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Report of the Bureau on the Study Group on Governance

Note by the Secretariat

Pursuant to paragraphs 35, 37 and 38 of resolution ICC-ASP/10/Res.5, of 21 December 2011, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the Study Group on Governance. The present report reflects the outcome of the informal consultations held by the Study Group with the Court.

I. Introduction

1. The Study Group on Governance (the “Study Group”) was established via a resolution of the Assembly of the States Parties (the “Assembly”) in December 2010 (ICC-ASP/9/Res.2) “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 [...]”; and “to facilitate this dialogue with a view to identifying issues where further action is required, in consultation with the Court, and formulating recommendations to the Assembly through the Bureau”.

2. The Study Group, in 2011, dealt with the relationship between the Court and the Assembly, strengthening the institutional framework within the Court and increasing the efficiency of the criminal process.

3. In resolution ICC-ASP/10/Res.5, specifically in paragraphs 35 to 38 on Governance, the Assembly stressed the need to continue the dialogue mentioned above and the organs of the Court were invited to further engage in such a dialogue with States Parties. The resolution took note of the report of the Bureau on the Study Group on Governance and the recommendations contained therein.¹ The Bureau was requested to extend, for a period of one year, the mandate of the Study Group to continue to facilitate the dialogue. Finally, the initiative of the Court to consider streamlining the judicial process in collaboration with the States Parties was welcomed.

4. Furthermore, at its tenth session, the Assembly requested the Study Group, in consultation with The Hague Working Group, to engage with the Court and the Committee on Budget and Finance (“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.

5. In March 2012, The Hague Working Group agreed to extend the Chairmanship of the Study Group of Ambassador Pieter de Savornin Lohman (Netherlands). It was decided to organize the work in two clusters:

(a) Cluster I: Expediting the criminal process. Focal point: Mr. Kanbar Hossein Bor (United Kingdom); and

(b) Cluster II: Enhancing the transparency and predictability of the budgetary process. Focal point: Mr. Cary Scott-Kemmis (Australia).

6. The Study Group adopted a program of work in April 2012. Ten meetings were held since, as well as several informal meetings by the two focal points with States Parties and the organs of the Court.

7. In line with the request of the Assembly,² an interim report was adopted by The Hague Working Group on 1 August 2012, containing preliminary recommendations on the budgetary process.

8. This final report of the Study Group describes the activities of the Study Group in the past year and contains a number of recommendations regarding the continuation of its work and issues which have been identified as requiring further action or where further study is recommended within the two clusters.

II. Evaluation of the Study Group and the way ahead.

9. In the first year (2011) a broad range of activities had been undertaken in three different clusters, while in the second year (2012) the focus was on two important areas. On many occasions, States Parties as well as the Court (its organs) confirmed the importance they attach to this ongoing dialogue. It has also become clear that, to bear fruit, this has to

¹ ICC-ASP/10/30.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Tenth session, New York, 12 – 21 December 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.4, Section H, para. 1.

be an ongoing process. Therefore, it is deemed appropriate to extend further the mandate of the Study Group. The Study Group will also serve as the initial forum for States Parties to consider any amendment initiatives in the context of the draft roadmap for expediting the criminal process. Possible new issues can be taken up in 2013.

III. Cluster I

10. The meetings of the Study Group devoted to Cluster I always took place in the presence of representatives of the Court. There were also several informal meetings at which representatives of the Court were also present. Building on the work of the Study Group during the course of 2011, there was general agreement amongst both States and the Court that sufficient courtroom practice had developed for there to be a substantive review of the Court's criminal procedures, especially in the areas of pre-trial and trial, with a view to expediting the criminal procedures. It was recalled that "justice delayed was justice denied". There was agreement that any review of the criminal procedures should be undertaken in the spirit of collaboration between both the Court and States. Outlined below is a summary of the discussions that took place.

11. To begin with, it was agreed that the focus of any review should be the Rules of Procedure and Evidence ('RPE') of the Court. The Study Group had in the previous year already recommended that the Working Group on Amendments (Working Group on Amendments) consider one change to the RPE. It was noted that amendments to the Statute would take considerable more time to enter into force; therefore it was considered that amendments to the Statute did not constitute a feasible means, at this stage, to provide timely redress to any problems relating to the criminal procedures. It was also noted that any discussion on proposals to amend the Statute would need to be undertaken within the remit of the Working Group on Amendments. It was accepted that the Court's day-to-day expertise would provide the basis to commence discussions on recommendations to amend the RPE. It was also noted that States, as the custodians of the Rome Statute, had a privileged role, both directly and indirectly under article 51, in ensuring that any proposals were in accordance with the overarching strategic and policy considerations of the Rome Statute. In particular, States played a key role in ensuring that proposals could be implemented in a timely and effective manner.

