entry into force of the Rome Statute in 2012;

<sup>3</sup> Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/10/25).

### **Cooperation**

6. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, *encourages* cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged, *further calls upon* States Parties to continue and strengthen their efforts to ensure full and effective cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants;
7. *Encourages* States Parties to express their political and diplomatic support to the Court;
8. *Calls upon* States Parties to give concrete expression in actions to the commitments made in the statements, declarations and pledges made at Kampala;
9. *Recognizes* the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, *welcomes* the report of the Bureau on potential Assembly procedures relating to non-cooperation<sup>4</sup> and *decides* to adopt the procedures annexed to the present resolution;

### **Agreement on Privileges and Immunities**

10. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to incorporate it in their national legislation, as appropriate;
11. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;
12. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes and *appeals* to all States which are not party to the Agreement on the Privileges and Immunities of the International Criminal Court in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

### **Host State**

13. *Recognizes* the importance of the relationship between the Court and the host State in accordance with the terms of the Headquarters agreement and *notes* with appreciation the ongoing commitment of the host State to the Court with a view to its more efficient functioning;

### **Strengthening of the International Criminal Court**

14. *Takes note* of the statements presented to the Assembly by the heads of the organs of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims, the Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;
15. *Takes note* of the latest report on the activities of the Court to the Assembly;<sup>5</sup>

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<sup>4</sup> ICC-ASP/10/37.

<sup>5</sup> ICC-ASP/10/39.

16. *Notes* with satisfaction the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's activities including its preliminary examinations, investigations and judicial proceedings in various situations which either States Parties or the United Nations Security Council<sup>6</sup> referred to the Court or which the Prosecutor initiated proprio motu;
17. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to continue to take note of best practices of other relevant international organizations and tribunals;
18. *Encourages* the Court to continue the dialogue with other international courts and tribunals to assist with their planning on residual issues and *invites* the Court to conduct, in consultation with the Oversight Committee on the permanent premises, a preliminary assessment of the possible modalities of hosting one or more residual mechanisms at the permanent premises of the Court on a cost-neutral basis for the Court, and without prejudice to the flexibility of the project and the area for the mandate of the Court;
19. *Welcomes* the report, adopted by the Bureau pursuant to paragraph 25 of resolution ICC-ASP/9/Res.3,<sup>7</sup> *decides* to adopt the recommendations contained therein, and *requests* the Bureau to start the process of preparing the election, by the Assembly of States Parties, of the members of the Advisory Committee on nominations of judges of the International Criminal Court in accordance with the terms of reference annexed to the report;
20. *Emphasizes* the importance of nominating and electing the most highly qualified judges in accordance with article 36 of the Rome Statute; for this purpose *encourages* States Parties to conduct thorough and transparent processes to identify the best candidates, and *decides* to review the procedure for the election of judges as set forth in section B of the resolution ICC-ASP/3/Res.6 on the occasion of future elections with a view to making any improvements as may be necessary, and requests the Bureau to report thereon to the Assembly at its eleventh session;
21. *Welcomes* the election of the Prosecutor of the International Criminal Court by consensus;
22. *Notes* the process established by the Bureau of the Assembly of States Parties for the election of the second Prosecutor of the International Criminal Court and *requests* the Bureau, through open-ended consultations with States Parties, to examine ways of strengthening future elections of the Prosecutor, including an evaluation of such a process;
23. *Notes with appreciation* the efforts undertaken by the Office of the Prosecutor to achieve the efficiency and transparency of its preliminary examinations, investigations and prosecutions;
24. *Notes with appreciation* the efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court's field operations with a view to increasing their efficiency and flexibility and *encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in States in which it carries out its work;
25. *Recognizes* the important work done by the field-based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;
26. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as of the New York Working Group and *expresses* its full support for the work of the New York Liaison Office;
27. *Emphasizes* the need to pursue efforts aimed at intensifying dialogue with the African Union and to strengthen the relationship between the Court and the African Union

<sup>6</sup> United Nations Security Council resolution 1593 (2005) and 1970 (2011).

<sup>7</sup> Report of the Bureau on the establishment of an Advisory Committee on the appointment of judges of the International Criminal Court (ICC-ASP/10/36).

*and commits* to the Court's further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office;

28. *Welcomes* the presentation of the eighth report of the Court to the General Assembly of the United Nations;<sup>8</sup>

29. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties ("the Secretariat"), *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes the fact* that the Director of the Secretariat participates in the meetings of the Coordination Council when matters of mutual concern are considered;

30. *Welcomes* the efforts undertaken by the Court to implement the One-Court principle, and to coordinate its activities among its organs at all levels, including through the implementation of measures to increase clarity on the responsibility of different organs in line of the report of the Court, while respecting the independence of the judges and the Prosecutor and the neutrality of the Registry, and *encourages* the Court to undertake all necessary efforts to fully implement the One-Court principle, *inter alia*, with a view to ensuring full transparency, good governance and sound management;

31. *Requests* the Bureau in consultation with the Court and relevant bodies to consider the proper arrangement of salary and all allowances for judges, whose terms have been extended in accordance with article 36(10), and to report thereon to the Assembly at its eleventh session;

32. *Recalls* the contribution that the International Humanitarian Fact-finding Commission, established by article 90 of the Additional Protocol I to the 1949 Geneva Convention, could make in ascertaining facts related to alleged violations of international humanitarian law, and facilitating, where appropriate, the prosecution of war crimes, both at the national level and before the Court;

### **Counsel**

33. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

34. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel, and thus *continues to encourage* applications to the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

### **Governance**

35. *Stresses* the need to continue a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence *and invites* the organs of the Court to further engage in a such a dialogue with States Parties;

36. *Takes note of* the Bureau report on the Study Group of Governance<sup>9</sup> and the recommendations contained therein;

37. *Requests* the Bureau to extend, for a period of one year, the mandate of the Study Group on Governance, established in accordance with the resolution ICC-ASP/9/Res.2, within The Hague Working Group, to continue to facilitate the dialogue referred to in previous paragraph with a view to identifying issues where further action is required, in

<sup>8</sup> United Nations document A/66/309.

<sup>9</sup> ICC-ASP/10/30.

consultation with the organs of the Court, and formulating recommendations to the Assembly through the Bureau;

38. *Welcomes* the initiative of the Court to consider streamlining the judicial process in collaboration with the States Parties;

### **Strategic planning process of the International Criminal Court**

39. *Emphasizes* the need for the Court to continue to improve and adapt outreach activities with a view to further developing and implementing effectively and efficiently the Strategic Plan for Outreach<sup>10</sup> in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;

40. *Recalls* the importance of public information and communication about the Court and its activities that constitute a shared responsibility of the Court and States Parties, while acknowledging the significant contribution of other stakeholders;

41. *Notes* with appreciation the initiatives undertaken to celebrate, for the first time, and in the context of its information and communication strategy<sup>11</sup> the 17 July as Day of International Criminal Justice<sup>12</sup> and *recommends* that, on the basis of lessons learned, all relevant stakeholders, together with the Court and other international Courts and Tribunal, engage in preparing the 2012 celebration with a view to reinforcing the international fight against impunity;

42. *Notes* with interest the preparation of the tenth anniversary of the International Criminal Court and *encourages* States Parties to engage in those activities, as well as in other significant activities to implement the Court's Public Information Strategy 2011-2013,<sup>13</sup> including in consultation with the Court and other relevant stakeholders;

43. *Notes* the recent presentation by the Court of its "Draft Guidelines governing the Relations between the Court and Intermediaries" and agrees to come back to this important issue for a more in-depth discussion;

44. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach and, in this regard, *requests* that the Court, in consultation with States Parties, continues to work towards setting a hierarchy of its priorities in order to facilitate strategic and budgetary choices;

45. *Invites* the Court to present, based on a thorough and transparent assessment of results achieved through Court activities in reaching the priorities set, an appropriate set of performance indicators, including the horizontal parameters of efficiency and effectiveness, for the Court activities and on the retroaction of lessons learned into the strategic planning process;

46. *Reiterates* its willingness to engage in constructive dialogue with the Court also on such issues as the adequate management of priority risks, and the development of a Court strategy on field operations;

47. *Welcomes* the announced review of the Strategic Plan in 2012 and stresses its readiness to contribute early on to the consultations in the context of this review and, where appropriate, in the context of the budgetary process, which is intended to strengthen and operationalize the impact of strategic planning on the development of the Court and its activities;

### **Victims and affected communities and Trust Fund for Victims**

48. *Notes* the ongoing work of the Court in reviewing its Strategy in relation to victims and its report thereon and *requests* the Court to finalize the review in consultation with

<sup>10</sup> ICC Strategic Plan for Outreach (ICC-ASP/5/12).

<sup>11</sup> ICC/ASP/9/29.

<sup>12</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II.B, Kampala Declaration (RC/Decl.1), para. 12.

<sup>13</sup> ICC/ASP/9/29.

States Parties and other relevant stakeholders and report thereon in advance of the Assembly at its eleventh session;

49. *Notes with concern* reports from the Court on the continued backlogs the Court has had in processing applications from victims seeking to participate, a situation which might impact on effective implementation of the rights of victims under the Rome Statute, and *underlines*, in this regard, the need to consider reviewing the victim participation system with a view to ensuring its sustainability, effectiveness and efficiency; *requests* the Court to conduct such a review in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session;

50. *Calls upon* States, international and intergovernmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims also in view of possible imminent reparations, in order to substantively increase the volume of the Trust Fund for Victims, broaden the resource base and improve the predictability of funding; and *expresses its appreciation* to those that have done so;

51. *Expresses its appreciation* to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims, and *encourages* the Board and the Secretariat to continue to strengthen its ongoing dialogue with the Court, States Parties and the wider international community, including donors as well as non governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact;

52. *Recalls* the responsibility, under the Regulations of the Trust Fund for Victims, of the Board of Directors to endeavour to manage its resources originating from voluntary contributions in such a way as to ensure an adequate reserve to complement any Court-ordered reparations awards, without prejudice to its activities under the Trust Fund's assistance mandate including those funded by earmarked contributions;

53. *Requests* the Court and the Trust Fund for Victims to develop a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;

#### **Recruitment of staff**

54. *Welcomes* the Court's continued efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma and violence against women or children and *encourages* further progress in this regard;

55. *Stresses* the importance of the dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, *welcomes* the report of the Bureau,<sup>14</sup> and *recommends* that the Bureau continue to engage with the Court to identify ways to improve equitable geographical representation and increase the recruitment and retention of women in higher level professional posts, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the eleventh session of the Assembly;

56. *Requests* the Court to submit a comprehensive report on Human Resources to the Assembly at its eleventh session, which would include an update on the implementation of the recommendations on the topic which would be made by the Committee on Budget and Finance in April 2012;

57. *Urges* the Court, in recruiting officers in charge of victims and witnesses affairs, to ensure that they have the necessary expertise to take into account the cultural traditions and sensitivities and the physical and social needs of victims and witnesses, particularly when

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<sup>14</sup> Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/10/35).

they are required to be in The Hague or outside their country of origin to take part in Court proceedings;

### **Complementarity**

58. *Resolves* to continue and strengthen effective domestic implementation of the Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally-recognized fair trial standards, pursuant to the principle of complementarity;

59. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes, and to ensure effective enforcement of those laws;

60. *Welcomes* the Bureau report on complementarity<sup>15</sup> and the progress made in implementing the Review Conference resolution on complementarity and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity and the further implementation of the Review Conference resolution on complementarity, as set out in the Bureau report on complementarity, “Taking stock of the principle of complementarity: bridging the impunity gap”;

61. *Welcomes* the report by the Secretariat of the Assembly of States Parties<sup>16</sup> on the progress in giving effect to its mandate to facilitate, within existing resources, the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, *and requests* the Secretariat to report to the eleventh session of the Assembly on further progress in this regard;

62. *Welcomes* the report of the Court on complementarity,<sup>17</sup> *recalls* its limited role in strengthening national jurisdictions, *notes* that the Court in carrying out its judicial mandate could have a positive impact on the ability and willingness of domestic jurisdictions to investigate and prosecute Rome Statute crimes and can have a positive impact on the functioning of the Rome Statute system, *and requests* the Court to further cooperate with the Secretariat on this issue and report to the next Assembly session;

63. *Welcomes* activities aimed at strengthening complementarity and the international justice system, such as the Court’s Internship and Visiting Professionals Programme, as well as the Legal Tools Project, all of which aim at enhancing knowledge of the Rome Statute system, international criminal law and creating tools to facilitate the national prosecution of the Rome Statute crimes equipping users with the legal information, digests and software required to work effectively in the field of international criminal law, contributes significantly to the promotion of international criminal law and justice and thus in fighting impunity, and *encourages* States to contribute actively in support of these activities;

### **Independent Oversight Mechanism**

64. *Recognizes* the importance of a fully operational Independent Oversight Mechanism, in accordance with ICC-ASP/8/Res.1 and ICC-ASP/9/Res.5, to the efficient and effective operation of the Court;

65. *Takes note of* the report of the Bureau on the Independent Oversight Mechanism;<sup>18</sup>

66. *Decides* to continue discussions on the Independent Oversight Mechanism in close consultation with the organs of the Court, fully respecting the provisions in the Rome Statute regarding judicial and prosecutorial independence and the management oversight of the Assembly of States Parties, including articles 40, 42 and 112, with a view for the Bureau to submit, to the eleventh session of the Assembly, a comprehensive proposal that would make possible the full operationalization of the Independent Oversight Mechanism;

<sup>15</sup> ICC-ASP/10/24.

