

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

**NINTH SESSION  
NEW YORK, 6 – 10 DECEMBER 2010**

**OFFICIAL RECORDS  
VOLUME I**

*Note*

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## Part I Proceedings

### A. Introduction

1. In accordance with the decision of the Assembly of States Parties to the Rome Statute of the International Criminal Court (hereinafter “the Assembly”), taken at the 8<sup>th</sup> meeting of its eighth session, on 26 November 2009, and on the basis of General Assembly decision 65/501, the Bureau fixed 6 to 10 December 2010 as the dates for the ninth session.
2. In accordance with the Rules of Procedure of the Assembly,<sup>1</sup> the President of the Assembly invited all States Parties to the Rome Statute to participate in the session. Other States that had signed the Statute or the Final Act were also invited to participate in the session as observers.
3. In accordance with rule 92 of the Rules of Procedure of the Assembly (hereinafter “the Rules of Procedure”), invitations to participate in the session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions,<sup>2</sup> as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.
4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or in consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Assembly, attended and participated in the work of the Assembly.
5. In addition, in accordance with rule 94 of the Rules of Procedure, the following States were invited to be present during the work of the Assembly: Bhutan, Democratic People’s Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People’s Democratic Republic, Lebanon, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu.
6. The list of delegations to the session is contained in document ICC-ASP/9/INF.1.
7. The session was opened by the President of the Assembly of States Parties, Mr. Christian Wenaweser (Liechtenstein), who had been elected, by acclamation, as President of the Assembly for the seventh to ninth sessions during the sixth session of the Assembly.<sup>3</sup>
8. The Bureau of the Assembly, having been elected at the seventh session for a term of three years, continued in office during the ninth session, with the exception of Vice-President of the Assembly, Mr. Zachary D. Muburi-Muita (Kenya), who, by a letter, dated 27 August 2010, resigned from his position. The Bureau was therefore composed for the remainder of its term as follows:

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

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

<sup>3</sup> *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part I.B, para. 22.

*President:*

Mr. Christian Wenaweser (Liechtenstein)

*Vice-Presidents:*

Mr. Jorge Lomónaco (Mexico)

Ms. Simona Mirela Miculescu (Romania)

*Rapporteur:*

Ms. Simona Drenik (Slovenia)

*Other members of the Bureau:*

Australia, Brazil, Burkina Faso, Estonia, Gabon, Georgia, Japan, Jordan, Kenya, Nigeria, Norway, Samoa, South Africa, Spain, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

9. At its 1<sup>st</sup> meeting, on 6 December 2010, in accordance with rule 25 of the Rules of Procedure, the following States were appointed to serve on the Credentials Committee:

Costa Rica, Estonia, Ireland, Lesotho, Netherlands, Republic of Korea, Serbia, Suriname and Uganda.

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

11. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure of the Assembly.

12. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/9/1):

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

13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/9/1/Add.1).

14. Also at its 1<sup>st</sup> meeting, the Assembly agreed on a programme of work and decided to meet in plenary session as well as in the working group format. In addition to the Working Group on Amendments, established by resolution ICC-ASP/8/Res.6,<sup>4</sup> the Assembly established a Working Group on the Programme Budget for 2011.

15. Ms. Lydia Morton (Australia) and Mr. Paul Seger (Switzerland) were appointed to chair the Working Group on the Programme Budget for 2011 and the Working Group on Amendments, respectively.

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

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

16. At the 1<sup>st</sup> meeting, on 6 December 2010, the Assembly was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to five States Parties.

17. The President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The President also appealed to all States Parties to pay their assessed contributions for 2011 in a timely manner.

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

18. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted the report of the Credentials Committee (see annex I to this report).

### **3. General debate**

19. At the 1<sup>st</sup> plenary meeting, the President of Colombia, H.E. Mr. Juan Manuel Santos, delivered a statement during the general debate. At the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plenary meetings, on 6, 7 and 9 December 2010, statements were made by the representatives of Argentina, Austria, Belgium (on behalf of the European Union), Bolivia (Plurinational State of), Botswana, Brazil, Burkina Faso, Central African Republic, Colombia, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo (on behalf of the African States Parties and, further, on its own behalf), Denmark, Ecuador, Estonia, Fiji, Finland, France, Germany, Ghana, Guatemala, Guinea, Hungary, Italy, Japan, Jordan, Kenya, Kuwait, Lesotho, Luxembourg, Mexico, New Zealand (on behalf of Canada, Australia, and New Zealand), Nigeria, Norway, Peru, Poland, Republic of Korea, Saint Lucia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, and Zambia. Statements were also made by representatives of the League of Arab States and the International Committee of the Red Cross and by representatives of the following non-governmental organizations: Amnesty International, Coalition for the International Criminal Court, Fédération internationale des ligues des droits de l'Homme, Human Rights Watch, International Commission of Jurists, International Society for Traumatic Stress Studies and Parliamentarians for Global Action.

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

20. At its 1<sup>st</sup> meeting, on 6 December 2010, the Assembly took note of the oral report on the activities of the Bureau, delivered by the President, Mr. Christian Wenaweser (Liechtenstein). The President noted that, since the eighth session, the Bureau had held 19 meetings in order to assist the Assembly in carrying out its activities under the Rome Statute.

<sup>4</sup> *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.6, para. 4.

21. The President expressed appreciation for the work carried out by the two Vice-Presidents of the Assembly, Ambassador Jorge Lomónaco (Mexico) and Ambassador Zachary D. Muburi Muita (Kenya), who had continued to serve as Coordinators of the respective Working Groups of the Bureau. On 27 August 2010, Ambassador Muburi-Muita had informed him of his resignation from the post of Vice-President. The President thanked him for his work as Vice-President during his term on the Bureau, and as focal point for the issue of the African Union Liaison Office.

22. The President had visited Uganda in January, in order to discuss the preparations for the Review Conference. He also visited the field office in Kampala and travelled to northern Uganda to get a first hand impression of projects of the Victims Trust Fund, where he met with affected communities. He had visited a Trust Fund for Victims project in Bunia, Democratic Republic of the Congo. In Addis Ababa, Ethiopia, he had discussed the possibility of establishing a liaison office, the status of preparations of the Review Conference and other issues related to the activities of the Court.

23. In October, he visited the seat of the Court and met with Court officials, State representatives and the host State. He met with the plenary of the judges in an informal meeting. Furthermore, he organized a retreat with the President of the Court, the Prosecutor and the Registrar, to discuss governance issues, with the valuable assistance of Vice-President Lomónaco.

24. As part of his efforts to engage in outreach activities and to promote the universality of the Court, he visited El Salvador in April and Guatemala in August, upon the invitation of the respective Governments.

25. The President identified the Review Conference as the highlight of the past year. The stocktaking topics provided a solid basis for action to advance the work of the international community on the four topics, which are essential for the effective functioning of the Court in the long run. He thanked the Government of Uganda for the hospitality extended to participants in the Conference.

26. The Assembly, through the Bureau, had engaged with the Court on an increasing number of issues, some of them very complex, which had led to a greater appreciation of the respective responsibilities.

27. The Secretariat of the Assembly of States Parties had continued to discharge its mandate in assisting the work of the Assembly and its subsidiary bodies, in accordance with resolution ICC-ASP/2/Res.3. It had also coordinated, as appropriate, with the different organs of the Court on the issues on the agenda of the Assembly, and on other matters which touch and concern the Assembly. The Secretariat had continued to fulfil its mandate under the Plan of action. Furthermore, in coordination with the Government of Uganda, the Secretariat had organized the Review Conference in Kampala, including through the negotiation of memoranda of understanding with the host State and with the United Nations.

28. The President noted that the Court had continued to grow in influence and had expanded the scope of its investigative, prosecutorial and judicial activities. Although cooperation by States has assisted the Court in advancing its mandate, there remained a number of outstanding arrest warrants, as well as areas in which other forms of cooperation could be extended, such as the enforcement of sentences. He had held discussions with two States Parties regarding questions of cooperation.

29. The President shared some personal reflections, which are reflected in the full text of his address at the following website address: [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP9/Statements/ASP9-PASP-Statements-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ASP9-PASP-Statements-ENG.pdf).

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

30. At its 1<sup>st</sup> meeting, on 6 December 2010, the Assembly heard statements by Judge Sang-Hyun Song, President of the Court and by Mr. Luis Moreno-Ocampo, Prosecutor of the Court. At the same meeting, the Assembly took note of the report on the activities of the Court.<sup>5</sup>

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<sup>5</sup> ICC-ASP/9/23.

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

31. In a note dated 28 October 2010, the Secretariat submitted to the Assembly a list of six candidates nominated by States Parties for election to the Committee on Budget and Finance.<sup>6</sup>

32. At its 1<sup>st</sup> meeting, on 6 December 2010, the Assembly elected the following six members of the Committee on Budget and Finance, in accordance with resolution ICC-ASP/1/Res.5<sup>7</sup> of 12 September 2003:

Mr. David Banyanka (Burundi)  
 Ms. Carolina María Fernández Opazo (Mexico)  
 Mr. Gilles Finkelstein (France)  
 Mr. Juhani Lemmik (Estonia)  
 Mr. Gerd Saupe (Germany)  
 Mr. Ugo Sessi (Italy)

33. In accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, the Assembly dispensed with a secret ballot and elected the six members of the Committee on Budget and Finance by acclamation. The term of office of the six members shall begin to run on 21 April 2011.

## 7. Consideration and adoption of the budget for the ninth financial year

34. The Assembly, through its Working Group, considered the proposed programme budget for 2011 on the basis of the draft proposal submitted by the Registrar, the reports of the Committee on Budget and Finance and the reports of the External Auditor.

35. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted the report of the Working Group on the programme budget, wherein it, inter alia, conveyed the recommendation of the Working Group, that the Assembly endorse the recommendations of the Committee on Budget and Finance at its fifteenth session<sup>8</sup> as a whole, with the adjustments reflected in sections VIII and IX of resolution ICC-ASP/9/Res.4.

36. At the same meeting, the Assembly also considered and approved, by consensus, the programme budget for 2011.

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

- (a) Programme budget for the year 2011, including appropriations totalling €103,607,900 for the major programmes and staffing tables for each of the major programmes;
- (b) Working Capital Fund for 2011;
- (c) Scale of assessments for the apportionment of the expenses of the International Criminal Court;
- (d) Financing of appropriations for the year 2011;
- (e) Contingency Fund;
- (f) Amendment of the Financial Regulations and Rules;
- (g) Transfer of funds between major programmes under the 2010 programme budget;
- (h) External Auditor;
- (i) African Union Liaison Office; and
- (j) Family visits for indigent detainees.

<sup>6</sup> ICC-ASP/9/22.

<sup>7</sup> As amended by resolution ICC-ASP/2/Res.4.

<sup>8</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.2.

## **8. Consideration of audit reports**

38. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted the report of the Working Group on the Programme Budget for 2011.<sup>9</sup> The Assembly also took note with appreciation of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 January to 31 December 2009<sup>10</sup> and of the Trust Fund for Victims for the same period.<sup>11</sup>

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

39. At its 1<sup>st</sup> meeting, on 6 December 2010, the Assembly heard a statement by Ms. Elisabeth Rehn, Chairperson of the Board of Directors of the Trust Fund for Victims. The Assembly considered and took note of the report on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2009 to 30 June 2010.<sup>12</sup>

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

40. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted the report of the Working Group on Amendments (see annex II).

41. The Assembly decided to hold informal consultations in New York between its ninth and tenth sessions, during which delegations would have the opportunity to present amendments already submitted and views could be expressed on the substance of proposed amendments as well as on the advisability of proceeding with further amendments regarding crimes within the jurisdiction of the Court at this stage of its existence. Delegations would also discuss working methods, procedures and the role of the Working Group with respect also to possible future amendments, on the basis of a paper to be prepared by the Coordinator.

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

42. During consideration of the Review Conference follow-up, on 8 December 2010, the focal points for the impact of the Rome Statute system on victims and affected communities (Chile and Finland) and for complementarity (Denmark and South Africa) presented updates of the work that had been undertaken since Kampala in the framework of The Hague Working Group. The focal points on pledges (Netherlands and Peru) invited States to submit new pledges for the next session of the Assembly, as well as to follow up on the pledges which they had already made.

43. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted resolution ICC-ASP/9/Res.2, by which it, inter alia, requested the Bureau to establish, for a period of one year, a study group within The Hague Working Group to facilitate the dialogue referred to in paragraph 1 thereof, 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.

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<sup>9</sup> ICC-ASP/9/WGPB/1.

<sup>10</sup> *Official Records ... Ninth session... 2010* (ICC-ASP/9/20), vol. II, part C.1.

<sup>11</sup> *Ibid.*, part C.2.

<sup>12</sup> ICC-ASP/9/2.

## 12. Premises of the Court

44. At its 4<sup>th</sup> meeting, on 9 December 2010, the Assembly took note of the oral report of the Chairperson of the Oversight Committee, Mr. Martin Strub (Switzerland), and of the report on the activities of the Oversight Committee,<sup>13</sup> which highlighted that the permanent premises project remained within budget and schedule. The report also indicated that the Preliminary Design and the Building Delivery System had been approved by the Committee on the recommendation of the Project Board,<sup>14</sup> and that the Committee kept the governance structure of the project under examination.<sup>15</sup>

45. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted, by consensus, resolution ICC-ASP/9/Res.1, whereby it welcomed the finalization of the preliminary design and formally approved the overall budget for the project at no more than €190 million (at 2014 price levels). The Assembly also, inter alia, requested the Oversight Committee, in cooperation with the Court and the host State, to continue its examination of the governance structure of the project and to implement any adjustments that might be required on a provisional basis, until approved by the Assembly of States Parties.

## 13. Election of the President of the Assembly for the tenth to twelfth sessions

46. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly, on the recommendation of the Bureau, decided to defer the election of the President for the tenth to twelfth sessions to the tenth session, in accordance with rule 29 of the Rules of Procedure.

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

47. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly decided to hold its tenth session in New York, from 12 to 21 December 2011, and decided further to hold its eleventh session in The Hague and its twelfth, thirteenth and fourteenth sessions in The Hague and New York, alternately.

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

48. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly decided that the Committee on Budget and Finance would hold its sixteenth session from 11 to 15 April 2011 and its seventeenth session from 22 to 30 August 2011, in The Hague.<sup>16</sup>

## 16. Other matters

### (a) Composition of the current Bureau

49. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly elected Ms. Simona Mirela Miculescu (Romania) as one of the Vice-Presidents of the Assembly to complete the term of former Vice-President Mr. Zachary Muburi-Muita (Kenya), who resigned on 27 August 2010.

### (b) Independent Oversight Mechanism

50. At its 5<sup>th</sup> meeting, on 10 December 2010, the Assembly adopted resolution ICC-ASP/9/Res.5, by which it decided that the investigative function of the Independent Oversight Mechanism shall operate in accordance with the provisions of the Operational Mandate contained in the annex thereto.

<sup>13</sup> ICC-ASP/9/28.

<sup>14</sup> Ibid., paras. 20-24 and 28-30.

<sup>15</sup> Ibid., paras. 61-62.

<sup>16</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.2, para. 142.

51. The Assembly also invited the Court to continue to work with the Temporary Head and, once appointed, the Head of the Independent Oversight Mechanism, on the amendments to existing legal instruments, with a view to the adoption, at the next session of the Assembly, of all the amendments necessary for the full operationalization of the investigative function of the Independent Oversight Mechanism.

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

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

53. The Assembly noted with satisfaction that 25 delegations had made use of the Trust Fund to attend the ninth session of the Assembly.

## Part II

### External audit, programme budget for 2011 and related documents

#### A. Introduction

1. The Assembly had before it the proposed programme budget for 2011 published by the Court on 2 August 2010,<sup>1</sup> the reports of the fourteenth<sup>2</sup> and fifteenth sessions<sup>3</sup> of the Committee on Budget and Finance (the Committee), the financial statements for the period 1 January to 31 December 2009;<sup>4</sup> and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2009.<sup>5</sup> The Assembly also had before it annex V of the report of the Committee on the work of its fifteenth session, in which the Court outlines the budgetary implications of the Committee's recommendations on the budgets of major programmes.

2. Following statements made at the 3<sup>rd</sup> plenary meeting, on 7 December 2010, by the Registrar of the Court, Ms. Silvana Arbia, and the Vice-Chair of the Committee, Ms. Rossette Nyirinkindi Katungye (Uganda), the Assembly heard a statement by the representative of the External Auditor (the National Audit Office of the United Kingdom of Great Britain and Northern Ireland).

#### B. External audit

3. The Assembly noted with appreciation the reports of the External Auditor and related comments of the Committee contained in its report on the work of its fifteenth session. The Assembly noted that the Committee had endorsed the External Auditor's recommendations.

#### C. Appointment of the External Auditor

4. The Assembly took note of the Committee's observation<sup>6</sup> that the term of appointment of the External Auditor was due to expire in 2010 and that a decision would be required by the Assembly pursuant to regulation 12.1 of the Financial Regulations and Rules to either renew the term of the current Auditor or to select a new Auditor for the period 2011-2015. The Committee recalled the international practice of the appointment of External Auditors to non-renewable terms. The Committee recommended that the Assembly adopt a policy of limiting the term of the External Auditor to four years with a possibility of one renewal. Given the fact that the Court had had the same External Auditor for eight years, in order to implement this policy, the Committee recommended that the Court undertake a bidding exercise among States Parties and submit the results to the Assembly in order for the Assembly to take a decision at its ninth session. The Committee also requested the Court to submit to the ninth session of the Assembly the amendments to the Financial Regulations and Rules that may be required.

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

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

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

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

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

<sup>6</sup> *Ibid.*, part B.2, para. 21.

5. The Assembly further noted that the Audit Committee had advised that this timeline was insufficient for an appropriate selection procedure for a new External Auditor. The Audit Committee had recommended to the Court a more extensive and comprehensive selection procedure that would include review by the Audit Committee of the specifications in February 2011; a suitable period of time for interested audit organizations to prepare tenders; measures to ensure the tender was widely disseminated, including to all States Parties; appointment of a technical evaluation panel; provision for interview of shortlisted organizations; review by the Audit Committee and Committee in June and August 2011 respectively; with recommendations to be put to the tenth session of the Assembly. The Audit Committee requested the Court not to proceed further with the procurement action until the Assembly had decided on a selection procedure for an External Auditor. The Audit Committee also recommended that the current External Auditor be reappointed for 2011 only, in order to allow for an appropriate selection process.

6. The Assembly endorsed the Committee's recommendation that the Assembly adopt a policy of limiting the term of the External Auditor to four years with a possibility of one renewal. The Assembly further agreed with the Audit Committee's recommendation that a detailed selection process be undertaken, with recommendations to be put to the tenth session of the Assembly. The Assembly decided to amend the Financial Regulations and Rules to this effect, and to provide for renewal of the External Auditor's term for 12 months while a selection process is undertaken.

#### **D. International Public Sector Accounting Standards (IPSAS)**

7. At its eleventh session, the Committee had recommended that the Assembly decide that the Court work towards implementation of IPSAS in the medium term. The Committee had further recommended that the Court report on a project plan and next steps towards implementing IPSAS and suggested that implementation in 2011 or 2012 might be targets for the Court.<sup>7</sup> At its fourteenth session, the Committee responded to the Court's report on the implementation of IPSAS by requesting a more comprehensive report and a budget proposal for its consideration.<sup>8</sup>

8. At its fifteenth session, the Committee concurred with the External Auditor that IPSAS implementation was inevitable and that the Court should commence its IPSAS implementation strategy. Noting that a revised cost had been presented, the Committee recommended that €332,600 be added to the 2011 proposed programme budget to allow for the commencement of IPSAS implementation.<sup>9</sup>

9. The Assembly endorsed these recommendations.

#### **E. General matters relating to the budget**

10. The Assembly recognized the value of the report of the Committee on the Court's proposed programme budget.

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<sup>7</sup> *Official Records ...Seventh session... 2008* (ICC-ASP/7/20), vol. II, part B.2, para. 18.

<sup>8</sup> *Official Records...Ninth session...2010* (ICC-ASP/9/20), vol. II, part B.1, para. 42.

<sup>9</sup> *Ibid.*, part B.2, para. 64.

## F. Contingency Fund

11. The Assembly noted that the Registrar's advice was that the implementation for the 2010 budget would be 102 per cent, i.e. the 2010 budget would be fully expended and the Contingency Fund used to the extent of approximately €2 million. This would be the first actual recourse to the Contingency Fund, as the Court had been able in past years to cover all unforeseen or not accurately estimated activities through underspend in the regular budget.<sup>10</sup> The Committee noted that, as the implementation rate of the regular budget approached 100 per cent, use of the Contingency Fund would have a more direct financial impact on States Parties than in the past, as there was less flexibility within the regular budget. Replenishment of the Fund would ultimately increase the assessed contributions of States Parties.

12. The Committee sounded a note of caution to the Court and the Assembly. The Committee noted that, as there was no prior in-depth scrutiny or approval process on the access of these funds, the Court should expect to provide greater detail in its notifications and be in a position to provide much greater detail and justifications for its actual expenditures. In this regard, the Assembly endorsed the Committee's recommendation that regulation 6.7 of the Financial Regulations and Rules be amended to replace the word "short" by the word "detailed".<sup>11</sup>

13. The Assembly welcomed the advice of the Committee that it provided comments to the Registrar on each of the Court's notifications regarding access to the Contingency Fund. The Assembly encouraged the Committee to make a copy of these opinions available to the Bureau, to ensure that the Assembly is kept fully informed about potential use of the Contingency Fund.

14. The Assembly endorsed the recommendation of the Committee that, following established practice, the Assembly should authorize the Court to transfer funds between major programmes at year end if the costs of unforeseen activities could not be absorbed within one major programme while a surplus existed in other major programmes, to ensure that all appropriations for 2010 were exhausted before accessing the Contingency Fund.<sup>12</sup>

## G. Established posts

15. The Court requested the conversion of seven GTAs to established posts (one in Major Programme I, five in Major Programme II, one in Major Programme III) and the establishment of two new posts in Major Programme IV and the abolition of one permanent post. The Committee recommended that the Court freeze the number of permanent posts (established posts) at its approved 2010 level until a comprehensive re-justification of all posts had been conducted.<sup>13</sup>

16. The Assembly endorsed the Committee's approach to the freezing of the number of established positions until a comprehensive re-justification of all posts has been conducted. The Assembly urged the Court to make greater efforts to prioritize and reallocate resources to carry out its current projected activities within existing levels. That prioritization should include the identification of positions and functions that will no longer be required or were under utilized.

<sup>10</sup> Ibid., paras. 35-40.

<sup>11</sup> Ibid., annex III.

<sup>12</sup> Ibid., para. 43.

<sup>13</sup> Ibid., para. 81.

## H. Major Programme I: Judiciary

17. At its eighth session, the Assembly decided<sup>14</sup> to establish in Addis Ababa, Ethiopia, an African Union Liaison Office headed at the D-1 level. The Court's proposed programme budget for 2011 sought €420,900 for the establishment of this Liaison Office. The Assembly noted the decision of the African Union taken in July 2010 to "reject for now, the request by the ICC to open a Liaison Office to the African Union in Addis Ababa, Ethiopia". The Assembly reaffirmed a clear commitment to support the Court in maintaining its dialogue and diplomatic engagement with the African Union. The Assembly also reaffirmed that diplomatic engagement with the African Union was a responsibility not just for Major Programme I of the Court, but for all organs of the Court and importantly, for the States Parties themselves.

18. The Assembly noted that, as at 27 August 2010, the actual expenditure associated with the opening of the African Union Liaison Office in 2010 had been €38,300.<sup>15</sup>

19. The Assembly requested the organs of the Court to make available in 2011 appropriate human resources and an amount not less than €38,300 for travel costs, in order to ensure that the Court has sufficient resources to maintain diplomatic engagement with the African Union pending a revision of the decision by the African Union regarding the establishment of a liaison office.

20. The Assembly approved the recommendation by the Committee that the Court's proposed budget of €420,900 for establishing the African Union Liaison Office not be allocated until such time as the African Union had revised its decision. Should the African Union accede to the request by the Court to open a Liaison Office in Addis Ababa, on the basis of the draft budget for sub-programme 1310, the Court may notify the Committee of a requirement for access to the Contingency Fund to proceed with preparations for opening the Liaison Office.

