

International Criminal Court

ICC-ASP/5/23

Assembly of States Parties

Distr.: General
1 November 2006

Original: English

Fifth session

The Hague

23 November to 1 December 2006

**Report of the Committee on Budget and Finance
on the work of its seventh session**

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction		4
A. Opening of the session, election of officers and adoption of the agenda.....	1-7	4
B. Participation of observers	8	5
C. Statement by a representative of the host State	9	5
II. Consideration of issues on the agenda of the Committee at its seventh session		5
A. Review of financial issues		5
1. Status of contributions.....	10	5
2. States in arrears	11-21	6
B. Audit reports		8
1. Financial statements of the Court for the period 1 January to 31 December 2005	-	8
2. Financial statements of the Trust Fund for Victims for the period 1 January to 31 December 2005	22-24	8
3. Report of the Office of Internal Audit.....	25-27	9
C. Strategic plans of the Court		9
1. Strategic Plan of the Court	28-30	9
2. Strategic Plan for Outreach	31-32	9
3. Strategic plan for information and communication technologies	33-35	10
4. Court Capacity Model	36-37	10
D. Budgetary matters		11
1. Financial performance data of the 2006 budget as at 31 August	38-42	11
2. Consideration of the proposed programme budget for 2007.....	43-82	12
(a) Recommendations of a general nature	48-52	12
(i) Presentation and results-based budgeting	48-50	12
(ii) In-built costs (inflation)	51	13
(iii) Classification exercise.....	52	13
(b) Recommendations relating to major programmes		13
(i) Major Programme I: The Judiciary – the Presidency and Chambers.....	53-56	13
(ii) Major Programme II: Office of the Prosecutor	57-69	14
(iii) Major Programme III: Registry.....	70-80	16
(iv) Major Programme IV: Secretariat of the Assembly of States Parties	81	17
(v) Major Programme V: Investment in the Court’s premises	82	17

	<i>Paragraphs</i>	<i>Page</i>
3. Pension scheme for judges	83-94	18
4. Conditions of service of judges: relocation upon completion of service	95-98	20
5. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors	99-105	21
E. Premises of the Court.....		22
1. Permanent Premises	106-113	22
2. Interim Premises.....	114-119	23
F. Other reports		24
1. Application criteria for accessing the Trust Fund for the participation of least developed countries and other developing States in the work of the Assembly.....	120-121	24
2. Appointment of the External Auditor.....	122	25
3. Organizational nature of the Court.....	123	25
G. Other matters		25
1. Relationship with the Special Court for Sierra Leone.....	124-125	25
2. Future meetings.....	126-130	26
3. Timeliness of documentation	131	26
Annexes*		28
I. List of documents		28
II. Status of contributions as at 13 October 2006		30
III. Budgetary implications of implementation of the recommendations of the Committee on Budget and Finance.....		

* Annex III is under preparation and will be issued as an addendum to this report.

I. Introduction

A. Opening of the session, election of officers and adoption of the agenda

1. The seventh session of the Committee on Budget and Finance (the “Committee”) was convened in accordance with the decision of the Assembly of States Parties (the “Assembly”) taken at the 4th plenary meeting of its fourth session, on 3 December 2005. The session, comprising 10 meetings, was held from 9 to 13 October 2006. The Vice-President of the Court, Ms. Akua Kuenyehia, delivered welcoming remarks at the opening of the session.

2. For the seventh session, the Committee elected by consensus Mr. David Dutton (Australia) as Chairperson and elected Ms. Elena Sopková (Slovakia) as Vice-Chairperson. The Committee also appointed Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland) as Rapporteur for the session. The Committee discussed the criteria for electing the Chairperson and Vice-Chairperson. While some members believed geographic rotation should be considered when electing the Chairperson of the Committee, other members argued that merit should be the sole criterion. The Committee agreed to continue the informal practice of rotating the position of Vice-Chairperson annually.

3. The Secretariat of the Assembly of States Parties (the “Secretariat”) provided the substantive servicing for the Committee, and its *ad interim* Director, Mr. Renan Villacis, acted as Secretary of the Committee.

4. At its 1st meeting, the Committee adopted the following agenda (ICC-ASP/5/CBF.2/L.1):

1. Opening of the session.
2. Election of the Chairperson and Vice-Chairperson.
3. Adoption of the agenda.
4. Participation of observers.
5. Organization of work.
6. States in arrears.
7. Financial performance data of the 2006 budget.
8. Consideration of the proposed programme budget for 2007.
9. Pension scheme for judges.
10. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors.
11. Audit reports:
 - (a) Financial statements of the International Criminal Court for the period from 1 January to 31 December 2005;
 - (b) Financial statements of the Trust Fund for Victims for the period from 1 January to 31 December 2005;
 - (c) Report of the Office of Internal Audit.
12. Appointment of the External Auditor.
13. Premises of the Court:
 - (a) Permanent premises;
 - (b) Interim premises.
14. Strategic Plan of the Court.

15. Application criteria for accessing the Trust Fund for the participation of least developed countries and other developing States in the work of the Assembly.
 16. Organizational nature of the Court.
 17. Other matters.
5. The following members attended the seventh session of the Committee:
1. Lambert Dah Kindji (Benin)
 2. David Dutton (Australia)
 3. Eduardo Gallardo Aparicio (Bolivia)
 4. Fawzi A. Gharaibeh (Jordan)
 5. Myung-jae Hahn (Republic of Korea)
 6. Rossette Nyirinkindi Katungye (Uganda)
 7. Juhani Lemmik (Estonia)
 8. Peter Lovell (United Kingdom of Great Britain and Northern Ireland)
 9. Karl Paschke (Germany)
 10. Elena Sopková (Slovakia)
 11. Michel-Etienne Tilemans (Belgium)
 12. Santiago Wins (Uruguay)
6. The Committee welcomed the two new members of the Committee, Ms. Rossette Nyirinkindi Katungye (Uganda) and Mr. Juhani Lemmik (Estonia).
7. The following organs of the Court were invited to participate in the meetings of the Committee to introduce the reports: the Presidency, the Office of the Prosecutor and the Registry.

B. Participation of observers

8. The Committee decided to accept the request of the Coalition for the International Criminal Court to make a presentation to the Committee. The Committee expressed its appreciation for the presentation and welcomed the insight that the Coalition was able to give on many of the issues facing the Court.

C. Statements by a representative of the host State

9. At the 1st, 4th, and 7th meetings on 9, 10 and 12 October, Ambassador Edmond Wellenstein, Director General, ICC Task Force, Ministry of Foreign Affairs of the Netherlands, made statements on behalf of the host State addressing the issues of interim and permanent premises, and detention costs.

II. Consideration of issues on the agenda of the Committee at its seventh session

A. Review of financial issues

1. Status of contributions

10. The Committee reviewed the status of contributions as at 13 October 2006 (annex II). It noted that a total of €5,955,666 was outstanding from previous financial periods, and

€12,644,241 for the 2006 financial period. It noted that 53 States were fully paid up for all their contributions. The overall situation represented an improvement since the Committee's previous session and a lower level of outstanding contributions than at the same time in 2005. Nonetheless, the Committee noted that total arrears remained significant and could jeopardise the cash flow of the Court if a higher level of activity reduced the cash buffer created by underspending in the current and previous budgets.

2. States in arrears

Applications for exemption at the fifth session of the Assembly

11. The Committee noted that paragraph 44 of resolution ICC-ASP/4/Res.4 stipulates that the Committee shall advise the Assembly before the Assembly decides on any requests for exemption under article 112, paragraph 8, of the Rome Statute.