<sup>16</sup> ICC-ASP/10/2.

<sup>17</sup> ICC-ASP/10/23.

<sup>18</sup> ICC-ASP/10/27.

67. *Invites* the Independent Oversight Mechanism, working in close consultation with the organs of the Court, Staff Union Council and States Parties, to develop an anti-retaliation/whistleblower policy, with a view to its adoption by the Court at the earliest time possible;

68. *Decides further* to delegate to the Bureau the following decisions, after taking into consideration possible budgetary implications and operational requirements, and, if necessary, consulting the Committee on Budget and Finance:

- (a) The hiring of the Head of the Independent Oversight Mechanism;
- (b) If necessary, the extension of the mandate of the Temporary Head of the Independent Oversight Mechanism; and
- (c) When to commence recruitment of the P-2 staff member for the Independent Oversight Mechanism.

#### **Committee on Budget and Finance**

69. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;

70. *Recalls* that, according to its Rules of Procedure,<sup>19</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;

#### **Assembly of States Parties**

71. *Expresses its appreciation* to the Secretary-General of the United Nations for facilitating the tenth session of the Assembly, held at United Nations Headquarters, and *looks forward* to continuing such assistance to the Court in accordance with the Relationship Agreement between the United Nations and the Court;

72. *Recalls also* that at the successful first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, States Parties adopted amendments to the Rome Statute, in accordance with article 5, paragraph 2, of the Rome Statute to define the crime of aggression and to establish conditions under which the Court could exercise jurisdiction with respect to that crime;<sup>20</sup> adopted amendments to the Rome Statute to expand the jurisdiction of the Court to three additional war crimes when committed in armed conflicts not of an international character,<sup>21</sup> and decided to retain, for the time being, article 124 of the Statute;<sup>22</sup>

73. *Notes* that those amendments are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Rome Statute;

74. *Notes with satisfaction* that the Depositary has notified the States Parties of the adoption of these amendments by the Review Conference, *calls upon* all States Parties to consider ratifying or accepting these amendments and *resolves* to activate the Court's jurisdiction over the crime of aggression as early as possible, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute;

75. *Welcomes* the report of the Bureau on the Working Group on Amendments,<sup>23</sup> *invites* the Working Group to continue its consideration of amendment proposals and of its own

<sup>19</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.

<sup>20</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, resolution RC/Res.6.

<sup>21</sup> *Ibid.*, resolution RC/Res.5.

<sup>22</sup> *Ibid.*, resolution RC/Res.4.

<sup>23</sup> ICC-ASP/10/32.

procedural rules or guidelines, and *requests* the Bureau to submit a report for the consideration of the Assembly at its eleventh session;

76. *Recalls* with appreciation pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, calls on these States and the regional organization to ensure the swift implementation of these pledges, and further calls on States and regional organizations to submit additional pledges and to inform, as appropriate, on the implementation thereof at future sessions of the Assembly;

77. *Welcomes* the substantive discussions carried out within the framework of the stocktaking exercise on international criminal justice to identify opportunities and challenges presented to the Court and the Rome Statute system and *commits* to the implementation of the resolutions on “Complementarity,” “Impact of the Rome Statute system on victims and affected communities,” and “Enforcement of Sentences,”<sup>24</sup> and the declaration on “Cooperation” as critical next steps in meeting these challenges;

78. *Recalls* that the Review Conference also conducted, as part of its stocktaking exercise, a panel discussion on peace and justice, *takes note with appreciation* of the moderator’s summary and *commends* this topic for further exploration and development;

79. *Welcomes* the robust participation of civil society in the Review Conference, *welcomes* the opportunity provided by the Review Conference to bring States Parties closer to the work of the Court in situations under investigation, including through visits to the Court’s field offices, and *encourages* States Parties to continue to take opportunities to raise awareness, including among State officials, of the Court’s activities in situations under preliminary examination and investigation;

80. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely manner and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly and *expresses its appreciation* to those that have done so;

81. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;

82. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court, and *expresses its appreciation* to those that have done so;

83. *Takes note* of the report of the Bureau on the arrears of States Parties<sup>25</sup> and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;

84. *Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;

85. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly on the result of their work;

86. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;

87. *Decides* that the Committee on Budget and Finance shall hold its eighteenth session from 23 to 27 April 2012 and its nineteenth session from 24 September to 3 October 2012;

88. *Decides* that the Assembly shall hold its eleventh session in The Hague from 14 to 22 November 2012. The twelfth, thirteenth and fourteenth session shall be held in The Hague and New York, alternately.

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<sup>24</sup> Ibid., resolution RC/Res.3.

<sup>25</sup> ICC-ASP/10/34.

## Annex

### Assembly procedures relating to non-cooperation

#### A. Background

1. Article 112, paragraph 2, of the Rome Statute provides that:
  - “2. The Assembly shall:
    - [...]
    - (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
    - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.”
2. Article 87, paragraphs 5 and 7, provide that:
  - “5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis;
    - (b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties, or, where the Security Council referred the matter to the Court, the Security Council.”
  - “7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.”
3. Paragraph 12 of the Assembly’s omnibus resolution<sup>1</sup> adopted on 10 December 2010 provides as follows:
  - “12. *Recognizes* the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, and requests the Bureau to prepare a report on which Assembly procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation and to submit that report to the Assembly for consideration at its tenth session.”

#### B. General scope and nature of non-cooperation procedures

4. For the purpose of relevant Assembly procedures, non-cooperation could be understood as the failure by a State Party or a State which has entered into an *ad hoc* arrangement or an agreement with the Court (hereafter: “requested State”) to comply with a specific Court request for cooperation (articles 89 and 93 of the Statute), as defined in article 87, paragraphs 5(b) and 7 of the Statute.
5. This needs to be distinguished from a situation where there is no specific Court request and a State Party has yet to implement the Rome Statute domestically in such a manner as to be able to comply with Court requests, which may lead to non-cooperation in the medium or longer-term future. This scenario is not under consideration here, as it is already dealt with by the Assembly in the context of the ongoing work on cooperation, in particular the discussions held in The Hague Working Group of the Bureau.

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<sup>1</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3.

6. Given the respective roles of the Court and the Assembly, any response by the Assembly would be non-judicial in nature and would have to be based on the Assembly's competencies under article 112 of the Statute. The Assembly may certainly support the effectiveness of the Rome Statute by deploying political and diplomatic efforts to promote cooperation and to respond to non-cooperation. These efforts, however, may not replace judicial determinations to be taken by the Court in ongoing proceedings.

7. Regarding concrete instances of non-cooperation, the following two scenarios may require action by the Assembly:

(a) A scenario where the Court has referred a matter of non-cooperation to the Assembly.<sup>2</sup> Depending on the circumstances, the matter may or may not require urgent action by the Assembly to bring about cooperation; and

(b) Exceptionally, a scenario where the Court might not yet have referred a matter of non-cooperation to the Assembly, but there are reasons to believe that a specific and serious incident of non-cooperation in respect of a request for arrest and surrender of a person (article 89 of the Rome Statute) is about to occur or is currently ongoing and urgent action by the Assembly may help bring about cooperation.<sup>3</sup>

8. The procedures outlined herein only refer to requested States as defined above, and would not refer to non-States Parties that have not entered into any relevant arrangements or agreements with the Court. These procedures would however be without any prejudice whatsoever to any steps the Assembly (and its sub-organs) might decide to take in regard of cooperation (and lack thereof) in respect of such States.

### C. General approach for non-cooperation procedures

9. The non-cooperation scenarios 7(a) and 7(b) require different procedures to be adopted, which may however partially overlap.

10. Scenario 7(a) would require a formal response, including some public elements, given that it has been triggered by a formal decision of the Court referring the matter to the Assembly. Depending on the specifics of the case, there may be merit in pursuing an informal and urgent response as a precursor to a formal response, in particular where it is still possible to achieve cooperation.

11. Scenario 7(b) would require an urgent, but entirely informal response at the diplomatic and political levels that is difficult to reconcile with the usual calendar of meetings of the Assembly and its current subsidiary bodies. Past experience has shown that the Bureau, which meets every month at United Nations Headquarters, New York, may need to adapt its working methods to be able to respond quickly enough to an immediate situation of non-cooperation, as outlined below.

### D. Specific non-cooperation procedures

12. The procedures outlined below would have to be carried out by the Bureau and the Assembly in full respect for the authority and independence of the Court and its proceedings, as enshrined in the Rome Statute and the Rules of Procedure and Evidence.<sup>4</sup> These procedures are aimed at enhancing the implementation of the Court's decisions. All actors involved must ensure that their participation in these procedures does not lead to discussions on the merits of the Court request or otherwise undermines the findings of the Court. These procedures address the role of the Assembly and its subsidiary organs, and are

<sup>2</sup> See e.g. the decisions of Pre-Trial Chamber I "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's presence in the territory of the Republic of Kenya", 27 August 2010, ICC-02/05-01/09; "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's recent visit to the Republic of Chad", 27 August 2010, ICC-02/05-01/09; and "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's recent visit to Djibouti, 12 May 2011 2011, ICC-02/05-01/09.

<sup>3</sup> Where the matter has not yet been referred to the Assembly by the Court but is also not urgent in nature, it appears that no specific procedures need to be adopted. Instead, it would be up to the Court to decide whether to trigger the Assembly's action by referring the matter to the Assembly or not.

<sup>4</sup> *Official Records ... First session ... 2002* (icc-asp/1/3 and Corr.1), part II.A.

without prejudice to actions taken by States at the bilateral or regional levels to promote cooperation.

**1. Formal response procedure: successive steps to be taken by the Bureau and the Assembly**

**(a) Trigger**

13. A formal, and to some extent public, procedure for the Assembly to address occurrences of non-cooperation should only be triggered by a decision of the Court regarding non-cooperation addressed to the Assembly.<sup>5</sup> Any such decision should be forwarded to all States Parties without delay. The general public should be informed by way of a press release of the Secretariat of the Assembly of States Parties.

**(b) Procedure**

14. Subsequent to the Court decision, several steps could be undertaken to address the issue, bearing in mind that the good offices by the President of the Assembly may also continue as described below:

(a) Emergency Bureau meeting: where the matter is such that urgent action by the Assembly may still bring about cooperation, a meeting of the Bureau could be convened at short notice. The meeting would be an opportunity to receive the oral report from the President on any action taken, and to decide on what further action would be required;

(b) Open letter from the President of the Assembly, on behalf of the Bureau, to the State concerned, reminding that State of the obligation to cooperate and requesting its views on the matter within a specified time limit of no more than two weeks.<sup>6</sup> The President of the Assembly could send a copy of the letter to all States Parties, encouraging them to raise the matter in bilateral contacts with the requested State, where appropriate;

(c) Upon expiration of the time limit or upon receipt of a written response, a meeting of the Bureau could be held (at the ambassadorial level), at which a representative of the State concerned would be invited to present its views on how it would cooperate with the Court in the future;

(d) Subsequently, and provided the next session of the Assembly is scheduled to take place more than three months after the Bureau meeting referred to under (c), the Bureau could request the New York Working Group to hold a public meeting on the matter to allow for an open dialogue with the requested State. This would include the participation of States Parties, observers and civil society representatives as currently provided under the Rules of Procedure of the Assembly of States Parties;<sup>7</sup>

(e) Subsequently, a Bureau report on the outcome of this dialogue could be submitted to the next (or ongoing) session of the Assembly, including a recommendation as to whether the matter requires action by the Assembly; and

(f) At the next (or ongoing) session of the Assembly, the report could be discussed in plenary session of the Assembly under the agenda item on cooperation. Furthermore, the Bureau could, if necessary, appoint a dedicated facilitator to consult on a draft resolution containing concrete recommendations on the matter.

<sup>5</sup> E.g. International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 27 August 2010 (Kenya), International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 27 August 2010 (Chad) and International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 12 May 2011 (Djibouti).

<sup>6</sup> See the precedent of the President's letters to the Foreign Ministers of Kenya, Chad and Djibouti, respectively, of 28 August 2010, 13 September 2010 and 17 May 2011.

<sup>7</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3/and Corr.1), part II.c; part XX.

## **2. Informal response procedure: good offices by the President of the Assembly**

15. In order for the Assembly to be able to respond to an impending or ongoing situation of non-cooperation, which may still lead to actual cooperation in that specific case, a flexible mechanism would be required for urgent action. One possibility would be to build on and institutionalize the good offices that the President of the Assembly has undertaken in the past, on an ad-hoc basis, in relation to requested States. The mandate for the President builds on this past work, but is intended to make it more effective through the activities and personal connections of Bureau members from other regions, and to signal the importance placed on cooperation by the Assembly.

### **(a) Regional focal points for cooperation**

16. In order to assist the President in his or her good offices, the Bureau would appoint among its members four focal points on the basis of the principle of equitable geographic representation.

### **(b) Trigger**

17. The President of the Assembly would become active on his or her own initiative where he or she assesses that the conditions of scenario 7(b) described above are met. Furthermore, the President would also become active on his or her own initiative where the President assesses that the conditions of scenario 7(a) are met, and that the opportunity to fulfill a request for arrest and surrender may no longer exist by the time the Bureau would be able to convene an emergency meeting to discuss the matter. In any event, the President would immediately notify Bureau members of the initiative.

