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Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises

1. This report is submitted by the facilitator for the budget, Ambassador Jens-Otto Horslund (Denmark), pursuant to the mandate given by the Bureau to the focal points for the sub-topics of budget management oversight and premises (Ambassador Eduardo Rodríguez Veltzé (Bolivia), and Ambassador Willys Delvalle (Panama), respectively) within The Hague Working Group facilitation for the budget.¹
2. The focal points have prepared reports on their activities during 2018. These reports appear as annex I and annex II to this report.

¹ Bureau decision of 4 March 2018.

Annex I

Report of the focal point for the topic of Budget Management Oversight

A. Introduction

1. The mandate for budget management oversight is derived from the budget resolution adopted at the sixteenth session of the Assembly of States Parties.¹ In that resolution the Assembly noted the status of the Court's strategic planning processes, reiterated the importance of strengthening the relationship between the strategic planning process and the budgetary process, and recalled previous invitations for dialogue between the Assembly and the Court on strategic planning, including risk management. Reference was also made to the various oversight bodies of the Court, namely the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit. Finally, the Assembly recommended that these bodies "expand their coordination in order to improve the timely exchange of information and report results amongst them, the organs of the Court, the Bureau and the Assembly, to optimize their oversight capacities".²

2. On 20 December 2017 the Bureau approved the allocation of budget management oversight to The Hague Working Group as a sub-topic of the budget facilitation. On 4 March 2018, the Bureau re-appointed Ambassador Eduardo Rodríguez (Bolivia) as focal point for the topic of budget management oversight.

3. The focal point's objectives for 2018 were to undertake consultations with the Court and the oversight bodies on relevant matters, and to convene informal meetings to brief States Parties on developments.

B. Meetings and discussions

4. Four meetings were held on the topic of budget management oversight in 2018, on 1 June, 31 July, 23 October and 16 November. In addition, the focal point held informal meetings with representatives of the Court and the various subsidiary bodies of the Assembly responsible for different aspects of budget management oversight.

5. The meetings provided an opportunity for the focal point to update States Parties on relevant developments and for the working group to hear from several oversight bodies regarding their work and efforts to coordinate.

1. Audit matters

6. During its meetings, the working group considered the audit reports prepared by the External Auditor of the Court, the *Cour des comptes*. At the meeting on 1 June 2018, a representative of the External Auditor, Mr. Michel Camoin, briefed States Parties on the audit activities carried out in 2018. He noted that the audits of the 2017 financial statements of the Court³ and the Trust Fund for Victims⁴ had resulted in an unqualified opinion, in line with the applicable international public sector standards. At the meeting on 31 July 2018, a representative of the External Auditor, Mr. Guy Piole, briefed the working group on the final audit report on Human Resources management.⁵ That report gave a comprehensive view of the workforce at the Court, covering all existing contract modalities (established posts, short term appointments, general temporary assistance, etc). The report touched on topics such as gender balance, geographical representation, recruitment procedure, and the general atmosphere at the Court. The focal point drew States Parties' attention to several

¹ ICC-ASP/16/Res.1, Section J.

² *Ibid.*, para. 8.

³ ICC-ASP/17/12.

⁴ ICC-ASP/17/13.

⁵ ICC-ASP/17/7.

recommendations in the report which were of relevance to the topic of budget management oversight.⁶

7. Regarding the process of interaction between the External Auditor and other oversight bodies, specifically concerning the selection of audit topics, the representatives of the External Auditor clarified that its main interlocutors were the Audit Committee and the Committee on Budget and Finance, and that the process for determining the topics was rather informal. In this context the focal point stressed that the Assembly was in a position to suggest themes to be addressed in future performance audits. In its report on the work of its thirty-first session, the Committee on Budget and Finance noted that the Audit Committee supported the External Auditor's intention to focus its 2019 performance audit on the budget process.⁷

8. At the meeting on 31 October 2018 States expressed their appreciation for the work of the External Auditor, including the final audit report on Human Resources management. States supported the recommendations of the Committee on Budget and Finance that the Assembly approve the financial statements of the Court and the Trust Fund for Victims for the year 2017. In particular, support was expressed for the recommendations contained in paragraphs 240 and 244 of the report of the Committee on Budget and Finance on the work of its thirty-first session.

Appointment of a new External Auditor

9. It was recalled at the meeting on 31 October 2018 that the term of the External Auditor, the *Cour des comptes*, would end with the financial statements of the Court and the Trust Fund for Victims for 2019, and that a detailed selection procedure for procurement of an External Auditor was being undertaken in time for the eighteenth session of the Assembly of States Parties. The Executive Secretary to the Committee on Budget and Finance provided an update on the selection procedure, noting that the process had been initiated at the beginning of 2018. The first stage was a request for Expressions of Interest which was sent by the Court's Procurement Unit to all States Parties on 3 August 2018. In addition, a number of companies from a previously approved list had also been invited to express their interest. The next stage was a Request for Proposals, which would have a deadline in early 2019. At that stage the Audit Committee, together with the Vice-President in The Hague, would compose a selection panel. A recommendation would then be conveyed to the Assembly ahead of its eighteenth session.