12. The Secretariat advised the Committee that five States were ineligible to vote as at 5 October 2006: Bolivia, Guinea, Honduras, Malawi and Niger. Two applications for exemption were received by the Committee. The application from Honduras was subsequently withdrawn, since Honduras made a payment sufficient to ensure restoration of its voting rights. Bolivia submitted an application for exemption, but without any supporting documentation and not before the deadline of one month prior to the Committee's session. The Committee noted that Bolivia needed to pay only €38 to restore its voting rights, while emphasising the need for it to pay its contributions in full. In these circumstances, the Committee did not further consider the application **and requested the Secretariat to advise Bolivia and the other three States Parties subject to article 112, paragraph 8, of the minimum payment required before the fifth session of the Assembly.**

13. A further 11 States would become ineligible to vote on 1 January 2007 should they not make additional payments to avoid the application of article 112, paragraph 8, of the Statute. **The Committee recommended that the Secretariat should ensure that States likely to lose their voting rights on 1 January were informed of that possibility, including the full amount due and the minimum amount necessary to avoid application of the article, several months prior to the end of each calendar year. The Committee also requested the Secretariat to ensure that future applicants were aware of the requirement to submit full relevant information so that the Committee could properly assess applications.**

Procedure for considering requests for exemption

14. The Committee resumed consideration of the procedures for handling applications for exemption under article 112, paragraph 8, of the Rome Statute, in accordance with the decision of the Assembly (paragraphs 40 to 47 of resolution ICC-ASP/4/Res.4) that the Committee should consider such applications.¹

15. The Secretariat informed the Committee that the New York Working Group of the Bureau had held consultations with a view to developing guidelines for the submission of documentation regarding requests for exemption. However, since the Bureau had not yet finalised its report, the Committee was unable to comment on any recommendations concerning the guidelines that the Bureau might submit to the Assembly at its fifth session. **The Committee nevertheless decided to consider its role under resolution ICC-ASP/4/Res.4 and to return to the issue at a future session, should that be necessary, in light of the Bureau's report and further decisions of the Assembly.**

¹ Report of the Committee on Budget and Finance on the work of its sixth session (ICC-ASP/5/1), paras. 14 to 17.

Timing of applications for restoration of voting rights

16. The Committee examined the implications of paragraph 44 of resolution ICC-ASP/4/Res.4 in light of the expected schedule of future Assembly and Bureau meetings. The current timing of meetings would allow the Committee to consider in October each year any applications in advance of the new session of the Assembly. However, currently, any State Party that became ineligible to vote on 1 January of a given year would not be able to submit an application for restoration of its voting rights through the Committee for any resumed session of the Assembly, or meeting of the Bureau, that took place between 1 January and the Committee's first session in any year.

17. The timing problem could not be resolved by States Parties making prospective applications in October in the event that they might become ineligible to vote on 1 January of the following year. The Committee recognised that the practice in the United Nations had been to not consider prospective applications. The relevant provisions in Article 19 of the Charter of the United Nations and article 112, paragraph 8, of the Rome Statute (which were effectively the same) referred to applications by States in arrears and required a determination that the "failure to pay is due to conditions beyond the control of the State Party". It would not appear to be possible to restore the voting rights of a State that had not in fact become ineligible to vote, and the Committee doubted that it would be possible to conclude that failure to pay was due to conditions beyond the control of a State before that State had in fact failed to pay its contributions.

18. The Committee examined several options that the Assembly might wish to take:

- (a) The Assembly could recognise that States Parties that became ineligible to vote on 1 January each year would not have the opportunity to apply for exemption before the Committee's first session each year. (That practice was followed in the United Nations, where the General Assembly usually considered applications for exemption only once a year).
- (b) The Assembly could amend the meeting schedule to ensure that the Committee met prior to any resumed session of the Assembly. The Committee doubted whether that would be achievable, since moving the Committee's session forward from April to January or February would hinder the Committee's other work. The Committee wished to retain its session in the period from mid-March to mid-May, since that was approximately six months from the October budget session and allowed sufficient time for preparations following the previous year's session of the Assembly. Moving the Assembly's resumed sessions until after the Committee's April meeting would mean that the Assembly would not be compatible with the timing needed to elect judges in some years (since the terms of judges commence in March).
- (c) The Assembly could consider applications for exemption arising in that situation without the advice of the Committee.

19. **The Committee recommended that the most practical option would be to employ option (c) for resumed sessions of the Assembly at which major elections were to be held, and to recognise (as per option (a)) that States would not have the opportunity to submit applications for other sessions of the Assembly or meetings of the Bureau held in the period between 1 January and the Committee's first session each year.**

Supporting information

20. The Committee considered the question of guidelines for submitting information in support of requests for exemption. It noted that the Assembly had already given some

guidance on the question in paragraph 42 of resolution ICC-ASP/4/Res.4. The Committee did not believe it would be possible to specify in more detail what information should be provided in support of requests for exemption, since the circumstances leading to States' failure to pay would vary. It agreed that applicants should provide all relevant information to support their claim that their failure to pay had been due to conditions beyond their control and recognised that article 112, paragraph 8, of the Statute set a rigorous standard for the restoration of voting rights. **The Committee recommended that the Secretariat should advise States Parties wishing to submit a request for exemption that they must submit sufficient documentation to support the contention that their failure to pay had been due to conditions beyond their control.**

Payment plans

21. The Committee discussed the utility of voluntary payment plans and agreed that the submission of such plans – and subsequent implementation of the terms – would demonstrate a State's commitment to eliminating its arrears. Payment plans should set out a schedule for paying off arrears in as few years as possible, while at the same time meeting in full new annual contributions that became due during the period of the plan. At the current early stage of the life of the Court, arrears had not yet built up to such an extent that long payment plans would be necessary, and the Committee emphasised the need for States to avoid the accumulation of large arrears. **The Committee recommended that the Secretariat should provide the Assembly, through the Committee, with an annual report describing any payment plans in place and performance against those plans. Finally, the Committee noted that the submission or implementation of a payment plan should have no bearing on decisions on restoring voting rights under article 112, paragraph 8, of the Statute.**

B. Audit reports

- 1. Financial statements of the Court for the period from 1 January to 31 December 2005**
- 2. Financial statements of the Trust Fund for Victims for the period from 1 January to 31 December 2005**

22. Introducing his reports on the financial statements of the Court (ICC-ASP/5/2) and of the Trust Fund for Victims (ICC-ASP/5/3), the External Auditor informed the Committee that the statements were free of material misstatement and presented fairly the financial position of the Court and of the Trust Fund for the period considered. The External Auditor was pleased that he could offer an unqualified opinion on the accuracy of the Court's accounts. He wished to highlight in particular recommendation 7 of the financial statements of the Court that asked the Court to appoint a majority of external independent members on the Court's yet to be established audit committee. The Registrar informed the Committee that the Court was considering how to secure the services of suitable external candidates.

23. The Committee expressed appreciation for the quality of the reports and welcomed the unqualified audit opinion. **It recommended that the Assembly should approve the recommendations contained in the external audit reports and that the Court should ensure their full implementation.** In particular, the Committee agreed on the need to **establish and strengthen the audit committee of the Court through the appointment of a majority of external independent members and urged the Court to do so promptly.**

24. The Committee also suggested that **the inclusion of a table in future reports setting out the progress made towards the implementation of previous recommendations would be a useful tool for the Committee and the Assembly.**

3. Report of the Office of Internal Audit

25. The Committee considered the Internal Auditor's report on the activities of the Office of Internal Audit during the previous year and the management responses (informal memoranda) that the Court had transmitted to the Auditor in response to his audit reports. While it was satisfied that the Office of Internal Audit had now fully assumed its functions as confirmed by a peer review carried out by the National Audit Office, the Committee could not escape the impression that the relationship between the Court and the Office of Internal Audit was adversely affected by a misunderstanding on both sides as to the role of internal oversight.