18. Otherwise, the President shall become or remain active as decided by the Bureau.

### **(c) Mandate and procedures**

19. Where the President's good offices have been triggered as outlined above, he or she would, as appropriate, raise the issue informally and directly with officials from the requested State and other relevant stakeholders, with a view to promoting full cooperation. The purpose of this interaction with the requested State would be to raise awareness of the issue and to promote full cooperation while that would still be possible, but not to make findings of judicial nature, which is the sole prerogative of the Court. The President may also remind the requested State of the possibility under article 97 of the Statute to consult with the Court. The President may request any of the regional focal points, or any other Bureau member, as appropriate, to provide assistance in this interaction. In the case of scenario 7(b) above, the President should use the interaction with officials from the requested State to verify the information on the basis of which he or she became active.

20. The President would report orally to the Bureau immediately after such interaction takes place, if necessary in the context of a Bureau meeting to be convened at short notice. Once the President has reported to the Bureau, he or she shall continue engaging in the matter as decided by the Bureau.

## Resolution ICC-ASP/10/Res.6

*Adopted at the 9th plenary meeting, on 21 December 2011, by consensus*

### ICC-ASP/10/Res.6 Permanent premises

*The Assembly of States Parties,*

*Recalling* its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1,<sup>1</sup> ICC-ASP/7/Res.1,<sup>2</sup> ICC-ASP/8/Res.5,<sup>3</sup> ICC-ASP/8/Res.8,<sup>4</sup> and ICC-ASP/9/Res.1,<sup>5</sup> and *reiterating* the importance of the permanent premises to the future of the Court,

*Noting* the report of the Oversight Committee on the permanent premises,<sup>6</sup> the recommendations of the External Auditor<sup>7</sup> as well as the reports of the Committee on Budget and Finance on the work of its sixteenth and seventeenth sessions and the recommendations contained therein,<sup>8</sup>

*Reiterating* its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, *emphasizing* the role of the Oversight Committee in implementing under its delegated authority any actions which might be needed to ensure that the project proceeds safely within budget as well as that the ownership costs of the permanent premises be as low as possible,

*Recognizing* the importance of effective and efficient decision-making, clear lines of authority, stringent risk identification and management, and strict control of design changes for ensuring that the project is delivered to cost, and *welcoming* the steps taken by the Oversight Committee to implement good governance arrangements for the permanent premises project, and the participation of the Court and the host State in this joint effort,

*Welcoming* the fact that 29 States Parties have committed to making a one-time payment in accordance with the principles contained in resolution ICC-ASP/7/Res.1, annex III, in an amount of €35.8 million, of which €6.5 million have already been received,

*Noting* that the Court has quantified on 1 March 2011 in the amount of €42.2 million the other costs related to the project but not directly related to the construction,

*Noting* that such costs concern elements that are user specific and include two components: (a) 3 gv, estimated at €2.1 million, for integrated user equipment, that is fixed elements integrated in the design; (b) 2 gv and other related costs, originally estimated at €0.1 million and later reduced to €19.8 million, for non-integrated user equipment, that is loose elements, and other costs such as moving, additional staff and consultancy fees,

*Noting* that at the end of the Final Design phase the ownership costs (depreciation, financial and operating costs) are currently estimated at €17 million per year,<sup>9</sup>

*Welcoming* the cost-review strategy put in place by the Oversight Committee to address 2 gv and 3 gv costs and to reduce their impact on the annual budgeting process, as well as to maintain the construction costs within the overall budget, and *encouraging* the continuation of a downward trend of these costs,

*Stressing* that the permanent premises shall be delivered at a good quality standard within the approved budget, and thereby that the Oversight Committee is mandated to ensure that the design and functionality requirements are constantly in line with the resources approved, and that the ownership costs are kept at the lowest possible level,

<sup>1</sup> *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.

<sup>2</sup> *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III.

<sup>3</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

<sup>4</sup> *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II.

<sup>5</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part II.

<sup>6</sup> ICC-ASP/10/22.

<sup>7</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part C.1.

<sup>8</sup> *Ibid.*, parts B.1 and B.2.

<sup>9</sup> Report on the activities of the Oversight Committee, ICC-ASP/10/22, paras. 91-98.

*Recalling* that the trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and that voluntary contributions can also be provided through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee,

## **I. Project: budget and timeliness**

1. *Welcomes* the report of the Oversight Committee and *expresses* its appreciation to the Project Board and the Oversight Committee for the progress made on the permanent premises project since the ninth session of the Assembly;
2. *Welcomes* the completion of the final design stage of the permanent premises project and *approves* the revised cash-flow scheme contained in annex I;
3. *Also welcomes* that the project continues to remain within the approved budget of €190 million;
4. *Approves* the strategy of the Oversight Committee to maintaining costs within budget, focusing on the overall budget rather than on the resources available during each phase and stage of the project;
5. *Approves* that non-integrated elements (2gv) and other related costs shall not exceed €19,8 million, and will be approved upon submission year by year in the Court's budget;
6. *Further approves* that the integrated elements (3gv) are construction costs and, as such, incorporated in the overall budget of €190 million, and *also approves* that such elements and their costs be entirely absorbed within the overall budget, so that the same is not exceeded;
7. *Authorizes* the Oversight Committee to review the design and/or the functionality requirements, as needed, in order to ensure a good quality building but keeping the budget within the approved cost and, to this end, *requests* the Project Director to ensure that changes to the project which might be needed can be implemented with due regard to the minimisation of additional costs related to delays and other factors, wherever possible, so as to ensuring a positive balance between additional costs and savings achieved through changes;
8. *Requests* the Oversight Committee, the Project Director and the Court, when making decisions on the design of the project, to take account of the consequences on the Court's future operating costs, and *stresses* that the project should go forward in such a way as to keep future operating costs of the permanent premises, including maintenance costs, at the minimum level possible given the necessary budgetary constraints;
9. *Takes note* of and *approves* the revised total gross floor area of no more than 52,450 square meters as a result of the Value Engineering conducted in March 2011;
10. *Notes* that the completion date for the permanent premises is September 2015, with readiness for the Court to take occupation thereof in December 2015, and *encourages* the Project Director, in consultation with the Oversight Committee, the Court and the host State to continue to identify ways to mitigate any delay and its consequences;
11. *Stresses* that the project budget will not be used to cover delays which might depend on the demolition schedule;
12. *Welcomes* the decision adopted by the Oversight Committee to procure the construction contract on a Best Value for Money basis, with a target cost mechanism which involves a guaranteed maximum price being agreed with a contractor, with incentives to continue to find additional savings during the construction period;

## **II. Governance**

13. *Stresses* the importance of a shared vision and ownership of the project among all stakeholders, as well as of an effective coordination and communication between the Project Director, the Court and the host State at all levels and stages of the permanent

premises project and, in this regard, *approves* the revised governance arrangements adopted by the Oversight Committee, and *welcomes* the reported improved effectiveness of the decision making process;

14. *Stresses* the importance of a timely and full involvement and participation by the host State at all stages and levels of the project and *further notes* the importance of the commitment of the host State for ongoing cooperation;

15. *Reiterates* the important role of the Project Director in providing strategic leadership and overall management of the project, and his responsibility for meeting the project's goals, timelines and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1, and *invites* the Registrar to delegate authority to the Project Director where necessary and at an appropriate level, in accordance with the Financial Regulations and Rules, with respect to engaging funds for the permanent premises project;

16. *Requests* the Project Director, together with the Court, to prepare recommendations, in accordance with resolution ICC-ASP/7/Res.1, annex V, paragraph 5, on ways to improve current guidelines on contracts and expenditures for the purpose of expediting the execution of the project, and to submit them to the Oversight Committee for approval;

### **III. Financial reporting**

17. *Requests* the Project Director, in consultation with the Oversight Committee, in accordance with resolution ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;

18. *Requests* the Court to keep under review, in consultation with those States that commit to making a one-time payment, the schedule for receiving such one-time payments and to keep the Oversight Committee permanently informed thereof;

19. *Requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;

### **IV. Management of the project**

20. *Requests* the Project Director to keep the project manual, together with a project plan under review and to report thereon to the Oversight Committee;

21. *Requests* the Oversight Committee to continue to develop and implement an audit strategy;

### **V. Voluntary contributions**

22. *Reiterates* the invitation to members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

### **VI. Renewal of membership of the Oversight Committee**

23. *Endorses* the recommendation of the Bureau, in accordance with ICC-ASP/6/Res.1, annex II, that the membership of the Oversight Committee, for the next term, be comprised of those States referred to in annex II to this resolution;

### **VII. Future reporting by the Oversight Committee**

24. *Requests* the Oversight Committee to remain seized of this issue, to continue to provide regular progress reports to the Bureau and to report to the Assembly at its next session.

## Annex I

### Cash-flow scheme

#### Budget Permanent Premises project (in million euros)

	Total costs	Overall total	2009	2010	2011	2012	2013	2014	2015	2016	Total
			PD (*)	FD (**)	FD+ and tendering	Construction			Moving		
<b>1. Construction Costs</b>		<b>136.1</b>									
1a. Direct costs	<b>121.8</b>						36.5	48.7	36.5		<b>121.8</b>
1b. Indirect (excluded general site costs)	<b>8.9</b>						2.7	3.6	2.7		<b>8.9</b>
1c. Fees design team (after tendering)	<b>5.4</b>					1.7	2.3	0.8	0.5		<b>5.4</b>
<b>2. Risks</b>		<b>32.9</b>									
2a. Project risk (all issues incl. design or third parties)	<b>27.6</b>		-	-	-	1.0	7.3	10.3	9.0	-	<b>27.6</b>
2b. Client risk (outside project e.g. municipality)	<b>5.3</b>		-	-	-	0.2	1.5	1.1	2.5	-	<b>5.3</b>
<b>3. Permit and dues</b>		<b>2.6</b>									
Permit and dues	<b>2.6</b>					2.6	-	-	-	-	<b>2.6</b>
<b>4. Fees</b>		<b>16.9</b>									
4a. Design related	<b>7.9</b>		-	2.7	5.2	-	-	-	-	-	<b>7.9</b>
4b. Project management	<b>6.6</b>		0.9	0.7	1.4	1.0	0.3	1.0	0.8	0.5	<b>6.6</b>
4c. Other consultants	<b>2.4</b>		0.4	0.2	0.4		0.5	0.4	0.4	0.1	<b>2.4</b>
<b>5. Other costs</b>	<b>1.5</b>	<b>1.5</b>									
Other costs	<b>1.5</b>	<b>1.5</b>	-	1.5	-	-	-	-	-	-	<b>1.5</b>
<b>Total</b>	<b>190.0</b>	<b>190.0</b>	<b>1.3</b>	<b>5.1</b>	<b>7.0</b>	<b>1.0</b>	<b>6.3</b>	<b>51.7</b>	<b>65.7</b>	<b>51.9</b>	<b>190.0</b>
			1.3	5.1	7.0		7.3	51.7	65.7	51.9	
<b>Cumulative</b>			<b>1.3</b>	<b>6.4</b>	<b>13.4</b>		<b>20.7</b>	<b>72.4</b>	<b>138.1</b>	<b>190.0</b>	

Note: The above figures are estimates only and subject to change.

(\*) PD: preliminary design stage.

(\*\*) FD: final design stage.

## **Annex II**

### **Members of the Oversight Committee\***

#### **African States**

1. Kenya

#### **Asian and Pacific States**

2. Japan
3. Republic of Korea

#### **Eastern European States**

4. Romania

#### **Group of Latin American and Caribbean States**

5. Argentina
6. [...]

#### **Western European and Other States**

7. Germany
8. Ireland
9. Italy
10. United Kingdom

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\* As of 21 December 2011.

## Annexes

### Annex I

#### Report of the Credentials Committee

*Chairperson:* Mr. Gonzalo Bonifaz (Peru)

1. At its first plenary meeting, on 12 December 2011, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, appointed a Credentials Committee for its tenth session, consisting of the following States Parties: Belgium, the Cook Islands, Czech Republic, Finland, Gabon, Hungary, Kenya, Panama and Peru.

2. The Credentials Committee held three meetings, on 12, 20 and 21 December 2011.

3. At its meeting on 21 December 2011, the Committee had before it a memorandum by the Secretariat, dated 21 December 2011, concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the tenth session of the Assembly of States Parties. The Chairman of the Committee updated the information contained therein.

4. As noted in paragraph 1 of the memorandum and the statement relating thereto, formal credentials of representatives to the tenth session of the Assembly of States Parties, in the form required by rule 24 of the Rules of Procedure, had been received as at the time of the meeting of the Credentials Committee from the following 67 States Parties:

Argentina, Australia, Austria, Barbados, Benin, Bolivia (Plurinational State of), Botswana, Bulgaria, Chile, Colombia, Cook Islands, Costa Rica, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Estonia, Fiji, Finland, France, Gambia, Germany, Greece, Guyana, Hungary, Iceland, Ireland, Italy, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Maldives, Mali, Malta, Mexico, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela (Bolivarian Republic of).

5. As noted in paragraph 2 of the memorandum, information concerning the appointment of the representatives of States Parties to the tenth session of the Assembly of States Parties had been communicated electronically to the Secretariat, as at the time of the meeting of the Credentials Committee, from the Head of State or Government or the Minister for Foreign Affairs, by the following 44 States Parties:

Afghanistan, Albania, Antigua and Barbuda, Bangladesh, Belgium, Belize, Brazil, Burkina Faso, Burundi, Cambodia, Canada, Central African Republic, Chad, Congo, Croatia, Djibouti, Dominican Republic, Ecuador, Gabon, Georgia, Ghana, Grenada, Honduras, Japan, Jordan, Lesotho, Madagascar, Marshall Islands, Mauritius, Montenegro, Namibia, Nauru, Niger, Republic of Korea, Republic of Moldova, Saint Kitts and Nevis, Saint Lucia, Senegal, Seychelles, Suriname, Tajikistan, Tunisia, United Republic of Tanzania and Zambia.