## I. Major Programme II: Office of the Prosecutor

21. In Programme 2300 (Investigation Division), the Committee noted the proposal by the Prosecutor to the Assembly to abolish the post of Deputy Prosecutor for Investigations, which had remained vacant for three years. The Committee noted that it would be for the Assembly to decide on the course of action to take regarding the post of an elected official. For its part, the Committee recalled that the salary for the post of Deputy Prosecutor for Investigations had not been included either in the 2010 approved budget or in the 2011 proposed budget, so that no savings would be made through its abolition.<sup>16</sup>

22. The Assembly noted that there is one other Deputy Prosecutor position (Prosecutions) which is funded and occupied.

23. The Assembly noted that this elected position was part of the original structure for the Office of the Prosecutor and had been the structure of the current Prosecutor's office for several years. The Assembly considered that the new Prosecutor should have this same flexibility to decide on the composition of the Office of the Prosecutor. The Assembly, therefore, did not approve the abolition of the post of Deputy Prosecutor for Investigations.

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<sup>14</sup> *Official Records ...Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.3, para. 28 and ICC-ASP/8/Res.7, section H.

<sup>15</sup> *Official Records...Ninth session...2010* (ICC-ASP/9/20), vol. II, part B.2, paras. 89-90.

<sup>16</sup> *Ibid.*, para. 93.

## J. Major Programme III: Registry

24. The Assembly recalled resolution ICC-ASP/8/Res.4<sup>17</sup> on the funding of family visits for indigent detainees and, in pursuance of paragraph 4, established a special fund within the Registry of the Court for the purpose of funding family visits for indigent detainees. The Assembly charged the Registry with promoting the special fund and soliciting and collecting contributions from States Parties, other States, non-governmental organizations, civil society, individuals and other entities. The Assembly requested the Registrar to take any necessary steps to ensure that management of the special fund would be without administrative cost to the special fund and the voluntary contributions therein.

25. The Assembly welcomed the announcement by one State Party that it would make an immediate contribution to the fund of €85,000. The Assembly called on States Parties, other States, non-governmental organizations, civil society, individuals and other entities to make contributions to the special fund.

26. The Assembly endorsed the Committee's recommendation that no appropriation for family visits for indigent detainees be made in the budget for 2011. The Assembly decided that all future family visits for indigent detainees be funded from voluntary funding.

## K. Amount of appropriation

27. The Court's draft programme budget proposed a total budget of €107.02 million. This was a 4.7 per cent increase over the budget allocated for 2010. The Committee's examination of the Court's proposed budget found a number of areas where, based on actual and forecast expenditure, as well as actual experience, a number of savings could be made. The Committee recommended that the budget allocation be reduced by 3.1 per cent to a total of €103.9 million. The Committee's recommended budget is a 1.6 per cent increase over the budget allocated for 2010.

28. There was division in the Assembly between those that supported adoption of the budget recommended by the Committee and those that supported a budget of the same amount as in 2010. There was general appreciation of the valuable work performed by the Committee in providing technical advice on the Court's proposed programme budget.

29. The Assembly approved a budget appropriation for 2011 of €103.6 million, being the budget allocation for 2010 plus the rate of inflation of The Netherlands (1.3 per cent).<sup>18</sup> In response, the Court advised that it had made considerable efforts to identify savings in major programmes without affecting performance and these reductions were contained in the table of allocations in the budget resolution.

30. The Assembly urged the Court to exercise fiscal restraint and to identify efficiency gains. The Assembly noted the increased costs which would be faced in 2012 (interim premises rent, capital replacement, implementation of IPSAS). It challenged the Court to find savings and efficiencies to offset these costs.

31. In addition to its normal budget for 2012, the Assembly requested the Court to draw up budget options for 2012, which costed the full range of core Court activities (investigations, prosecutions and trials) and also costed those other important activities, which could be achieved within the same budget allocation as 2011. This would assist the Court and the Assembly in making decisions on funding priorities.

32. One delegation suggested that a two-tiered approach be adopted to the payment of assessed contributions. States Parties would pay 95 per cent of their assessed contribution. At the end of the financial year, the Court would review its level of expenditure and determine, on that basis, whether a request to the States Parties for the remaining 5 per cent of the assessed contribution would be justified.

<sup>17</sup> *Official Records ...Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II.

<sup>18</sup> July 2010 inflation rate. Harmonized index of consumer prices, European Central Bank.

## L. Judges' pensions

33. On 5 October 2010, the Presidency of the Court sent a letter to the Bureau regarding a reconsideration of the pension regime for judges insofar as it relates to:

a) Whether the pension benefits for two judges elected in 2007 to fill judicial vacancies are governed by the original pension scheme regulations of 10 September 2004 or the amended regulations of 14 December 2007; and

b) The pension benefits for judges elected after the sixth session of the Assembly.

34. The Bureau decided to have the matter addressed in the framework of the budget discussions at the ninth session of the Assembly. The Secretariat of the Assembly disseminated a paper, dated 8 December 2010, containing a chronology of decisions of the Assembly and the Committee on the pension scheme of judges.

35. The Assembly heard a presentation by Judge Adrian Fulford on behalf of the Judges' Pension Committee. The Assembly emphasized that the decision reached by the Assembly at its sixth session and embodied in the amendments to the Pension Scheme Regulations for Judges, adopted by resolution ICC-ASP/6/Res.6,<sup>19</sup> should not be reopened. The Assembly decided that the issue of the regime that should apply to the two judges elected at the sixth session of the Assembly be referred to the Committee on Budget and Finance for its opinion.

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<sup>19</sup> *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.

## Part III

### Resolutions adopted by the Assembly of States Parties

#### Resolution ICC-ASP/9/Res.1

*Adopted at the 5<sup>th</sup> plenary meeting, on 10 December 2010, by consensus*

#### ICC-ASP/9/Res.1

##### Permanent premises

*The Assembly of States Parties,*

*Recalling* resolution ICC-ASP/4/Res.2, which emphasized that “the Court is a permanent judicial institution and as such requires functional permanent premises to enable the Court to discharge its duties effectively and to reflect the significance of the Court for the fight against impunity”, and *reiterating* the importance of permanent premises to the future of the Court,

*Recalling* resolution ICC-ASP/6/Res.1,<sup>1</sup> adopted on 14 December 2007 at the 7<sup>th</sup> plenary meeting of the sixth session of the Assembly, resolution ICC-ASP/7/Res.1,<sup>2</sup> adopted on 21 November 2008 at the 7<sup>th</sup> plenary meeting of the seventh session of the Assembly, resolution ICC-ASP/8/Res.5,<sup>3</sup> adopted on 26 November 2009 at the 8<sup>th</sup> plenary meeting of the eighth session of the Assembly, and resolution ICC-ASP/8/Res.8,<sup>4</sup> adopted on 25 March 2010 at the 10<sup>th</sup> plenary meeting of the eighth session of the Assembly,

*Noting* the report of the Oversight Committee on the permanent premises,

*Expressing* its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, and *recognizing* the importance of effective and efficient decision-making, clear lines of authority, stringent risk identification and management, and strict control of design changes for ensuring that the project is delivered to cost,

*Noting* the recommendations of the External Auditor,<sup>5</sup>

*Noting also* the reports of the Committee on Budget and Finance on the work of its fourteenth and fifteenth sessions and the recommendations contained therein,<sup>6</sup>

*Welcoming* the steps taken by the Oversight Committee to review the current governance arrangements of the permanent premises project, and the participation of the Court and the host State in this joint effort,

*Noting* the Court’s wish for a good quality building that is delivered on time and within budget,

*Welcoming* the fact that 25 States Parties have committed to making a one-time payment in accordance with the principles contained in resolution ICC-ASP/7/Res.1, annex III, as at 19 November 2010, in an amount of €32.4 million, of which €17.6 million have already been received,

*Noting with appreciation* that the host State has accepted the refund of funds drawn from the loan for a value of €1.4 million, in light of the incoming one-time payments, thus avoiding the accrual of interest in the years 2010 and 2011,

*Noting* that the end of the construction phase of the permanent premises is foreseen for mid-2015, and that the rent free period of the interim premises ends in June 2012,

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

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

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

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

<sup>5</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part C.1.

<sup>6</sup> *Ibid.*, parts B.1 and B.2.

*Noting* the steps taken by the Court with regard to costs related to the rent and maintenance of the interim premises, including operating costs, utilities and enhancement of different elements, and *welcoming* further steps by the Court in this respect,

*Recalling* the relevant provisions of the Rome Statute, and *noting* that the Financial Regulations and Rules and internal and external audit arrangements of the Court are applicable to the project,

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

1. *Expresses* its appreciation to the Project Board and the Oversight Committee for the progress made on the permanent premises project since the eighth session of the Assembly;
2. *Notes with satisfaction* the signature of the contract with schmidt hammer lassen architects, on 24 February 2010;
3. *Welcomes* the finalization of the preliminary design of the permanent premises project and *approves* the overall budget for the project at no more than €190 million (at 2014 price levels) and the revised cash-flow scheme contained in the annex;
4. *Takes note of* and *approves* the revised total gross floor area of no more than 50,560 square metres;
5. *Notes* that the completion date for the permanent premises continues to be 2015, and *encourages* the Project Director, in consultation with the Oversight Committee, to continue to identify ways to mitigate any delay and its consequences;
6. *Authorizes* the Project Director to increase the budget amount for each project phase by no more than 10 per cent, subject to the approval of the Oversight Committee, on the condition that the overall budget of €190 million is not exceeded;
7. *Welcomes* the decision adopted on the Building Delivery Strategy;

## **II. Governance**

8. *Reaffirms* the important role of States Parties, through the Oversight Committee, the Court and the host State in the permanent premises project, in particular by developing a shared vision and ownership for the project and *requests* the Oversight Committee, in cooperation with the Court and the host State, to continue its examination of the governance structure, with a view to strengthening the Project, and to implement any adjustments that may be required on a provisional basis until approved by the Assembly of States Parties;
9. *Stresses* the importance of effective coordination and communication between the Project Director, the Court and the host State at all levels and stages of the permanent premises project;
10. *Stresses* the importance of full involvement and participation by the host State at all stages and levels of the project and *further expresses* its appreciation to the host State for its ongoing cooperation;
11. *Reiterates* the important role of the Project Director in providing strategic leadership and overall management of the project, and recalling his responsibility for meeting the project's goals, timelines and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1, *requests* the Oversight Committee to review, in cooperation with the Court, the financial framework for the project, and *invites* the Registrar to delegate authority to the Project Director where necessary and at an appropriate level, in accordance with the Financial Regulations and Rules, with respect to engaging funds for the permanent premises project;
12. *Requests* the Project Director, together with the Court, to prepare recommendations, in accordance with resolution ICC-ASP/7/Res.1, annex V, paragraph 5, on ways to improve current guidelines on contracts and expenditures for the purpose of expediting the execution of the project, and to submit them to the Oversight Committee for approval;

### III. Financial reporting

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

14. *Requests* the Court to keep under review, in consultation with those States who commit to making a one-time payment, the schedule for receiving one-time payments and to submit this to the Committee for consideration as a matter of priority;

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

### IV. Costs outside the overall budget

16. *Requests* the Court, in consultation with the Project Director, to identify and quantify the other costs related to the project but not directly related to the construction, such as the costs of relocating the Court from the temporary premises to the permanent premises, movable items such as furniture and ICT hardware, potted greenery and decorations, costs relating to communications and public relations for the project and costs relating to the interim premises, before 1 March 2011, to report on these annually to the Assembly, through the Oversight Committee, to keep the Committee regularly informed of any change thereof, and to consider ways in which to reduce the impact of such costs on the annual budgeting process;

17. *Requests* the Oversight Committee, the Project Director and the Court, when making decisions on the design of the project, to take account of the consequences on the Court's future operating costs, and *stresses* that the project should go forward in such a way as to keep future operating costs of the permanent premises, including maintenance costs, at the minimum possible level;

### V. Management of the project

18. *Welcomes* the fact that the updated project manual has been approved by the Oversight Committee and *requests* the Project Director to continue to develop the project manual, together with a project plan and to present them to the Oversight Committee for their consideration and approval;

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

### VI. Voluntary contributions

20. *Recalls* that a trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and *invites* members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

21. *Welcomes also*, in this regard, any voluntary contribution through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee;