26. Court officials seemed to be generally uneasy about the Internal Auditor's right and obligation to report major findings to the Committee and to the Assembly and would prefer the Office to be an exclusively internal controlling instrument. The Office of Internal Audit, on the other hand, must not limit itself to detecting irregularities and uncovering administrative weaknesses, but should more strongly emphasize the goal of working in partnership with management to improve the overall performance of the Court.

27. The Committee was conscious of the built-in tension in the relationship between the Auditor and management, **but urged both sides to work for a better understanding of their respective roles. The Court's Internal Oversight Committee, in particular, was called upon to work towards that goal. The early inclusion of external experts in the Internal Oversight Committee would be helpful in that endeavour.**

C. Strategic plans of the Court

1. Strategic Plan of the Court

28. The Committee considered the Strategic Plan of the Court (ICC-ASP/5/6). It welcomed the completion of the Plan, which would provide a common framework and direction for the Court's activities in meeting the expectations of the Rome Statute. The Committee also heard a presentation from the Prosecutor that gave members an insight into the activities of the Office of the Prosecutor, and of the Prosecutor's own strategic plan which outlined the contribution that his Office would make to the overall Plan.

29. The Committee noted that achievement of some of the objectives (e.g. outreach and information and communication technologies (ICT) projects) would have budgetary implications. It also noted the linkages between the Plan and the 2007 budget **and expected that area to develop further in the future. With that in mind, the Committee recognised the need for the Court to keep the Plan under regular review to reflect changes in assumptions and other circumstances.**

30. The Committee wished to remain seized of the issue in future sessions.

2. Strategic Plan for Outreach

31. The Committee considered the Strategic Plan for Outreach (ICC-ASP/5/12) and benefited from a helpful presentation by the Court, which gave a comprehensive breakdown of the approach and the channels of communication the Court intended to adopt in the various situations in order to ensure that it fulfilled its critical outreach mandate. The Committee found the report and presentation particularly helpful to its consideration of the relevant aspects of the budget. It nevertheless remained concerned that there appeared to be no clear system for determining the levels and extent of engagement required for the target audience, or any process to evaluate whether that had been achieved. Notwithstanding the critical nature

of that task and the interest of States and other concerned parties, **the Committee felt that the omission could potentially have significant financial consequences in the future.**

32. **The Committee urged the Court to continue fine-tuning its Plan and wished to be kept informed of further developments.**

3. **Strategic plan for information and communication technologies**

33. At its fourth session, the Assembly of States Parties endorsed the recommendation of the External Auditor and the Committee on Budget and Finance that the Court should develop an ICT strategy aligned to its core business objectives. The Court's strategy was set out in document ICC-ASP/5/7.

34. A key feature of the overall Strategic Plan of the Court was the objective of becoming an 'e-institution' that provided a high level of information security. The Court had an ambitious programme to achieve that objective. The Strategic Plan set out a clear programme of work by individual projects until the end of 2010. The Committee welcomed the opportunity to view at first hand the operation of some of that technology. Its main area of concern was not with the programme itself but with the method of financial authorisation and project/programme control. The Financial Regulations and Rules and the budgetary process did not provide for ICT projects to be considered on a 'whole life' basis but only in terms of resource requirements for individual financial years. ICT investment was likely to be comparable to or even to exceed the cost of permanent premises and represented a financial commitment spanning several years. The investment in the SAP-ERP system now exceeded €4.5 million, but had never been viewed as a single investment project. Current plans were to invest some €37 million over the period 2006-2010. **The Committee recommended that the Court should seek to move to a system in which each major ICT project or programme was treated as a separate programme or sub-programme in the budget, where the financial commitment was informed by a formal business case, investment appraisal and benefit realisation plan that could be subsequently monitored. The inclusion of some external non-executive presence on the boards of programmes would also provide States Parties with assurance that there was sufficient challenge and rigour to key decision-making.**

35. Notwithstanding that concern, the Committee was pleased with a number of features of the strategy, including:

- (a) Development of strategic partnerships with hardware and software providers to ensure value for money;
- (b) Utilisation of existing commercial packages rather than bespoke systems that required expensive upgrades;
- (c) Liaison with other judicial organizations in the development of Court-related systems with a view to reducing development costs;
- (d) Development of risk-management and business continuity plans; and
- (e) Development of the capacity to internalise the maintenance of the systems.

4. **Court Capacity Model**

36. The Committee considered the report on the Court Capacity Model (ICC-ASP/5/10) and benefited from a detailed presentation of the Model by officials of the Court. The Model simulated the number of staff likely to be required for given numbers of situations, investigations, trials and appeals. The Model had the clear potential to assist in informed decision-making on budgetary and Court capacity issues. Nevertheless, the Committee

recognised that many of the assumptions in terms of staffing requirements and timelines were either based on theoretical assumptions of workloads that had not been tested, or on activities that had yet to take place. Further work was therefore required to compare and test actual and projected requirements and to refine areas, such as economies of scale, so that the Model could command a higher confidence factor than current circumstances allowed.

37. The Committee wished to be updated annually on the development of the Model and its use in the planning process.

D. Budgetary matters

1. Financial performance data of the 2006 budget as at 31 August

38. The Committee considered the report on the budget performance of the Court as at 31 August 2006 (ICC-ASP/5/13). It noted that only 54.4 per cent of basic resources and 36.6 per cent of situation-related resources had been spent by 31 August, which was projected to lead to a total underspend in the region of €14 million in 2006. The overall implementation rate for 2006 was expected to be about 83 per cent (based on expenditure of approximately €67 million against a budget of €80.4 million).

39. In staffing, 441 of 624 approved posts were filled at 31 August (a vacancy rate of 29.3 per cent). Of the 183 vacant posts, 35 had been advertised, while another 25 pertaining to a second trial had been frozen. The Committee was advised that a consequence of the lack of filled posts was a greater reliance on general temporary assistance (GTA) and consultants, both of which would be substantially overspent.

40. The Court explained that the 2006 budget had been based on assumptions of trials starting in May and July. Neither of those assumptions had materialised resulting in savings of €9 million in the Division of Victims and Counsel and the Division of Court Services, and €7.9 million in the Judiciary and the Office of the Prosecutor, making a total of nearly €17 million. The fact that the Court's projections indicated only a €14 million saving overall suggested that there was an overspend of approximately €3 million in other areas and raised the question of whether the Court could have lived within its budget if the trials had taken place as had been anticipated.

41. The Committee recalled that in his report on 2004 expenditure, the External Auditor had raised the issue of budgetary planning, control and monitoring.² Similarly, in its report on the work of its fifth session, the Committee had felt that increased financial control would be achieved with a closer alignment of authority and budgetary responsibility.³

42. The Committee observed that the pattern of significant underspending by the Court was a continuing one, noting that the implementation rate had been 82 per cent in 2004 and 83 per cent in 2005. The Committee recognised that underspending was due in large measure to the fact that the stated assumptions for the budget had not been realised in any of the three financial periods, and it appreciated the fact that the Court had not sought to spend available funds that it did not believe were required. Even so, it meant that decisions were not made against a background of normal financial diligence, and that solutions and decisions might not be subject to the level of budgetary rigour expected. The Committee was concerned moreover that a significant portion of expenditures took place at the end of the year and it cautioned the

² Financial statements for the period from 1 January to 31 December 2004 (ICC-ASP/4/9), in particular paras. 18 - 52.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part II. B. 6 (b), paras. 12 - 14 and 28.

Court against any unjustified spending. Furthermore, the Committee also expressed concern about the overspending on GTA, travel and consultants.

2. Consideration of the proposed programme budget for 2007

43. The Committee heard a general presentation by the Court of the budgetary estimates for 2007, covering basic expenses, situation-related costs, and the major areas of budgetary growth.

