
Assembly of States Parties

Distr.: General
19 August 2004

Original: English
Languages: All

Third session

The Hague
6-10 September 2004

Report of the Committee on Budget and Finance ¹

I. Introduction

A. Opening of the Session and Adoption of the Agenda

1. The Committee on Budget and Finance was convened in accordance with a decision of the Assembly of States Parties taken at its 5th plenary meeting on 12 September 2003, and met at the seat of the Court in The Hague from 29 to 31 March 2004. The Committee held 8 meetings.
2. The session was presided over by the Chairman Mr. Karl Paschke (Germany) and opened by the President of the Court, Mr. Philippe Kirsch.
3. The Secretariat of the Assembly of States Parties provided the substantive servicing for the Committee and its Director, Dr. Medard Rwelamira, acted as Secretary of the Committee.
4. The Committee adopted the following agenda (ICC-ASP/3/CBF.1/L.1):
 1. Opening of the session
 2. Adoption of the agenda
 3. Organization of work
 4. Participation of observers
 5. Consideration of the Report from the Court
 6. Approval of the Report of the meeting
 7. Documentation for the August 2-6 meeting
 8. Other matters
 9. Closing of the session

¹ Previously issued as ICC-ASP/3/CBF.1/L.4, Report of the Committee on Budget and Finance (29-31 March 2004).

5. The following members attended the second session of the Committee:
 1. Lambert Dah Kindji (Benin)
 2. Eduardo Gallardo Aparicio (Bolivia)
 3. Fawzi A. Gharaibeh (Jordan)
 4. Hahn Myung-jae (Republic of Korea)
 5. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)
 6. John F. S. Muwanga (Uganda)
 7. Karl Paschke (Germany)
 8. Elena Sopková (Slovakia)
 9. Inna Steinbuka (Latvia)
 10. Michel Tilemans (Belgium)
 11. Santiago Wins (Uruguay)
6. Officials from the Court were invited to participate in the meetings of the Committee for the purpose of the introduction of the Report from the Court.

B. Participation of Observers

7. It was decided to accept the request of the Coalition for the International Criminal Court for a 45-minute presentation to be made by its representatives Ms. Cecilia Nilsson Kleffner and Mr. Jonathan O'Donohue. The Committee also decided to accept the request of Mr. Edmond Wellenstein, Director-General of the Host Country ICC Task Force, which is the main interlocutor with the Court, to address the Committee.

C. Travel Expenses of Committee Members

8. The Committee noted that its members, as they travel between their respective resident countries and the venue of meetings of the Committee are entitled to business class fares, following relevant United Nations practice (i.e. Advisory Committee on Administrative and Budgetary Questions; Committee for Programme and Co-ordination and the Committee on Contributions). Consequently, the Committee requested the Assembly of States Parties Secretariat and the Court to handle entitlements accordingly henceforth.

D. Premises of the Court

9. The Committee was addressed by Mr. Edmond Wellenstein of the ICC Task Force. The Committee was informed that the Court will continue to be temporarily housed in the current premises until such time that it can move to its own new premises. Part of the temporary premises have been refurbished at the cost of the Government of the Kingdom of the Netherlands, a Pre-Trial Chamber has been built, another bigger courtroom as well as holding cells are also being constructed. The Court and the Host Country are together working on a brief for the permanent premises and the plan is to submit the brief in due time to the Assembly of States Parties, through the Committee, for approval.

10. The representative of the Host Country stated that the financing of the new premises, which may require several hundred million euro will need to be discussed and approved by the Assembly of States

Parties which should consider various options including financing through banking institutions or through private donations.

11. The Committee noted the special responsibility of the Host Country in financing the construction of the permanent premises for the Court.

II. Consideration of the Report Provided by the Court

A. Management Matters

1. Host Country Agreement and Status of Court's Temporary Premises

12. The Registrar informed the Committee that negotiations were ongoing on the Host Country Agreement and enumerated the limited number of outstanding matters on which negotiations are continuing. These included the status of Nongovernmental organizations, representatives of the media, the Enforcement of Sentences and Provisions relating to Interim Release.

13. The Court noted that some €14 million expenses in addition to those budgeted for in the current programme were to be incurred in connection with the Court's detention facility, secure mail receiving facility, expansion into the C-wing of the current premises and the construction of additional courtrooms. The Committee noted with regret that the recently-installed video recording facility in the Pre-Trial Chamber was already regarded as obsolete. With regard to the issue of construction of detention facilities, the Committee reiterated the need to further explore the possibility of sharing of detention facilities with other international organizations and the Host Country.