12. As a first step, it was agreed that the Court would embark upon an exercise of prioritization to identify areas of importance warranting further consideration, with a view to recommending proposals. This exercise would identify the substance of any subsequent discussions on the process to undertake a review. Thereafter, the Court and States would consider next steps, in particular the drafting of a potential Roadmap to set out how any process of review would be undertaken.

13. Accordingly, on 21 August 2012, the Court completed this initial review and produced its report, "Lessons Learnt: First Report to the Assembly of States Parties" ("the report").³ The report identified nine areas of importance which would require further consideration. Furthermore, it also contained a Roadmap proposal.

14. Subsequently, discussions within the Study Group focused on revising and completing the draft Roadmap which would identify the process by which a review of the criminal procedures, using the report as a template, could be carried out. It was acknowledged that the current statutory and regulatory framework did not provide a sufficient interface to facilitate a structured dialogue between the key stakeholders within the Rome Statute system, in particular those who had the standing to put forward recommendations to amend the RPE. In the interests of ensuring that all relevant stakeholders within the Rome Statute system could participate in a review of the criminal procedures, it was considered appropriate to draft a Roadmap which would facilitate a structured dialogue aimed at consolidating ideas on amending the RPE. During the course of discussions, the Study Group considered that the Roadmap should be underpinned by a number of guiding principles, in particular:

³ ICC-ASP/11/31/Add.1.

- (a) Preserve the rights granted within the Rome Statute, in particular preserve the right to a fair trial;
- (b) Respect the independence of the Court;
- (c) Expedite the criminal process of the ICC; and
- (d) Preserve the delicate balance between the world's principal legal systems, as enshrined in the Rome Statute.

15. It was also noted that the Roadmap would be without prejudice to the statutory and regulatory framework of the Rome Statute, in particular article 51. This meant that States, judges or the Prosecutor could put forward proposals outside the auspices of the Roadmap if they so desired. Nevertheless it was accepted that all participants would be encouraged to engage in the Roadmap so as to avoid a disparate and unstructured approach to any proposals on amending the criminal procedures. Finally, the Study Group agreed that any process of review should not be driven by budgetary considerations; instead the driving factor would be to ensure that proceedings were being conducted fairly and expeditiously.

16. In conclusion, the Study Group agreed upon a Roadmap which provided for a process whereby the Court, using the Report as a basis, would put forward a number of proposals to States under the auspices of the Study Group with the intention of finalizing recommendations which would then be transmitted by the Study Group to the Working Group on Amendments for consideration at the twelfth session of the Assembly. The Roadmap also identified key guiding principles and objectives. Whilst it was accepted that the Court would provide the initial impetus with proposals to amend the RPE, it was also acknowledged that States could also put forward proposals of their own to amend the RPE which were separate and distinct from that of the Court. The Roadmap would provide the basis for both sets of proposals to benefit from mutual consideration and analysis, with the aim of putting forward a series of consolidated and effective recommendations.

17. It was understood that this process was likely to be long-term in outlook and initially the Roadmap would facilitate the transmission of priority recommendations to the Working Group on Amendments. There would be a review mechanism so that the implementation of the Roadmap could be reconsidered and if necessary amended for any review process post 2013.

IV. Cluster II: Enhancing the transparency and predictability of the budgetary process

18. The tenth session of the Assembly of States Parties (“the Assembly”) to the Rome Statute “request[ed] the Study Group on Governance (“the Study Group”), 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”.⁴

Programme of work and discussions

19. The Study Group adopted a programme of work in April 2012.⁵ The programme, guided by the objectives outlined in the relevant Assembly resolution, envisaged a focused discussion on each phase of the Court's budget process - from the point at which the organs of the Court agree upon a set of assumptions which will inform the following year's annual draft programme budget to the point at which the Assembly considers and decides upon the Court's budget. The primary goal of the Study Group was to gain a stronger appreciation and understanding of each phase in the preparation of the Court's draft programme budget.