## **VII. Interim premises**

22. *Welcomes* the steps taken by the Court with regard to the future rent of the interim premises and *decides* that the Court and the Bureau shall closely follow developments on this matter and take appropriate action in this regard;

23. *Urges* the Court and, as appropriate the Bureau, to continue formal discussions with the host State on aspects related to the interim premises, including with regard to the transfer to the permanent premises;

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

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

## Annex

## Cash-flow scheme

|  |  | Totals<br>(million EUR) | 2008       | 2009       | 2010       | 2011                  | 2012       | 2013       | 2014       | 2015       |       |
|--|--|-------------------------|------------|------------|------------|-----------------------|------------|------------|------------|------------|-------|
| Project Phases:                        |  | Completion              |            |            | PD         | FD &<br>Preparation T | T          | TS         | Execution  |            | Maint |
|  | 100%   |                         | 0%         | 0%         | 0%         | 0%                    | 9%         | 34%        | 34%        | 23%        |       |
| <b>BOX 1; Construction costs</b>       | <b>€14,9</b>   |                         | 0,0        | 0,0        | 0,0        | 0,0                   | 9,8        | 39,4       | 39,4       | 26,3       |       |
| <b>BOX 3; Other construction costs</b> | <b>€75,1</b>   |                         | 0,0        | 8,7        | 5,4        | 12,9                  | 7,3        | 15,5       | 15,8       | 9,4        |       |
| <b>Divided in:</b>                     |  |                         |            |            |            |                       |            |            |            |            |       |
|  |  |                         | 0%         | 0%         | 8,8%       | 0%                    | 9%         | 34%        | 34%        | 14%        |       |
| 15%                                    | Contingency  | €7,2                    | 0,0        | 0,0        | 1,5        | 0,0                   | 1,5        | 5,9        | 5,9        | 2,4        |       |
| 1%                                     | Integrated, specialized<br>representational features | €1,1                    | 0,0        | 0,0        | 0,0        | 0,0                   | 0,1        | 0,2        | 0,6        | 0,2        |       |
| 4%                                     | Fees Project management<br>incl. cost consultancy    | €5,3                    | 0,0        | 0,9        | 0,7        | 1,1                   | 0,8        | 0,7        | 0,7        | 0,3        |       |
| 14%                                    | Fees designers, engineers,<br>consultants, etc       | €8,5                    | 0,0        | 0,4        | 3,0        | 9,6                   | 2,4        | 1,9        | 0,7        | 0,6        |       |
| 4%                                     | Permit and dues                                      | €3,5                    | 0,0        | 0,0        | 0,0        | 1,5                   | 1,0        | 0,7        | 0,2        | 0,1        |       |
| sum                                    | Consultancy user permits                             | €0,1                    | 0,0        | 0,0        | 0,0        | 0,0                   | 0,0        | 0,0        | 0,1        | 0,0        |       |
|  | <b>Total</b>   | <b>€15,7</b>            | <b>0,0</b> | <b>1,3</b> | <b>5,2</b> | <b>12,2</b>           | <b>5,9</b> | <b>9,4</b> | <b>8,2</b> | <b>3,6</b> |       |
| 1,03                                   | Escalation   | €29,4                   | 0,0        | 7,4        | 0,2        | 0,7                   | 1,5        | 6,1        | 7,6        | 5,8        |       |
| <b>Total</b>                           |  | <b>190</b>              | <b>0</b>   | <b>9</b>   | <b>5</b>   | <b>13</b>             | <b>17</b>  | <b>55</b>  | <b>55</b>  | <b>36</b>  |       |
|  |  |                         | <b>0</b>   | <b>9</b>   | <b>14</b>  | <b>27</b>             | <b>44</b>  | <b>99</b>  | <b>154</b> | <b>190</b> |       |

*Project Phases:*

Competition  
 PD: preliminary design phase  
 FD: final design phase  
 Preparation T: preparation for tendering  
 T: tendering  
 TS: Technical Specifications  
 Execution: ready for use building  
 Maint: maintenance and use building

## Resolution ICC-ASP/9/Res.2

*Adopted at the 5<sup>th</sup> plenary meeting, on 10 December 2010, by consensus*

### ICC-ASP/9/Res.2

#### Establishment of a study group on governance

*The Assembly of States Parties,*

*Reaffirming* the fundamental importance of the judicial independence of the Court to the integrity of the Rome Statute system,

*Recognizing* that the Rome Statute established a groundbreaking regime with a complex institutional structure,

*Acknowledging* the significant progress made by the Court in consolidating its structure under the One-Court principle,

*Acknowledging also* the need to take stock of the institutional framework of the Rome Statute system,

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

*Emphasizing* that, in accordance with the Rome Statute, the Assembly shall provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court,

*Noting* the report of the Court on measures to increase clarity on the responsibilities of the different organs,<sup>1</sup>

*Noting also* the recommendations of the Committee of Budget and Finance at its fifteenth session on the issue of governance,<sup>2</sup>

*Recalling* operative paragraph 9 of resolution ICC-ASP/8/Res.6<sup>3</sup> and operative paragraph 53 of resolution ICC-ASP/8/Res.3,<sup>4</sup>

1. *Stresses* the need to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence *and invites* the organs of the Court to engage in a such a dialogue with States Parties;
2. *Requests* the Bureau to establish, for a period of one year, a study group within The Hague Working Group to facilitate the dialogue referred to in paragraph 1 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;
3. *Decides* that the issues to be dealt with by the study group include, but are not limited to, matters pertaining to the strengthening of the institutional framework both within the Court and between the Court and the Assembly, as well as other relevant questions related to the operation of the Court;
4. *Decides* that the study group shall be chaired by a member of The Hague Working Group and shall adopt its own working methods;
5. *Decides also* that the study group shall be open to all States Parties, and shall periodically report the progress of its work to the Bureau through The Hague Working Group, for its consideration;
6. *Invites* the Bureau to report to the Assembly at its tenth regular session on any findings and recommendations.

<sup>1</sup> ICC-ASP/9/34.

<sup>2</sup> *Official Records ... Ninth session...2010* (ICC-ASP/9/20), vol. II, part B.2, paras. 22-33.

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

<sup>4</sup> *Ibid.*

## Resolution ICC-ASP/9/Res.3

*Adopted at the 5<sup>th</sup> plenary meeting, on 10 December 2010, by consensus*

### ICC-ASP/9/Res.3

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

*The Assembly of States Parties,*

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

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

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

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

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

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

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

*Taking note with appreciation* of United Nations General Assembly resolution A/65/12 of 23 November 2010, concerning the Court, and previous relevant United Nations General Assembly resolutions,

*Welcoming* the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, and expressing appreciation for the extensive preparations undertaken by the Bureau, the Secretariat, the host State, States Parties, Court officials and civil society,

*Emphasizing* the renewed spirit of cooperation and solidarity and the firm commitment to fighting impunity for the most serious crimes of international concern to guarantee lasting respect for the enforcement of international criminal justice, reaffirmed by the high-level representatives of States Parties in the Kampala Declaration,<sup>1</sup>

*Recalling* the decision by the Assembly of States Parties (“the Assembly”) to establish a representation of the Court at the African Union Headquarters in Addis Ababa,<sup>2</sup>

<sup>1</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, declaration RC/Decl.1.

<sup>2</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.3, para. 28.

*Noting* that it is the decision of the African Union Summit<sup>3</sup> to reject for now the opening of a liaison office of the Court to the African Union Headquarters in Addis Ababa, and *reiterating* that the presence of such a liaison office at the Headquarters of the African Union in Addis Ababa would promote dialogue with the Court and the understanding of its mission within the African Union and among African States, individually and collectively,

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

*Conscious* of the importance of equitable geographical representation and gender balance in the organs of the Court,

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

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

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

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

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

## **I. Rome Statute of the International Criminal Court and other agreements**

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

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

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

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

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

<sup>3</sup> 15<sup>th</sup> African Union Summit decision: Kampala, Uganda, from 19 to 27 July 2010.

6. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, *encourages* cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged, *further calls upon* States Parties to continue and strengthen their efforts to ensure full and effective cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants;
7. *Encourages* States Parties to cooperate with the Court, in accordance with their capacity, in the areas of conclusion of agreements or arrangements or any other means of cooperation on witness relocation and the enforcement of sentences and *further encourages* States Parties to express their political and diplomatic support to the Court;
8. *Welcomes* the establishment of the Special Fund for Relocation which aims at strengthening cooperation with regard to witness protection and *encourages* States to contribute to that Fund;
9. *Calls upon* States Parties to give concrete expression in actions to the commitments made in the statements, declarations and pledges made at Kampala;
10. *Takes note* of the report of the Bureau on cooperation;<sup>4</sup>
11. *Requests* the facilitator to continue her work on cooperation as provided for in resolution ICC-ASP/8/Res.2,<sup>5</sup> *recalls* the decision taken in Kampala that the Assembly, “in its consideration of the issue of cooperation, place a particular focus on sharing experiences”,<sup>6</sup> *further requests* the facilitator to explore proposals to facilitate the sharing of experience and other initiatives to enhance cooperation, such as a standing item on cooperation within the Assembly’s agenda;
12. *Recognizes* the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, and *requests* the Bureau to prepare a report on which Assembly procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation and to submit that report to the Assembly for consideration at its tenth session;
13. *Looks forward* to receiving an updated report of the Court on cooperation to the Assembly at its tenth session, which would include an examination of how to enhance public information on, and promote an understanding of, the mandate and operations of the Court;
14. *Recognizes* the contribution that the International Humanitarian Fact-finding Commission, established by article 90 of the Additional Protocol I to the 1949 Geneva Convention, could make in ascertaining facts related to alleged violations of international humanitarian law, thus facilitating, where appropriate, the prosecution of war crimes, both at the national level and before the Court;
15. *Encourages* States Parties to further discuss issues related to the principle of complementarity;
16. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,<sup>7</sup> *endorses* the recommendations of the report, and *requests* the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its tenth session;
17. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to incorporate it in their national legislation, as appropriate;

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<sup>4</sup> ICC-ASP/9/24.

<sup>5</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.2, para. 28.

<sup>6</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, declaration RC/Decl.2, para. 8.

<sup>7</sup> Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/9/21).

18. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

19. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes and *appeals* to all States which are not party to the Agreement on the Privileges and Immunities of the International Criminal Court in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

## II. Institution-building

20. *Takes note* of the statements presented to the Assembly by the heads of the organs of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims, the Vice-Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;

21. *Notes* with satisfaction the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's activities including its preliminary examinations, investigations and judicial proceedings in various situations which either States Parties or the United Nations Security Council<sup>8</sup> referred to the Court or which the Prosecutor initiated proprio motu;

22. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to continue to take note of best practices of other relevant international organizations and tribunals;

23. *Encourages* the Court to continue the dialogue with other international courts and tribunals to assist with their planning on residual issues and invites the Court to conduct, in consultation with the Oversight Committee on the permanent premises, a preliminary assessment of the possible modalities of hosting one or more residual mechanisms at the permanent premises of the Court on a cost-neutral basis for the Court, and without prejudice to the flexibility of the project and the area for the mandate of the Court;

24. *Emphasizes* the importance of nominating and electing the most highly qualified judges in accordance with article 36 of the Rome Statute and *encourages* States Parties to conduct thorough and transparent processes to identify the best candidates;

25. *Requests* the Bureau to prepare a report to the Assembly for its tenth session on the potential implementation of article 36, paragraph 4(c), of the Rome Statute;

26. *Notes with appreciation* the consultations held by the Office of the Prosecutor on its 2009-2012 Prosecutorial Strategy with States, international organizations and civil society, as well as on its policy papers on victims' participation and preliminary examination, and *encourages* the Office of the Prosecutor to continue to carry out such consultations on its policy papers and guidelines, as a continuing sign of its transparency;

27. *Notes with appreciation* the efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court's field operations with a view to increasing their efficiency and flexibility and *encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in States in which it carries out its work;

<sup>8</sup> United Nations Security Council resolution 1593 (2005).