14. The Committee requested further information regarding the Host Country's original statements and undertakings in respect of the facilities with which it would furnish the Court. In this regard the Committee sought, but was unable to obtain clarification on expenses incurred against the €33 million offer by the Host Country as indicated in its Statement dated 15 April 2002.

15. The Committee expressed the hope that the Host Country, even in the absence of detailed undertakings, would be gracious and generous, in keeping with its officially-stated intentions, in accommodating the needs of the Court pertaining to space and equipment.

16. The Committee cautioned against non-essential investment of infrastructure resources into the Court's temporary premises. It also requested further information regarding the dimension and timescale for growth envisaged by the Court.

17. The Committee will revert to these issues at its next session in August 2004 in light of the additional information to be provided by the Registrar.

2. Managerial Progress and the Structure of the Court

18. The Court presented the Committee with organigrammes of the structure of each of its Organs, explaining the internal *modus operandi* of each Organ. Co-ordination of their activities is secured through regular meetings of the Co-ordination Council. The judicial activities of the Court obviously depend upon the level of activity of the Office of the Prosecutor. In this respect, the Office of the Prosecutor anticipates that two situations will be under investigation during the course of 2004, with at least one of those situations, the referral by the President of the Republic of Uganda, constituting a full-fledged investigation. However, the extent of these activities will depend on a number of factors, including security which is a major concern for the Court's investigations. The conclusion of the UN-ICC Relationship Agreement and

subsequent agreements with the Department of Peace Keeping Operations of the United Nations would greatly facilitate the work of the Court and alleviate the high security risks and costs if the Court were obliged to provide its own security in the field.

19. The Committee recalled its comments and recommendations regarding safety and security in Paragraph 46 of its report of 8 August 2003 (ICC-ASP/2/7) and urged the Court to conclude Memoranda of Understanding with UNSECOORD, as well as with other Intergovernmental Organizations such as the African Union and the European Union and to seek from States Parties contributions to security capabilities in support of field investigations.

20. The Court informed the Committee that of the 375 staff for which budgetary provision has been made for 2004, 177 staff members so far have been recruited on 1 year contracts, with 35 staff members on a General Temporary Assistance basis and 7 consultants. Although this represents slower progress towards the figure of 375 than might be expected, the Court has endeavored not to recruit more staff than it needs at a given time. The Court's vacancy rate for 2003 was 25% but it was difficult to anticipate what the rate will be for 2004.

21. The geographical distribution and gender balance of the Court's recruited staff was discussed, with the Court reporting that no state or region's targets had as yet been exceeded. Its gender balance is currently tipped in favour of males, but the ratio of recruited males to female professionals mirrored precisely the ratio of male to female applicants for those posts. The Committee expressed concern that Asia and Africa were under-represented amongst the staff of the Court.

22. The Committee requested information regarding the redeployment of posts between sections of the Court. The Court undertook to provide a report on redeployment to the next session in August 2004 of the Committee, by which time the redeployment process will have been completed. In its deliberation the Committee expressed a desire to have more information on the number of consultants employed by the Court and the grounds on which consultants are used.

3. Communication Between Members of the Committee and the Court

23. The Committee welcomed the Court's proposed mechanism for facilitating the secure flow and exchange of information between members of the Committee *inter se* and between the Court and the Committee. The proposed mechanism will facilitate the secure online hosting of documents under discussion by the Committee and will obviate the need for the cumbersome circulation of documents by email. Additionally, it will allow online discussion by the Committee members. The Committee expressed its appreciation for the proposed new system, while stating that in order for the system to be successful, it will require the Court to use it to circulate documents and engage in discussions with the Committee, while taking care not to circulate more documents than necessary and so overburden the Committee. The Committee requested the Court to give a practical demonstration of the system at its next session in August 2004. The Committee also noted that it is important that any system adopted by the Court should be durable and not become obsolete technology within a short space of time.

4. Substantive Performance Reports of the Organs

24. The Committee received from the Presidency, the Office of the Prosecutor and the Registry, substantive performance reports on the activities of the respective Organs of the Court for 2003.

25. The Committee expressed concern over a certain fragmentation between the three Organs and the apparent lack of unanimity on a strategy to centralize administrative duties in the Registry, which may result in the possible duplication of activities. The Committee requested the Court to provide a common

organizational chart describing the relationship between the different Organs. The Committee also requested details of the criteria by which the Court distinguishes between its organizational sections, units and divisions in order to assist the Committee in its consideration of the substructures of the Organs of the Court. The Court undertook to furnish the Committee with this information at its next session in August 2004.