20. Pursuant to the programme of work adopted, the Study Group held eight meetings under the Cluster. The Study Group heard presentations from the Court on the phases during which the assumptions, priorities and objectives are refined by the Court, costed and then integrated into the Court's proposed programme budget. The Study Group also held

⁴ *Official Records ... Tenth session... 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.4, Section H, para. 1 (emphasis added).

focused discussions with the Committee on Budget and Finance on the latter's work practices and interaction with the Assembly and on the phase where The Hague Working Group and the Assembly consider and decide upon the budget of the Court, guided by the recommendations of the Committee.

21. The Study Group also held focused discussions on a series of discrete items including the Contingency Fund; biennial budgets; and medium-term budget forecasting. The Study Group also heard updates from the Presidency on the process for the upcoming election of the Registrar. The Study Group collectively expressed deep appreciation to the Court for its strong engagement with the Study Group on this important subject throughout the year.

22. Based on the discussions throughout the year, the Study Group adopted a report (at annex II) which includes a detailed set of recommendations designed to improve the transparency, predictability and efficient conduct of the entire budget process and each phase therein.

V. Recommendations

23. The Study Group submits the following recommendations for the consideration of the Assembly:

(a) Extends for another year the mandate of the Study Group, provided in resolution ICC-ASP/9/Res.2 and extended in resolution ICC-ASP/10Res.5, and requests the Study Group to report back to its twelfth session.

(b) Endorses the proposed "Roadmap" which facilitates the establishment of a structured dialogue between all stakeholders within the Rome Statute system to consider proposals aimed at expediting the criminal process of the International Criminal Court.

(c) Endorses the recommendations contained in the report on the budget process designed to improve the transparency, predictability and efficient conduct of the entire budget process and each phase therein.

Annex I

Draft Roadmap on reviewing the criminal procedures of the International Criminal Court

States Parties and the Court have reached the following understanding regarding the roadmap:

A. Vision

1. Establish a consolidated process to engage in a structured dialogue between all stakeholders within the Rome Statute System to consider proposals aimed at expediting the criminal process of the International Criminal Court (“the Court”).

B. Guiding principles

2. The principles guiding any review of the Court’s criminal procedures should be to:
- (a) Preserve the rights granted within the Rome Statute, in particular the right to a fair trial;
 - (b) Respect the independence of the Court;
 - (c) Expedite the criminal process of the Court; and
 - (d) Preserve the delicate balance between the world’s principal legal systems, as enshrined in the Rome Statute.
3. This Roadmap is without prejudice to the statutory and regulatory framework of the Rome Statute, in particular article 51 of the Rome Statute.

C. Objectives

4. The objectives of this Roadmap will be to:
- (a) Focus on amendments concerning the Rules of Procedure and Evidence (‘RPE’) which relate to the areas of importance as identified in the report of the Court ‘Lessons Learnt: First Report to the Assembly of States Parties’ (‘The report’);
 - (b) Provide for a rigorous and thorough review of amendment proposals within a defined timescale; and
 - (c) Acknowledge that the Study Group on Governance is the initial forum to consider recommendations on proposals to amend the RPE and that thereafter any recommendations will be transmitted to the Working Group on Amendments for consideration.

D. Process

5. The Working Group on Lessons Learnt (WGLL), established in October 2012 by the Court, will consider recommendations on proposals to amend the RPE in the areas of importance identified in The Report. The WGLL will be open to all judges and will determine its own composition and working methods.
6. Recommendations on proposals to amend the RPE that receive the support of at least five judges will be transmitted to both the Study Group for consideration by the end of March 2013 and the Advisory Committee on Legal Text (‘ACLT’) for its consideration.
7. The Study Group should convey any views on the aforementioned recommendations or alternative recommendations on amending the RPE to the WGLL by the end of May

¹ ICC-ASP/11/31/Add.1.

2013. Thereafter, any recommendation to amend the RPE having the support of at least 5 judges will be transmitted to the ('ACLT') for consideration within 4 weeks.

8. The WGLL will send a second report on lessons learnt ('Second Report') to the Study Group by the end of August 2013 which may also include recommendations on proposals to amend the RPE. The Second Report will, to the extent possible, set out the budgetary implications, if any, of the implementation of any recommendations on proposals to amend the RPE. The Study Group may consider inviting the Committee on Budget and Finance, possibly on an intersessional basis, to comment on a timely basis on the budgetary implications of the implementation of any recommendations on proposals to amend the RPE.