28. *Recognizes* the important work done by the field-based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;
29. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;
30. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as of the New York Working Group and *expresses* its full support for the work of the New York Liaison Office;
31. *Emphasizes* the need to pursue efforts aimed at intensifying dialogue with the African Union and to strengthen the relationship between the Court and the African Union *and commits* to the Court's further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office;
32. *Welcomes* the presentation of the sixth report of the Court to the General Assembly of the United Nations;<sup>9</sup>
33. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties ("the Secretariat"), *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes the fact* that the Director of the Secretariat participates in the meetings of the Coordination Council when matters of mutual concern are considered;
34. *Welcomes* the efforts undertaken by the Court to implement the One-Court principle, including by coordinating the activities of the Court among its organs at all levels, while respecting the independence of the judges and the Prosecutor and the neutrality of the Registry, and *encourages* the Court to undertake all necessary efforts to fully implement the One-Court principle, inter alia, with a view to ensuring full transparency, good governance, and sound management and, in this regard, *welcomes* the report of the Court on measures to increase clarity on the responsibility of different organs;<sup>10</sup>
35. *Welcomes* the report of the Bureau on the strategic planning process of the International Criminal Court,<sup>11</sup> *welcomes* the efforts of the Court to implement a strategic approach based on the document entitled "Revised strategic goals and objectives of the International Criminal Court for 2009-2018",<sup>12</sup> *welcomes* also the substantial progress made by the Court in the implementation of the strategic goals and objectives, *underlines* the importance of a credible process of strategic planning that has a guiding impact on the definition of the Court's annual priorities and work programmes as well as on budgetary allocations;
36. *Reiterates* the importance of the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach and, in this regard, *recommends* that the Court should work towards setting a hierarchy of its priorities in order to facilitate strategic and budgetary choices;
37. *Invites* the Court to focus increasingly on the thorough and transparent assessment of results achieved through Court activities in reaching the priorities set, using an appropriate set of performance indicators, including the horizontal parameters of efficiency and effectiveness, for the Court activities and on the retroaction of lessons learned into the strategic planning process;

<sup>9</sup> United Nations document A/65/313.

<sup>10</sup> ICC/ASP/9/34.

<sup>11</sup> ICC-ASP/9/32.

<sup>12</sup> Report on the activities of the Court (ICC-ASP/7/25, annex).

38. *Reiterates* the need to continue to improve and adapt outreach activities and *encourages* the Court to further develop and implement the Strategic Plan for Outreach<sup>13</sup> in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;
39. *Reiterates* that the wider issues of public information and communication on the Court and its activities are of a strategic nature and welcomes the recent presentation of an ICC Public Information Strategy 2011-2013;<sup>14</sup>
40. *Recommends* that a productive dialogue be maintained between States Parties and the Court and its organs on the content and implementation of this strategy, *considers in particular* that the issues of public information and communication are a shared responsibility of the Court and States Parties and *recommends* that they share information on future initiatives in this area, in particular in view of the celebration of the Day of International Criminal Justice (17 July);<sup>15</sup>
41. *Notes* that strategic planning, while setting a middle to long-term perspective, needs to be responsive to changing circumstances and new emerging issues, like the adequate management of priority risks or the development of a Court strategy on field operations, and *reiterates its willingness* to engage in constructive dialogue with the Court also on such issues;
42. *Underlines* the perspective of the review of the Strategic Plan to be undertaken by the Court in 2012 and *stresses* its interest in contributing early on to the informal process of consultations leading up to this review;
43. *Welcomes* the Court's continued efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma and violence against women or children and *encourages* further progress in this regard;
44. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel, and thus *continues to encourage* applications to the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;
45. *Stresses* the importance of the dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, *welcomes* the report of the Bureau,<sup>16</sup> and *recommends* that the Bureau continue to engage with the Court to identify ways to improve equitable geographical representation and increase the recruitment and retention of women in higher level professional posts, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the tenth session of the Assembly;
46. *Urges* the Court, in recruiting officers in charge of victims and witnesses affairs, to ensure that they have the necessary expertise to take into account the cultural traditions and sensitivities and the physical and social needs of victims and witnesses, particularly when they are required to be in The Hague or outside their country of origin to take part in Court proceedings;

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<sup>13</sup> Ibid.

<sup>14</sup> ICC/ASP/9/29.

<sup>15</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, declaration RC/Decl.1, para.12.

<sup>16</sup> Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/9/30).

47. *Welcomes* the report of the Bureau on complementarity<sup>17</sup> and the progress made in implementing the Review Conference resolution on complementarity,<sup>18</sup> *requests* the Bureau to continue the dialogue with the Court and other stakeholders on the issue of complementarity and the further implementation of the Review Conference resolution as set out in the Bureau report on complementarity, “Taking stock of the principle of complementarity: bridging the impunity gap”<sup>19</sup> as well as the progress report of the Bureau, and *invites* the Court and the Secretariat to report to the next session of the Assembly on this matter, in accordance with resolution RC/Res.1;

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

49. *Recalls* the resolution adopted by the Review Conference entitled “The impact of the Rome Statute system on victims and affected communities”,<sup>20</sup> *welcomes* the final report of the focal points regarding the stocktaking exercise,<sup>21</sup> *requests* the Court to review its strategy in relation to victims<sup>22</sup> and to consider all aspects of the recommendations of the panel, including budgetary implications<sup>23</sup> contained in the final report, and to report on the progress to the Assembly at its tenth session, *encourages* States and civil society to take action to implement the resolution also with regard to victims’ reparations and to consider carrying forward the recommendations in the final report, *notes that*, in light of the Court’s forecast, the first reparations order could be issued in the course of 2011, *underlines* the usefulness of a timely and informative dialogue between States Parties and the Court on victims-related issues of common interest and *requests* the Bureau to report on the developments in the victims-related issues to the Assembly at its tenth session;

50. *Requests* the Bureau to consider the view of the Committee on Budget and Finance<sup>24</sup> that the Assembly might wish to provide guidance to the Court on the extension of the term of a judge, in particular, but not limited to, with regard to reparations proceedings, and to report thereon to the Assembly at its tenth session;

### III. Assembly of States Parties

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

<sup>17</sup> ICC-ASP/9/26.

<sup>18</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, resolution RC/Res.1.

<sup>19</sup> ICC-ASP/8/51.

<sup>20</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, resolution RC/Res.2.

<sup>21</sup> *Ibid.*, annex V(a).

<sup>22</sup> ICC-ASP/8/45.

<sup>23</sup> Paragraph 14 (c) of the final report reads as follows:

“(c) The way forward

(i) The Court needs to find creative ways to strengthen its two-way dialogue with victims and affected communities.

(ii) The Court’s outreach activities need to be further optimized and adapted to the needs of victims.

(iii) A specific policy needs to be developed for addressing the needs of women and children.

(iv) More protective measures are needed for victims and witnesses.

(v) A comprehensive policy towards intermediaries should be finalized by the Court and implemented.

(vi) Field operations should be reinforced and linked to strategic planning and the allocation of resources.

(vii) The Trust Fund should be congratulated for conducting a monitoring and evaluation programme of its current project and encouraged, where prudent, to increase its visibility.

(viii) Finally, the Court and its staff cannot walk this road alone. They need the stewards of the Court—the States Parties—to continue their commitment, support and leadership.”

<sup>24</sup> *Official Records ... Ninth session...2010* (ICC-ASP/9/20), vol. II, part B.2, para. 68.

52. *Takes note* of the latest report on the activities of the Court to the Assembly;<sup>25</sup>
53. *Recalls also* that at the successful first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, States Parties adopted amendments to the Rome Statute, in accordance with article 5, paragraph 2, of the Rome Statute to define the crime of aggression and to establish conditions under which the Court could exercise jurisdiction with respect to that crime;<sup>26</sup> adopted amendments to the Rome Statute to expand the jurisdiction of the Court to three additional war crimes when committed in armed conflicts not of an international character,<sup>27</sup> and decided to retain, for the time being, article 124 of the Statute;<sup>28</sup>
54. *Notes* that those amendments are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5;
55. *Notes with satisfaction* that the Depositary has notified the States Parties of the adoption of these amendments by the Review Conference, *calls upon* all States Parties to consider ratifying or accepting these amendments and *resolves* to activate the Court's jurisdiction over the crime of aggression as early as possible, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute;
56. *Requests* the Bureau to prepare a report for the consideration of the Assembly, at its tenth session, on procedural rules or guidelines for the Working Group on Amendments;
57. *Recalls* with appreciation pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, *calls* on these States and the regional organization to ensure the swift implementation of these pledges, and *further calls* on States and regional organizations to submit additional pledges and to inform, as appropriate, on the implementation thereof at future sessions of the Assembly;
58. *Welcomes* the substantive discussions carried out within the framework of the stocktaking exercise on international criminal justice to identify opportunities and challenges presented to the Court and the Rome Statute system and *commits* to the implementation of the resolutions on "Complementarity," "Impact of the Rome Statute system on victims and affected communities," and "Enforcement of Sentences,"<sup>29</sup> and the declaration on "Cooperation" as critical next steps in meeting these challenges;
59. *Recalls* that the Review Conference also conducted, as part of its stocktaking exercise, a panel discussion on peace and justice, *takes note with appreciation* of the moderator's summary of that discussion and *commends* this topic for further exploration and development;
60. *Welcomes* the robust participation of civil society in the Review Conference, *welcomes* the opportunity provided by the Review Conference to bring States Parties closer to the work of the Court in situations under investigation, including through visits to the Court's field offices, and *encourages* States Parties to continue to take opportunities to raise awareness, including among State officials, of the Court's activities in situations under preliminary examination and investigation;
61. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely manner and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly and *expresses its appreciation* to those that have done so;
62. *Recalls* the prominent place given to the victims and their families in the stocktaking exercise during the Kampala Review Conference, including highlighting the right of victims to apply for reparations and benefit from assistance provided through the Trust Fund for Victims;

<sup>25</sup> ICC-ASP/9/23.

<sup>26</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, resolution RC/Res.6.

<sup>27</sup> *Ibid.*, resolution RC/Res.5.

<sup>28</sup> *Ibid.*, resolution RC/Res.4.

<sup>29</sup> *Ibid.*, resolution RC/Res.3.

63. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, in order to substantively increase the volume of the Trust Fund, broaden the resource base and improve the predictability of funding, and *expresses its appreciation* to those that have done so;
64. *Expresses its appreciation* to the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims for their continuing commitment to easing the suffering of victims, and *encourages* the Secretariat of the Trust Fund to continue to strengthen its ongoing dialogue with the Registry, the States Parties and the international community, including donors as well as civil society, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility, including transparent and quality driven activities that benefit victims and their families in situations under the jurisdiction of the International Criminal Court;
65. *Encourages* the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims to anticipate the activation of the reparations mandate of the Trust Fund for Victims in the coming year, requiring pro-active engagement with stakeholders and the assurance of appropriate reservations for reparations while respecting existing commitments, and *calls upon* States to consider their voluntary contributions to the Trust Fund for Victims in view of imminent reparations;
66. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;
67. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court, and *expresses its appreciation* to those that have done so;
68. *Takes note* of the report of the Bureau on the arrears of States Parties<sup>30</sup> and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;
69. *Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;
70. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly on the result of their work;
71. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;
72. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;
73. *Recalls* that, according to its Rules of Procedure,<sup>31</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;
74. *Decides* that the Committee on Budget and Finance shall hold its sixteenth session from 11 to 15 April 2011 and its seventeenth session from 22 to 30 August 2011;
75. *Decides* that the Assembly shall hold its tenth session in New York from 12 to 21 December 2011 and its eleventh session in The Hague. The twelfth, thirteenth and fourteenth session shall be held in The Hague and New York, alternately.

<sup>30</sup> ICC-ASP/9/27.

<sup>31</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.

