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Report of the Bureau on the Strategic planning process of the International Criminal Court

Note by the Secretariat

Pursuant to paragraphs 63 to 69 of resolution ICC-ASP/13/Res.5 of 17 December 2014, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the strategic planning process of the International Criminal Court. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

I. Introduction

1. The Assembly of States Parties (“the Assembly”), recalling its previous resolutions in this context,¹ early on expressed a strong interest in encouraging strategic planning as an integral part of setting-up and managing the Court’s multiple activities in implementing the Rome Statute.

2. At its thirteenth session, the Assembly, *inter alia*, took note of the Court’s revised Strategic Plan for 2013-2017, of the implementation of the new Strategic Plan of the Office of the Prosecutor for the year and noted that in 2015, the Office would produce a new strategic plan for the period 2016-2018, as well as reiterated the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process.² The Assembly also requested the Bureau to engage with the Court on risk management, a comprehensive risk-management strategy and on the development of the strategic approach to the Court’s presence in the field.

II. Follow up to the thirteenth session of the Assembly and strategic planning in 2014

3. On 18 February 2015, the Bureau appointed Ambassadors Jan Borkowski (Poland) and Eduardo Rodríguez Veltzé (Bolivia) to serve as co-facilitators for the issue of Strategic Planning. The facilitator held consultations with States Parties and the Court in the framework of The Hague Working Group of the Bureau (“the working group”) on 17 and 30 September 2015; these included the participation of representatives of the NGO community.

4. The following issues were discussed during the working group on the basis of presentations, documents and working papers submitted by the Court:

- (a) Interim update of the Court’s Strategic Plan 2013-2017;
- (b) Strategic Plan of the Office of the Prosecutor 2016-2018;
- (c) Update by the Secretariat of the Trust Fund for Victims on its strategic plan 2014-2017.

A. Update of the Court’s Strategic Plan 2013-2017

5. The working group received an update on the Court’s updated Strategic Plan 2013-2017, and was informed that the Plan had been used in the preparation of the 2016 proposed programme budget, which included references thereto throughout the document, including connections between the strategic objectives and the yearly targets.

6. The working group was informed that the Strategic Goals are deliberately expressed in high-level terms and aim to provide a broad policy framework for all aspects of the Court’s operations, and change infrequently. Under each of these, more detailed Priority Objectives are established looking two years ahead, together with a list of Expected Results for each of them. These are updated annually. In practice, the over-arching ICC Strategic Plan represents a common understanding between the organs on the Court’s overall objectives and priorities.

7. However, delivering results is managed and ultimately reported at the organ or sub-organ level; in addition, many important Priority Objectives or even Strategic Goals have a strong focus on some but not all Organs of the Court, requiring the definition of organ-specific targets. This is illustrated by the Strategic Plan of the Office of the Prosecutor 2016-2018 as well as other thematic strategic plans of the Court (see below).

¹ Resolutions ICC-ASP/4/Res.4, ICC-ASP/5/Res.2, ICC-ASP/6/Res.2, ICC-ASP/7/Res.3, ICC-ASP/8/Res.3, ICC-ASP/9/Res.3, ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8 and ICC-ASP/13/Res.5.

² Resolution ICC-ASP/12/Res.8.

8. Also mindful of the improvement projects ongoing in all major organs as well as the move to the Permanent Premises at year end, the Court therefore considered that a general reform of the Court's Strategic Plan should already be carried out in 2016. To this end, the present Court-wide Strategic Plan only represents an "interim update".³

As a next step, the Court informed the Working Group that it intends to reform the Court-wide Strategic Plan and create organ-specific strategic plans also for the Judiciary and Registry. The Court-wide strategic plan should be a high-level document, setting medium-term goals and shorter-term priority objectives for the whole institution.

The Court indicated that in terms of concrete next steps, a new Court-wide plan covering the three years from 2016 would be elaborated in early 2016, alongside Strategic Plans for each organ (noting that the Office of the Prosecutor and the Trust Fund for Victims are already operating their specific plans). The latter would also need an annual cycle of updating and reporting results. Progress would continue to be reported to States on an annual basis.

9. Some delegations expressed concerns on the Court's Updated Strategic Plan 2013-2017, in the sense that: (i) as cooperation is an obligation under the Rome Statute, it should not be a Strategic Goal of the Court (Goal 3); (ii) as the strengthening of national capacities is not a part of the Court's mandate under the Rome Statute, it should not be part of its Strategic Plan (Goal 3.6, Priority Objective 3.6.2 and its corresponding Expected Results). The Court explained that the Strategic Plan covers the Court's own duties to engage in information exchange, facilitate and streamline cooperation with States Parties and the Assembly, including a number of duties directly stipulated in the Rome Statute. As regards the encouragement and facilitating the development of national capacities (Goal 3.6), the Court clarified that this encompasses particularly assistance rendered to State Party initiatives upon their request such as, for example, specialized advice on cooperation matters at regional seminars or any other provision of specialized information destined at reinforcing national capacities, with no financial bearing for the Court.