9. The Study Group will consider the Second Report and any potential recommendations to amend the RPE. Should the Study Group decide to endorse any proposals they should be transmitted to the Working Group on Amendments for consideration at least 60 days prior to commencement of the twelfth session of the Assembly.

10. During the course of this process the Study Group will regularly update the Chair of the Working Group on Amendments on developments pertaining to the implementation of this Roadmap.

11. States and the Court will keep under review the effectiveness of the Roadmap.

E. Significant milestones

12. End of March 2013 – First transmission by WGLL of recommendations on proposals to amend the RPE to the Study Group;

13. End of May 2013 – Study Group to consider WGLL recommendations and transmit views or other recommendation to WGLL;

14. August 2013 – the WGLL to report back to the Study Group on any recommendations, including recommendation on proposals to amend the RPE;

15. Sixty days before the start of the twelfth session of the Assembly – Study Group to consider transmitting recommendations on proposals to amend the RPE Working Group on Amendments.

16. Twelfth session of the Assembly – Subject to deliberations by the Working Group on Amendments, the Assembly to consider adopting amendment proposals.

Annex II

Report of the Study Group on Governance (Cluster II, budget process)

1. The tenth session of the Assembly of States Parties (“the Assembly”) to the Rome Statute “request[ed] the Study Group on Governance (“the Study Group”), in consultation with the Hague Working Group, to engage with the Court and the Committee [on Budget and Finance], 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” (emphasis added).¹

2. The Study Group’s interim report containing preliminary recommendations was adopted by the Hague Working Group on 1 August 2012. This final report of the Study Group to the Assembly of States Parties contains: (i) an outline of the Study Group’s discussions on this matter; and (ii) a set of final recommendations by the Study Group on the budget process.

A. Programme of work

3. The Study Group adopted a programme of work in April 2012.² Based on this programme, the Study Group held focused discussions on each phase of the Court’s budget process - from the point at which the organs of the Court agree upon a set of assumptions which inform the draft programme budget to the point at which the Assembly considers and decides upon the Court’s budget.

4. The Study Group also considered a series of discrete items including (a) the Contingency Fund; (b) the budget cycle and biennial budgets; (c) the strategic planning and budget processes; and (d) medium-term budget forecasting. The Study Group also heard updates from the Presidency on the process for the upcoming election of the Registrar.

B. Discussion and recommendations

1. Engagement between the Court and the Assembly

5. The Study Group has held exchanges with the Court on the phases during which the assumptions of Court activity, priorities and objectives are refined by the Court, costed and then integrated into the Court’s draft programme budget. Given that the Assembly does not feature in the budget process until its final stages, **the Study Group agreed that an enhanced dialogue between States Parties and the Court on the assumptions, objectives and priorities which underpin the draft programme budget would be of benefit.**

6. It was agreed that the exchange could take place between States Parties and the Court once the Court had agreed upon the assumptions and other relevant parameters and indicators, both new and ongoing, which would impact upon the Court’s draft programme budget as cost drivers. The Court’s medium term judicial calendar (developed in paragraph 19) would serve as the centre-piece for dialogue. The purpose of the dialogue would be for the Court to outline to the Assembly, via The Hague Working Group, the agreed assumptions, objectives and priorities and their potential impact on the Court’s draft programme budget for the following year. The task of the Assembly would not, however, be to approve the Court’s assumptions but to improve States Parties’ awareness. The Study Group also suggested that this exchange could be an opportunity for a dialogue on the Court’s current medium-term budget forecast, discussion on which is developed at paragraphs 17 - 19 of this report, and other matters as appropriate.

¹ *Official Records ... Tenth session...2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.4, Section H, para 1.

² Concept paper, prepared by the focal point for Cluster II, Mr. Cary Scott-Kemmis (Australia), dated 5 April 2012.

7. The Study Group recognized the challenges faced by the Court in accurately forecasting, at an early stage in the previous year, assumptions of future activities which would, necessarily, inform the Court's draft programme budget. The Study Group emphasised the importance of ensuring that the assumptions underpinning the resources requested by the Court from the Assembly in the draft budget remain as accurate as possible.