## Resolution ICC-ASP/9/Res.4

*Adopted at the 5<sup>th</sup> plenary meeting, on 10 December 2010, by consensus*

### ICC-ASP/9/Res.4

#### **Programme budget for 2011, the Working Capital Fund for 2011, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2011 and the Contingency Fund**

*The Assembly of States Parties,*

*Having considered* the proposed programme budget for 2011 of the International Criminal Court and the related conclusions and recommendations contained in the report of the Committee on Budget and Finance on the work of its fifteenth session,

### **I. Programme budget for 2011**

1. *Approves* appropriations totalling €103,607,900 for the following appropriation sections:

| <i>Appropriation section</i>   | <i>Thousands of euros</i> |
|--|---------------------------|
| Major Programme I - Judiciary  | 10,669.8                  |
| Major Programme II - Office of the Prosecutor                          | 26,598.0                  |
| Major Programme III - Registry   | 61,611.4                  |
| Major Programme IV - Secretariat of the Assembly of States Parties     | 2,728.2                   |
| Major Programme VI - Secretariat of the Trust Fund for Victims         | 1,205.2                   |
| Major Programme VII-1 - Project Director's Office (permanent premises) | 492.2                     |
| Major Programme VII-2 - Permanent Premises Project – Interest          | 0.0                       |
| Major Programme VII-5 - Independent Oversight Mechanism                | 303.1                     |
| <b>Total</b>   | <b>103,607.9</b>          |

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

|                 | <i>Judiciary</i> | <i>Office of the Prosecutor</i> | <i>Registry</i> | <i>Secretariat Assembly of States Parties</i> | <i>Secretariat Trust Fund for Victims</i> | <i>Project Director's Office (permanent premises)</i> | <i>Independent Oversight Mechanism</i> | <i>Total</i> |
|-----------------|------------------|---------------------------------|-----------------|---|---|---|--|--------------|
| USG             |                  | 1                               |                 |   |   |   |  | 1            |
| ASG             |                  | 2                               | 1               |   |   |   |  | 3            |
| D-2             |                  |                                 |                 |   |   |   |  | 0            |
| D-1             |                  | 2                               | 4               | 1   | 1   | 1   |  | 9            |
| P-5             | 3                | 12                              | 17              |   | 1   |   |  | 33           |
| P-4             | 3                | 29                              | 39              | 2   |   | 1   | 1                                      | 75           |
| P-3             | 21               | 44                              | 66              | 1   | 3   |   |  | 135          |
| P-2             | 5                | 47                              | 61              | 1   |   |   | 1                                      | 115          |
| P-1             |                  | 17                              | 7               |   |   |   |  | 24           |
| <i>Subtotal</i> | <i>32</i>        | <i>154</i>                      | <i>195</i>      | <i>5</i>                                      | <i>5</i>                                  | <i>2</i>  | <i>2</i>                               | <i>395</i>   |
| GS-PL           | 1                | 1                               | 16              | 2   |   |   |  | 20           |
| GS-OL           | 15               | 63                              | 268             | 2   | 2   | 1   |  | 351          |
| <i>Subtotal</i> | <i>16</i>        | <i>64</i>                       | <i>284</i>      | <i>4</i>                                      | <i>2</i>                                  | <i>1</i>  |  | <i>371</i>   |
| <b>Total</b>    | <b>48</b>        | <b>218</b>                      | <b>479</b>      | <b>9</b>                                      | <b>7</b>                                  | <b>3</b>  | <b>2</b>                               | <b>766</b>   |

## II. Working Capital Fund for 2011

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2011 shall be established in the amount of €7,405,983, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court.

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

*The Assembly of States Parties,*

1. *Decides* that, for 2011, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for 2011 and adjusted in accordance with the principles on which that scale is based;<sup>1</sup>

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

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

## IV. Financing appropriations for 2011

*The Assembly of States Parties,*

*Resolves* that, for 2011, budget appropriations amounting to €103,607,900 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part I, paragraph 1, and part II, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.

## V. Contingency Fund

*The Assembly of States Parties,*

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

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

1. *Decides* to maintain the Contingency Fund at its current level for 2011;
2. *Decides* that, should the Fund reach a level below €7 million by the end of the year, the Assembly should decide on its replenishment up to an amount it deems appropriate, but no less than €7 million;
3. *Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

## VI. Amendment to the Financial Regulations and Rules

*The Assembly of States Parties,*

*Having* regard to the Financial Regulations and Rules<sup>2</sup> adopted at its first session on 9 September 2002,

*Endorsing* the views of the Committee on Budget and Finance at its fifteenth session in respect of the scrutiny and approval process for access to the Contingency Fund, as well as the desirable level of detail and justification required for such access,<sup>3</sup>

*Decides* to amend regulation 6.7 of the Financial Regulations and Rules by substituting the word “detailed” in the second sentence for the word “short”.

## VII. Transfer of funds between major programmes under the 2010 programme budget

*The Assembly of States Parties,*

*Noting* that in 2010 the Court will see the first actual recourse to the Contingency Fund,

*Having* considered the recommendation contained in paragraph 43 of the report of the Committee on Budget and Finance on the work of its fifteenth session,<sup>4</sup>

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

*Decides* that, in line with established practice, the Court may transfer funds between major programmes at the conclusion of 2010 should costs for activities which were unforeseen or could not be accurately estimated be unable to be absorbed within one major

<sup>2</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.D, as amended by resolution ICC-ASP/3/Res.4, annex (*Official Records ... Third session ... 2004* (ICC-ASP/3/25), part III).

<sup>3</sup> *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.2, para. 40.

<sup>4</sup> *Ibid.*, para. 43.

programme, whilst a surplus exists in other major programmes, in order to ensure that appropriations for each major programme are exhausted prior to accessing the Contingency Fund.

## VIII. External Auditor

*The Assembly of States Parties,*

*Noting* that the term of appointment of the External Auditor is due to expire in 2010 and that a decision is required by the Assembly pursuant to regulation 12.1 of the Financial Regulations and Rules to either renew the term of the current Auditor or to select a new Auditor for the period 2011-2015,

1. *Accepts* the recommendation<sup>5</sup> of the Committee on Budget and Finance at its fifteenth session that the Assembly adopt a policy of limiting the term of the External Auditor to four years with a possibility of one renewal;
2. *Accepts* the recommendation of the Audit Committee that a detailed selection procedure for procurement of an External Auditor be undertaken in time for the tenth Assembly of States Parties;
3. *Decides* to extend the term of the current External Audit by one year while the procurement is undertaken;
4. *Decides* to amend rule 12.1 of the Financial Regulations and Rules to replace the words “and its appointment may be renewed” with the words “and its appointment may be renewed for one additional period of four years, once only”.

## IX. African Union Liaison Office

*The Assembly of States Parties,*

1. *Requests* the organs of the Court to make available in 2011 appropriate human resources and travel funds not less than that expended in 2010 (€38,300) to maintain diplomatic engagement with the African Union pending revision of the decision by the African Union to reject, for now, the request by the Court to open a Liaison Office in Addis Ababa, Ethiopia;
2. *Decides* that, should the African Union agree to the Court’s request, the Court may notify the Committee on Budget and Finance of the requirement for access to the Contingency Fund up to the amount in the Court’s proposed budget (€429,900) to proceed with establishing the Liaison Office in Addis Ababa.

## X. Family visits for indigent detainees

*The Assembly of States Parties,*

*Recalling* resolution ICC-ASP/8/Res.4 on the funding of family visits for indigent detainees,<sup>6</sup>

1. *Decides* to establish a special fund within the Registry for the purpose of funding family visits for indigent detainees entirely through voluntary donations and charges the Court with promoting the special fund and collecting contributions from States Parties, other States, non-governmental organizations, civil society, individuals and other entities;
2. *Welcomes* the generous and immediate voluntary contribution to be made by one State Party to the special fund and calls on all other potential contributors to positively consider making a contribution to the special fund;
3. *Agrees* that the special fund shall be administered on a budget neutral basis.

<sup>5</sup> *Ibid.*, para. 21.

<sup>6</sup> *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II.

## Resolution ICC-ASP/9/Res.5

*Adopted at the 5<sup>th</sup> plenary meeting, on 10 December 2010, by consensus*

### ICC-ASP/9/Res.5 Independent Oversight Mechanism

*The Assembly of States Parties,*

*Recalling* the Rome Statute of the International Criminal Court and, in particular article 112, paragraphs 2(b) and 4, of the Rome Statute,

*Recalling* its resolution ICC-ASP/8/Res.1 establishing the Independent Oversight Mechanism,<sup>1</sup>

*Welcoming* the report of the Bureau on the Independent Oversight Mechanism,<sup>2</sup>

*Welcoming* the appointment of the Temporary Head of the Independent Oversight Mechanism,

*Welcoming* the decision of the Bureau to appoint the Selection Panel to carry out the recruitment procedure for the Head of the Independent Oversight Mechanism,<sup>3</sup>

1. *Decides* that, pending a decision on the operationalization of the inspection and evaluation functions of the Independent Oversight Mechanism, this mechanism shall perform only its investigative function and consist of two staff members, i.e. one staff member who will head the office at the P-4 level and one further staff member at the P-2 level. If the Assembly decides to operationalize the inspection and evaluation functions of the Independent Oversight Mechanism, it shall also review, as it deems necessary, the staffing capacity and grade of the head and other staff members. If the evaluation and inspection functions are not operationalized, the staffing capacity and grades of the investigative function of the Independent Oversight Mechanism may be reviewed by the Assembly once the mechanism has been operational for a reasonable period of time, in accordance with established procedure;
2. *Decides* that the investigative function of the Independent Oversight Mechanism shall operate in accordance with the provisions of the annex to this resolution (Operational Mandate) and that the Operational Mandate shall be kept under review;
3. *Invites* the Temporary Head and, once appointed, the Head of the Independent Oversight Mechanism, to continue to work on the development of functions, regulations, rules, protocols and procedures of the investigative function of the Independent Oversight Mechanism and to submit them to the Assembly for approval at its next session;
4. *Invites* the Court to continue to work with the Temporary Head and, once appointed, the Head of the Independent Oversight Mechanism, on the amendments to existing legal instruments, with a view of the adoption, at the next session of the Assembly, of all the amendments necessary for the full operationalization of the investigative function of the Independent Oversight Mechanism;
5. *Reiterates* its request, as contained in resolution ICC-ASP/8/Res.1, that a memorandum of understanding be concluded between the Court and the United Nations Office of Internal Oversight Services;

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

<sup>2</sup> Report of the Bureau on the Independent Oversight Mechanism (ICC-ASP/9/31).

<sup>3</sup> Decisions of the fifteenth meeting of the Bureau of 19 October 2010: <http://www.icc-cpi.int/Menu/Go?id=98da805c-eebf-42cc-ab97-bfe8a714f4b1&lan=en-GB>.

6. *Welcomes* the decision of the Bureau to commission an assurance mapping study into the existing oversight mechanisms of the Court<sup>4</sup> as a step forward towards a decision on the operationalization of the inspection and evaluation functions within the oversight mechanism and, in this regard, *expresses* its intention to consider the findings thereof also in the context of the discussion on the overall governance framework of the Court, including in the context of the study group on governance;

7. *Decides further* that the Bureau shall prepare a report on the operationalization of the investigative function of the Independent Oversight Mechanism, including staffing issues, and the operation of the inspection and evaluation functions within the oversight mechanism, including the terms of reference, staffing issues and related financial implications, with a view to a decision on its adoption at the next session of the Assembly;

8. *Decides* to delegate to the Bureau to decide, should the need arise, upon consultation with the United Nations Office of Internal Oversight Services and with due regard to the memorandum of understanding to be concluded by the Court, on whether to extend the mandate of the Temporary Head of the Independent Oversight Mechanism, after taking into consideration possible budgetary implications of that decision and, if necessary, consulting the Committee on Budget and Finance.

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<sup>4</sup> Decisions of the sixteenth meeting of the Bureau of 28 October 2010: <http://www.icc-cpi.int/Menus/Go?id=4caf7ae0-8500-4546-88e3-5ca56e077f09&lan=en-GB>.

## Annex

### Operational Mandate of the Independent Oversight Mechanism

The Independent Oversight Mechanism shall assume the functions prescribed in the Assembly of States Parties resolution ICC-ASP/8/Res.1,<sup>1</sup> as amended by the present resolution and subject to the modalities defined below, with a view to ensuring effective and meaningful oversight of the International Criminal Court (hereinafter “the Court”):

#### I. Function

1. The purpose of the Independent Oversight Mechanism is to ensure the effective and meaningful oversight of the Court through the exercise of the following function:

##### Investigations

2. The Independent Oversight Mechanism may receive and investigate reports of misconduct<sup>2</sup> or serious misconduct, including possible unlawful acts by a judge, the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court (hereinafter “elected officials”), all staff subject to the Staff and Financial Regulations and Rules of the Court (hereinafter “staff” or “staff member”) and all contractors and/or consultants retained by the Court and working on its behalf (hereinafter “contractors”).<sup>3</sup>

3. All reports of misconduct or serious misconduct, including possible unlawful acts, made against an elected official, staff member or contractor shall, if received by the Court, be submitted to the Independent Oversight Mechanism.<sup>4</sup> Any person submitting such reports may also elect to submit a copy to the Presidency of the Court for informational purposes only. Likewise, staff members submitting a report against other staff members may elect to submit a copy of their report to the Prosecutor or Registrar, as appropriate.