6. The Chairperson recommended that the Committee accept the credentials of the representatives of all States Parties mentioned in the Secretariat's memorandum, on the understanding that formal credentials for representatives of the States Parties referred to in paragraph 5 of the present report would be communicated to the Secretariat as soon as possible.

7. On the proposal of the Chairperson, the Committee adopted the following draft resolution:

*“The Credentials Committee,*

*Having examined the credentials of the representatives to the tenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, referred to in paragraphs 4 and 5 of the present report;*

*Accepts the credentials of the representatives of the States Parties concerned.”*

8. The draft resolution proposed by the Chairperson was adopted without a vote.

9. The Chairperson then proposed that the Committee recommend to the Assembly of States Parties the adoption of a draft resolution (see paragraph 11 below). The proposal was adopted without a vote.

10. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

#### **Recommendation of the Credentials Committee**

11. The Credentials Committee recommends to the Assembly of States Parties to the Rome Statute of the International Criminal Court the adoption of the following draft resolution:

#### **“Credentials of representatives to the tenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court**

*The Assembly of States Parties to the Rome Statute of the International Criminal Court,*

*Having considered the report of the Credentials Committee on the credentials of representatives to the tenth session of the Assembly and the recommendation contained therein,*

*Approves the report of the Credentials Committee.”*

## Annex II

### Other budget related documents

#### A. Proposed supplementary budget of the International Criminal Court for 2012\*

##### I. Proposed supplementary budget

1. The budget assumptions for 2012 were established by the International Criminal Court (“the Court”) in January 2011 and the Court’s proposed programme budget was submitted on 8 July 2011. As a consequence, the Court was not in a position to include in its budget proposal the additional requirements for developments that occurred after the submission of its proposed programme budget, namely the situation in Côte d’Ivoire and costs related to the 2gv elements of the permanent premises project.

2. The 2gv elements for the permanent premises do not fall within the Court’s core activities. However, they have been included in the present proposed supplementary budget following the recommendation of the Committee on Budget and Finance (“the Committee”).<sup>1</sup>

3. In response to the developments mentioned above, and in accordance with Regulations 3.6 and 3.7 of the Financial Regulations and Rules of the Court,<sup>2</sup> the Court hereby submits a supplementary budget proposal setting out the budgetary consequences of the two new developments and the appropriate budgetary requirements which amount to a total of €5,332,300 and are distributed as follows:

(a) €4,428,200 for the situation in Côte d’Ivoire distributed as follows:

(i) €15,400 for the Judiciary;

(ii) €1,762,100 for the Office of the Prosecutor; and

(iii) €2,250,700 for the Registry.

(b) €904,100 for the Project Director’s Office (permanent premises project) for 2gv costs.

**Table 1. Proposed supplementary budget (thousands of euros)**

<i>Supplementary Budget 2012</i>	<i>Total Côte d’Ivoire</i>	<i>Total Permanent Premises</i>	<i>Total Proposed Supplementary Budget</i>
<i>Judges</i>	0.0	0.0	0.0
<i>Professional staff</i>	99.8	0.0	99.8
<i>General Service staff</i>	126.0	0.0	126.0
<i>Subtotal staff</i>	225.8	0.0	225.8
<i>General temporary assistance</i>	2,302.4	456.3	2,758.7
<i>Temporary assistance for meetings</i>	33.2	0.0	33.2
<i>Overtime</i>	0.0	0.0	0.0
<i>Consultants</i>	65.1	0.0	65.1
<i>Subtotal other staff</i>	2,400.7	456.3	2,857.0

\* Previously issued as ICC-ASP/10/10/Add.2

<sup>1</sup> Report of the Committee on Budget and Finance on the work of its seventeenth session (ICC-ASP/10/15), para. 140.

<sup>2</sup> See Financial Regulations and Rules of the International Criminal Court.

<i>Supplementary Budget 2012</i>	<i>Total Côte d'Ivoire</i>	<i>Total Permanent Premises</i>	<i>Total Proposed Supplementary Budget</i>
Travel	609.0	0.0	609.0
Hospitality	0.0	0.0	0.0
Contractual services	159.6	447.8	607.4
Training	0.0	0.0	0.0
Counsel for Defence	27.6	0.0	27.6
Counsel for Victims	576.9	0.0	576.9
General operating expenses	396.4	0.0	396.4
Supplies and materials	32.2	0.0	32.2
Furniture and equipment	0.0	0.0	0.0
<i>Subtotal non-staff</i>	<i>1,801.7</i>	<i>447.8</i>	<i>2,249.5</i>
<b>Total</b>	<b>4,428.2</b>	<b>904.1</b>	<b>5,332.3</b>

4. The draft resolution of the Assembly of States Parties on the proposed programme budget for 2012, the proposed supplementary budget for 2012, the Working Capital Fund for 2012, the scales of assessments for the apportionment of expenses of the Court, the financing appropriations for 2012 and the Contingency Fund is provided in appendix I.

## II. Proposed supplementary budget - situation in Côte d'Ivoire

### A. Introduction

5. Following the Prosecutor's letter of 19 May 2011 informing the President of the Court of his intention to submit a request to the Pre-Trial Chamber for authorization to open an investigation into the situation in Côte d'Ivoire for crimes committed since 28 November 2010, the Presidency of the Court assigned the situation in Côte d'Ivoire to Pre-Trial Chamber II on 20 May 2011.

6. After a preliminary examination, the Prosecutor concluded that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed in Côte d'Ivoire since 28 November 2010.

7. On 17 June 2011, the Prosecutor informed victims of war crimes and crimes against humanity allegedly committed in Côte d'Ivoire by any party following the presidential election of 28 November 2010 that he would request authorization from the Pre-Trial Chamber II to open an investigation into such crimes.<sup>3</sup> The victims or their legal representatives had 30 days from this notice to make representations to the Pre-Trial Chamber.

8. On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request to commence an investigation in Côte d'Ivoire with respect to alleged crimes within the jurisdiction of the Court committed since 28 November 2010 and continuing crimes that may be committed in the future in the context of this situation. Subsequent to the Prosecutor's *Application Pursuant to Article 58 as to Laurent Koudou Gbagbo* of 25 October 2011, Pre-Trial Chamber III issued its *Warrant of Arrest for Laurent Koudou Gbagbo* on 23 November 2011.<sup>4</sup> On 30 November 2011 the suspect arrived in the ICC Detention Centre in The Hague.

9. Côte d'Ivoire, which is not party to the Rome Statute, had accepted the jurisdiction of the Court on 18 April 2003, pursuant to article 12(3) of the Statute of the Court. Furthermore, on both 14 December 2010 and 3 May 2011, the Presidency of Côte d'Ivoire reaffirmed that State's acceptance of jurisdiction.

<sup>3</sup> Article 15(3) of the Rome Statute and rule 50 of the Rules of Procedure and Evidence.

<sup>4</sup> ICC-02/11, issued under seal, *ex parte* Prosecution and Registry on 23 November 2011, reclassified on 30 November 2011 following the transfer of the suspect to the ICC Detention Centre in The Hague.

10. This is the first time the Court has initiated a case concerning a State which, although not party to the Rome Statute, has accepted the jurisdiction of the Court.

## B. Financial implications

11. This budget is based on the assumption that the present investigations will continue and that a confirmation hearing in the case against Laurent Koudou Gbagbo will commence on or around the tentative date of 18 June 2012,<sup>5</sup> with a decision on the confirmation of charges to follow later in the year. In light of Mr Gbagbo's transfer to the Court on 30 November 2011, the Court requests the necessary resources for continued investigations and pre-trial activities in the case against Mr Gbagbo by way of this supplementary budget. Further assumptions are provided in appendix II to this document.

12. It must be noted that this budget document only accounts for those financial implications of the situation in Côte d'Ivoire that are currently foreseeable. Since the outcome of a decision on the confirmation of charges cannot be anticipated, any resources for preparation of a trial will, if incurred in 2012, be subject to a notification to the Contingency Fund.

13. As indicated in the table below, the major additional costs relate to general temporary assistance, temporary assistance for meetings (translation and interpretation), travel, contractual services (including data processing services and public information production costs), anticipated legal aid and general operating expenses (including witness relocation, resettlement, protective measures and communications).

## C. Resource requirements

14. Table 2 provides the proposed financial requirements for the situation in Côte d'Ivoire.

**Table 2. Proposed supplementary budget - Côte d'Ivoire (thousands of euros)**

<i>Supplementary Budget 2012 Côte d'Ivoire (CIV)</i>	<i>Total suppl. CIV by Major Programme</i>	<i>Major Programme I</i>	<i>Major Programme II</i>	<i>Major Programme III</i>
<i>Judges</i>	0.0	0.0	0.0	0.0
Professional staff	99.8	0.0	0.0	99.8
General Service staff	126.0	0.0	0.0	126.0
<i>Subtotal staff</i>	225.8	0.0	0.0	225.8
General temporary assistance	2,302.4	415.4	1,442.6	444.4
Temporary assistance for meetings	33.2	0.0	0.0	33.2
Overtime	0.0	0.0	0.0	0.0
Consultants	65.1	0.0	20.1	45.0
<i>Subtotal other staff</i>	2,400.7	415.4	1,462.7	522.6

<sup>5</sup> The tentative date of commencement of the confirmation hearing was set by the Presiding Judge of Pre-Trial Chamber III during the suspect's Initial Appearance Hearing on 5 December 2011.

<i>Supplementary Budget 2012 Côte d'Ivoire (CIV)</i>	<i>Total suppl. CIV by Major Programme</i>	<i>Major Programme I</i>	<i>Major Programme II</i>	<i>Major Programme III</i>
Travel	609.0	0.0	284.4	324.6
Hospitality	0.0	0.0	0.0	0.0
Contractual services	159.6	0.0	15.0	144.6
Training	0.0	0.0	0.0	0.0
Counsel for Defence	27.6	0.0	0.0	27.6
Counsel for Victims	576.9	0.0	0.0	576.9
General operating expenses	396.4	0.0	0.0	396.4
Supplies and materials	32.2	0.0	0.0	32.2
Furniture and equipment	0.0	0.0	0.0	0.0
<i>Subtotal non-staff</i>	<i>1,801.7</i>	<i>0.0</i>	<i>299.4</i>	<i>1,502.3</i>
<b>Total</b>	<b>4,428.2</b>	<b>415.4</b>	<b>1,762.1</b>	<b>2,250.7</b>

## D. Resources description

### 1. Major Programme I - Judiciary

15. The resource description for the Judiciary is based on the Prosecutor's assumptions that a confirmation of charges hearing will commence on or around the tentative date of 18 June 2012. The initial pre-trial activities of the Chamber (preparation for proceedings, the first appearance of the suspect before the Pre-Trial Chamber, redactions to evidence and applications for participation from victims) will commence in December 2011. In view of the expected workload in preparation for the entire pre-trial phase in 2012, including the Pre-Trial Chamber's decision on the confirmation of charges, the following staff will be required.

16. *Staff costs:* An amount of €15,400 is requested for 36 months of GTA resources at P-2 level and 24 months at General Service level (GS-OL) to provide the necessary pre-trial support for this case. Consistent with the pre-trial related allocation of Judiciary staff in previous cases of a similar size, the requested resources at P-2 level will be mainly used for: the analysis of filings submitted and evidence disclosed by the Office of the Prosecutor (OTP) and the defence; the preparation of summaries to support the work of existing P-3 Legal Officers and the Judges; the assessment of the need for redactions to the evidence tendered by the parties; assistance with the drafting of decisions and orders of the Pre-Trial Chamber (including the decision on the confirmation of charges), as directed by the P-3 Legal Officers and the Judges; specific legal research; and the preparation for hearings and status conferences. The GTA General Services resources (GS-OL) are required to process victims' applications for participation in the proceedings and to assist with the redaction of evidence, general legal research and any other administrative or case management tasks.

**Table 3. GTA requirements for the Judiciary (thousands of euros)**

<i>Title</i>	<i>No. of months</i>	<i>Section</i>	<i>Type</i>	<i>Grade</i>	<i>Total</i>
<b>Chambers (1200)</b>					
Associate /Assistant Legal Officer	36	1200	GTA	P-2	275.4
Legal Assistant	24	1200	GTA	GS-OL	140.0

17. It is envisaged that any additional legal support staff who may be required depending on developments in the pre-trial phase in this case will be redeployed from other areas within the Judiciary as necessary, depending on their availability and in the light of future developments in other cases before the Court. No further costs are foreseen at this stage. Initial Pre-Trial activity in December 2011 will be absorbed on an interim basis by existing Judiciary resources.

18. *Non-staff costs*: Additional costs in the pre-trial phase not related to staff costs will be absorbed by the regular budget.

## 2. Major Programme II - Office of the Prosecutor

19. The supplementary budget for Major Programme II is required for pre-trial activities before, during and after the confirmation of charges. The total amount requested for the aforementioned activities for 2012 is €1,762,100.

20. *Staff costs*: Table 4 sets out the GTA requirements of the Office of the Prosecutor.