8. The Study Group recognized the efforts of the Court to continuously review the operative assumptions and urged the Court to continue and enhance this practice in order to improve upon the accuracy of the assumptions. **The Study Group also urged the Court, in consultation with the Committee on Budget and Finance ("the Committee"), to maintain a dialogue on the budget timeline and the timing of the draft programme budget submission with a view to enhancing the accuracy of the assumptions and improving the process.**

9. The Study Group also welcomed the release of a yearly budget timeline³ setting out approximate key budgetary milestones, including the expected date for agreement on the assumptions, approval of budget data, Committee sessions and the date for submission of the draft programme budget. The Study Group, while recognizing that such timelines may be fluid, welcomed the Court's initiative to continue to make it available to States Parties on an annual basis.

2. The Assembly and the Committee on Budget and Finance

10. The Study Group held a dialogue with the Committee on the latter's work practices and its important interface with the Assembly and The Hague Working Group. The Study Group welcomed the Committee's efforts to identify "focal points" for particular budgetary issues amongst its members (including human resources and premises issues) in order to facilitate greater and more fruitful intersessional contact between the Assembly and the Committee. The Study Group welcomed also the Committee's development of a Policy and Procedure Manual⁴ capturing the work practices of the Committee, providing a useful snapshot of the Court's budget process, previous Committee recommendations and commentary on key budgetary policy issues.

11. The Study Group discussed the nature and frequency of the engagement between the Committee and the Assembly and its Working Groups and **agreed upon the value of an enhanced engagement between the Committee and the Assembly.**

12. The Study Group welcomed the provision, in advance, of the Committee's agenda for discussions in its April 2012 session. The Study Group agreed that a **dialogue between the Committee and The Hague Working Group with a view to further understanding the Committee's agenda prior to its sessions with the Court and an enhanced engagement between the Committee and the Assembly following the release of the Committee's reports** would be of value in the context of the Assembly's consideration of the Court's draft programme budget and other budgetary and financial matters and the recommendations of the Committee thereon.

13. The Study Group emphasized that such an exchange with the Committee must be cognisant of the independent nature of the Committee's evaluations and recommendations.

14. It was emphasized that there would be particular value in engagement with the Assembly and its Working Groups following the Committee's deliberations on the Court's draft programme budget, occurring during the Committee's session in the second semester of the year. The Study Group highlighted the technical and detailed nature of the Committee's reasoning and work and, in this regard, **emphasized the value of engaging with the Committee, following the release of its report on the Court's draft programme budget on the substance of the recommendations therein.** The Study Group agreed that such an exchange would allow the Committee to fully articulate the reasons and rationale behind the recommendations contained within the relevant report and to allow for a full and proper dialogue between States Parties and the Committee.

³ Report of the Court on its budgeting process (ICC-ASP/11/11).

⁴ Committee on Budget and Finance: Policy and Procedure Manual.

15. The Study Group took note of the creation of an Executive Secretary position (a P-5 position) to the Committee. The Study Group indicated that the position would enable the Committee to enhance its engagement, particularly its intercessional engagement, with both the Court and the Assembly. **The Study Group recognized that the Executive Secretary, who would be present during all the Committee's meetings with the Court, could also assist the Assembly to engage with the Committee's reports during the Assembly's consideration of the budget.**

16. The Study Group underlined its strong appreciation of the Committee's work. The Study Group noted the significant demands that the analysis of the Court's detailed and extensive programme budgets and other staffing, budgetary and financial issues places on the members of the Committee. The suggestion was also made by some participants in the Study Group that the Committee could consider, if appropriate, **shortening its first session in the year and expanding the length of time it spends in The Hague analysing the Court's draft programme budget in the latter part of the year. It was also suggested that The Hague Working Group facilitator for the budget could be present, as appropriate, during Committee sessions with the Court.**

17. The Study Group suggested that the **Committee could provide to the Assembly a set of reflections, in 2013, on the Committee's current structure, composition and practices.** The Study Group suggested that **the Committee may wish to give consideration to using its April session to consider issues of a strategic nature which are not necessarily connected to the following year's programme budget in order to facilitate an exchange between States Parties and the Court earlier in the year on these points.**

3. Medium term budget forecasting

18. The Study Group discussed the concept of medium-term budget forecasting. The Study Group underscored the importance of detailed budget forecasting as a tool to enhance the predictability of the Court's budget and to provide a strategic overview of known and potential cost drivers in future budget years. The Study Group took note of the Court's acknowledgement of the value in identifying and forecasting long-term cost implications.⁵