26. With regard to outreach and external relations, the Committee requested a list of activities which the different Organs of the Court have performed and recommended that the Court develop a common outreach and external relations programme. A strategy document on this issue should be submitted to the Committee at its next session in August 2004.

5. Report on Budget Issues

27. The Committee received a report on the status of implementation of the 2003 budget, including the status of assessed contributions as at 25 March 2004, as well as an audit update. The Court also sought guidance from the Committee on whether financial statements of the Court should be signed by all the heads of Organs or whether the Registrar should continue to be the sole signatory to the financial statements. The Committee decided that the Registrar should continue to sign the Court's financial statements as the sole signatory.

28. The Committee received a status report on the implementation of the Court's 2004 budget. The Committee was also informed that in its review of the budget the Court had identified a potential deficit in the budget caused by technical errors in computing salary costs. This error resulted in an underestimation of the 2004 Programme Budget by €4.75 million. However, the Court indicated that based on the revised and re-prioritized staffing requirements, the forecast total of work months and the Court's other financial requirements, the forecast deficit would be reduced to €860.000. The Committee was also informed that control mechanisms have been put in place to avoid similar mistakes in the future.

29. The Committee expressed its regret that this mistake was made and noted the measures taken by the Court to ensure that such a miscalculation does not reoccur in the future. The Committee undertook to monitor the consequences of this occurrence and decided to revisit the issue at its next session in August 2004.

30. The Court proposed moving the current December to September budget preparation schedule to the period March to November. The advantage of this timetable would be that the draft budget could be finalized in August and submitted to the Committee and Assembly of States Parties in October and November respectively, closer to the period of the actual implementation of the budget. The Committee was of the view that such a move would be useful and would add to the efficiency of the budgetary process. The Committee recommended that the matter should be referred to the Assembly of States Parties for consideration.

31. The Court requested the Committee's advice on the possibility of changing the budgetary cycle from annual to biennial. This would enable the Court to provide better recruitment terms to staff and to undertake long-term capital projects. The Committee was of the view that while the proposal is commendable, it would not be prudent to move to a biennial budgetary cycle at this stage of the development of the Court.

32. On the issue of staff recruitment the Committee was concerned that staff was only being offered one year contracts. This included key positions. The Committee expressed its concern at this approach on two counts. Firstly, it would not facilitate recruiting a workforce with a wide geographical representation and secondly, it could discourage the most able candidates from applying.

33. The Committee received a proposal from the Court to increase the level of the Working Capital Fund in order to cater for unforeseen expenditure as well as appropriations of an urgent nature when the Assembly of States Parties cannot be convened. The Committee observed that the Working Capital Fund was not intended to be a contingency fund but a cash flow fund. The Committee instead took the view that the Court should prepare a detailed proposal of amendments to the Financial Rules and Regulations to be considered by the Committee at its next session in August 2004, regarding the establishment and level of a contingency fund, the creation of a commitment authority for the Registrar to use this fund and defining the role of the Committee and Assembly of States Parties over the commitment authority. The Committee requested the Court to fully justify the level proposed for this fund and to clarify whether this fund would be within the programme budget or in addition to it.

6. Budget 2005

34. The Committee received the Prosecutor's assumptions on the analysis, investigation, and prosecution of cases for 2005 with regard to the two situations that are under consideration by the Court, namely Uganda and the Democratic Republic of the Congo. The Prosecutor expressed his commitment to utilizing the centralized common services of the Registry wherever appropriate and with due regard to the independence of the Office of the Prosecutor and undertook to provide the Committee with a paper setting out the approach to this issue. The Committee noted that the Prosecutor's activities were in keeping with the assumptions presented to the Committee at its last session.

35. With regard to the structure of Budget 2005, the Court drew a distinction between core capacity that would be needed to deal with one case on a zero deployment time and conditional capacity which is additional, scalable capacity that would be required to pursue all its assumed cases.

36. The Committee requested the Court to provide it with details of its procurement activities, in particular the role of the Procurement Review Committee as well as measures that have been put in place to streamline procurement procedures. The Court undertook to furnish this information to the Committee during its next session in August 2004.

37. The Committee noted that insufficient information had been provided by the Court on the status and management of Trust Funds. In this regard, the Committee requested that the Court include in their 2005 Programme Budget information on Trust Fund management and extra budgetary resources received by the Court.