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

Note by the Secretariat

Pursuant to paragraphs 39 to 47 of resolution ICC-ASP/10/Res.5 of 21 December 2011, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the strategic planning process of the International Criminal Court. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

I. Introduction

1. The Assembly of States Parties (“the Assembly”), recalling its previous resolutions in this context,¹ early on expressed a strong interest in encouraging strategic planning as an integral part of setting-up and managing the Court’s multiple activities in implementing the Rome Statute.
2. At its tenth session, the Assembly welcomed the announced review of the Strategic Plan in 2012 and stressed its readiness to contribute early on to the consultations.² The Court has presented its revised Strategic Plan to the Working Group and it is proposed that discussions continue on this topic in 2013.

II. Follow up to the tenth session of the Assembly and strategic planning in 2012

3. At its sixth meeting, on 31 January 2012, the Bureau appointed Ambassador Jean-Marc Hoscheit (Luxembourg), as facilitator for the consultations of States Parties and the dialogue between the Court and States Parties in the framework of The Hague Working Group of the Bureau (“the Working Group”).
4. Consultations were also held with the participation of representatives of the NGO community.
5. The following priority issues were discussed during the Working Group on the basis of presentations and working papers elaborated by different representatives of the Court:
 - (a) Public information and communication;
 - (b) Intermediaries; and
 - (c) Review of the Strategic Plan.

6. The Working Group held three rounds of informal consultations, on 29 March, 14 June and 5 July 2012 to consider the issues set out in the mandates to the Bureau at the tenth session.³ In general, the process of strategic planning was welcomed by States Parties as an important management tool for the future development of the Court up to 2018. The credibility of strategic planning needs to be maintained and strengthened by establishing its impact on policies, budgetary allocations and operational decisions which needs to be placed firmly within the goals and priorities defined by the Strategic Plan. The translation of strategic objectives into daily operations by the Court needs to be monitored with the help of a short set of quantitative and qualitative performance indicators.

III. Consideration of issues

A. Public information and communication

7. The Working Group considered the Day of International Criminal Justice (17 July),⁴ and the tenth anniversary of the entry into force of the Rome Statute (2 July), as key events relevant to the Court’s Public Information Strategy 2011-2013,⁵ in particular its communications policy. As these dates both fell in the month of July, the Working Group suggested that activities be undertaken by stakeholders to mark the two events jointly, and it noted that the celebrations presented a unique opportunity to raise the profile of the Court, which was considering undertaking activities to support the activities of stakeholders. Furthermore, the Working Group noted that while 17 July was a fixed date, the tenth anniversary celebrations could extend over the year, including a focus at the

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

² ICC-ASP/10/Res.5, para. 47.

³ Ibid., paras. 39 - 47.

⁴ Kampala Declaration, para. 12.

⁵ ICC-ASP/9/29.

eleventh session of the Assembly. It was suggested that the Court could, of its own accord, also mark its own tenth anniversary.

8. The activities which the Court undertook were humble and limited, due to the lack of a specific budget for such activities, and included establishing a visual identity, and the design of, *inter alia*, a logo, flag, posters, and banners for external use. The Secretariat of the Assembly of States Parties, jointly with the Court's Public Information and Documentation Section (PIDS), established a website⁶ which reflects the activities undertaken by stakeholders, and includes a toolkit for use by stakeholders that might require material for their activities, publications, and a logo for use by third parties in their celebration of the tenth anniversary. PIDS, with the support of the host State, planned to organize a digital photographic exhibition which would be launched in The Hague to coincide with the eleventh session of the Assembly in November 2012.

9. The complementary approach of the Court in support of the activities of stakeholders was welcomed by delegations, and it was noted that it reflected the mandate of the tenth session of the Assembly. States were encouraged to consider how they could highlight the tenth anniversary during the eleventh session. The Working Group recalled that it was not the Court but the Rome Statute system that would celebrate its tenth anniversary, and encouraged worldwide promotion of this celebration. It was also hoped that the advanced stage of the different trials before the Court would provide a greater focus on outcomes over the past 10 years, and it was suggested that the judicial activities could be highlighted.

10. The possibility of voluntary contributions to support specific events and/or initiatives was welcomed by the Working Group.