19. The difficulty in providing completely accurate medium-term forecasts was also recognized. However, **the value of providing estimates with a total estimated figure(s) for each year coupled with a narrative format for the estimate which includes as much specificity as possible about key cost drivers (including staff costs, premises costs and capital items) and their estimated budgetary impact was highlighted by the Study Group as an important planning tool for States Parties.**

20. Given the unpredictable nature of the Court's judicial activities, the utility of developing alternate budget forecasts, including with alternate figures, for known cost drivers (especially trials) and those that can be reasonably estimated was stressed. The value of providing the Committee an opportunity to comment on the forecast prior to inclusion in the Court's budget documentation was also emphasised. **The Study Group noted the value, in this regard, in developing a forward looking judicial calendar for the Court's ongoing trials.** The Study group outlined the **value of holding more detailed discussions on the Court's medium-term forecasts - in tandem with the dialogue between the Assembly and the Court on the Court's assumptions, objectives and priorities - earlier in the calendar year as expanded upon previously.**

4. Consideration of the draft programme budget by the Assembly

21. It was recognized by the Study Group that the Court often faced numerous queries from States Parties on the draft programme budget. Similar questions may have been previously posed in the context of the preceding Committee sessions, or in previous years. **There was agreement that a more efficient and streamlined process would be beneficial, including through strengthening links with the Committee as emphasized previously.** The Study Group took note of the Committee's advice that it was in the process

⁵ Report of the Court on its budgeting process (ICC-ASP/11/11).

of standardizing the process of its enquiries to the Court to ensure increased predictability and a better comparative perspective over time.

(a) **Developing defined procedures for budget queries**

22. In addition, the Study Group agreed that there is **value in developing defined procedures, potentially including templates, for queries from States to the Court and responses thereon.** In relation to detailed questions on the programme budget from States Parties, the Study Group suggested that **there was value in States Parties submitting, in writing, such questions to the Court rather than presenting them in an oral fashion. The written questions should also be conveyed to the Committee in order to provide it with the opportunity for comment, as appropriate. Court responses to such queries should also be conveyed in writing and provided to the Committee.**

23. Should queries be made by States Parties regarding the possibility of making additional savings, **detailed submissions should also be made to the Court by States Parties and should be conveyed to the Committee. Full consultation should occur with the current budget facilitator in advance of finalising and sending to the Court such queries. Upon receipt of the request, the Court should indicate the length of time that will be needed to respond, in writing, to the query. The Court's written response should provide: a narrative on how the suggestion for additional savings would impact upon the operations of the Court; the potential cost savings; and a relevant focal point within the Court for ongoing contact. The Court's written response should be conveyed also the Committee which could make comments on the response, as appropriate.**

(b) **Programme budget implication assessments**

24. The Study Group underlined the importance of assisting the Court in its endeavours to operate within a predictable budgetary framework. Accordingly, **the Study Group agreed that States Parties needed to be mindful of actions, including Assembly resolutions, which could place unforeseen demands on the Court's budget. In this regard it was agreed that lessons should be learnt from the practice of other organizations, in particular the United Nations.**

25. The Study Group agreed on the importance of the Assembly being cognisant of the Programme Budget Implications (PBIs) of potential decisions, including Assembly Resolutions. The Study Group agreed that, **where appropriate, a PBI assessment should be undertaken by the Court, in consultation with the relevant facilitator/focal point, on draft Assembly resolutions with a budgetary impact. The assessment should, in line with accepted practice, detail the administrative, financial and programmatic changes that the adoption of a draft resolution would entail. Once a PBI assessment is finalized it should be forwarded to the Committee, time permitting, for it to submit its comments, as appropriate, thereon.**

26. The Study Group discussed the manner in which The Hague Working Group and the Assembly of States Parties, aided by the recommendations of the Committee, considers and decides upon the Court's programme budget. The Study Group recognized the onerous nature of the task before the facilitator of the programme budget. The Study Group acknowledged that the manner by which budget discussions are structured in The Hague Working Group and the Assembly are, annually, a matter for the Assembly and its Working Groups. The Study Group stressed that future Assemblies and Working Groups may benefit from consideration of the following set of suggestions.

(c) **Format of budget discussions**

27. The Study Group emphasized that consideration of the Court's draft programme budget by the Assembly is rendered more streamlined and focused when a **thematic approach to deliberations is adopted.** Under this model the Committee's recommendations, rather than the Court's major programmes, serve as the core agenda items for consideration and decision. Additional agenda items and topics for consideration

may always be added to this core set of agenda items by The Hague Working Group or the Assembly.