2. Oversight bodies

10. At the meeting on 31 July 2018, as a continuation of the overview exercise of the different bodies assisting the Assembly with its oversight functions, the Chair of the Audit Committee and the Director of the Office of Internal Audit made presentations on their respective work.

11. The Chair of the Audit Committee, Mr. Samir Abu Lughod, noted that the Audit Committee had continued its close interaction with other oversight bodies and the Court, by receiving information and by having in-session discussions with the representatives of the External Auditor on external audit matters and the Office of Internal Audit on internal audit matters, as well as with the Independent Oversight Mechanism (IOM). The Chair of the Audit Committee indicated that the Committee on Budget and Finance and the Audit Committee continued to share information and keep each other updated on relevant issues. He further noted that having two members of the Committee on Budget and Finance represented in the Audit Committee, and a common Executive Secretary for both Committees, contributed to an optimum flow of information in addition to avoiding duplication of work. The Chair of the Audit Committee underlined that despite its short

⁶ Recommendation 1 regarding the inclusion of additional measures aimed at increasing the representation of female staff, particularly at more senior levels; Recommendation 2 regarding the application of one set of human resources policies by the different organs of the Court; Recommendation 6 concerning the establishment of either an incompatibility between belonging to the staff and running for elected functions, or strict conditions to avoid conflict of interest in such situations; Recommendation 8 on establishing an Ombudsman function; and Recommendation 9 on developing and publishing an ethics charter.

⁷ ICC-ASP/17/15, para. 235.

period of existence, the Audit Committee had acted as a catalyst in triggering important improvements and had found a complementary position in the oversight architecture of the Court. In response to a question regarding the differences between the Audit Committee and the Office of Internal Audit, a member of the Audit Committee noted that the Office of Internal Audit was an internal body, and therefore part of the organization itself, while the Audit Committee was composed of independent experts elected to oversee the performance of audits. The mandate of the Audit Committee also encompassed topics such as risk management, values and ethics, and transparency and accountability.

12. The Chair of the Audit Committee advised that at its seventh session in March 2018, the Audit Committee had welcomed the progress made by the Court in the field of risk management, in particular the full operationalization of the Risk Management Committee and the organization of training sessions for risk owners. He noted that the Audit Committee had recommended that the Court, in close cooperation with the Office of Internal Audit, continue to address the un-implemented internal audit recommendations.

13. The Chair of the Audit Committee emphasized the need for substantive progress in the field of values and ethics. In this regard, he noted the Audit Committee had requested in April 2017 that the Court, using in-house capacity, submit a revised values and ethics framework based on the Court's values and general code of conduct applicable for all staff members and setting out the professional conduct expected in the performance of specific activities. The Chair of the Audit Committee concluded by stating that several recommendations of the Audit Committee in relation to the governance structure were still outstanding, such as the inclusion within the Court's priorities of the preparation of an organizational manual, which is common in most international organizations, for better cooperation, understanding and clarity regarding the different responsibilities of sections and units.

14. The Director of the Office of Internal Audit explained that the Office conducted evaluations of the effectiveness and the efficiency of governance, risk management and internal control processes, and the identification of areas of improvement. The Office also conducted assessments on request of management covering a wide range of topics from organization, strategies and policies to operations and systems expenses. The internal auditors undertook their work independently and objectively and reported functionally to the Audit Committee and administratively to the Registry. The Director also indicated that the Office independently develops an annual work plan outlining areas where risks may potentially prevent the achievement of the Court's objectives, and catalogues them, together with inputs from senior management and the governing bodies, in the Court's Risk Register. The Office took into account the work plan of the External Auditor in order to avoid duplication of work. The Office issued recommendations for the management of the Court to improve the issues identified during audits on organization, governance and processes. The managers of the Court were the "owners" of the recommendations and were in charge of implementing them. The Office then followed up on the implementation of recommendations once or twice a year.

C. Recommendations

15. The focal point, through the Bureau, submits the proposed language contained in the appendix to this report for the consideration of the Assembly.