44. The Court emphasised that a large proportion of the overall growth in the figures was a reflection of decisions that had been taken and approved by the Assembly of States Parties as part of the previous year's budget process. The growth over and above that level was confined to situation-related costs and there had been zero growth in proposed basic expenses.

45. The budget had been based on the assumption that only one trial would be conducted during 2007. Based on that assumption, some of the resources which had been included in the 2006 budget were no longer requested for 2007 and would be funded by drawing upon the Contingency Fund, should the need arise if a second trial was required.

46. The Prosecutor presented the overall budget proposal for the Office of the Prosecutor, and emphasised that the proposal had been prepared in line with the Court's Strategic Plan. The Office aimed to be engaged in four or five investigations during 2007 and in the conduct of one trial. Should any new investigation be launched other than the three that were currently under way, a rotational resource model would be applied with a view to minimizing the need for additional resources. Cooperation with States was critical and the proposed budget sought additional resources in that key area. Cooperation was essential throughout the Court's work cycle, especially with respect to arrest, detention, relocation and protection of witnesses. In this connection, the Court emphasised that the degree of cooperation from States would bear on the budget in 2007 and future years, and that investment in securing effective cooperation should reduce costs in the medium and long term.

47. The Court indicated that some of the additional requested resources were required as a result of recent rulings by Chambers, which imposed additional responsibilities on the Office of the Prosecutor, and of the very strict and short timelines imposed by the Rules of Procedure and Evidence and the Regulations of the Court.

(a) Recommendations of a general nature

(i) Presentation and results-based budgeting

48. The Committee welcomed the clarity of the budget presentation and the layout of the proposed budget document itself, noting a continuous improvement in the Court's work in that area. The Committee was nevertheless concerned at the general approach. In each of the programmes and sub-programmes, the budget proposals for 2007 were compared with the 2006 budget, which had been developed to meet workload assumptions as they appeared in the summer of 2005, that had only partially materialised. As a result, the 2006 budget had been significantly underspent and could not therefore be considered a sound baseline for consideration of the 2007 budget. Similarly, much of the commentary related only to perceived growth rather than justifying the overall budget. The Committee resolved to adopt a more inter-active approach with the Court to address the issue, either inter-sessionally or at its April session.

49. A preferable approach would have been to compare the 2007 budget with projected implementation for 2006, linking the increases to workload assumptions. The Committee recognised that the Court's SAP-ERP system was not sufficiently developed for that purpose.

However, such an approach would highlight a difference of an approximately 40 per cent increase between projected implementation for 2006 and the 2007 budget.

50. The Committee recalled the comments it had made in previous reports on the issue of results-based budgeting.⁴ Despite some incremental improvements, with links to the Strategic Plan, progress remained too slow.

(ii) In-built costs (inflation)

51. The Committee noted that a total of €9.17 million was proposed as ‘in-built’ costs over which the Court had no control or arising from previous decisions of the Assembly. While it acknowledged the need to accommodate increased costs for posts that had been approved in 2005, pensions for judges, interim premises and detention facilities, **the Committee recommended against the provision of €1.49 million for inflation. Given the consistent pattern of underspending and higher than projected vacancy rates, the Committee believed that increased salary rates could be accommodated within the 2006 levels for staff costs.**

(iii) Classification exercise

52. The Committee noted that the Court intended to conduct a reclassification exercise in 2007 and had proposed €185,000 in Major Programme I, €98,000 in Major Programme II and €200,000 in Major Programme III for cost increases arising from upward reclassifications. While the Committee agreed that the Court should have some flexibility to re-grade posts within budgetary periods, it was concerned that there might be pressure to use a regrading exercise as a means of promoting and rewarding individuals. **The Committee reiterated that reclassification was justified only in cases where a substantial change in functions and responsibility took place. The Committee recommended against any post reclassifications pending a full examination of the Court’s proposed approach, including justification for each post proposed for reclassification, at the Committee’s April session. The Committee recommended that the Assembly authorize the Committee to approve at its April session reclassifications where it believes there is strong justification to do so. This procedure would allow the Court to proceed with justified reclassifications by the middle of 2007 while allowing the Assembly to review reclassified posts at its sixth session. The Committee also recommended that the proposed funds should not be included in the 2007 budget, since it did not expect that the reclassification exercise would result in costs that required specific provisions.**

(b) Recommendations relating to major programmes

(i) Major Programme I: The Judiciary – the Presidency and Chambers

Programme 1100: Presidency

53. **The Committee recommended that the proposed P-2 Associate External Relations Adviser (paras. 44 - 45) should not be approved.** It noted that a P-3 post had been approved for that purpose in 2005 and that efforts should be made to rationalise the workload of responding to external correspondence.

⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part II. A.8 (b), paras. 43 - 48.

Programme 1200: Chambers

54. The Committee noted that the budget stated 'the setting of expected results and performance indicators is... not applicable to judicial activities'. It recalled that this assertion had been contained in the 2006 budget, but that the 2005 budget did include expected accomplishments and indicators. Judges played a major role in achieving the strategic objectives of the Court, just as they had done in the Ad Hoc Tribunals, and the Committee did not believe that the identification of expected results and indicators for Chambers posed any threat to the independence of judges or their role under the Rome Statute. The Committee therefore **recommended that the Court should submit appropriate expected results and performance indicators for Chambers in future budgets.**

55. **The Committee recommended that the three P-3 Legal Officers proposed in the Trial Division (para. 51) should not be approved at the current stage.** While it recognised that the posts were consistent with the staffing structure for Chambers set out in the 2005 budget, it had in fact expressed some reservations at that time. With the expected reclassification of some P-2 posts in Chambers to the P-3 level, and since the Chambers were still only in the early stages of substantial judicial activity, the Committee believed that more experience was needed before additional resources were made available. **It recommended that the Court re-justify its Chambers staffing structure in the budget for 2008. It also recommended that increased GTA (para. 53) should be approved to ensure some capacity to respond to workload peaks.**

56. The Committee noted that the budgeted costs for judges in 2007 did not include the cost of judges which had yet to be called to the Court as soon as justified by the workload of the Court. The Committee also noted that the salary and other costs of those judges would be met from the Contingency Fund should a second trial commence during 2007.

(ii) **Major Programme II: Office of the Prosecutor**

Programme 2100: Prosecutor

57. **The Committee recommended that the increase of €94,700 for consultants (para. 68) should not be approved and that the provision should remain at the 2006 level.**

58. The Committee observed that the provisions for travel across the Office of the Prosecutor were ambitious and recommended that greater efforts should be made to combine multiple purposes in single trips. Given the large number of trips proposed in paragraph 71, and the potential to combine their objectives into fewer trips, **the Committee recommended that basic travel should be maintained at the 2006 level (€64,200 – a reduction of €19,100). The Committee further recommended against the provision of €7,500 in paragraph 72 for photographers, which appeared unnecessary.**

59. In sub-programme 2120 (Services Section), the Committee noted that there had been generous increases in previous years and that, while some increase was again justified, the quantum of additional resources did not appear to correspond to changes in assumptions or demonstrated workload. **It therefore recommended against the proposed posts in paragraphs 75, 76 and 77, but in favour of the increase of €270,000 in GTA, which should provide some additional capacity. It further recommended that travel (paras. 86 - 87) should be rationalised into fewer, longer trips, and that the provision should be approved at the 2006 level (by a reduction of €95,600). The Committee was not convinced of the need to increase contractual resources by €95,000 and recommended that it should be approved at the 2006 level (paras. 88 - 91).**

Programme 2200: Jurisdiction, Complementarity and Cooperation Division

60. The Committee enquired as to the meaning of a number of references in the narrative for the Jurisdiction, Complementarity and Cooperation Division which might be construed as a suggestion that the Division had an oversight role vis-à-vis the other Divisions of the Office of the Prosecutor. The Committee was advised that such a reading of the narrative was incorrect, since the Division had no oversight role vis-à-vis the other two Divisions. Rather, all three Divisions reported directly to the Prosecutor, although in many instances officers from the three Divisions cooperated closely in joint teams.