28. The Study Group underscored the multi-faceted nature of the Assembly's consideration of the draft budget which requires careful assessment by the Assembly of a range of difficult budget and budget-policy related questions. The Study Group emphasized that **the Assembly should not micromanage the Court's budget nor should it attempt to duplicate the efforts of the Committee.** In this regard, it was highlighted that **the initial task before the budget Working Group is to identify a set of issues for discussion, including the amount of appropriation, utilizing the issues identified in the relevant Committee's reports as a starting point.**

29. Once such a set of issues is identified for discussion it may be of value in **planning ongoing meetings to develop clear agendas for each meeting, highlighting which issues will be discussed, well in advance.** It was underscored by many participants that consideration of the budget can be highly technical and that many delegations are unable to devote a large amount of time to its coverage, or sufficiently prepare for meetings, when it is uncertain precisely what items will be discussed at particular Working Group meetings.

30. It was also emphasized that members of the relevant Working Group may benefit from the **preparation and circulation of material including relevant background (including extracts from Committee reports) and, as appropriate, relevant discussion points on the topics upon which consideration and decision is required.** The need for increased support for the budget facilitator was emphasized in this regard. It was suggested that the **option of appointing co-facilitators or sub-facilitators for particular budget matters could be considered on an annual basis,** given the technical nature of the issues at hand and the often limited time between the release of the Committee's recommendations and the Assembly. The Study Group highlighted the **value of concluding budget discussions at an early juncture, if possible, allowing the Assembly room to focus on more strategic matters.**

31. In scrutinizing the Court's programme budget, the Study Group indicated that there would be **value in the Committee, in instances where the Committee was of the view that such an approach was feasible from a technical perspective, providing several savings options to areas of the Court's budget. The impact on the operations of the Court of the various options provided would be spelt out clearly by the Committee.**

32. The Study Group recognized the Court's adherence to the existing financial regulations and rules framework but recognized also the challenge faced by the Assembly when supplementary budget submissions were made by the Court at a late stage in the Assembly's deliberations on the draft budget. The Study Group noted that clarity was needed on the total requested figure (programme budget plus other liabilities) when supplementary budget requests were made. The Study Group also considered that **States Parties need to be transparently provided with an overview of possible liabilities arising from the Court's mandate and operations that are not ready to become budget assumptions, both in the case they might or might not result in a supplementary budget, or notification of access to the Contingency Fund. This register of possible liabilities should outline the nature of the potential liability, an estimation of the potential financial impact and the likelihood of the liability occurring.**

33. The Study Group recommended that **the Court consider expanding on the best practice employed in other contexts, including the Permanent Premises project, and develop and update regularly a register of reasonably foreseeable liabilities with the potential for a budgetary impact, including in relation to its judicial activities. The register would be made available to the Assembly.**

5. The Contingency Fund

34. The Study Group held an exchange with the Court on the current practice and procedure pertaining to the Contingency Fund. The Study Group highlighted the need to ensure an enhanced measure of financial and budgetary certainty relating to replenishment of the Fund by the Assembly. The Study Group took note of the Court's explanation that the extent to which the Court draws on the financial resources of the Contingency Fund is

not fully known until the Court's accounts are closed and that this occurs (approximately) six months after the programme budget is decided. The Study Group also took note of the Court's explanation that the Court will make use of underspend in the Court's programme budget, if applicable, before drawing on the Contingency Fund to finance its notifications.

35. The Study Group discussed two potential options to address the call for enhanced budgetary certainty for the Assembly pertaining to Contingency Fund replenishment. First, a cap⁶ could be placed by the Assembly on the amount of Contingency Fund replenishment at the time the budget is decided by the Assembly. Should total access to the Fund be less than anticipated, States Parties assessed contributions will be reduced accordingly. However, should access to the Fund be greater than forecasted by the Court at the Assembly there will be no subsequent post-Assembly increase in assessed contributions.

36. Second, the Study Group suggested that replenishment of the Contingency Fund could be deferred until the following year's programme budget in order to ensure certainty and accuracy in replenishment. The Study Group took note of the potential cash flow risks and that, if such an idea were to be advanced, amendments may be needed to relevant financial rules in order to expand the use of the Working Capital Fund. The Study Group agreed to refer the two options to the Committee with a view to receiving further advice on these, or any other, suggestions. The Study Group requested the Court to further develop in 2013 the guidelines, in consultation with the Committee, to specify clearly what items can and cannot be accessed through utilisation of the fund.