10. States Parties welcomed the Court's intention to further improve the inclusion of its performance indicators in the Strategic Plan. States Parties reiterated the importance of the Court's efforts to ensure adequate interaction between the Court's Strategic Plan and those of its different organs.

B. Strategic Plan of the Office of the Prosecutor 2016-2018

11. The working group heard a presentation by the Office of the Prosecutor on its Strategic Plan 2016-2018,⁴ which had also been presented by the Prosecutor in the Hague Working Group on 8 July as well as the related Basic Size document, which was additionally the subject of discussions in the context of the Study Group on Governance, cluster II. In this context, the Office of the Prosecutor indicated that it had submitted its new Strategic Plan in order to receive input and support from States and other stakeholders, but that due to prosecutorial independence as enshrined in the Rome Statute, its plan was not subject to approval by the Assembly. Furthermore, the Office of the Prosecutor stated that it had received several comments from States and other stakeholders, and that after consideration by the Office, it would be issuing a revised version of its 2016-2018 Strategic Plan, which would reflect some of those comments. The Office would also communicate directly with all the stakeholders which had submitted comments on their individual input.

12. The Office of the Prosecutor indicated, *inter alia*, that the Strategic Plan (2016-2018) builds upon the 2012-2015 Strategic Plan. While maintaining the shift in investigative and prosecutorial policy, it aims to further develop the Office's improved performance and to adapt it to existing challenge. The Office also noted the key link with the Office's "Basic size" proposal.⁵ The Office further stressed the essential link between its Strategic Plan and the budget, as the Plan's objectives are aligned with the annual budget proposal, where both the qualitative and quantitative aspects of the work undertaken by the Office are set out.

³ See http://www.icc-cpi.int/iccdocs/registry/Strategic_Plan_2013-2017__update_Jul_2015.pdf.

⁴ ICC-ASP/14/....

⁵ ICC-ASP/14/....

The Strategic Plan, it was noted, also included 14 performance indicators with which to gauge the performance of the Office.

13. Reference was also made to the Goal nine of the 2016-2018 strategic plan, which aims at closing the impunity gap for ICC crimes.

14. Concerns were expressed by some delegations that the Strategic Plan should not make links between international crimes and other forms of criminality, bearing in mind that the OTP's authority under the Rome Statute is strictly limited to international crimes and links cannot serve as a vehicle to foster jurisdictional expansion. The Office clarified that its aim is to contribute to the strategic goal in question (strategic goal 9) acting strictly within its mandate and by engaging in further discussions with suitable partners on how better coordination between the respective mandates can be achieved. It added that the sharing of information, networks and evidence where appropriate and within the Office's mandate and means, will form part of this synergies exercise aimed at closing the impunity gap. The OTP further explained that the reality of the interconnected nature of transnational criminal activity and the commission of ICC crimes is one that is reflected in practice. Therefore, combining international and national efforts, with each entity acting within its respective mandate, towards the common objective of combatting criminality could only serve to strengthen remedial responses, avoid duplication and increase efficiencies.

15. As regards preliminary examinations, some delegations expressed concerns in the sense that: (i) the need for the OTP to avoid, while carrying out the deeper engagement during preliminary examinations foreseen in its current and previous strategic plans, de facto investigations; (ii) efficiency in the use of resources should be taken into account when deciding on continuing or closing a preliminary examination; (iii) the numeric approach contained in the OTP's Strategic Plan seems to focus more on the quantity of expected results rather than on pursuing the Court's results; and (iv) as the encouragement of national investigations and proceedings is not a part of the OTP's mandate under the Rome Statute, it should not be part of its Strategic Plan.

16. The Office of the Prosecutor explained that the legal basis upon which it carries out those examinations is article 15 of the Rome Statute, and thus falls within Office's prerogatives.⁶ Furthermore, the process is an evolving one which can take time depending on the individual circumstances of each situation. In particular, the complementarity assessment carried out as part of the preliminary examination process can, in certain situations, take time as it will need to evaluate any national proceedings dealing with the alleged crimes and give due deference to the pace of genuine national proceedings.. It further explained that the Preliminary examination process is clearly distinguished from the investigative process, since normal investigative activities cannot be conducted by the Office prior to the launching of an investigation. The Office is, however, mandated to request and collect information on crimes and to analyse the seriousness of the information received.