4. The results of investigations conducted by the Independent Oversight Mechanism shall be transmitted to the Presidency, Registrar or Prosecutor of the Court, as appropriate, together with recommendations for consideration of possible disciplinary or jurisdictional action.

5. The Independent Oversight Mechanism will not investigate contractual disputes or human resource management issues, including work performance, conditions of employment or personnel-related grievances.

6. The Independent Oversight Mechanism will not investigate offences under article 70 of the Rome Statute.

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<sup>1</sup> Establishment of an Independent Oversight Mechanism, adopted at the 7<sup>th</sup> plenary meeting on 26 November 2009, by consensus. See: *Official Records ...Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II.

<sup>2</sup> Misconduct, also described in the Staff Rules as “unsatisfactory conduct”, which includes any act or omission by elected officials, staff members or contractors in violation of their obligations to the Court pursuant to the Rome Statute and its implementing instruments, Staff and Financial Regulations and Rules, relevant administrative issuances and contractual agreements, as appropriate.

<sup>3</sup> The term “contractor” or “consultant” does not include an “intermediary”, who is broadly defined as an individual or entity that facilitates contact between the Court and a witness, victim or other source of information. Therefore the scope of the Independent Oversight Mechanism does not extend to the activities of an “intermediary” and any reported misconduct received by the mechanism regarding an “intermediary” shall be duly referred to the relevant organ head for their information.

<sup>4</sup> The Independent Oversight Mechanism shall duly consider all reported misconduct claims submitted to it, however, the mechanism retains discretionary authority to decide which matters to investigate. Those matters which the Independent Oversight Mechanism does not intend to investigate will be referred to the relevant entity for their appropriate action.

## II. Appointment – Head of office

7. All staff of the Independent Oversight Mechanism are considered staff members of the Court. As such, their appointment, conditions of employment and standard of conduct must be in accordance with the Staff and Financial Regulations and Rules and relevant administrative issuances of the Court. Therefore, as part of the Court, the staff of the Independent Oversight Mechanism shall enjoy the same rights, duties, privileges and immunities and benefits of all staff members, and any administrative requirements shall be facilitated by the Registry.

8. The Head of the Independent Oversight Mechanism shall be selected by the Bureau of the Assembly in coordination with the Court.

9. The Head of the Independent Oversight Mechanism may be removed only for cause and by the decision of the Bureau of the Assembly.

10. Evaluation of the work performance of the Head of the Independent Oversight Mechanism shall be undertaken by the President of the Assembly.

11. Any complaints regarding the actions of the Head of the Independent Oversight Mechanism shall be submitted to the President of the Assembly, who shall assess such complaints for impact on any investigation and the possibility of investigative misconduct, as well as any performance implications.<sup>5</sup> The President of the Assembly shall submit a copy of all such complaints and a report of the outcome thereof to the heads of organs. Such reports will be treated as confidential.

## III. Mode of operation

### A. Operational independence

12. The Independent Oversight Mechanism shall exercise operational independence under the authority of the President of the Assembly.

13. In the conduct of its duties, and in accordance with article 112, paragraph 4, of the Rome Statute, the office shall have the authority to initiate on a reasonable basis, carry out and report on any action which it considers necessary to fulfil its responsibilities with regard to investigations without any hindrance or need for prior clearance, except as provided in paragraphs 20 to 25 and as set forth in the present resolution.

14. The Independent Oversight Mechanism may accept requests for its services from the Presidency, Registrar or Prosecutor of the Court, as appropriate, and act with maximum dispatch but it may not be prohibited from carrying out any action within the purview of its mandate.

15. The staff of the Independent Oversight Mechanism shall have direct and prompt access to all elected officials, staff and contractors, and shall receive their full cooperation. Failure to provide such cooperation, without reasonable excuse, shall be duly reported upon and may result in disciplinary action.

16. Additionally, staff of the Independent Oversight Mechanism shall have access to all (electronic or otherwise) Court records, files, documents, books or other materials, assets and premises, and shall have the right to obtain such information and explanations as they consider necessary to fulfil their responsibilities.

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<sup>5</sup> Investigative misconduct is any material deviation from prescribed norms, procedures or practices in an investigation that is perpetrated intentionally or with reckless disregard for proper practices. In some instances, investigative misconduct may also constitute unsatisfactory conduct as provided for in the Staff Regulations and Rules of the Court and such conduct shall be duly addressed within the existing disciplinary structure of the Court by the Registrar upon the recommendation of the President of the Assembly of States Parties.

17. Notwithstanding the provisions outlined in paragraphs 15 and 16 above, the right of access granted to the Independent Oversight Mechanism shall be subject to confidentiality considerations envisaged by the Rome Statute in the context of judicial proceedings, a pre-existing obligation of confidentiality to the originator of the information or document, the safety and security of witnesses, victims and third parties, and the protection of national security information of State Parties.<sup>6</sup>

18. The Independent Oversight Mechanism shall notify the Presidency, Registrar or Prosecutor of the receipt of a report that merits an investigation of misconduct or serious misconduct, including possible unlawful acts, by staff and contractors under their respective authority. Such notification does not include revealing the identity of the information source or any such circumstance which might lead to its identification, and such notification must be treated as strictly confidential. Any unauthorized disclosure of this information or reprisal action taken against any person suspected of having submitted a report, provided information or otherwise cooperated with the Independent Oversight Mechanism shall constitute misconduct, for which disciplinary measures may be imposed.

19. Notwithstanding its operational independence, the functions of the Independent Oversight Mechanism shall not affect the Presidency, Registrar or Prosecutor's power to impose disciplinary measures pursuant to the relevant regulations and rules.

20. The authority of the Independent Oversight Mechanism to initiate a case on its own motion does not in any way impede the authority or independence granted by the Rome Statute to the Presidency, judges, Registrar or Prosecutor of the Court. In particular, the Independent Oversight Mechanism fully respects the notions of judicial and prosecutorial independence and its activities will not interfere with the effective functioning of the Court.

21. In case of an objection by a head of organ that an investigation initiated by the Independent Oversight Mechanism on its own motion would undermine judicial or prosecutorial independence of that organ,<sup>7</sup> the head of the organ shall notify the Independent Oversight Mechanism and the Independent Oversight Mechanism shall take into consideration these concerns.

22. Should the Independent Oversight Mechanism, notwithstanding such concerns, still consider that there is a need for an Independent Oversight Mechanism investigation, the matter of whether an Independent Oversight Mechanism investigation would proceed shall be determined by a third party with judicial or prosecutorial experience appointed by the Bureau.<sup>8</sup>

23. In the event that the third party determines that an Independent Oversight Mechanism investigation would not undermine judicial or prosecutorial independence of the relevant organ, the Independent Oversight Mechanism shall proceed with the investigation.

24. If, however, the third party determines that the Independent Oversight Mechanism investigation would undermine judicial or prosecutorial independence of the relevant organ, the matter in question shall be subject to an investigation by the relevant organ head, who shall conduct its own investigation of the matter and submit a report to the Independent Oversight Mechanism. Should the Independent Oversight Mechanism not be satisfied with the investigation or its outcome, it can seek consultations with or clarifications from the relevant organ head. Should the matter not be resolved to the satisfaction of the Independent Oversight Mechanism, it can apply its oversight powers to investigate the organ head for failing to properly address the specific concerns of the Independent Oversight Mechanism and it can bring the issue, as appropriate, to the attention of the Assembly.

25. Should the outcome of an Independent Oversight Mechanism investigation of the organ head be a finding that the investigation of the staff or contractors under their respective authority was not conducted properly, the matter shall be referred back to the

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<sup>6</sup> This includes articles, 54, 57, 64, 68, 72 and 93 of the Rome Statute.

<sup>7</sup> Judicial and prosecutorial independence is regarded as the independent performance of judicial or prosecutorial functions.

<sup>8</sup> The procedural framework, including confidentiality provisions, concerning the implementation of this paragraph shall be set out in the Operational Manual of the Independent Oversight Mechanism.

third party, who shall determine whether the Independent Oversight Mechanism should proceed with the initial investigation.

## **B. Confidentiality**

26. The Independent Oversight Mechanism may receive from any person reports of misconduct or serious misconduct, including possible unlawful acts, by elected officials, staff members and contractors. These reports shall be received and handled in complete confidence. The procedures and related arrangements described below are designed to protect individual rights as well as to protect against reprisals for reporting:

(a) Staff of the Independent Oversight Mechanism shall be responsible for safeguarding the reported allegations from accidental, negligent or unauthorized disclosure, as well as for ensuring that the identity of the staff members and others who submitted such reports to the office is not disclosed, except as otherwise provided in the present resolution;

(b) Unauthorized disclosure of the said reports by staff of the Independent Oversight Mechanism shall constitute misconduct, for which disciplinary measures may be imposed;

(c) The identity of a staff member or other person who submits reports to the Independent Oversight Mechanism may only be disclosed by the office where such disclosure is necessary for the conduct of proceedings, whether administrative, disciplinary or judicial and only with their consent. However, such protection will not be provided when a staff member or other person discloses their own identity to a third party, including the Court, or submits a knowingly false or wilfully reckless report to the office;

(d) Confidential reports of misconduct or serious misconduct, including possible unlawful acts, may be used in the official reports of the Independent Oversight Mechanism, without attribution directly or indirectly as to the source or identity of the individuals involved or implicated;

(e) No action may be taken against staff or others as a reprisal for submitting a report, providing information or otherwise cooperating with the Independent Oversight Mechanism; and

(f) Disciplinary proceedings shall be initiated and disciplinary action shall be taken in respect of any elected official or staff member who is proven to have retaliated against a staff member or other person who has submitted a report, provided information or otherwise cooperated with the Independent Oversight Mechanism.

## **C. Due process**

27. Investigations shall respect the individual rights and all conditions of employment for elected officials, staff members and contractors, and shall be conducted with strict regard for fairness and due process for all concerned.

28. The Independent Oversight Mechanism conducts preliminary fact-finding administrative investigations and will operate in support of the existing disciplinary structures of the Court.

29. Investigations into reported misconduct or serious misconduct, including possible unlawful acts, by contractors will be undertaken pursuant to the terms of the contract where stipulated, otherwise the Independent Oversight Mechanism will act in accordance with its own established procedures reflecting recognized best practices.

30. The transmittal of reports of misconduct or serious misconduct, including possible unlawful acts, to the Independent Oversight Mechanism with knowledge of its falsity or with wilful disregard of its truth or falsity shall constitute misconduct, for which disciplinary measures may be imposed.

## **IV. Jurisdictional action**

31. Where criminal acts by elected officials, staff members or contractors of the Court are reasonably suspected to have occurred, the Independent Oversight Mechanism shall hand over the results of the investigation to the Court. The Independent Oversight Mechanism may recommend that the Court refer the matter for possible criminal prosecution to relevant national authorities, such as those of the State where the suspected criminal act was committed, the State of the suspect's nationality, the State of the victim's nationality and, where applicable, of the host State of the seat of the Court.

32. The Independent Oversight Mechanism may recommend to the relevant elected officials of the Court that privileges and immunities be waived in accordance with article 48, paragraph 5, of the Rome Statute and, if applicable, the provisions of the Agreement on the Privileges and Immunities of the International Criminal Court, as well as the Headquarters Agreement between the International Criminal Court and the host State.

## **V. Reporting procedures**

33. The Independent Oversight Mechanism will submit quarterly activity reports directly to the Bureau and will submit on an annual basis a consolidated report of its activities to the Assembly via the Bureau. Such reports shall respect the confidentiality of staff members, elected officials and contractors. All reports shall be copied to the Presidency, the Prosecutor, the Registrar and the Committee on Budget and Finance.

34. The Court will have a reasonable opportunity to respond in writing to the reports submitted by the Independent Oversight Mechanism, and such written responses shall be transmitted to the Bureau and the Assembly and copied to the Head of the Independent Oversight Mechanism and the Committee on Budget and Finance.

## **VI. Disciplinary follow-up**

35. The Presidency, Registrar or Prosecutor, as appropriate, shall provide the Head of the Independent Oversight Mechanism twice yearly with written updates regarding the follow-up of disciplinary procedures involving cases previously investigated by the Independent Oversight Mechanism, together with information, if any, on the application of sanctions made in individual cases.