**Table 4. GTA requirements for the Office of the Prosecutor (thousands of euros)**

<i>Title</i>	<i>Section</i>	<i>Type</i>	<i>Grade</i>	<i>Total</i>
<b>Immediate Office of the Prosecutor (2100)</b>				
Translator	2120	GTA	P-3	110.9
Language Assistant (NWL)	2120	GTA	GS-OL	70.0
Field Interpreters (ad hoc SSA 2 work months)	2120	GTA	GS-OL	11.7
Database Coordinator	2120	GTA	P-1	91.5
<b>Investigation Division (2300)</b>				
Investigator	2330	GTA	P-3	110.9
Associate Investigator	2330	GTA	P-2	91.8
Associate Analyst	2320	GTA	P-2	91.8
DPA/Legal Review	2320	GTA	GS-OL	70.0
DPA/Legal Review	2320	GTA	GS-OL	70.0
DPA/Legal Review	2320	GTA	GS-OL	70.0
<b>Prosecution Division (2400)</b>				
Trial Lawyer	2410	GTA	P-4	134.1
Trial Lawyer	2410	GTA	P-4	134.1
Trial Lawyer	2410	GTA	P-3	110.9
Case Manager	2410	GTA	P-1	91.5
Associate Trial Lawyer	2410	GTA	P-2	91.8
Associate Trial Lawyer	2410	GTA	P-1	91.5

21. Consistent with previous requests arising from the transfer of accused persons to the Court and pertaining to pre-trial activities for the confirmation of charges, a pre-trial capacity Joint Team will be established, comprising not only prosecution staff but also one cooperation/analysis expert from the Jurisdiction, Complementarity and Cooperation Division (JCCD)) and three Investigation Division staff to support investigative, admissibility and cooperation issues relevant to the case.

22. No new established posts are requested.

23. A total amount of €1,442,600 is required for GTA contracts. This amount represents a total of 11 GTA professional posts and five GTA GS-OL posts, most of which are for a period of 12 work months.

24. As regards the Investigation Division, there is the need to replace three investigation division staff (one P-3 Investigator, one P-2 Associate Investigator and one P-2 Associate Analyst) in order to free up the corresponding capacity to support the pre-trial capacity Joint Team in the preparation for the confirmation of charges. In addition three GS-OL Legal Reviewers/Data Processing Assistants are required for the accelerated pace of evidence review which a confirmation hearing demands.

25. JCCD staff requirements to support the confirmation of charges will be accommodated by existing established posts and GTA resources provided for by the regular budget.

26. As regards the Prosecution Division, there is a need to expand pre-trial capacity for the filing of submissions with the Pre-Trial Chamber and the ongoing preparation of the case for trial. The supplementary budget requirement for GTA in this regard comprises two P-4 Trial Lawyers, one P-3 Trial Lawyer, one P-2 Associate Trial Lawyer and one P-1 Assistant Trial Lawyer.

27. In addition, one P-1 Case Manager (GTA) will be required for the situation in Côte d'Ivoire in order to provide adequate support for the case as it progresses towards the confirmation of charges stage.

28. With regard to the Services Section, a P-3 Translator is requested to support the accelerated pace of the translation of evidence and to ensure trial readiness. For interpretation and language assistance in non-working languages, two and twelve months of GTA and GS-OL level respectively are requested to support the further investigative and witness follow-up activities necessary to prepare for the confirmation of charges.

29. Additionally, a P-1 Database Coordinator is requested to support disclosure and specific evidence repository searches that will be necessary for the confirmation of charges.

30. An amount of €20,100 is requested for consultancy, in order to cover the costs of expert witnesses in the case. This amount represents the equivalent of approximately 1.5 months of expert assistance, reports and/or testimony at P-5 level, including travel costs.

31. *Non-staff costs:* Additional funds in an amount of €84,400 are required to cover the costs of missions for Investigators, Trial Lawyers and support staff, such as Field Interpreters, to contact witnesses and the continued collection of evidence for the confirmation of the charges/trial phase of the case in addition to missions related to public information, cooperation associated with the case. This amount provides for 92 individual missions, 76 of which would be to Côte d'Ivoire or the region.

32. An amount of €10,000 is requested for the outsourcing of translations related to evidence review and disclosure. A further €5,000 is required for OTP-specific public information activities directly linked to the case.

### 3. Major Programme III - Registry

33. As the Organ responsible for the non-judicial aspects of the administration and servicing of the Court, the Registry's budget is largely driven by the level of support required of it by its clients.

34. *Staff costs:* The Registry has made every effort to ensure that its services concerning the situation in Côte d'Ivoire, which are based on the assumptions underpinning the supplementary budget, are provided by existing resources. Limited funds are requested for staff redeployment and GTA contracts.

35. An amount of €9,800 is requested for the redeployment of one P-3 Field Operations Section post from Sudan to Headquarters to address field requirements arising from the new situation.

36. An additional amount of €3,000 is requested for the redeployment of one GS-OL Security and Safety Section post from Sudan to Headquarters, corresponding to one Associate Field Security Officer (Security Lieutenant). Similarly, an amount of €3,000 is requested for the redeployment of one GS-OL post from the Security and Safety Section in Sudan to the Budget and Finance Section at Headquarters in order to respond to the significant increase in workload. In the proposed programme budget for 2012, a request was made for this redeployment mainly to meet the increased workload arising from the new situations of Libya, and now Côte d'Ivoire, which has resulted in a substantial increase in the processing of transactions due to increased staff numbers, new contingency staff recruitments and work associated with arranging staff entitlements, payment, disbursement, payroll, accounting and budget documents. However, the Committee expressed concerns about the redeployment

of field positions to Headquarters, making a recommendation that no funds be provided in the 2012 proposed programme budget to the Security and Safety Section for this post.

37. An amount of €83,200 is requested for one GTA P-3 Field Security Officer in the Security and Safety Section for nine months as a basic requirement for the situation in Côte d'Ivoire.

38. As concerns the Office of the Public Counsel for Victims, an amount of €55,500 is requested for one GTA P-3 Legal Officer for six months to provide assistance to external legal representatives, to assist victims in accordance with regulation 81 of the Regulations of the Court and/or to provide legal representation for victims.

39. Additional funds in an amount of €70,000 are required for one GTA GS-OL post for twelve months in the Human Resources Section. In the proposed programme budget for 2012, a request was made for the redeployment of one GS-OL post from the Security and Safety Section to the Staff Administration Unit in order to accommodate the staffing needs arising not only from the increase in and changes to staff duties but also the increased administrative workload resulting from higher numbers of staff members and their dependents. The incumbent would be responsible for establishing clear conditions of service and applying them consistently to all organs, developing and implementing clear guidelines on contract extension, by linking contract extension to the performance appraisal system, further developing the generic appraisal criteria and reinforcing systems to ensure consistency and the uniform application of the appraisal system throughout the Court.

40. An amount of €73,900 is needed for one GTA P-3 Operations Coordinator and Protection Advisor for eight months in the Victims and Witnesses Unit to manage the Initial Response Systems (IRS) and other local protective measures, and to coordinate the overall activities in the areas of responsibility.

41. As regards the Victims Participation and Reparations Section, an amount of €61,800 is requested for one GTA P-2 Associate Legal Officer for 12 months to act as legal focal point for the legal analysis of victims' applications for participation in the proceedings, draft filings, respond to orders of the Chambers, process and analyse said applications, prepare for the filing of submissions, organize redactions and to establish the framework for organizing the common legal representation of participating victims. One GS-OL Data Processing Assistant is also required to process applications for participation received by the Court (scanning, registration and data entry).

**Table 5. GTA requirements for the Registry (thousands of euros)**

<i>Title</i>	<i>Section</i>	<i>Type</i>	<i>Grade</i>	<i>Total</i>
<b>Office of the Registrar (3100)</b>				
Field Security Officer	3140	GTA	P-3	83.2
Legal Officer	3192	GTA	P-3	55.5
<b>Common Administrative Services Division (3200)</b>				
Human Resources Assistant	3220	GTA	GS-OL	70.0
<b>Division of Court Services (3300)</b>				
Operations Coordinator and Protection Advisor	3350	GTA	P-3	73.9
Associate Legal Officer	3360	GTA	P-2	91.8
Data Processing Assistant	3360	GTA	GS-OL	70.0

42. An amount of €33,200 is requested for temporary assistance in respect of the services provided by the Court Interpretation and Translation Section at meetings, for the translation and revision of texts concerning victims' applications for participation and the confirmation of charges and interpretation provided during the confirmation hearing.

43. Consultants are required by the Victims Participation and Reparations Section to conduct a detailed mapping of victims' communities, to assess potential intermediaries,

including in the diaspora, and to research identification documents submitted by applicants. The amount requested is €45,000.

44. *Non-staff costs*: Additional funds of €24,600 are needed to cover the travel costs of Registry missions concerning:

- (a) The negotiation of agreements with governments and private companies;
- (b) Coordination, assessment and inspection activities related to security and safety;
- (c) Missions related to field operations;
- (d) Meetings with victims represented by the Office of Public Counsel for Victims;
- (e) Escorting witnesses appearing before the Court;
- (f) Internal support activities related to victim participation; and
- (g) The briefing of outreach staff.

45. An amount of €144,600 is required for contractual services to guarantee effective communication between Côte d'Ivoire and Headquarters, provide transport during inspection/assessment missions, arrange meetings with victims and intermediaries (related to meeting venues, accommodation and local travel) and cover costs associated with public information and outreach meetings in the field, the printing of information storage material, the production of TV and radio broadcasts and the need for increased storage space for evidentiary material collected by the OTP.

46. Duty counsel missions are planned to Côte d'Ivoire and the need for two defence teams for victims is envisaged for 2012. The required amount for legal aid is €604,500.

47. General operating expenses for €396,400 mainly include costs related to the provision of support services such as cost-sharing for the UN Security Management System, increased mobile phone roaming and data coverage, extra custody officers for detention, vehicle rental, witness relocation, resettlement and other protective measures, as well as referrals of witnesses for support and the establishment of the IRS in two areas of operation.

48. €2,200 is required for supplies and materials, including uniforms for security and detention staff, fuel and equipment to protect confidential information.

### III. Proposed supplementary budget - permanent premises

#### A. Introduction

49. The 2gv elements for the permanent premises have been included in the present proposed supplementary budget following the recommendation of the Committee that “to maintain the principle of budgetary integrity, the 2gv costs should normally be contained within the regular budget of the Court.”<sup>6</sup> The inclusion of the 2gv elements in the regular budget of the Court accords with the views of the Oversight Committee.<sup>7</sup>

50. In order to capture in a clear and transparent way all of those costs which are unrelated to the construction of the permanent premises in Major Programme VII-1 (Project Director's Office (PDO) (permanent premises)), three programmes have been established in Major Programme VII-1 under the control of the Project Director. The amounts budgeted under each programme shall be approved on a yearly basis subject to the needs of the project until its completion.

51. Programme 7110 (formerly Major Programme VII-1) comprises the Project Director's Office and will focus during 2012 on the continuation and conclusion of the tender for the general contractor and the contract award. Subsequently, the project will

<sup>6</sup> Report of the Committee on Budget and Finance on the work of its seventeenth session (ICC-ASP/10/15), para. 140.

<sup>7</sup> The Hague Working Group, informal consultations on the 2012 budget, 25 October 2011, oral report on the 2012 budget proposal for Major Programme VII-1 by the Chair of the Committee, Mr. Roberto Bellelli (Italy), 24 October 2011, 11:30.

move into the construction phase. The resource requirements of the Project Director's Office are contained in the Court's proposed programme budget for 2012.

52. Programme 7120 relates to crucial support provided to the project by the sections of the Court. In order for the sections to be able to provide the necessary support, the Project Director will make funds available for general temporary assistance by concluding service level agreements. Following recommendations by the Committee,<sup>8</sup> these amounts have been removed from the 2gv budget, since the temporary assistance required does not relate exclusively to 2gv budgets but to the project as a whole.

53. Programme 7130 focuses on the 2gv elements which are not part of the construction budget, i.e. costs related to the project but not construction. In accordance with the decision of the Oversight Committee at its eighth meeting on 6 July 2011, these costs will be submitted to the Assembly of States Parties ("the Assembly") every year for the duration of the project, through the Committee.

54. The total proposed budget for Major Programme VII-1, including programmes 7110, 7120 and 7130, stands at 1,450.5 thousand euros.

## B. Programme 7120: Staff resources and management support

### 1. Introduction

55. Programme 7120 relates to crucial support provided to the project by the sections of the Court. In 2012 such support will entail procuring a general contractor for the largest and most complex contract ever purchased by the Court. It is essential that the process is handled correctly. Ongoing support will be required for this contract over the lifespan of the project.

56. Service level agreements with the key sections of the Court involved will be formalized by the Project Director's Office and will outline their expected input. The service level agreements will be funded by this programme, leaving the sections involved free to establish temporary support posts to cover the staff time required.

57. Court staff will be required for the duration of the permanent premises project. The current estimated cash flow for the next five years is as follows:

<i>€ million</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<b>Total</b>
Programme 7120	0.4	0.5	0.6	0.6	0.1	<b>2.2</b>

<i>Expected results</i>	<i>Performance indicators</i>	<i>Target 2012</i>
<b>Objective 1</b>		
- To provide the permanent premises project with the necessary crucial support functions to meet the project's strategic goals and objectives.	- Permanent premises project receives from the Court high quality input in a timely manner.	100%
	- The permanent premises project benefits to the greatest extent possible from expertise and experience existing within the Court.	100%

### 2. Staff resources

#### Basic resources

##### *General temporary assistance*

58. The financial equivalent of one P-3 position for other support functions (e.g. procurement, legal, translation, budget and finance, audit and General Services Section (GSS)).