61. In sub-programme 2210 (Office of the Head), the Committee **recommended that consultancy funds of €32,000 (para. 100) should not be approved.**

62. The Committee agreed that travel provisions in paragraphs 101-102 included too much travel in Europe to negotiate agreements and **recommended that the provision should be maintained at the 2006 level (by a reduction of €33,500).**

63. In sub-programme 2220 (Situation Analysis Section), the Committee **recommended that the P-2 Associate Situation Analyst (para. 103) should not be approved and that travel provisions (paras. 106 - 107) should be maintained at the 2006 levels (through a reduction of €34,800), since the increase was not adequately justified. It also recommended that GTA of €43,400 (para. 105) should not be approved.**

64. In sub-programme 2230 (International Cooperation Section), the Committee was satisfied with the rationale for establishing two P-4 International Cooperation Advisers posts (paras. 108 - 109), but **recommended that the P-3 International Cooperation Adviser post (para. 110) should not be approved.** Increases in travel provisions (para. 111) were not adequately explained and the Committee **recommended that travel should be maintained at the 2006 level (through a reduction of €87,400).**

Programme 2300: Investigation Division

65. In sub-programme 2310 (Office of the Deputy Prosecutor for Investigations), the Committee **recommended that the provision of €44,700 for consultants (para. 116) should not be approved, since it lacked justification.**

66. The Committee **accepted the need for the proposed increases in sub-programme 2320 (Planning and Operations Section) and for most of the increases in sub-programme 2330 (Investigation Teams). However, in the latter sub-programme, it was not convinced of the need for the P-3 Analyst (paras. 133 - 134) or for an increase in GTA (para. 137). It therefore recommended against the post and that GTA should be maintained at the 2006 level (through a reduction of €73,400).** The Committee welcomed the revision of travel plans to reduce costs without reducing the number of days in the field and observed that similar efforts were needed in most other areas of the Office of the Prosecutor.

Programme 2400: Prosecution Division

67. In sub-programme 2410 (Office of the Deputy Prosecutor for Prosecutions), the Committee noted that the justification for travel (paras. 147 - 148) was not strong and that funds were provided in several other sections for similar purposes. **It therefore recommended that the total should be cut by half to €17,000.**

68. In sub-programme 2420 (Prosecution Section), the **Committee recommended that the P-1 Case Manager, GS-OL Trial Support, GS-OL Trial Support / Prosecution Assistant (para. 150) should not be approved,** noting that the Assembly had rejected the same proposals in 2006, which had a higher level of activity according to the assumptions. **It**

also was not convinced of the need to establish two P-3 Legal Officers (para. 152) and recommended that the posts should be converted into GTA funds for 2006, pending the settling down of the workload.

69. In sub-programme 2430 (Appeals Section), the Committee **recommended that the P-3 Appeals Counsel (para. 154) should not be established**, since the volume of appeals work had not been sufficiently demonstrated to justify an additional post at the current stage.

(iii) Major Programme III: Registry

Programme 3100: Office of the Registrar

70. In sub-programme 3120 (Office of Internal Audit), the Committee **recommended in favour of the P-4 Senior Auditor post (para. 172) to strengthen the internal audit function, but believed that it should be classified as basic and not situation-related resources.**

Programme 3200: Common Administrative Services Division

71. In sub-programme 3220 (Human Resources Section), the Committee **recommended against the P-2 Associate Human Resources Officer post (paras. 191 - 192)**, since there should be sufficient capacity to handle the functions mentioned. It also **recommended that the GL-OL Training Assistant post (paras. 198 - 199) should not be approved**, since the Section already had a considerable number of staff, including for training.

72. In sub-programme 3250 (General Services Section), the Committee **recommended against the GS-OL Travel Assistant post (para. 210) but endorsed additional GTA for another GS-OL for the same function. It recommended that funds for external printing (para. 219) should be cut to €15,000**, with printing to be funded from a second trial budget should a second trial take place.

Programme 3300: Division of Court Services

73. In sub-programme 3310 (Office of the Head), the Committee **recommended that the provision for consultants (para. 271) should not be approved.**

74. In sub-programme 3340 (Court Interpretation and Translation Section), the Committee **recommended that the posts of two P-4 Revisers, one P-2 Associate Terminologist and one GS-PL Reference Assistant should not be approved, and that GTA should be increased by €300,000 (rather than €543,100)**, since very large increases were proposed without a clear basis in the assumptions or workload.

75. In sub-programme 3350 (Victims and Witnesses Unit), the Committee **recommended that three P-2 Associate Protection Officers posts (paras. 306 - 307) should not be established at the current stage but should be converted into GTA and that another P-2 Associate Operations Officer post for situation IV (paras. 308 - 309) should not be approved. It also recommended that the increase in proposed travel of €171,000 (para. 312) should not be approved and that travel should be approved at the 2006 level.**

Programme 3400: Public Information and Documentation Section

76. In sub-programme 3420 (Library and Documentation Centre), the Committee **recommended that only one new GS-OL Library Assistant should be approved rather than two and that the functions should be determined according to priorities in the Section.**

77. In sub-programme 3430 (Public Information Unit), the Committee **recommended that the P-3 Conference Organizer (paras. 329 - 331) should not be approved**, since the functions related to protocol and the post had been rejected in the 2006 budget. The Committee **recommended that the two P-2 Associate Outreach Officer posts (paras. 334 - 337) should not be approved**, since the Section already had considerable resources and the Committee was not satisfied that the need for additional posts had been justified in terms of results. The Committee **also recommended that GTA of €62,600 for administrative assistance (paras. 340 - 341) should not be approved**, since it had not been adequately justified. The Committee **was not convinced of the need to increase contractual services for printing (paras. 342 - 345) by €438,000 and recommended a smaller increase of €200,000.**

Programme 3500: Division of Victims and Counsel

78. In sub-programme 3520 (Defence Support Section), the Committee **recommended a reduction of travel (paras. 356 - 357) by €10,000 to the 2006 level.**

79. In sub-programme 3530 (Victims Participation and Reparations Section), the Committee **recommended against the GTA provision of €31,200 (para. 366), for which justification was inadequate.**

Programme 3600: Secretariat of the Trust Fund for Victims

80. The Committee recommended that the Secretariat's annual budget should be fully incorporated into future proposed budgets for the Court and that a separate presentation of the activities of the Board of Directors of the Trust Fund for Victims should not appear in the report to the Assembly. The Committee also recommended that travel should be maintained at the 2006 level of €49,000. The Committee further observed that the total annual budget of the Secretariat exceeded more than half of the balance of the Trust Fund for Victims. Unless significant progress was made in raising funds to distribute to victims, the Committee noted that it might become necessary to assess the cost-effectiveness of the current arrangements.

(iv) **Major Programme IV: Secretariat of the Assembly of States Parties**

81. The Committee noted that the Bureau was recruiting a new Director for the Secretariat. While it believed that most changes should await the new Director and recommended against the establishment of a new P-3 Conference Officer post, it agreed that there was a need to establish stronger policy capacities within the Secretariat. For that reason, the Committee recommended the establishment of the P-3 Legal Officer post and that, in designing the duties of the post, consideration should be given to servicing the growing budgetary and administrative discussions within the Assembly and its subsidiary bodies.

