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Assembly of States Parties

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Report of the Court on solutions for the funding of long-term capital replacements at its headquarters in The Hague[*]

Executive Summary

1. At the sixteenth session of the Assembly of States Parties,[1] the Court was asked to present, via the Committee on Budget and Finance, different options for funding long-term maintenance and replacement based on the experience of other international organizations. This report provides details of the methods used by three international organizations that fund their own capital replacement needs. While the Court will continue, through its network of facilities managers, to consult on funding mechanisms, it recommends that a capital replacement fund be set up based on a rolling five-year forecast and separate to its planned programme budget.

2. At its twenty-ninth session,[2] the Committee requested the Court to consult with the incoming main contractor for a second opinion on the containment of capital replacement costs at the Court's premises at The Hague. The Court expects the contract to be finalized by 1 September 2018, thus providing for a mobilization phase during the last quarter of 2018. The current arrangement will be extended to 31 December 2018 when the maintenance services provided by Courtys will end. The new contractor will be present on the premises for its "warm-up" during the last quarter of 2018 before performance of the contract formally commences on 1 January 2019, after which time they will provide the second opinion.

3. At its twenty-ninth session, the Committee also asked to be provided with the terms of reference and key performance indicators for the new maintenance contract.[3] These will be made available after the start of the new contract on 1 January 2019.

[*] Previously issued as CBF/31/2.
[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixteenth session, New York, 4-14 December 2017* (ICC-ASP/16/20), vol. I, part III, ICC-ASP/16/Res.1, part G, para. 4.
[2] Ibid., para. 3; ICC-ASP/16/15, para. 235.
[3] ICC-ASP/16/15, para. 225.

I. Introduction

1. This report has been prepared in response to the request of the Assembly of States Parties ("the Assembly") at its sixteenth session,[4] and the Committee on Budget and Finance ("the Committee") at its thirtieth session[5], that the International Criminal Court ("the Court") report on solutions used by other international organizations for the funding of long-term capital replacements.

2. The report also responds to the Committee's request, at its twenty-ninth session,[6] that, as the first expenses for capital replacements at the Court's premises are to occur only in 2020, the Court should further refine the cost estimates and explore opportunities for containing costs. In particular, the Committee recommended that the Court seek a second opinion from the incoming main contractor.

3. In its report to the thirtieth session of the Committee,[7] the Court indicated (i) that the terms of reference and key performance indicators of the new maintenance contract would be provided once the contract was in place and (ii) that the arrangement with Courtys was to be extended to 31 August 2018. This report seeks to update the Committee on those indications.

II. Solutions used by other international organizations for funding long-term capital replacements

1. At the sixteenth session of the Assembly, the Court was asked to present, via the Committee, and ahead of the Assembly's seventeenth session, a report on different options for funding long-term maintenance and replacement based on the experience of other international organizations. Most international organizations do not own their premises, which are often provided by the host country. Some of those that own their buildings or are responsible for funding capital replacements make medium to long-term provision for capital replacement works. The following examples illustrate how some organizations plan, manage and finance their capital replacements.

A. Vienna International Centre (VIC)

2. The Vienna International Centre hosts several organizations. Four of these, represented by UNIDO, share the building's management-related costs. The building comprises a total of 230,000 m².

3. The VIC is owned by the host country (Austria). Capital replacements are funded through the Major Repair and Replacement Fund (MRRF) managed by UNIDO. Contributions are made annually from the regular budgets of the Vienna-based organizations (50 per cent) and by the host country government (50 per cent). Total annual contributions to the fund currently amount to 4.6 million euros. The contributions allow the fund to be built up to meet expected capital replacement expenses, including spikes in expenditure anticipated in future years. A rolling five-year-plan is prepared by UNIDO and presented annually to the other international organizations, in consultation with the host country government. Expenditure is recorded in UNIDO's annual accounts.

B. Organization for Economic Cooperation and Development (OECD)

4. The OECD is headquartered in Paris and has recently built a conference centre. The OECD strategy for capital replacements divides the building components into three categories, namely:

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[4] *Official Records … Sixteenth session … 2017*, (ICC-ASP/16/20), vol. I, part III, ICC-ASP/16/Res.1, part G, para. 4.
[5] ICC-ASP/17/5, para. 84.
[6] *Official Records … Sixteenth session … 2017*, (ICC-ASP/16/20), vol. I, part III, ICC-ASP/16/Res.1, part G, para. 3; ICC-ASP/16/15, para 235, ICC-ASP/17/5, para. 83.
[7] CBF/30/3, Report of the Court on the development of medium-term and long-term cost projections for capital replacements and the inclusion of performance indicators in the new maintenance contract.

(a) Class 1: Short- and medium-term capital replacements of elements with a useful life of less than ten years;

(b) Class 2: Long-term capital replacements of building infrastructure with a useful life of between ten and twenty years; and

(c) Class 3: Long-term capital replacements of building infrastructure with a useful life of more than twenty years.