37. The Study Group took note of the Committee's previous recommendation that all Contingency Fund resource requests and comments of the Chairperson of the Committee thereon "would be distributed to the Assembly for consideration at its next meeting".⁷ The Study Group also recognized the need for maximum transparency and visibility in relation to notifications for potential access to the Contingency Fund, while being cognizant of the need to fully protect sensitive information, given the potential budgetary implications of such requests. The Study Group **endorsed the Committee's recommendation that resources which are sought for multiple years must be justified in full in the relevant draft programme budget of the Court. The Study Group agreed that the resource requests of the Court and the comments of the Chairperson should be distributed, via the Secretariat, to all States Parties at their time of submission.**

6. The budget cycle: annual and biennial options

38. The Study Group heard presentations from the Court and also from representatives from the International Criminal Tribunal for the former Yugoslavia on the advantages and disadvantages of the biennial budgets option. Advantages of biennial budgets included that less time was needed for budget preparation and approval. Disadvantages included that a higher degree of uncertainty would lead to less accurate assumptions, which could entail the need for a large Contingency Fund "buffer" and potentially even revised programme budgets.

39. The Study Group **requested the Court to prepare, as a medium term project, a discussion paper on the biennial budgets option articulating fully the implications, both positive and negative, on the option of transitioning from annual to biennial budgets. The Study Group urged the Court to draw also on the lessons learned by other organisations, including other international courts and tribunals.**

7. Review of existing programs and policies

40. The Study Group acknowledged the need to conduct regular reviews of the efficiency and effectiveness of existing policies, programs and structures. In this regard, the

⁶ It is intended that the quantum of replenishment would be the quantum required to 'replenish' the Contingency Fund to the applicable minimum threshold.

⁷ *Official Records ... Third Session... 2004* (ICC-ASP/3/25), part II.A.8 (b), para. 31.

Study Group welcomed the efforts of the Court to conduct a comprehensive review of the existing legal aid scheme and the Court's commitment to ongoing similar reviews.⁸

41. The Study Group recognized the need to avoid overlaps and integrate Court activities⁹ and **emphasized the value of regular and targeted reviews of Court policies, programs and administrative and legal framework, including those based on mandates provided by the Rome Statute and the Assembly of States Parties, with a view to re-evaluating their value and enhancing their efficiency.** The Study Group commended the Court's efforts to find efficiencies in existing programs and welcomed the Court's reporting on efficiency measures to the Assembly. **The Study Group urged the Court to continue to undertake efforts to find efficiencies in existing programs and to continue to report on its efforts to the Assembly and to the Committee.**

42. The Study Group noted that reviews could take advantage of the expertise available in-house (including the Office of Internal Audit and the Committee) or external consultancies, in instances where competencies did not exist within the Court. The Study Group indicated that the Assembly, its **Working Group and the Committee would benefit from regular updates and dialogue, prior to the commencement of and during, of such reviews.**

43. In this regard, the Study Group underscored the value in the proposal by the Court to engage an external consultant to work in consultation with the Court and to **provide a comprehensive structural review of the Court's staff profile and requirements.** The Study Group outlined the need for transparency and ongoing dialogue with the Committee and the Assembly on the review, including at an early stage and in relation to the applicable terms of reference for the consultancy.

44. The Study Group on Governance recognized the efforts of the Court to **trial zero-based budgeting in some sections in the Court, including those that provided services (including ICT).** The Study Group indicated an interest in **exploring the feasibility of employing such a budgeting approach across other sections of the Court, as appropriate, and indicated a desire for a dialogue to be maintained between the Court, the Committee and the Assembly in this regard with a view to improving the articulation of requests for resources.**

45. The Study Group **requested the Court continue work in the development of a Court capacity model,** as a medium-term project, including to demonstrate the Court's peak capacity, expressed in terms of judicial activity, for the Court's permanent premises. The Study Group also **endorsed the Court's ongoing work to better develop analytical accountability models in order to be able better capture and thus better forecast the costs of trials and other core Court activity.**

⁸ Draft International Criminal Court Strategic Plan 2013 – 2017, dated 19 September 2012, introduced orally by the Court at the sixth meeting of The Hague Working Group, on 20 September 2012.

⁹ Report of the Court on its budgeting process (ICC-ASP/11/11).