(v) **Major Programme V: Investment in the Court's Premises**

Programme 5100: Interim premises

82. The Committee recommended that resources for security staff should not be approved, except for one GS-OL Assistant Security Officer (para. 409), and urged the host State to implement proper arrangements for interim premises security staff that did not create additional costs for the Court.

3. Pension scheme for judges

83. The Committee recalled that the Assembly had asked the Committee to make recommendations on three issues (in paras. 4, 6 and 7 of resolution ICC-ASP/4/Res.9): the most cost-effective option for administering the judges' pension scheme; the pension terms that should be applicable to future judges of the Court; and the situation of judges who had served at more than one international court. The Committee resumed its consideration of these issues based on the respective reports of the Court.

Tender to provide a pension scheme

84. The Committee examined the report on a procurement tender for the pension scheme for judges (ICC-ASP/5/18). The Court had contracted an external firm to conduct a tender exercise to identify a suitable provider for insuring the judges' pension scheme in accordance with paragraph 4 of the resolution ICC-ASP/4/Res.9. Only one tender met all of the Court's requirements, including that all risks should be insured, pensions would be paid on a yearly basis, and there should be minimal administrative work for the Court. Under a proposal from Allianz/NL the Court would pay annual pension premiums and Allianz/NL would pay all insured pensions related to those premiums. Any return on investment above 3.3 per cent per annum would be returned to the Court and an administrative cost of 7 per cent of premiums would apply. Premiums would be determined by Allianz/NL individually for each judge based on an assessment of risk.

85. The Committee noted that only the Allianz/NL proposal met the Court's requirements and acknowledged the difficulty of obtaining insurance for a very small and unique pension scheme. Since the United Nations Joint Staff Pension Scheme was incompatible with the pension terms of the judges, the Allianz/NL proposal appeared to be the only viable offer for administering the pension scheme through an external party. The Committee noted that with only a single option available it was difficult to assert that the proposal was the most cost-effective solution as requested in the resolution of the Assembly. Nonetheless, the Committee agreed that the search for solutions had been adequate and that the Allianz/NL proposal appeared to be reasonable. **The Committee therefore recommended that the Court should accept the tender of Allianz/NL to insure the judges' pension scheme.**

Pension terms applicable to judges

86. The Committee recalled that the conditions of service and compensation for the judges of the Court that were adopted at the first session of the Assembly (and partially revised at the second and third sessions) were modelled on the terms of judges of the International Court of Justice. The pension scheme contained in the conditions of service was non-contributory and paid a pension to judges attaining the age of 60 at half the rate of final salary after completion of a nine-year term, with pro rata reductions for judges who had served between three and nine years, and a pension of one quarter of final income for surviving spouses.

87. The Committee noted that the scheme appeared to assume that the Court was the sole source of a judge's retirement pension, and did not take into account pensions accrued during service at other international courts or in national systems. The Committee felt it was unlikely that judges of the Court would not have sources of pension income other than the Court, given the high qualifications and extensive experience required for election to the Court.

88. The Committee also observed that the non-contributory nature of the scheme and the ability to gain a full pension from only nine years work meant the pension scheme for judges was incommensurate with the pensions available to all other Court staff. It noted that the annual cost to the budget of a judge's pension was approximately €155,560 (equivalent of 84

per cent of salary) while the annual cost of a pension at the USG level within the United Nations Joint Staff Pension Scheme was €31,510 (although the USG salary level was approximately €34,000 lower than the salary level for judges). The Committee noted that the cost of the pension scheme for judges represented a significant proportion of budgeted annual costs for judges: in 2007 some €2,640,000 was budgeted for this purpose, representing 45 per cent of the total cost of judges to the budget.

89. On the basis of these considerations, the Committee agreed that the pension scheme for future judges should provide a level of pension income commensurate with the proportion of an individual's working life spent in the service of the Court. This would resolve both the difference between the judges' pensions and those of other Court staff and officials and the problem inherent in the fact that the scheme presently took no account of other pensions available to individuals. Moreover, the Committee believed that it was neither desirable nor efficient to maintain a separate set of conditions of service, including a pension scheme, for the small number of judges, which led to, inter alia, the difficulty of obtaining an insurer. The Committee recognised that this would require discontinuing the link with the conditions of service of judges of the International Court of Justice.

90. With this in mind, **the Committee had an initial discussion on alternatives to the present pension scheme for judges and the wider conditions of service that would reflect the principles identified above and preferably avoid the maintenance of separate conditions of service for a small number of people. The Committee agreed to continue its consideration in future on the basis of any guidance that might be provided by the Assembly. To assist its consideration it requested the Court to explore what suitable pension options would be available on the commercial market that would provide future judges with a pension contribution commensurate with their term of service, would not be unduly complex for the Court to administer, and could be provided at a reasonable cost to States Parties. The Committee also asked the Court to provide a comparison in tabular form of the conditions of service pertaining to judges and those applicable to other Court staff under rules derived from the International Civil Service Commission.**

Pension schemes applicable to judges of international courts

91. The Committee examined a report (ICC-ASP/5/19) prepared in accordance with paragraph 7 of resolution ICC-ASP/4/Res.9, in which the Assembly requested the Committee to consider further the issue of whether existing pensions payable to individual judges who had served at other international tribunals and organizations should be taken into account in determining the pensions payable by the Court.

92. According to the report, the Pension Scheme Regulations of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda provided that no pension should be paid to a former judge of those courts who was subsequently elected a judge of another of those courts until his or her term of office had expired. The Committee noted that that arrangement prevented any individual judge from receiving simultaneously a salary from one of the three courts and a pension from another. However, the arrangement had not been extended to the International Criminal Court and it was possible that a judge of the Court might receive a full salary from the Court while in receipt at the same time of a pension from another international court. Similarly, nothing currently prevented a former judge of the Court from receiving both an International Criminal Court pension and a salary from another international court.

93. Notwithstanding the Committee's intention to consider further the pension scheme for future judges of the Court, **the Committee recommended that the Pension Scheme Regulations should be amended immediately to preclude the possibility of individuals receiving a pension from the Court while serving as a judge at another international**

court. The Committee also recommended that the Assembly should invite the General Assembly of the United Nations to consider amending the Pension Scheme Regulations for judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to ensure that no former judge of any of those courts received a pension while also serving as a judge of the International Criminal Court.

94. The report also advised that under the current Pension Scheme Regulations for judges of the International Criminal Court, the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, it was possible for a judge who had served on more than one court to receive two or more pensions simultaneously. The Committee noted that the situation of more than one pension being paid to an individual could be remedied by amendment to the Pension Scheme Regulations of the four courts by the Assembly of States Parties to the Rome Statute and the General Assembly of the United Nations. However, the Committee also noted that the question of individuals receiving more than one full pension from different institutions was not limited to previous service in another international court. The Committee observed that since it would be difficult to devise an equitable system for taking pension income from all sources into account in determining the level of pension to be paid by the Court, it might be preferable to amend the Pension Scheme Regulations to provide a level of pension income commensurate with the proportion of an individual's working life spent in the service of the Court (as discussed in para. 89 above). After consideration of the issue on a number of occasions, the Committee felt that the matter would be best resolved by addressing the causes rather than the symptoms. The Committee decided to consider the issue further in the context of its discussions on the pension terms applicable to future judges (see para. 90).