## **VII. Budget and personnel**

36. By resolution ICC-ASP/8/Res.1,<sup>9</sup> the Assembly established the Independent Oversight Mechanism as a separate and distinct new major programme budget to recognize and ensure its operational independence.

37. Future programme budget proposals for the provision of adequate resources for the effective functioning of the Independent Oversight Mechanism shall be submitted by the Head of the office for consideration by the relevant Court entities according to established procedures for final review and approval by the Assembly.

38. The Head of the Independent Oversight Mechanism shall have delegated certifying authority for all of the accounts of the office, which are subject to internal and external auditing established for the Court.

39. In keeping with the need for operational independence, the Head of the Independent Oversight Mechanism shall exercise the degree of latitude and control over the personnel and resources of the office, consistent with the Staff and Financial Regulations and Rules of the Court, that is necessary to achieve the objectives of the office.

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<sup>9</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

## Annexes

### Annex I

#### Report of the Credentials Committee

*Chairperson:* H.E. Mr. Pieter de Savornin Lohman (Netherlands)

1. At its first plenary meeting, on 6 December 2010, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, appointed a Credentials Committee for its ninth session, consisting of the following States Parties: Costa Rica, Estonia, Ireland, Lesotho, Netherlands, Republic of Korea, Serbia, Suriname and Uganda.

2. The Credentials Committee held two meetings, on 6 and 9 December 2010.

3. At its meeting on 9 December 2010, the Committee had before it a memorandum by the Secretariat, dated 9 December 2010, concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the ninth session of the Assembly of States Parties. The Chairman of the Committee updated the information contained therein.

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

Andorra, Argentina, Australia, Austria, Barbados, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Dominica, Ecuador, Estonia, Fiji, Finland, France, Germany, Ghana, Greece, Guinea, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lesotho, Liechtenstein, Luxembourg, Mali, Malta, Mexico, Namibia, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Saint Lucia, Samoa, San Marino, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

5. As noted in paragraph 2 of the memorandum, information concerning the appointment of the representatives of States Parties to the ninth session of the Assembly of States Parties had been communicated to the Secretariat, as at the time of the meeting of the Credentials Committee, by means of a cable or a telefax from the Head of State or Government or the Minister for Foreign Affairs, by the following 37 States Parties:

Afghanistan, Albania, Antigua and Barbuda, Bangladesh, Belize, Benin, Bosnia and Herzegovina, Cambodia, Central African Republic, Colombia, Comoros, Democratic Republic of the Congo, Denmark, Djibouti, Gabon, Gambia, Georgia, Guyana, Honduras, Jordan, Kenya, Lithuania, Madagascar, Malawi, Mauritius, Montenegro, Nauru, Netherlands, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Tajikistan, The former Yugoslav Republic of Macedonia, United Republic of Tanzania, Uruguay and Zambia.

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

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

*“The Credentials Committee,*

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

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

8. The draft resolution proposed by the Chairperson was adopted without a vote.
9. The Chairperson then proposed that the Committee recommend to the Assembly of States Parties the adoption of a draft resolution (see paragraph 11 below). The proposal was adopted without a vote.
10. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

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

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

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

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

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

*Approves the report of the Credentials Committee.”*

## Annex II

### Report of the Working Group on Amendments

1. By resolution ICC-ASP/8/Res.6,<sup>1</sup> the Assembly of States Parties established a Working Group for the purpose of considering, as from its ninth session, amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute at its eighth session,<sup>2</sup> as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

2. At the first meeting of its ninth session, on 6 December 2010, the Assembly appointed Mr. Paul Seger (Switzerland) as Coordinator of the Working Group.

3. The Working Group held three meetings between 7 and 9 December 2010.

4. In his opening remarks, the Coordinator suggested that, due to the limited time available at this session, the Working Group concentrate on a preliminary debate on how to deal with the amendments referred to in resolution ICC-ASP/8/Res.6 and on how to organize the deliberations of the Working Group. Delegations that wished to present their amendments were invited to do so. The Coordinator stressed, however, that the fact that a delegation refrained from presenting its amendment(s) at this session could not be interpreted as an implicit withdrawal; it simply meant that the delegation in question did not wish to discuss the amendment at the present stage. All amendments remained on the table.

5. Some delegations were of the view that before entering into a substantive consideration of amendments, the Working Group should develop rules of procedure, including as regards decision-making. In so doing, it was important to consider that several amendment proposals might be submitted in the future, both regarding the Statute and, in light of the Court's developing experience, to the Rules of Procedure and Evidence. The point was made that the Working Group should consider in detail only those amendments that had the potential of garnering a large degree of support and that indicators should be developed to that end. The view was also expressed that overburdening the jurisdiction of the Court, at this early stage, with crimes on which there was substantial disagreement was not a productive and cost-effective way to fight impunity. It was further remarked that focusing on implementing the amendments adopted at the Review Conference should take precedence over considering new amendments.

6. Other delegations, while agreeing in principle that only those amendments that had the potential of garnering a large degree of support should be considered with a view to adoption, referred to the proposals they had submitted and observed that a substantive discussion was necessary to determine the degree of support enjoyed by a specific proposed amendment. They pointed out that they had demonstrated flexibility in the run-up to the Review Conference, but could not agree to further postponing the consideration of these amendments. It was noted that some issues had in fact been outstanding since the Rome Conference and that there were other crimes than those within the Court's jurisdiction that were of concern to several regions in the world. The view was expressed that a substantive consideration of the amendments could not negatively affect the work of the Court. Given the limited time available to the Working Group, it was suggested to hold such debate through an inter-sessional process. It was pointed out that this work should be carried out within existing resources. However, there was also a view that allocating more time to the Working Group at the next session of the Assembly was a preferable way forward than holding an inter-sessional meeting.

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<sup>1</sup> *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I.

<sup>2</sup> See footnote 3 of resolution ICC-ASP/8/Res.6, as well as the report of the Working Group on the Review Conference to the eighth session of the Assembly (*Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, annex II and appendices I-VI) and the report of the Bureau on the Review Conference to the same session of the Assembly (ICC-ASP/8/43 and Add.1).

7. In light of the above, and upon the suggestion of the Coordinator, the Working Group agreed that informal consultations be held in New York between the ninth and the tenth session of the Assembly. During such consultations, delegations would have the opportunity to present amendments already submitted and positions on the substance of proposed amendments could be expressed, as well as on the advisability of proceeding with further amendments regarding crimes within the jurisdiction of the Court at this stage of its existence. Delegations would also discuss working methods, procedures and the role of the Working Group with respect also to possible future amendments, on the basis of a paper to be prepared by the Coordinator. As suggested by the Coordinator, the goal of these consultations would be to achieve greater clarity on both the substantive views on the amendment proposals and the procedure to be followed in dealing with amendment proposals, so as to inform the deliberations of the Working Group during the tenth session of the Assembly. Accordingly, the Working Group agreed on adding language to the omnibus resolution on Strengthening the International Criminal Court and the Assembly of States Parties, which would call for the drafting of a report, to be considered at the tenth session of the Assembly, on the elaboration of procedural rules or guidelines that would assist the Working Group in dealing with possible future proposals to amend the Rome Statute or the Rules of Procedure and Evidence.

## Annex III

### List of documents

|                     |   |
|---------------------|---|
| ICC-ASP/9/1         | Provisional agenda  |
| ICC-ASP/9/1/Add.1   | Annotated list of items included in the provisional agenda  |
| ICC-ASP/9/2         | Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2009 to 30 June 2010            |
| ICC-ASP/9/3         | Report of the Court on its assessment of the implementation of International Public Sector Accounting Standards   |
| ICC-ASP/9/4         | Report of the Court on analytic accountability  |
| ICC-ASP/9/5         | Report of the Committee on Budget and Finance on the work of its fourteenth session   |
| ICC-ASP/9/6         | Report on budget performance of the International Criminal Court as at 31 March 2010  |
| ICC-ASP/9/7         | Report on programme performance of the International Criminal Court for the year 2009   |
| ICC-ASP/9/8         | Report of the Court on human resources management   |
| ICC-ASP/9/9         | Updated Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court, the comparison between internal and external counsel |
| ICC-ASP/9/10        | Proposed Programme Budget for 2011 of the International Criminal Court  |
| ICC-ASP/9/10/Corr.1 | Proposed Programme Budget for 2011 of the International Criminal Court - Corrigendum  |
| ICC-ASP/9/10/Corr.2 | Proposed Programme Budget for 2011 of the International Criminal Court - Corrigendum  |
| ICC-ASP/9/11        | Report of the Court on the Kampala Field Office: activities, challenges and review of staffing levels; and on memoranda of understanding with situation countries                     |
| ICC-ASP/9/12        | Report on the review of field operations  |
| ICC-ASP/9/13        | Financial statements for the period 1 January to 31 December 2009   |
| ICC-ASP/9/13/Corr.1 | Financial statements for the period 1 January to 31 December 2009 - Corrigendum   |
| ICC-ASP/9/14        | Trust Fund for Victims. Financial statements for the period 1 January to 31 December 2009   |
| ICC-ASP/9/15        | Report of the Committee on Budget and Finance on the work of its fifteenth session  |
| ICC-ASP/9/16        | Report on the budget performance of the International Criminal Court as at 30 June 2010   |
| ICC-ASP/9/17        | Report on the job evaluation study of posts at Professional level   |
| ICC-ASP/9/18        | Report of the Court on its proposed schedule and budget for the implementation of the International Public Sector Accounting Standards  |
| ICC-ASP/9/19        | Updated Report of the Court on capital investment replacements  |
| ICC-ASP/9/21        | Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court                                 |
| ICC-ASP/9/22        | Election of members of the Committee on Budget and Finance  |
| ICC-ASP/9/23        | Report on the activities of the Court   |

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|--------------------------|---|
| ICC-ASP/9/24             | Report of the Bureau on cooperation   |
| ICC-ASP/9/25             | Report of the Bureau on the impact of the Rome Statute system on victims and affected communities   |
| ICC-ASP/9/26             | Report of the Bureau on complementarity   |
| ICC-ASP/9/27             | Report of the Bureau on the arrears of States Parties   |
| ICC-ASP/9/28             | Report on the activities of the Oversight Committee   |
| ICC-ASP/9/28/Add.1/Rev.1 | Resolution on permanent premises  |
| ICC-ASP/9/29             | Report of the Court on the public information strategy 2011-2013  |
| ICC-ASP/9/30             | Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court  |
| ICC-ASP/9/31             | Report of the Bureau on the Independent Oversight Mechanism   |
| ICC-ASP/9/32             | Report of the Bureau on the strategic planning process of the International Criminal Court  |
| ICC-ASP/9/33             | Report of the Court on the appointment of the External Auditor  |
| ICC-ASP/9/34             | Report of the Court on measures to increase clarity on the responsibilities of the different organs   |
| ICC-ASP/9/INF.2          | Bureau of the Assembly of States Parties. Search Committee for the position of the Prosecutor of the International Criminal Court. Terms of Reference   |
| ICC-ASP/9/L.1            | Draft report of the Assembly of States Parties to the Rome Statute of the International Criminal Court  |
| ICC-ASP/9/L.2            | Draft report of the Credentials Committee   |
| ICC-ASP/9/L.3/Rev.2      | Draft resolution. Strengthening the International Criminal Court and the Assembly of States Parties   |
| ICC-ASP/9/L.4            | Draft resolution of the Assembly of States Parties on the proposed programme budget for 2011, the Working Capital Fund for 2011, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2011 and the Contingency Fund |
| ICC-ASP/9/L.5            | Draft resolution on the establishment of a study group on governance  |
| ICC-ASP/9/L.6/Rev.1      | Draft resolution on the Independent Oversight Mechanism   |
| ICC-ASP/9/L.7            | Draft resolution. Amendment to the Financial Regulations and Rules  |
| ICC-ASP/9/WGA/CRP.1      | Draft Report of the Working Group on Amendments   |
| ICC-ASP/9/WGA/1          | Report of the Working Group on Amendments   |
| ICC-ASP/9/WGPB/CRP.1     | Draft Report of the Working Group on the Programme Budget for 2011 of the International Criminal Court  |
| ICC-ASP/9/WGPB/1         | Report of the Working Group on the Programme Budget for 2011 of the International Criminal Court  |

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