17. In response to a question the Office of the Prosecutor indicated that it was reticent to proceed with prosecutions of article 70 cases where the matter would appropriately be deferred to relevant national authorities for prosecution domestically, although the Office remained willing to prosecute such cases at the ICC in special circumstances where the criminality cannot be properly addressed at the national level.

18. Some delegations expressed additional concerns on the publicity of Preliminary Examinations in the sense that, given that according to the Regulations of the Office, publicity of a preliminary examination is a discretionary prerogative of the OTP, preliminary examinations should not be made public according to a rigid and sequential approach; on the contrary, the decision of publicity should follow due consideration of complementarity issues (holistic approach) as well as of the political, economic and international impact to the State under analysis and the possible impact on the integrity of ongoing national judicial proceedings and safety of witnesses.

⁶ Reference was also made to the Office of the Prosecutor's policy paper from 2011 and to the 2012 Regulations of the Office [regulations of the Office - ICC-BD/05-01-09 - date to 2009].

19. The Office of the Prosecutor recalled that it conducts preliminary examinations of situations, not countries. . It also explained its approach on publicity, which is outlined in its Policy Paper on Preliminary Examinations (November 2013).

20. To address some of the concerns expressed, the Office stated that it would explore how it may better clarify what the opening and closing of preliminary examinations entail, including its different phases in Office's public communications.

C. Update by the Secretariat of the Trust Fund for Victims' strategic plan 2014-2017

21. The working group received an update on the strategic plan 2014-2017 of the Trust Fund for Victims which had been adopted by the Board of Directors in 2014. In this connection, the working group was informed that, as reflected in its annual report, the Board had continued to exercise its two-fold mandate, that its role on reparations was one of its essential concerns. In light of the ReVision of the Trust Fund the Board held a session on 21 and 22 July 2015 and as an outcome thereof decided on the new structure of its Secretariat and the resources required to carry out its mandate. Accordingly, the TFV Board submitted a budget corrigendum for consideration of the Assembly via the twenty-fifth session of the Committee on Budget and Finance.⁷

D. Thematic strategic plans

22. The working group recalled the links between the Court's Strategic Plan and that of the Office of the Prosecutor, as well as other plans previously developed by different parts of the Court and the Trust Fund, such as the Revised strategy in relation to victims,⁸ the Strategic Plan for outreach,⁹ and the Strategic plan of the Information and Communications Technologies Section (ITC) 2013-2017,¹⁰ the Strategic plan of the Trust Fund for Victims 2014-2017¹¹ and a Strategic plan for the Defence which the Assembly had requested the Court to prepare.¹²

23. In this connection, given the intertwining nature of the overall Strategic Plan and the various thematic ones, the fact that the Office of the Prosecutor's Strategic Plan 2016-2018 was going to be updated in light of comments submitted by various stakeholders in the third trimester of 2015, that the full implications for the Court's organs resulting from the Registry's ReVision exercise, which had concluded in June 2015, had yet to be fully determined, the co-facilitators suggested that an update on the thematic strategic plans in the near future could be envisioned for States Parties to have a better understanding of the inter-linkages and their cohesive nature.

III. Day of International Criminal Justice

24. As regards the celebration of the Day of International Criminal Justice, the co-facilitators organized on 26 June 2015 a seminar entitled "*The criteria for opening preliminary examinations and investigations by the Office of the Prosecutor*" at the Embassy of Poland in The Hague. Participants in the seminar included the President of the Court, the Director of the Prosecutions Division of the Office of the Prosecutor, Judges of the Court, as well Diplomatic Corps and NGO.

25. The representative of the OTP explained the policy and activities of the Office with regard to preliminary examinations as one of the three core mandated activities of the Office under article 42 of the Rome Statute. The Office applies consistent and uniform criteria in its analysis, including on matters of jurisdiction, on admissibility (which comprises an assessment of complementarity related to existence and genuineness of

⁷ ICC-ASP/14/10/Add.1 and ICC/ASP/14/15.

⁸ ICC-ASP/12/41 and ICC-ASP/13/19, para. 233.

⁹ ICC-ASP/5/12.

¹⁰ ICC-ASP/13/19, para. 201.

¹¹ The Board of Directors of the Trust Fund approved its Strategic plan at the end of August 2014. The plan would be subject to mid-term review in the beginning of 2016.