5. A Capital Investment Budget and Reserve Fund has been created for capital replacements of building elements classes 1 and 2. Class 3 capital replacements, being very long-term, are not included in this fund. Regular assessments are, however, carried out to determine if and when the fund should be expanded to finance them.

6. Initial funding comes from the transfer of the balance of existing reserves of surplus funds. The balance required for future replacements comes from: (i) an annual transfer of a fixed amount from within the normal budget (1.9 million euros); (ii) annual revenues derived from rental of the conference centre to external entities; and (iii) interest income on the fund.

7. The OECD's capital replacement plan acknowledges that full funding of all Class 3 building elements is not achievable out of planned resources. An additional 3.8 million euros of annual funding would be required to cover the cost of replacing this class of assets. Typically, eventual replacement would be covered by financing arrangements to be identified closer to the time when they would be needed.

C. World Intellectual Property Organization (WIPO)

8. WIPO is located in Geneva and has recently moved into owner-occupied headquarters. The organization has established a Capital Master Plan (CMP) to cover capital replacements and investments.

9. The CMP provides the basis for a comprehensive rolling six-year plan covering the organization's capital expenditure needs with assigned priorities and resource estimates for one-time investment costs as well as the operating/recurring cost implications. The CMP will be reviewed and updated as necessary in order to ensure that it remains relevant and accurate as a planning tool.

10. WIPO splits its capital replacements projects into three categories:

(a) Priority A: Projects in this category will require immediate and urgent implementation, either due to their strategic importance for the organization or as a result of the high risk they represent for maintaining operations, security and the health and/or safety of staff and properties;

(b) Priority B: Implementation of projects in this category will be relatively important as they may relate to efficiency issues, environmental concerns, and/or generate cost efficiency gains. If not implemented, they represent a medium to high risk to security, health and/or safety. Increased costs may be incurred if works are deferred; and

(c) Priority C: Projects in this category will be those which represent a low risk to security, health and/or safety if not implemented. They may involve the introduction of technology that will increase cost efficiency over the long term.

11. WIPO is an income-generating organization that accumulates significant financial reserves. Projects included in the CMP are proposed for funding from available reserves. The original six-year forecast from 2014 to 2019 estimated the costs for capital replacements in ICT infrastructure, buildings projects and security systems at 43.2 million Swiss Francs (€50.1 million). Priority A projects are expected to consume 11.2 million Swiss Francs (€13 million) and will be funded from existing reserves.

III. Future Cooperation with other International Organizations

1. This matter was discussed at the last conference of the Inter-Agency Network of Facilities Managers. Participants agreed that the network would continue, at future

meetings and as part of its work programme, to share information on capital replacement funding mechanisms. The Court will continue to update the Committee at its future sessions on best practices of other international organizations in this regard.

IV. Recommendation on the preferred funding option for capital replacements

1. It is the practice of international organizations that own their own premises to have both a long-term plan and rolling five-year plans to estimate medium-term capital replacement costs. The related expenditure is financed through fund accounts that are in turn financed through State contributions (except in the case of WIPO that can use funds from its income-generating activities).

2. The Court's preferred option is to establish a fund to cater for programmed building-related capital expenditure for incorporation into a long-term plan. The Court would periodically present a five-year expenditure plan along with a view of longer-term expectations. This would allow annual contributions to the fund to be adjusted in line with expected costs and with the agreement of the States Parties.

V. Monitoring the costs of capital replacements

1. At its twenty-ninth session, the Committee requested that, as the first expenses for capital replacements at the Court's premises would occur only in 2020, the Court should further refine the cost estimates and explore opportunities for containing costs. In particular, the Committee recommended that the Court seek a second opinion from the incoming main contractor, bearing in mind the following factors: (i) urgency of replacements, taking into account actual usage; (ii) value for money, in particular whether alternative product brands offer better value for money in terms of reliability, durability, ease of repair etc.; (iii) pricing assumptions with surveys of most recent market trends; (iv) opportunities from (joint) procurement; and (v) lessons learned, for instance, from other institutions based in The Hague.

2. The Court reported to the Committee at its thirtieth session[8] that the main contractor would start on 1 September 2018. However, to ensure that maintenance costs remained within the budget appropriation for the year, the Court has extended the maintenance contract with Courtys to the end of 2018. The commencement date of the new contract has been put back to 1 January 2019. The Court will thus be able to provide the answers to the Committee's questions on containing the costs of capital replacements through a second opinion of the incoming main contractor after the formal commencement date of the new contract.

VI. Terms of Reference and Key Performance Indicators of the New Maintenance Contract

1. In its report to the thirtieth session of the Committee, the Court indicated (i) that the terms of reference and key performance indicators of the new maintenance contract would be provided once the contract was in place and (ii) that the arrangement with Courtys was to be extended to 31 August 2018.

2. Considering that the new contract start date is now to be 1 January 2019, the terms of reference and the key performance indicators will be shared with the Committee after that date.

[8] CBF/30/03.