Appendix

Proposed resolution language for 2018

To be inserted into the budget resolution

Budget Management Oversight

The Assembly of States Parties,

1. *Notes* that the strategic plans of the Court and the Office of the Prosecutor are dynamic and updated on a regular basis;
2. *Notes* the intention of the Court, the Office of the Prosecutor and the Registry to prepare Strategic Plans for the period 2019-2021 in the first quarter of 2019, *stresses* the importance of receiving Strategic Plans at the earliest possible time, and preferably before the beginning of the Strategic Plan period, and *requests* the Court, the Office of the Prosecutor and the Registry to update States Parties on the development of those plans;
3. *Renews* its invitation to the Office of the Prosecutor to inform the Bureau on the implementation of its Strategic Plan for 2016-2018, and any lessons learned;
4. *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;
5. *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;
6. *Welcomes* the progress made by the Court in the area of risk management, specifically in relation to the establishment of the Risk Management Committee and the organization of training sessions for risk owners;
7. *Notes* the oversight roles of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, and *recommends* that these bodies continue to expand their coordination in order to improve the timely exchange of information and reporting of results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities, and to avoid duplication of competence and work.

Annex II

Report of the focal point for the topic of premises

1. The Bureau reappointed Ambassador Willys Delvalle (Panama) as focal point for the topic of premises via silence procedure on 4 March 2018.¹
2. The specific mandate for the topic of premises for the year 2018, derives from Section B, paragraphs 6 and 7 of annex II of resolution ICC-ASP/15/Res.2, which recommended that the Bureau be entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget or, if necessary, a subcommittee thereof.
3. In 2018, The Hague Working Group (“the working group”) held three consultations on premises (16 October, 12 November, and 15 November). The Court was invited to be present at the meetings.

A. Meetings and discussions

Long-term maintenance and capital replacements

4. During the meeting, States were provided with conclusions of the report of the Court on solutions for the funding of long-term capital replacements at its Headquarters in The Hague²: namely that it is the practice of international organizations that own their premises to have both a long-term plan and rolling five-year plans to estimate medium-term capital replacement costs; and that the related expenditure is financed through fund accounts that are in turn financed through State contributions. The Court’s preferred option is to establish a fund to cater for programmed building-related expenditure for incorporation into a long-term plan.
5. The Court noted that when enquiring on representative samples for comparison, it searched for reference in international organizations that own their premises and requested information from the Facilities Management Network. The Registry also noted that the Court found that such organizations have both a long-term plan and rolling five-year plans to estimate medium-term capital replacement costs and a fund for building-related expenditure, and that other organizations, including in The Hague, did not fulfil this criteria as the property was owned by the host State.
6. States Parties noted that the report of the Committee on Budget and Finance on the work of its thirty-first session³ indicated that the five-year capital expenditure plan is a suitable approach and that the Committee endorsed the Court’s intention to present those five-year plans along with a view of longer-term expectations. Some States Parties, however, raised a number of concerns on the issue of capital replacements and concurred with the recommendation of the Committee not to support the establishment of a fund as the need for establishment of such a fund for long-term capital replacement has yet to be demonstrated.
7. In response to concerns raised by some States Parties regarding the terms of reference, and in particular the level of clarity, delayed circulation, and lack of an external second opinion, the Court indicated that the terms of reference were the result of a complex negotiation but that it was in its final stage and envisaged that it would be finalized in mid-November 2018. The Court noted that the offer included special clauses regarding incentives as well as performance indicators with penalties attached to them in case of non-fulfilment of obligations.

¹ Ambassador Willys Delvalle (Panama) was initially appointed as focal point for the topic of premises via silence procedure on 16 February 2017.

² ICC-ASP/17/23.

³ ICC-ASP/17/15.

8. The Court noted that the capital replacement plan and preventive and corrective maintenance are separate issues, the latter being incorporated in Major Programme V. The Court clarified that as maintenance and capital replacements are closely interrelated, the new main contractor will deal with both maintenance issues and capital replacements. The Court also underlined that as the new main contractor will be in charge of procuring capital replacements, the risk of failure will be managed appropriately. As the contractor is also in charge of other buildings, it can conduct joint procurements. This cost-effective and efficient approach shall ensure that the best practice models are applied and best value for money is achieved.

9. In relation to the funding of any capital replacement needs in the future, divergent views were expressed as to the meaning of the term “foreseeable future”.

B. Recommendations

10. The focal point through the Bureau submits the recommendations contained in the appendix to be included in the budget resolution for the consideration of the Assembly.

Appendix

Recommendations to be included in the budget resolution

Premises of the Court

The Assembly of States Parties,

1. *Takes note* of the information provided by the Court on solutions for funding of long-term capital replacements at its Headquarters in the Hague; *notes further* the endorsement made by the Committee on Budget and Finance as regards the proposal that the Court periodically present a five-year expenditure estimate along with an outlook on long-term plans; *further notes* that any capital replacement needs arising in the foreseeable future should be financed within the scope of the regular budget process to the extent the expenditure is justified; *further notes* that the Court will seek the views of the incoming main contractor, and that funding should be reviewed when major cost spikes are approaching and once the proposed longer-term estimates become available;

2. *Reaffirms* that the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget, or, if necessary, a subcommittee thereof; and *requests* that a report on the topic be submitted for consideration by the eighteenth session of the Assembly.