¹² ICC-ASP/12/8, annex I, para. 6(e).

relevant national proceedings and of gravity) and on the interest of justice. There are no set timelines as each situation is unique and different phases of analysis may require different time periods, depending in particular on the factual and legal complexity of the crimes alleged as well as the progress of relevant national proceedings. Preliminary examinations can in some cases also encourage or lead to genuine national proceedings as an indirect consequence of the OTP's activity, and thus contribute to the common aim of ending of impunity, strengthening of the Rome Statute system as a whole and increasing the efficiency of the OTP's impact and role.

26. During the Seminar, some participants voiced support for the interplay between the undertaking of genuine national proceedings and preliminary examinations in the sense that a proper system of preliminary examinations leads to a better and informed use of national proceedings, and emphasized the deterring effect of the activities of ad hoc tribunals. Other participants voiced concerns regarding: (i) the lack of mandate of the ICC under the Rome Statute to encourage strengthening of national capacities; (ii) the discretionary character of the publicity of preliminary examinations and the importance of maintaining preliminary examinations confidential at least until issues of admissibility have been duly considered (holistic approach); (iii) the importance of considering efficiency in the use of resources when deciding to open or close a preliminary examination; and (iv) the necessity to establish a timetable for opening, duration and closing of preliminary examinations.

27. This event sought to encourage all relevant stakeholders to engage in activities that reinforce the international fight against impunity.¹³ Furthermore, building on the initiative launched in 2014, the Court and the President of the Assembly of States Parties continued with the Justice Matters social media campaign which garnered large support worldwide. States representatives, civil society organizations, legal professionals and scholars, children, youth and elders all over the world sent the strong message that, justice matters.¹⁴

IV. Recommendations

28. On the basis of the work conducted on strategic planning, The Hague Working Group recommends to the Assembly of States Parties the inclusion in the omnibus resolution of the language contained in annex I.

29. In this connection, the working group recalled its prior recommendations on the Strategic Planning process¹⁵ and welcomed that the Court had committed itself to engage annually in a review of the link between the Plan and the budget through planned performance measurement.

30. Furthermore, the working group welcomed the events organized around the 17 July commemoration and encouraged that similar events be undertaken by all stakeholders on an annual basis, including via cooperation with other international courts and tribunals as appropriate.

¹³See <http://...>

¹⁴<https://...>

¹⁵ ICC-ASP/13/27, paragraphs ... to ... , as well as the omnibus resolution paragraphs 63 to 69 and paragraph 9 of its annex.

Annex

Draft paragraphs for inclusion in the omnibus resolution

1. *Notes* that the Court's Strategic Plan, that of the Office of the Prosecutor and other strategic plans are reviewed and updated on a regular basis and *welcomes* that, also in light of organ-specific improvement projects and the move to the Permanent Premises, a new system of a Court-wide Strategic Plan alongside organ-specific plans will be elaborated in 2016;
2. *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 Outreach¹ in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;
3. *Recalls* that the issues of public information and communication about the Court and its activities constitute a shared responsibility of the Court and States Parties, while acknowledging the significant contribution of other stakeholders to developing a coordinated and comprehensive approach, *requests* the Court that its communication strategy be consistently and efficiently implemented in line with the respective mandates and responsibilities within the Court;
4. *Welcomes* the initiatives undertaken to celebrate 17 July as Day of International Criminal Justice² and *recommends* that, on the basis of lessons learned, all relevant stakeholders, together with the Court, continue to engage in preparation of the annual celebrations with a view to reinforcing the international fight against impunity;
5. *Takes note of* the Court's interim update of its Strategic Plan for 2013-2017, and *welcomes* the Court's intention to continue to adapt its Plan, as appropriate, on an annual basis, including for the purpose of the formulation of the budget assumptions and to inform the Bureau thereon with a view to further strengthening the budgetary process;
6. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester, on the implementation of its strategic plans during the previous calendar year, with a view to improving performance indicators updated on the basis of lessons learned;
7. *Takes note of* the presentation by the Office of the Prosecutor of its Strategic Plan for 2016-2018 and *invites the* Office of the Prosecutor to inform the Bureau on its implementation;
8. *Notes* the conclusion of the *ReVision* process which has led to a significant reorganization of the Registry's structure, processes and working methods, and *looks forward* to being duly informed about the impact ensuing from the new structure, both in terms of its capacity to absorb increases in the workload and tangible efficiencies attained.
9. *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;
10. *Requests* the Bureau to continue to engage in a dialogue with the Court on the development of a comprehensive risk management strategy and to report thereon to the fifteenth session of the Assembly of States Parties, and *further requests* the Bureau to continue to engage in dialogue with the Court on the implementation of the strategic approach to the Court's presence in the field with a view to the development of the Court strategy on field operations and to report thereon on a regular basis.

¹ ICC-ASP/5/12.

² Kampala Declaration, para. 12.