<sup>8</sup> Report of the Committee on Budget and Finance on the work of its seventeenth session (ICC-ASP/10/15).

59. The financial equivalent of one GS-OL position for other support functions (e.g. procurement, legal, translation, budget and finance, audit and GSS).

60. The financial equivalent of one Project Manager Officer (P-2) in the Facilities Management Unit.

61. The financial equivalent of one Project Manager Officer (P-2) in the Security and Safety Section.

62. The financial equivalent of one Project Manager Officer (P-2) in the Information and Communication Technology Section.

63. The specific budgeted costs for 2012 for each of the above GTA positions are detailed in the table below.

<i>Elements</i>	<i>2012 budget requested</i>
Financial equivalent of one P-3 position for other support functions (e.g. procurement, legal, translation, budget and finance, audit and GSS)	€10,900
Financial equivalent of one GS-OL position for other support functions (e.g. procurement, legal, translation, budget and finance, audit and GSS)	€70,000
Financial equivalent of one Project Manager Officer FMU (P-2)	€1,800
Financial equivalent of one Project Manager Officer SSS (P-2)	€1,800
Financial equivalent of one Project Manager Officer ICTS (P-2)	€1,800
<b>ICC staff total</b>	<b>€156,300</b>

## C. Programme 7130: 2gv elements (non-integrated user equipment)

### 1. Introduction

64. Resolution ICC-ASP/9/Res.1 requires the Court, in consultation with the Project Director, to identify and quantify other costs related to the project which are not directly related to construction ("Box 4 costs") before 1 March 2011.

65. Box 4 consists of two components: (i) the integrated user equipment or 3gv elements, belonging to the construction budget; and (ii) the non-integrated user equipment or 2gv elements, currently estimated at €17.6 million. Programme 7130 focuses only on the 2gv elements which are part of Box 4.

66. The Oversight Committee decided at its eighth meeting on 6 July 2011 that 2gv costs be submitted to the Assembly every year for the duration of the project, through the Committee.

67. Budget for the 2gv elements will be required for the duration of the permanent premises project. The current estimated cash flow for the next five years is as follows:

<i>€ million</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<b>Total</b>
Programme 7130	0.4	0.2	3.3	13.5	0.1	<b>17.5</b>

<i>Expected results</i>	<i>Performance indicators</i>	<i>Target 2012</i>
<b>Objective 1</b>		
- To provide the permanent premises project with the necessary 2gv elements (non-integrated equipment) to meet the project's strategic goals and objectives.	- Timely input and support to meet the project's timeline.	100%
<b>Objective 2</b>		
- To manage the resources and support in an effective and efficient way by continuously striving for synergies.	- To reduce the overall budget for 2gv elements by at least 10% by 2016.	100%

## 2. Staff resources

### Basic resources

#### *Contractual services*

68. The required consultancy services are set out below.

(a) ICT: assistance in defining and monitoring requirements related to the design, technical assistance related to patching, labelling and administration of Main Equipment Rooms and Satellite Equipment Rooms.

(b) security: assistance in defining and monitoring requirements related to design, technical assistance related to programming the security and safety systems and key plan.

(c) *Arbo* (verification of the compliance of conditions in the workplace with the law).

(d) mobility management: implementation of mobility policy and coordination of the commuting plan.

(e) logistics: feasibility study of move scenarios.

(f) communication events and liaising with the neighbourhood.

<i>Elements</i>	<i>2012 budget requested</i>
Contractual services	€147,800

## Appendix I

### Draft Resolution of the Assembly of States Parties on the proposed programme budget for 2012, the Working Capital Fund for 2012, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2012 and the Contingency Fund

*The Assembly of States Parties,*

*Having considered* the proposed programme budget for 2012 and the proposed supplementary budget for 2012 of the International Criminal Court and the related conclusions and recommendations on the proposed programme budget for the Court contained in the Report of the Committee on Budget and Finance on the work of its seventeenth session.

#### A. Programme budget for 2012

1. *Approves* appropriations totalling €123,065,300 for the following appropriation sections:

<i>Appropriation section</i>	<i>Thousands of euros</i>
Major Programme I - Judiciary	10,723.7
Major Programme II - Office of the Prosecutor	33,564.8
Major Programme III - Registry	72,166.8
Major Programme IV - Secretariat of the Assembly of States Parties	3,082.9
Major Programme VI - Secretariat of the Trust Fund for Victims	1,755.8
Major Programme VII-1 - Project Director's Office (permanent premises)	1,450.5
Major Programme VII-5 - Independent Oversight Mechanism	320.8
<b>Total</b>	<b>123,065.3</b>

2. *Further approves* the following staffing tables for each of the above appropriation sections:

	<i>Office of the Judiciary</i>	<i>Office of the Prosecutor</i>	<i>Registry</i>	<i>Secretariat Assembly of States Parties</i>	<i>Secretariat Trust Fund for Victims</i>	<i>Project Director's Office</i>	<i>Independent Oversight Mechanism</i>	<i>Total</i>
USG		1						1
ASG		2	1					3
D-2								0
D-1		2	4	1	1	1		9
P-5	3	12	17		1			33
P-4	3	29	39	2		1	1	75
P-3	21	44	66	1	3			135
P-2	5	47	61	3			1	117
P-1		17	7					24
<i>Subtotal</i>	<i>32</i>	<i>154</i>	<i>195</i>	<i>7</i>	<i>5</i>	<i>2</i>	<i>2</i>	<i>397</i>

	Office of the Judiciary Prosecutor	Registry	Secretariat Assembly of States Parties	Secretariat Trust Fund for Victims	Project Director's Office	Independent Oversight Mechanism	Total
GS-PL	1	1	17	2			21
GS-OL	15	63	267	3	2	1	351
<i>Subtotal</i>	<i>16</i>	<i>64</i>	<i>284</i>	<i>5</i>	<i>2</i>	<i>1</i>	<i>372</i>
<b>Total</b>	<b>48</b>	<b>218</b>	<b>479</b>	<b>12</b>	<b>7</b>	<b>3</b>	<b>769</b>

## B. Working Capital Fund for 2012

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2012 shall be established in the amount of €7,405,983, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court.

## C. Scale of assessment for the apportionment of expenses of the International Criminal Court

*The Assembly of States Parties,*

*Decides* that, for 2012, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for 2012 and adjusted in accordance with the principles on which that scale is based,<sup>1</sup>

*Notes* that, in addition, any maximum assessment rate for the largest contributors applicable for the United Nations regular budget will apply to the International Criminal Court's scale of assessments.

## D. Financing appropriations for 2012

*The Assembly of States Parties,*

*Resolves* that, for 2012, budget appropriations amounting to €123,065,300 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part I, paragraph 1, and part II, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.

## E. Contingency Fund

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res. 4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res. 4 that requested the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Taking note* of the advice of the Committee on Budget and Finance in the reports on the work of its eleventh and thirteenth sessions,

*Taking note* that the Fund should be replenished up to an amount the Assembly deems appropriate, but no less than €7 million,

*Taking note* that the Fund will reach a level below €7 million by the end of 2011,

- Decides* to maintain the Contingency Fund at the level of €7 million for 2012;
- Decides* to replenish the Fund in the amount of €3.4 million in 2012;<sup>2</sup> and
- Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

<sup>1</sup> Rome Statute of the International Criminal Court, article 117.

<sup>2</sup> The suggested exact amount of replenishment will be communicated by the Court at a later stage.

## Appendix II

### Assumptions for the supplementary budget (Côte d'Ivoire) for the proposed programme budget for 2012

<i>Function</i>	<i>Total</i>
1. Number of court days in 12 months	10
2. Number of witnesses (defence)	2
3. Number of expert witnesses	0
4. Number of support persons	1
5. Maximum duration of stay per witness	15
6. Number of accused in custody	1
7. Number of defence teams	0
8. Number of victims' representatives	2
9. Number of cells required	1
10. Number of site visits by judges	0
11. Field presence/field offices	0
12. Extension of judges (in months)	0

## B. Proposed Programme Budget for 2012 of the International Criminal Court\*

### Corrigendum

1. Page 6, paragraph 27,  
*Insert* new paragraph:

“27bis. A table showing the full budgetary impact of possible additional resources requirements to the 2012 proposed programme budget is shown in annex XIII.”

2. Page 183,  
*Insert* new Annex XIII:

### Annex XIII

#### Full budgetary impact of possible additional resources requirements to the 2012 proposed programme budget

1. The Court’s budgetary requirements as presented at the tenth session of the Assembly are described in two documents:

- (a) 2012 proposed programme budget<sup>1</sup> with a total of €17,733,000; and  
(b) Supplementary budget:

(i) Under the current assumptions related to investigations in Côte d’Ivoire, as presented in the supplementary budget, the Court requires €4,428,200; and

(ii) As recommended by the Committee on Budget and Finance, costs for the Permanent Premises Projects related to the 2gv elements have been included in the Court’s regular supplementary budget for a total of €904,100 in 2012. These costs will amount to an additional €7.5 million to the Court’s Regular Budget over the next five years of the Permanent Premises Project.

Total States Parties’ **appropriation** as proposed by the Court,<sup>2</sup> depending on the Assembly’s approval: €23,065,300

2. One-off payment for Contingency Fund replenishment: because the Contingency Fund is only accessed once the regular budget has been fully utilized, the exact requirements for replenishment of the fund will only be known after closing the Court’s accounts for the 2011 financial year. According to the last financial forecast as at 30 September, the Court foresees 99.5 per cent implementation of its regular budget.

\* Previously issued as ICC-ASP/10/10/Corr.5.

<sup>1</sup> In line with resolution ICC-ASP/9/Res.4, section IX no resources have been allocated to the African Union Liaison Office in the 2012 proposed programme budget. In the event of a decision by the African Union in the first months of 2012 to agree to the Court’s request to open a liaison office in Addis Ababa, Ethiopia, the Court will notify the Committee on Budget and Finance of the requirement for access to the Contingency Fund by an estimated amount of €283,200 (estimated for 6 months in 2012). The 2012 proposed programme budget includes an Annex describing the full costs for one year in details.

<sup>2</sup> The Committee on Budget and Finance suggested showing the cost of calling on five additional judges. This additional requirement is dependent upon developments in pre-trial proceedings and trial preparations currently taking place. The 2012 proposed programme budget is based on certain assumptions set at the time of budget preparations; these assumptions still stand at the time of submission of the present corrigendum. The Court is not in a position to assume how far additional judges may be required and is therefore not budgeting for this assumption. Because these costs can not be accurately estimated at the time of adoption of the budget, should judicial developments require calling a certain number of additional judges, the additional cost will be covered by the Contingency Fund.

3. The remaining expenditures pertaining to the Contingency Fund notifications that cannot be absorbed within Regular Budget utilization shall be drawn from the Contingency Fund. The Court estimates that the total Contingency Fund costs (€5,712,000) will correspond to the necessity to replenish the fund by €3,380,000 in order to maintain the €7,000,000 threshold recommended by the Assembly.

Total estimated **one-off payment** for the Contingency Fund replenishment:  
€3,380,000

4. The full financial impact of possible resources requirements in 2012 can therefore be summarised as follows:

<i>Resources</i>	<i>Appropriations</i>	<i>One-off payment</i>
2012 proposed programme budget	€17,733,000	
Côte d'Ivoire (supplementary budget)	€4,428,200 <sup>3</sup>	
Permanent premises 2gv elements (supplementary budget)	€904,100	
Contingency Fund replenishment		€3,380,000 <sup>4</sup>
<b>Total</b>	<b>€23,065,300</b>	<b>€3,380,000</b>

3. Page 6, paragraph 27,

*Insert* new paragraph:

“27ter. A list of knowable significant multi-year cost drivers of the Court for the years 2013-2015 is provided in annex XIV.”

4. Page 183,

*Insert* new Annex XIV:

## **Annex XIV**

### **Estimated knowable significant multi-year cost drivers 2013-2015<sup>5</sup>**

1. The table below presents a mid-term planning for the knowable significant multi-year costs drivers of the Court as requested by the Committee on Budget and Finance: “The Committee has been encouraging the Court to identify known or knowable significant multi-year cost drivers including capital replacement, premises and staff costs and to present them clearly to the Assembly to ensure that there were no surprises when a clearly identifiable expense comes due.”<sup>6</sup>

	2013	2014	2015
<b>Staff costs</b>			
<i>Subtotal</i> <sup>7</sup>	64,843,400	66,939,000	69,102,300
<b>Capital investment replacements<sup>8</sup></b>			
Vehicles	448,211	768,303	579,624
Equipment	780,000	500,000	1,036,359
<i>Subtotal</i>	1,228,211	1,268,303	1,615,983

<sup>3</sup> In its last report (ICC-ASP/10/15, table 1), the Committee on Budget and Finance refers to an assumed amount of €1.5 million for the Côte d'Ivoire situation. New assumptions related to this situation at the time of publication of the present annex, yield a new proposed budget, as indicated in the Court's supplementary budget submitted to the Assembly.

<sup>4</sup> The exact amount required for replenishment can only be calculated after the Court's official closing of accounts. The amount indicated in the table above could therefore be reduced significantly in the first quarter of 2012.

<sup>5</sup> Annex XIII has been prepared assuming that the overall volume of activities will remain unchanged in the following three years.

<sup>6</sup> ICC-ASP/10/15, para. 22.

<sup>7</sup> A 3.2 per cent increase has been applied to staffing costs as a steady growth on a compounded basis. The projection does not include any potential change in the number of staff.