B. Relations between the Court and intermediaries

11. The Court presented to States Parties its "Draft Guidelines governing the Relations between the Court and Intermediaries", "Code of conduct for intermediaries" and "Model contract for intermediaries", dated 11 May 2012. The Court had consulted with the NGOs and received the views of intermediaries active in the field, some of which were reflected in the draft documents.

12. The draft guidelines reflected modifications identified as necessary during the Court's continued review. They incorporated policies necessary to align the guidelines with those derived from the *Lubanga* ruling, and included provisions on the accountability of intermediaries. They reflected responses to the challenges experienced by the Court, including the need for clarity in the relationship with intermediaries, security, and the financial burden to some intermediaries of their interaction with the Court. The draft guidelines are subject to periodic review and assessment and would be revised if necessary, in the light of the experience of the Court.

13. The importance of developing a formalized general policy specific to the Court was noted, in view of its global reach and since it worked with ad hoc partners. The Group felt that the experience gained by other tribunals could be useful for the Court. It was noted that the different organs of the Court that relied on intermediaries, i.e. the Office of the Prosecutor (OTP) and the Registry, approached intermediaries for assistance with functions specific to that organ.

14. The Working Group noted that no budgetary implications attached to the supervisory role envisaged for relevant Court staff, but that such implications could exist in respect of security.

15. As regards the status of intermediaries, the model contract clarified that it was not a contract of employment, but a contract for the provision of services, and that intermediaries were not staff of the Court. In circumstances where the Court deemed it appropriate to compensate them for tasks performed, such payment was done in conformity with the contract.

⁶ See: www.10a.icc-cpi.info.

16. As regards the possibility of the Court being held accountable for the misconduct of intermediaries, the draft guidelines made clear that the Court would not be held liable for the activities of intermediaries carried out under the contract. The intermediaries would, however, be liable for their own misconduct, as set out in the Code of Conduct, which was to be read in conjunction with the guidelines. Where an intermediary violates any term of the contract, it is the duty of the Court to terminate the contract immediately. Since the intermediary is not part of the structure of the Court and therefore not subject to disciplinary measures, termination is the effective measure available to the Court.

17. The Working Group noted that the Court is immune from national proceedings, enjoys immunity and that intermediaries would be subject to national proceedings. This extended not only to social law, but also to criminal law. As regards the legal status of intermediaries beyond their contract with the Court, the regime of privileges and immunities did not apply to them.

18. The guidelines also contained provisions relating to the issue of confidentiality, of which the intermediaries were informed before their interaction with the Court; any continued interaction with the Court was the sole decision of the intermediary.

C. Interface between the Strategic Plan and the annual budget

19. At its tenth session, the Assembly of States Parties reiterated the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach and, in this regard, requested that the Court, in consultation with States Parties, continues to work towards setting a hierarchy of its priorities in order to facilitate strategic and budgetary choices.⁷ Furthermore, the Assembly requested the Study Group on Governance, in consultation with The Hague Working Group, to engage with the Court and the Committee on Budget and Finance, with a view to enhancing the transparency and predictability of the budgetary process and to present its preliminary recommendations to the Bureau before August 2012.⁸ This issue was considered in the Study Group on Governance.⁹

D. 2012 Review of the Strategic Plan

20. Pursuant to resolution ICC-ASP/10/Res.5,¹⁰ the Court introduced the draft revised Strategic Plan for 2013 - 2017, dated 19 September 2012 at the sixth meeting of The Hague Working Group, on 20 September 2012.

21. The 2012 revision of the Court's Strategic Plan was intended to better reflect expectations and the realities of the Court, and ensured better alignment of the strategy, activities of sections, and the costs of such activities as outlined in the budget. The revised Strategic Plan contained general long-term goals of the institution and for each goal, priority objectives were identified outlining activities required to achieve the goal. The Court found it more fruitful to focus on shorter time-frames for the priority objectives (2013-2014) and would revise the priority objectives by the end of 2014, given the changing realities of the Court.