4. Conditions of service of judges: relocation upon completion of service

95. The Court submitted to the Committee a document (ICC-ASP/5/14) containing a proposal to amend the conditions of service and compensation for judges of the Court so as to increase the relocation allowance payable to judges upon completion of service to 24 weeks of net base salary after a nine-year term, and to extend the relocation allowance to judges who had served fewer than five years at the Court. The Committee was informed that the Court had believed it necessary to submit the report to the Assembly because paragraph XIII of the annex to resolution ICC-ASP/3/Res.3 stated that the conditions of service and compensation of judges should be reviewed by the Assembly as soon as practicable following the review of the conditions of service of the judges of the International Court of Justice by the General Assembly of the United Nations. The Committee noted that the General Assembly had amended the relocation allowance for the judges of the International Court of Justice on 13 April 2005, and that the current report had been submitted to the Committee only two working days prior to the commencement of its session. Given the proposal that the conditions of service of judges of the Court should be amended retrospectively to 1 January 2005, and the financial implications of the decision, the Committee wished to express its disappointment at the late submission of the report.

96. The Committee observed that the relocation allowance for judges – both in its current and proposed form – bore no relationship to the costs incurred by judges in returning to their home country at the end of their term. Both on appointment and separation judges were entitled to travel costs and removal expenses for their household goods. On appointment, judges were entitled to €10,000, plus €5,000 for a spouse and each additional child. While the Committee agreed it was desirable to also provide a modest sum to cover the many incidental costs of relocation, it did not believe that such a payment should be dependent on length of service nor that a severance payment amounting to half of annual salary (for a judge who had served for nine years) was appropriate given the nature of fixed term judicial appointments.

97. The Committee noted that the cost to the budget of the Court would be €300,000 for the period up to the end of 2006. It also noted that a further €125,000 was proposed for inclusion in the 2007 and subsequent budgets to ensure that the cost of liabilities were accrued in the accounts.

98. Given its reservations about the basis and size of the relocation allowance, **the Committee recommended that the Assembly should not approve the proposed amendments to the conditions of service for judges nor any increase to the budget for accrued liabilities.** Subject to the decisions of the Assembly, the Committee indicated its willingness to consider the issue further in the broader context of its consideration of the conditions of service for future judges (see paras. 89 - 90).

5. Conditions of service and compensation of the Prosecutor and Deputy Prosecutors

99. The Committee continued its consideration of the conditions of service and compensation for the Prosecutor and Deputy Prosecutors in the light of a further report from the Court (ICC-ASP/5/21) responding to the Committee's previous report (paras. 60 - 63). The Committee noted the costs of each of the options identified, and the difficulties caused by a custom-built system of conditions of service (as existed for judges). The Committee identified two options which the Assembly might choose.

Option A

100. **The Assembly could confirm the appointment of the Prosecutor and Deputy Prosecutors at the USG and ASG levels, respectively, for the purpose of conditions of service under article 49 of the Statute. That would avoid creating separate conditions of service and would be administratively convenient. However, it would not be commensurate with the conditions of service and remuneration level for the judges. That could be addressed in part by specifying a higher salary level than would normally apply at the USG and ASG levels.**

101. With respect to pensions, the Committee recalled its observation at its fifth session that 'participation in the United Nations Joint Staff Pension Fund (UNJSPF) would be inadequate, and consequently, that a more reasonable scheme should be developed with the advice of a private insurer'.⁵ That observation had been based on advice from the Court contained in document ICC-ASP/4/11 that the nature of the UNJSPF assumed career-long participation in the Fund, and that the limited terms available to the Prosecutor and Deputy Prosecutors would mean that those individuals would receive a much smaller pension for their term of service than the judges. The Committee noted that document ICC-ASP/5/21 identified the cost to the Court if the Prosecutor and Deputy Prosecutors were to join the UNJSPF and advised that it might be possible to negotiate retrospective participation in the Fund for existing officials back to the beginning of their terms of service.

102. **The Committee noted that should the Assembly determine that the conditions of service and pension scheme for the Prosecutor and Deputy Prosecutors would be those applicable to the USG and ASG levels, respectively, then that would lead to pension entitlements that would not be commensurate with those of the judges. However, the entitlements would be comparable with those of the Registrar and other Court staff who spent only part of their careers in international organizations.**

⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part II. B. 6 (b), para. 100.

Option B

103. The Assembly could amend the conditions of service for judges to include the Prosecutor and Deputy Prosecutors and then consider conditions of service and pensions for future elected officials in total. This would avoid creating a separate system of conditions for service for three officials and could provide parity with judges in remuneration and pensions.

104. **The Committee recognised that both of those options were feasible but agreed that the question of remuneration level and parity with judges was a political one which would be weighed by the Assembly in light of the responsibilities assigned to the Prosecutor in the Statute.** The costs associated with both options were clearly set out in document ICC-ASP/5/21, which had been presented by the Court.

105. The Committee emphasised the need for a decision to be taken on the conditions of service of the Prosecutor and Deputy Prosecutors, especially with respect to pensions since no pension entitlements had yet been established. Once a decision on pension entitlements was made, it would also be necessary to ensure retrospective payment for service up to the date of a decision.

E. Premises of the Court**1. Permanent premises**

106. The Committee considered the comprehensive progress report on the future permanent premises of the International Criminal Court (ICC-ASP/5/16) and the report on the governance arrangements for the permanent premises at the International Criminal Court (ICC-ASP/5/17). The Committee was also able to consider the informal summary of the Vice-Presidents of The Hague Working Group of the Bureau from the meeting of experts on permanent premises which had taken place on 21 and 22 September 2006 and which a member of the Committee had attended. The Committee benefited from a discussion of the issues with representatives of the Court and the host State and with the Coordinator of The Hague Working Group.

107. The Committee noted the clearly expressed view of the experts that a new building was the most preferable option. That option was likely to offer the greatest value in the long term. In particular, a new building would provide the best solution to the need for flexibility and scalability, given the many unknown factors likely to affect the Court's future workload.

108. The Committee recalled the view it had expressed at its fifth session that the Alexanderkazerne option would probably offer the most flexibility in matching the requirements of interested parties. Since that decision, the host State had made its improved bid, offering land at the Alexanderkazerne and a €200million loan. **The Committee recommended that efforts should be focused on new premises at the Alexanderkazerne, and that work in relation to other options should be suspended until such time as the Assembly could make an informed decision as to whether to proceed with the Alexanderkazerne.**

109. The Committee noted the need for a detailed functional brief to help determine likely costs and to provide the basis for future decisions, and it **recommended that the Court should commence work on the brief at the earliest opportunity, which should facilitate the development of financial estimates based on various options of size and capacity. That would enable the Committee to make recommendations to the Assembly on the key decisions in relation to the permanent premises.**

110. The Committee welcomed the clarification by the host State of the position whereby the Court would own the buildings of the permanent premises and the host State the land. **The Committee agreed that it was also essential for the host State to clarify the exact terms of its additional bid to provide the Alexanderkazerne site and requested that the clarification should be provided to States and to the Committee before 31 March 2007.**

111. The Committee also considered the report on the governance arrangements for the Court's permanent premises. Although the report addressed some of the requirements, it recognised that further work was needed and suggested that the proposal should be supplemented as the project progressed. The Committee did not believe that that was a suitable way to proceed.

112. **The Committee recommended that a comprehensive and unambiguous governance framework should be put in place at the outset. The framework should define the distribution of rights and responsibilities among the different stakeholders and participants, determine the rules and procedures for making decisions and setting objectives, and establish a system for monitoring and reporting performance against project objectives.** Developing that framework as the project progressed would not provide the level of assurance to stakeholders that the governance framework sought to provide. The Committee emphasised that strong governance arrangements were essential to the success and cost control of the project, and cautioned against rushing decisions on that (or any other aspect of the project).