<sup>8</sup> Figures have been updated based on CBF/16/5. Additional replacements resulting from the lease negotiation of the Arc building are still unknown and have not been included.

	2013	2014	2015
<b>Premises</b>			
Rent and maintenance of interim premises <sup>9</sup>	6,225,000	6,225,000	6,225,000
Box 4 (2 gv) <sup>10</sup>	200,000	3,300,000	13,500,000
Staff Budget for Permanent Premises	500,000	600,000	600,000
Estimated interest payment on host State loan	100,000	1,000,000	2,600,000
<i>Subtotal</i>	<i>7,025,000</i>	<i>11,125,000</i>	<i>22,925,000</i>
<b>Special programmes/projects</b>			
African Union Liaison Office (AULO) <sup>11</sup>	433,000	393,000	393,000
IPSAS implementation <sup>12</sup>	600,200	285,200	64,350
<i>Subtotal</i>	<i>1,033,200</i>	<i>678,200</i>	<i>457,350</i>
<b>Total</b>	<b>74,129,811</b>	<b>80,010,503</b>	<b>94,100,633</b>

5. Page 166, annex V(e),  
Replace table with table below:

### Salary and entitlements for 2012 - Judges (thousands of euros)

<i>Presidency:</i>	<i>Costs</i>
Special allowance President and Vice-Presidents	28.0
<i>Chambers: 18 Judges</i>	
Standard salary costs	2,930.0
Judges' pension (pending Allianz quotation)	1,497.2
After-service relocation allowance	227.1
Common Costs	
- Insurance - Service Incurred Injury (65.0)	
- Education grant <sup>13</sup> (20.0)	
- Home Leave Travel (40.0)	125.0
<i>Subtotal Chambers</i>	<i>4,779.3</i>
<i>Additional Requirements 2012</i>	
Provision for costs relating to end of term and newly elected judges	304.6
<i>Subtotal additional requirements</i>	<i>304.6</i>
<b>Total Judiciary</b>	<b>5,111.9</b>

<sup>9</sup> Pending conclusion of current negotiations.

<sup>10</sup> ICC-ASP/10/10/Add.1. Costs for Box 4 (3 gv) will be part of the construction project budget.

<sup>11</sup> Dependent on agreement of the African Union and of the government of Ethiopia. Assuming the AULO is set-up in 2013.

<sup>12</sup> ICC-ASP/10/3.

<sup>13</sup> This is a cost estimate based on the average expenses of the last years; the final figure may vary.

## Annex III

### Statement of the Chair of the Committee on Budget and Finance, Mr. Santiago Wins<sup>1</sup>

It is an honour to present the reports of the sixteenth and seventeenth sessions of the Committee on Budget and Finance. You will have noticed that the workload of the Committee has considerably increased, and that, within the time limits and with the resources available, we have proposed a series of recommendations that we hope will contribute to ensuring the approval of a balanced budget that guarantees the normal operation of the Court.

The proposal for 2012 budget has been particularly challenging, due to the increasing workload of the Court in the context of a difficult international financial context.

Furthermore the status of the contribution shows a trend of higher level of arrears which might significantly affect the cash flow of the Court and impact on the future use of the working capital fund.

One of the challenges States will have to decide whether they want a Court driven by demand or rather a Court driven by resources. This draws further attention to the need for the Assembly to provide strategic guidance to the Court on how to manage increase costs both from known cost drivers and new situations.

When considering the proposed programme budget, the main focus is on reviewing the resource request against anticipated activities and past use. However, the Assembly may wish to consider whether alternative mechanisms both for financing and for delivering certain services may also be an avenue to accommodate increased desirable activity.

There are also major cost drivers identified that require a reflection by the Assembly on how to be better addressed. In order to offer some guidance to address these major cost drivers, the Committee made the following strategic considerations:

1. Major cost drivers include legal aid and new situations, including Security Council referrals. Legal aid spending in the *Lubanga* case will likely exceed €3 million before the end of the trial. Under the current legal aid system, costs will continue to grow. The Committee notes with satisfaction that its recommendation to review the legal aid system is under consideration. As a contribution to this political discussion, the Committee has provided in its report an annex with further details and some possibilities for potential changes of the current legal aid system.
2. The new situations of Côte d'Ivoire and the United Nations Security Council referral for Libya represent additional financial impact on the 2012 proposed programme budget. In light of the unpredictability in Libya case, the Committee recommended that the Prosecutor assess events on the ground and re-evaluate the needs of the Office, to determine if the requested resources are required at the same level or whether further reductions on the 2012 proposed budget can be made. Due to the very late submission of this information, received only last Friday, I will make specific comments orally for this situation, as well as with respect to the supplementary budget for Côte d'Ivoire and 2gv costs. A table with adjustments proposed will be distributed.<sup>2</sup>
3. The Committee has been encouraging the Court to identify known or knowable significant multi-year cost drivers including capital replacement, premises and staff costs and to present them clearly to the Assembly in order to ensure clearly identifiable expense forecasting. In order to be able to forecast better cost increases for the future years, the Committee 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.

<sup>1</sup> At the fifth plenary meeting of the Assembly on 15 December 2011.

<sup>2</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II, annex.

4. Furthermore, the Committee also recommended the Court to reconsider its process for establishing the proposed programme budget and report to the Committee on this matter at its eighteenth session. The Court would need to ensure that the fiscal context is well understood by all programmes and sub-programmes and that a real prioritization process is established.

5. Another major cost driver is staff costs, which represents more than two-thirds of the annual budget. The Committee has continued to recommend that freeze on established posts remain in place until the Court makes a study on its staffing structure with adequate justifications.

6. Outreach is an important area to help build and maintain support for the Court internationally. However, outreach is fragmented across the Court with different organs and programmes pursuing different forms of outreach. While some fragmentation may be necessary, at some point the Court will require guidance as to the level and type of outreach that is appropriate within the regular budget for this stage of the Court's development.

## A. Macroanalysis

7. The Court's 2012 proposed programme budget was €17.7 million, representing an increase of €4,125,100 or 13.6 per cent over the approved budget level for 2011. The Court identified the major cause for the increase as the Libya situation as a whole, budgeted at €7.2 million, and an increase in legal aid, amounting to €4.9 million.

8. Crucially, these figures do not include the supplementary budget that the Court has submitted last week to cover the costs for the situation in Côte d'Ivoire, and for the 2gv for the permanent premises amounting in total €5.3 million. Therefore, the total 2012 proposed programme budget was €23 million.

9. However, the Court's proposed budget excludes a number of expenses that States Parties may have to face, such as the African Union Liaison Office, budgeted at €32,400 and replenishment of the Contingency Fund of €2.2 million which might bring it up to the minimum level of €7 million. So, in fact, the worst-case budget scenario was a total of €25.6 million.

10. The Committee has made recommendations of its seventeenth session, where the total impact of such recommendations was calculated by the Court and resulted in a total amount of adjustments of €5.6 million.

11. This recommendation is based on specific analysis by major programme and on general cross-cutting recommendations as follow:

12. Given the significant increase in the workload, the Committee recommended that the Internal Audit Office's 2012 proposed budget would be exempted from all cross-cutting recommendations.

13. The Committee observed that there was an overall proposed increase in staff costs of €2.96 million. The majority of this increase was due to increments on salaries and a portion was attributed to the decision of the Court to enhance the conditions of service for professional staff serving in the field. In this respect, the Committee recalled its concern about this decision without the prior approval of the Assembly. The Committee recommended that the increases of staff salary and enhanced conditions of service in the field be absorbed within each major programme. This would also apply to GTA staff. The Committee also reiterated its previous recommendation to the Court to enter into contact with the International Civil Service Commission to better explain how and on what terms the United Nations common system had been implemented in the Court.

14. The Committee noted the 19 per cent overall increase in travel for the Court. While some of this was clearly situation-related, the Committee observed that there was also a level of travel for routine or discretionary business. The Committee recommended that each major programme cut its travel budget by 10 per cent.

15. With regard to training, the Committee noted that in a number of cases the training appeared to be recurrent or routine. In order to promote greater prioritization, the Committee recommended that training be frozen at the 2011 approved budget level.

16. The Committee noted with concern the 74 per cent increase in the projected use of consultants, with large increases in almost all major programmes. While the use of consultants was certainly justified in some cases, the Committee was particularly concerned that excessive use of consultants could undermine budgetary discipline and relieve the Court of making best use of established and GTA staff. For that reason the Committee recommended that the budget for consultancy be reduced by 10 per cent.

17. The Committee reviewed a number of requests for increases for supplies and materials. However, in light of the large increases in the 2011 approved budget and the forecast implementation rate of 95 per cent for 2011, the Committee recommended that the level for supplies and materials be maintained at the 2011 approved budget level.

18. The Committee agreed with the Court that the vacancy rate should be maintained at 8 per cent for Major Programme II and at 10 per cent for all other major programmes. The Committee recommended that the vacancy rates also be applied to GTA staff at 8 per cent.

## 1. Libya

19. The Court had made a notification to access the Contingency Fund for the amount of €4 million in 2011 for the Libya referral. In the proposed regular budget the Court identified a need for €7.2 million to cover the Libya situation.

20. The Committee held in-depth discussions with the Court on the needs for the Libya situation. It was clear at the time of this session, there were still many uncertainties given the rapidly unfolding events and fluid situation on the ground, including the possible decision by the Libyan authorities to undertake domestic proceedings.

21. The Committee proposed that the Assembly take a step approach to the funding for Libya and present revised estimates before the Assembly.

22. The Court submitted revised estimates for Libya for a total amount of €6.4 million.

23. The OTP proposed to put into a trigger two scenarios of €2.1 and €1.2 million. After consideration of different elements, the Committee agreed with its approach.

24. With respect to Major Programme III, the Registry proposed to put into a trigger €265,000 and requested €1.6 million. The Committee noted that activity is expected only for half of the year and therefore a reduction of 50 per cent was recommended. The Committee recommended to put into the trigger an amount of €798,600, and recommended an amount of €798,600 for the budget.

25. The total amount for scenario 1 in the trigger represents €3 million, which if materialized should be funded by the Contingency Fund.

26. With respect to scenario 2 for an amount of €1.2 million, given the uncertainties, the Committee is of the view that it should be brought forward in the 2013 budget and absorb any requirements for 2012. Therefore, this represents an overall reduction on the regular budget of €4.1 million.

27. Regarding the proposed supplementary budget contained in document ICC-ASP/10/10/Add.2, the Committee considered the supplementary proposed budget for Cote d'Ivoire, and made recommendations by major programme.

28. As a coherence methodology with the rest of the budget, the Committee decided that cross-cutting measures should be applied in the case of consultants (10 per cent), travel (10 per cent), training (same level of 2011) and supplies and materials (same level as 2011). However, the Committee did not apply the 8 per cent vacancy rate on GTA but instead recommended deeper cuts for each major programme as well as similar approach for contractual services. In addition, the Committee recommended a 25 per cent reduction in general operating expenses.

## 2. Major Programme I

29. Regarding paragraph 16, there is a request of GTA for 36 months at the professional level and 24 months at the general service level. Given that after February resources that are currently being used for the Kenya situation should be able to be liberated and redeployed, the Committee was of the view that only 10 months of the requested resources would be required in order to ensure an expeditious process. It therefore recommended that a provision of €346,170 be approved with a total reduction of €69,000.

## 3. Major Programme II

30. With respect to Major Programme II, the Committee observed that in para. 24 there was a request for additional resources for the Investigation Division, representing one additional P-3 and two additional P-2 positions for a total amount of €202,700. The Committee noted that in paragraph 86(c) of the 2012 proposed programme budget document, “the Prosecutor is planning to absorb the additional resources required in the event that it is authorized by the Chambers to open an investigation into Côte d’Ivoire” and therefore this should be absorbed, representing a reduction of €202,700. Along with the cross-cutting recommendations on travel, consultants and contractual services, the Committee recommended an overall reduction of €233,150.

## 4. Major Programme III

31. Concerning paragraphs 35 and 36, the Committee has already made recommendations regarding the redeployment of staff from the field to headquarters in paragraphs 105 and 109 of its report and notes that these are the same resources contained in paragraphs 229 and 230 of the 2012 proposed programme budget document.

32. Furthermore, the justification provided in the proposed programme budget 2012 on why these positions are needed, did not convince the Committee. In conclusion, the Committee recommended that the requested professional and general services posts not be approved.

33. As for the GTA, Major Programme III requested a total amount of €440,400. The Committee recommended a 50 per cent reduction amounting to €220,200. The Committee has observed that similar requirements have been included in the 2012 proposed budget or are not directly related to the situation in Côte d’Ivoire, thus the Committee was of the opinion that the many of the requirements included in the supplementary budget could be met with the resources approved within the proposed budget.

34. As for the contractual services, an amount of €144,600 was requested. The Committee recommended 50 per cent reduction amounting to €72,300.

35. It was noted that the amount of €76,900 for Counsel for Victims is difficult to justify, taking into account the level of expenditure in the past, since the Court has never spent such a significant amount and the fact that the Court has stated that it would generally start with one victim legal team unless a demonstrated conflict appeared. Furthermore, the Committee noted that €5,500 was also requested for the OPCV for this situation. Therefore, we recommend a 50 per cent reduction amounting to €28,450.

36. The total reduction for Major Programme III would be €24,510.

## 5. 2gv

37. Regarding the 2gv costs presentation, the Committee noted with regret that the Court has not respected the 45 days period as stated by rule 3.4 of the Financial Regulations and Rules and we would expect this not to be repeated.