22. The Court indicated that 2013 would be a transitional year between the revised Strategic Plan and the prior revised Plan of 2009, and while the Court would attempt to put the latest plan into practice, the 2013 budget would contain some elements of the prior Plan. The revised Plan 2012 provided longer term perspectives on objectives than the annual budget, but the cycles were compatible, and the new Plan would adjust to the budget cycles. The new Plan and the priority objectives would be reflected in the 2014 budget, the first that would be aligned completely to the Plan. The Plan was a living document which the Court would continue to monitor in the light of experience.

⁷ ICC-ASP/10/Res.5, para. 44.

⁸ ICC-ASP/10/Res.4, section H.

⁹ Report of the Study Group on Governance (ICC-ASP/11/31).

¹⁰ ICC-ASP/10/Res.5, para. 47.

23. The Court had assessed the impact of the revised Strategic Plan on the programme budget for 2014, and noted that the linkage between the Strategic Plan and the budget would have a beneficial impact on the Court's control over its expenditures. Furthermore, as regards the risks that it had identified in the Strategic Plan, the Court had conducted a separate risk analysis, and created a risk register.

24. The Working Group had, at the 5 July informal consultations on the strategic planning process, expressed that the issue would warrant a formal expression of views of the Assembly. The Working Group therefore recommends that a more thorough consideration of the revised Strategic Plan be carried out in 2013.

E. Emerging issues

25. The Working Group recalled that the Assembly had identified the following issues which needed to be followed attentively:

- (a) Management of risks; and
- (b) Field operations,

in order to determine when States Parties can be usefully involved in consultations on the policy aspects of these important issues,¹¹ and that the Assembly had reiterated its willingness to engage in constructive dialogue with the Court also on such issues as the adequate management of priority risks, and the development of a Court strategy on field operations.¹²

IV. Conclusion

26. On the basis of the work conducted on strategic planning within The Hague Working Group, the Assembly of States Parties is invited to provide guidance on future work in this area and examine the draft language for inclusion in the omnibus resolution (annex).

¹¹ ICC-ASP/9/Res.3, para .41.

¹² ICC-ASP/10/Res.5, para. 46.

Annex

Draft paragraphs for inclusion in the omnibus resolution

Text of 2011 resolution, amended:

40. *Recalls* that the issues of public information and communication about the Court and its activities that constitute a shared responsibility of the Court and States Parties, while acknowledging the significant contribution of other stakeholders;
41. *Notes* with appreciation the initiatives undertaken to celebrate, in the context of its information and communication strategy¹ the 17 July as Day of International Criminal Justice² and *recommends* that, on the basis of lessons learned, all relevant stakeholders, together with the Court and other international Courts and Tribunal, engage in preparing the 2013 celebration with a view to reinforcing the international fight against impunity;
42. *Notes* with appreciation the activities undertaken and those being planned by stakeholders to mark the tenth anniversary of the entry into force of the Rome Statute, and *encourages* States Parties to engage in those activities, as well as in other significant activities to implement the Court's Public Information Strategy 2011-2013,³ including in consultation with the Court and other relevant stakeholders;
43. *Takes note of* the presentation by the Court of its "Draft Guidelines governing the Relations between the Court and Intermediaries" and *invites the Bureau* to engage in a more in-depth discussion with the Court on this issue;
44. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach and, in this regard, *requests* that the Court, in consultation with States Parties, continue to work towards setting a hierarchy of its priorities in order to facilitate strategic and budgetary choices;
45. *Invites* the Court to present, based on a thorough and transparent assessment of results achieved through Court activities in reaching the priorities set, 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;
46. *Reiterates* its willingness to engage in constructive dialogue with the Court on emerging issues, including the adequate management of priority risks, and the development of a Court strategy on field operations;
47. *Notes* the introduction of draft revised Strategic Plan for 2013 – 2017 and *invites the Bureau* to consult with the Court thereon, where appropriate, in the context of the budgetary process, which is intended to strengthen and operationalize the impact of strategic planning on the development of the Court and its activities;
48. *Requests the Bureau* to engage in constructive dialogue with the Court on the emerging issues of risk management and development of a Court strategy on field operations.⁴

¹ ICC/ASP/9/29.

² Kampala Declaration, para. 12.

³ ICC/ASP/9/29.

⁴ ICC-ASP/10/Res.5, para. 46.