38. It was noted that the amount proposed for 2gv was €904,100 in the supplementary budget. After considering the information provided, where it was noted that the proposed budget was built in two parts: (1) GTA resources for an amount of €456,300 and part (2) with respect to contractual services representing an amount of €447,800.

39. The Committee noted that it is important to ensure that the process moves on expeditiously and it agreed with GTA resources requested.

40. Taking into consideration that some items included in the 2gv proposed budget, such as contractual services, could be adjusted to reach the initial total amount requested by the Oversight Committee of €847,000, the Committee recommended a round figure of €60,000 to be reduced.

## **6. Conclusion**

41. The total reduction amount for the whole supplementary proposed budget would amount to €1.3 million.

## **B. Other issues**

42. The Committee received the information on the selection process and tender procedure of the external auditor. According to its mandate, the Committee recommended to the Assembly the appointment of the proposed External Auditor and it confirmed that the procedure has been duly observed taking into account its previous recommendation on the importance of rotation of the External Auditor.

43. The Committee also noted with satisfaction the results of the consultations on interim premises whereby facilitators were able to lower the overall rent of the interim premises and clarify the responsibility for rehabilitation costs.

44. Before closing, I wish to offer my thanks on behalf of the Committee to the Court officials and all its staff with whom the Committee has worked this year. We appreciate the excellent dialogue we have had with the Court. I also wish to thank Mr. Renan Villacis and the staff of the Secretariat of Assembly who have worked very hard to service the Committee.

45. I wish to thank all my colleagues in the Committee on Budget and Finance for their valuable contribution to the Committee, and I would like to congratulate the incoming elected ones.

46. As this session would be my last one, I would like to express what a great honor was for me to serve on the Committee since its inception. I am particularly pleased to note that the Committee has become a valued part of the governance of the Court; where our dialogue with the Court is productive and based on trust; and the Assembly considers our advice carefully in making its decisions.

## Annex IV

### Statements by the President of the Assembly

#### A. Statement before the election of the Prosecutor<sup>1</sup>

Before we proceed, I would like to make a brief statement regarding the process leading to this point. In preparing for this election, the President and Bureau of the Assembly were, at all times, guided by paragraph 33 of resolution ICC-ASP/3/Res.6, which states that “every effort shall be made to elect the Prosecutor by consensus.” In order to facilitate the fulfilment of this paragraph, the Bureau, in December 2010 created the Search Committee for the position of Prosecutor of the International Criminal Court. The purpose of the Committee was to receive nominations and expression of interest and to actively seek out the most qualified candidates for the position of Prosecutor with a view to arriving at a shortlist of at least three names, where possible, and in doing so assist the Assembly in fulfilling its mandate to arrive at a consensual election.

I would hereby like to acknowledge the valuable work of the Search Committee. Its report, publicly available, was presented to States Parties in an open meeting of the Bureau on 25 October. It contained a shortlist of four individuals with outstanding qualifications. The candidates presented themselves to States Parties in the framework of the New York Working Group. As a result of subsequent consultations among States Parties, a broad agreement was reached that Ms. Fatou B. Bensouda should be nominated as the sole candidate for the position of Prosecutor. Ms. Bensouda was subsequently nominated by 76 States on 9 December 2011.

I would hereby like to thank the members of the Search Committee, regional focal points for consultations among States Parties and all States Parties that engaged in the search of consensus to fill this important position.

#### B. Statement about the first Prosecutor<sup>2</sup>

Allow me now to say a few words about the first Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, for whom this will have been his last session of the Assembly as he prepares to leave office next spring. When he was elected by States Parties to the Rome Statute in 2003, the Court was a very different institution. There was no building, only the barest skeleton staff. The Rome Statute was still a novel instrument, enjoying the support of only half the States Parties of today and facing active opposition from several major actors in international relations.

During his term of office to date, Prosecutor Ocampo significantly contributed to the establishment of the Court as the primary tool of the international community to investigate and prosecute the worst crimes under international law. Now, eight and a half years after he has taken office, his Office has become seized of cases in every way foreseen in the Rome Statute, including through the referral of States Parties, through a *proprio motu* and through a referral by the United Nations Security Council. It is especially noteworthy that the latest referral by the Security Council was done with the affirmative vote of all members of the Council.

The Prosecutor, more than any other single individual, sets the direction the Court will take. In deciding whether or not to open investigations, whether or not to seek indictments against certain people and how to proceed with trials, he invariably comes under tremendous political pressure from all sides. While it is natural that not everyone would agree with those decisions, I think it is clear that nobody would contest that they have been taken in an entirely independent manner, focusing on the facts and the law, and leaving political considerations aside.

<sup>1</sup> At the first meeting of the Assembly on 12 December 2011.

<sup>2</sup> At the ninth meeting of the Assembly on 21 December 2011.

I have been overwhelmed this week with the outpouring of support for Prosecutor Ocampo among States Parties. It is clear to me that his work is deeply appreciated among all those present in this room today. On behalf of all States Parties, I would like to wish him all the best of luck for his final months in office.

### **C. Closing statement<sup>3</sup>**

We have had a productive tenth session of the Assembly. Despite having to work on a compressed schedule due to the unexpectedly long elections, we have indeed elected six judges to the Court as well as six members to the Committee on Budget and Finance and, of course, we have elected a new Prosecutor. Working late into the nights and evenings, we were able to find agreement on an omnibus resolution and a budget, both of which have just been adopted by consensus. I am aware that the budget we have just adopted is not perfect and does not represent a best-case scenario for any of the stakeholders involved. I therefore thank States Parties for their flexibility in finding a consensus under these difficult conditions, and the Court for making painful cuts. I nevertheless think that the totality of our achievements is justifiable cause for a bit of pride among States Parties.

This Assembly has also given us cause for reflection in a number of areas. Most immediately, the conduct of business at the sessions of the Assembly warrants review. The correct balance must be struck between the time taken up by necessary elements and by substantive discussions, especially in view of constraints posed by the availability of interpretation.

The discussions these past few days have also demonstrated that the entirety of the budget process deserves very close scrutiny. There is no lack of ideas as to how this must be done and I will seek to use the next year to consult widely and transparently with all involved stakeholders, but most especially with States Parties, in order to present concrete proposals for adoption at the next session of the Assembly. I will begin these consultations, which I hope to conduct on both sides of the Atlantic, immediately upon the end of the winter holidays.

I was heartened to hear expressions of support for the Court from all States Parties who took the floor during the general debate. Indeed, even during the tough budget negotiations, both sides underscored their deep commitment to the work of the Court. Our challenge now is to operationalize this political support when the Court most needs it: in preventing non-cooperation and in defending it from those who unfairly criticize it.

The coming year also brings with it the opportunity to take forward work on complementarity. If we have learned anything from these budget discussions, it is that the Court is not in a position to rapidly expand its docket either by expanding prosecutions beyond those most responsible or by opening investigations in many more situations. Therefore, the only way to prevent the emergence of an impunity gap is to do more to enable States to prosecute the most serious crimes under international law within their national jurisdictions. The Assembly and its Secretariat have a role to play in furthering the cause of complementarity, and I hope that, after two successful retreats in Greentree and several informative side events at this Assembly, the next year will bring with it concrete first steps towards the implementation of the Kampala mandate. I have also been informed that the focal points also wish to convene discussions on this topic on both sides of the Atlantic.

I now want to thank the two Vice-Presidents elected at this Assembly, Ambassador Kenneth Kanda of Ghana and Ambassador Markus Börlin of Switzerland, who have provided me with invaluable support and advice. I would also like to thank the other members of the Bureau for all their help.

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<sup>3</sup> At the ninth meeting of the Assembly on 21 December 2011.

## Annex VI

### List of documents

ICC-ASP/10/1	Provisional agenda
ICC-ASP/10/1/Add.1	Annotated list of items included in the provisional agenda
ICC-ASP/10/2	Report of the Secretariat on complementarity
ICC-ASP/10/3	Report of the Court on the implementation of International Public Sector Accounting Standards
ICC-ASP/10/4	Report of the Court regarding the desirability of absolute thresholds for the purposes of indigence calculation
ICC-ASP/10/5	Report of the Committee on Budget and Finance on the work of its sixteenth session
ICC-ASP/10/6	Report of the Court on capital investment replacements
ICC-ASP/10/7	Report of the Court on the implementation and operation of the governance arrangements
ICC-ASP/10/8	Report on the relevant components of common costs calculation for the judges of the International Criminal Court
ICC-ASP/10/9	Report of the Court on human resources management
ICC-ASP/10/10	Proposed Programme Budget for 2012 of the International Criminal Court
ICC-ASP/10/10/Corr.1	Proposed Programme Budget for 2012 of the International Criminal Court - Corrigendum
ICC-ASP/10/10/Corr.2	Proposed Programme Budget for 2012 of the International Criminal Court - Corrigendum
ICC-ASP/10/10/Corr.3	Proposed Programme Budget for 2012 of the International Criminal Court - Corrigendum
ICC-ASP/10/10/Corr.4	Proposed Programme Budget for 2012 of the International Criminal Court - Corrigendum
ICC-ASP/10/10/Corr.5	Proposed Programme Budget for 2012 of the International Criminal Court - Corrigendum
ICC-ASP/10/10/Add.2	Proposed supplementary budget of the International Criminal Court for 2012
ICC-ASP/10/11	Report on budget performance of the International Criminal Court as at 30 June 2011
ICC-ASP/10/12	Financial statements for the period 1 January to 31 December 2010
ICC-ASP/10/13	Trust Fund for Victims. Financial statements for the period 1 January to 31 December 2010
ICC-ASP/10/14	Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2010 to 30 June 2011
ICC-ASP/10/15	Report of the Committee on Budget and Finance on the work of its seventeenth session
ICC-ASP/10/16	Report on programme performance of the International Criminal Court for the year 2010
ICC-ASP/10/17	Report of the Court on the applicability of the former pension regime to Judges Cotte and Nsereko
ICC-ASP/10/18	Fourth election of judges of the International Criminal Court
ICC-ASP/10/18/Add.1	Fourth election of judges of the International Criminal Court - Addendum
ICC-ASP/10/18/Add.2	Fourth election of judges of the International Criminal Court - Addendum - Withdrawal of candidature
ICC-ASP/10/19	Election of the judges for the International Criminal Court: guide for the fourth election
ICC-ASP/10/21	Election of members of the Committee on Budget and Finance
ICC-ASP/10/22	Report on the activities of the Oversight Committee
ICC-ASP/10/23	Report of the Court on complementarity
ICC-ASP/10/24	Report of the Bureau on complementarity
ICC-ASP/10/25	Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court

ICC-ASP/10/26	Report of the Court on the Field Operations Strategy
ICC-ASP/10/27	Report of the Bureau on the Independent Oversight Mechanism
ICC-ASP/10/28	Report of the Bureau on cooperation
ICC-ASP/10/29	Report of the Bureau on the strategic planning process of the International Criminal Court
ICC-ASP/10/30	Report of the Bureau on the Study Group on Governance
ICC-ASP/10/31	Report of the Bureau on victims and affected communities and Trust Fund for Victims
ICC-ASP/10/32	Report on the Working Group on Amendments
ICC-ASP/10/33	Letter of the Chair of the Working Group on Amendments to the President of the Assembly of States Parties, dated 9 December 2011 - Proposed amendment to rule 4 of the Rules of Procedure and Evidence
ICC-ASP/10/34	Report of the Bureau on the arrears of States Parties
ICC-ASP/10/35	Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court
ICC-ASP/10/36	Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court
ICC-ASP/10/37	Report of the Bureau on potential Assembly procedures relating to non-cooperation
ICC-ASP/10/38	Election of the Prosecutor of the International Criminal Court
ICC-ASP/10/38/Add.1	Election of the Prosecutor of the International Criminal Court - Addendum
ICC-ASP/10/39	Report on the activities of the Court
ICC-ASP/10/40	Report of the Court on cooperation
ICC-ASP/10/41	Report of the Court to the Bureau on the lease negotiations for the interim premises of the International Criminal Court
ICC-ASP/10/INF.2	Report of the Search Committee for the Position of the Prosecutor of the International Criminal Court
ICC-ASP/10/INF.2/Add.1	Report of the Search Committee for the Position of the Prosecutor of the International Criminal Court - Addendum - Alphabetical list of candidates
ICC-ASP/10/INF.3	Retreat on the Future of the International Criminal Court
ICC-ASP/10/INF.4	Study Group on Governance: Dialogue on institutional review of the governance framework of the Assembly of States Parties - Informal summary
ICC-ASP/10/L.1	Draft report of the Assembly of States Parties to the Rome Statute of the International Criminal Court
ICC-ASP/10/L.2	Draft report on the Credential Committee
ICC-ASP/10/L.3	Draft resolution. Strengthening the International Criminal Court and the Assembly of States Parties
ICC-ASP/10/L.4/Rev.4	Draft Resolution of the Assembly of States Parties on the proposed programme budget for 2012, the Working Capital Fund for 2012, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2012 and the Contingency Fund
ICC-ASP/10/L.5	Draft resolution on cooperation
ICC-ASP/10/L.6	Draft resolution on amendments to the rule 4 of the Rules of Procedure and Evidence
ICC-ASP/10/L.7	Draft resolution on reparations
ICC-ASP/10/L.8/Rev.1	Draft resolution on permanent premises
ICC-ASP/WGPB/CRP.1	Draft report of the Working Group on the 2012 proposed programme budget of the International Criminal Court