113. The Committee also noted that a better sequencing of the project was emerging and **recommended that the Court should prepare a clear timetable for the decisions that would be required to advance the project. In that regard, it noted that a decision on how to finance the project would not be needed until the project was ready to proceed. It agreed that examination of financing options should be undertaken over the following two years to ensure that options were properly considered and that the Assembly would be in a position to make a decision at the appropriate time should the Alexanderkazerne project proceed. As a first step, the Committee recommended that full details of the host State low-cost loan offer should be provided at an early stage. The Committee believed that the Assembly would need to know the range of flexibility available, particularly with respect to the sum borrowed and the term of the loan, including details of how the loan could be drawn and how it must be repaid. The provision of that information would then assist the Committee and the Assembly in comparing the low-cost loan offer to other financing options such as direct assessment of States or private lending. An assessment of the value of the low-cost loan to States would be needed as well as a firm estimate of the cost of the loan to the host State.**

2. Interim premises

114. The representative of the host State referred to the discussion of the issue of interim premises by the Committee at its previous session and the decision taken by it to endorse the Bureau's recommendation to select one of the options proposed by the host State, namely, the pre-fabricated premises, as the most convenient solution. Unfortunately, a number of problems had arisen in connection with that option, which at the current stage could be considered as practically unsolvable. Meanwhile, the host State had learned that a new office building was being planned by a property developer on a block in the immediate vicinity of the temporary headquarters of the Court (the "Arc"), which was expected to be completed in early 2008.

115. The new building was closer to the Arc than the pre-fabricated options and did not pose major difficulties in respect of security arrangements. The financial offer by the host State regarding the temporary accommodation of the Court was also applicable to the new

option. The following alternative was also possible. The new office building had twice the extra capacity required by the Court, and Eurojust, which currently shared the Arc with the Court, had informed the host State that it would require additional accommodation from 2008. In view of that development, the host State had suggested that Eurojust use the whole new building as temporary premises and the Court could then use the B-wing of the Arc to fulfil its additional requirements. In the view of the host State, that would not only be the most economical way of meeting the accommodation requirements of both organizations, but would also be consistent with the “One Court” principle. It should be noted, however, that that alternative, although favoured by the host State, was still dependent on the position to be taken by Eurojust and the member States of the European Union.

116. The host State added that until additional interim premises for the Court had been completed, it had provided temporary office space to the Court on two floors of the Hoftoren building and, at the Court’s request, a third floor with a capacity of around 40 workstations would be prepared for use by the Court in 2007.

117. Court officials stressed that even with the new option foreshadowed by the host State, additional space was needed between the current date and March 2008. They suggested that two additional floors in the Hoftoren building (in addition to the three already granted) might help as an initial step, but still more space would be needed very shortly thereafter. Any additional space should be allocated in the same building as that would substantially reduce the cost of “temporary interim” premises, by avoiding the need to replicate the infrastructures needed for, *inter alia*, security and information technology. Both the representative of the host State and Court officials were in agreement about the convenience of having the Secretariat of the Assembly of States Parties, as an integral part of the Court, located in the same premises as the Court’s main organs. Furthermore, **the Committee recommended that the Court and the host State should endeavour to secure office space for the translation teams of the Secretariat of the Assembly, which were recruited in the second semester of each year to prepare the documentation for the Assembly and the Committee, in the “temporary interim” premises used by the rest of the Court, so as to reduce the costs of replicating the basic infrastructure.**

118. On the issue of security, the view of the Court officials was that the degree of security required by the Court should be the same for all its integral parts, since reducing the level of security for one area of the Court could result in that area being perceived as a softer target.

119. The Committee was dismayed that the issue of interim premises still remained unresolved and expressed concern at both the impact on the efficient running of the Court and the continuing drain on management time caused by the ongoing uncertainty and disruption. **The Committee called on the host State to make every effort to bring the issue to a speedy conclusion. The Committee also requested the Court to look objectively and pragmatically to ensure that the actual level of security stipulated was consistent with the risk.**

F. Other reports

1. Application criteria for accessing the Trust Fund for the participation of least developed countries and other developing States in the work of the Assembly

120. At its fourth session, the Assembly had decided to “make a provisional change to the terms of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 for the year 2006 to allow other developing States to draw on the fund so as to enhance the possibility of such States to participate in the activities of the Assembly of States Parties in meetings in, but not limited to, The Hague, and requests the Bureau to review the terms of the trust fund and

make recommendations on application criteria for accessing the fund to the fifth session of the Assembly of States Parties, through the Committee on Budget and Finance with a view to maximising its effectiveness within the resources available...”.⁶

121. At its seventh session, the Committee had not yet received the formal report of the Bureau on the matter. Nonetheless, the Committee was of the view that its comments could be limited to noting that the decision by the Assembly was of a political nature and that having a single fund to be drawn upon by both least developed countries and other developing States might have an impact on the level of contributions from donors that might otherwise be channelled specifically to support least developed countries.

2. Appointment of the External Auditor

122. With regard to the appointment of the External Auditor, the Committee considered the report on the reappointment of the External Auditor prepared by the Court (ICC-ASP/5/4), expressed its appreciation for the exemplary work performed by the External Auditor and therefore **recommended that the National Audit Office of the United Kingdom of Great Britain and Northern Ireland should be appointed for a second quadrennium (2007 - 2010).**

3. Organizational nature of the Court

123. With regard to the organizational nature of the Court, the Committee **emphasized that it kept the matter under review on a regular basis, since the issue constituted an integral part of its deliberations at each session.**

G. Other matters

1. Relationship with the Special Court for Sierra Leone

124. The Committee was invited by the Court to consider informal papers relating to the financial arrangements for the Special Court for Sierra Leone to use the facilities of the International Criminal Court. A specific issue related to the basis of charging. The Committee noted that the letter from the President of the Assembly to the President of the Court, dated 12 April 2006, referred to the request “being cost neutral to the ICC”. Article 3, sub-paragraph 3, of the Memorandum of Understanding between the International Criminal Court and the Special Court referred to payment “in respect of all clearly identifiable direct and indirect costs ... Such costs shall include a component for any depreciation in the value of ICC owned equipment or property ...”.

125. That gave rise to the question of whether the costs should at one extreme reflect only the additional identifiable costs that the Court would incur, or, at the other extreme, the full economic value of the facilities being provided. The view of the Committee was that adopting a commercial approach was not consistent with engendering a spirit of cooperation between international organizations. **The recommendation of the Committee was that the charges should reflect the clearly identifiable direct and indirect costs that the Court incurred, to which a management fee of 13 per cent should be added to reflect the unquantifiable cost of Court management in providing the use of its facilities.**

⁶ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November to 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.4, para. 38.

2. Future meetings

126. **The Committee decided to hold its eighth session in The Hague, from 23 to 26 April 2007, and its ninth session, tentatively, from 8 to 12 October 2007 in The Hague, with the latter dates to be confirmed at the Committee's April session.**

127. The Committee observed that its workload had increased markedly since its first session in 2003. It had become increasingly difficult to respond to the expectations of the Assembly, the informal working groups of the Bureau, and the Court, while also discharging its mandated functions.⁷ Moreover, the extensive discussions in the working groups and the increase in time for the Assembly reflected an increasing intergovernmental deliberation over the Court's budget, administration and premises. That trend also affected the Committee's role and workload. The Committee emphasised its wish to continue to provide high quality advice to the Assembly across the range of issues within the Committee's terms of reference. It agreed that action was needed to preserve the Committee's ability to provide such advice and meet the expectations of the Assembly.

128. While the Committee did not believe that a substantial expansion of the time allotted to its sessions would be justified, it agreed that its April session should be extended from three to four days. Given the time taken by formalities and preparation and adoption of the report at each session, the April session currently provided less than two days of time to hold substantive discussions. A fourth day would increase the time for substantive discussion at a limited cost: The programme budget implications for Major Programme IV would amount to approximately €11,800.

129. The Committee noted a tendency for some issues to be placed on its agenda at every session. While that might be necessary or desirable in some instances, the Committee wished to indicate its preference to consider issues only once each year unless there were compelling reasons to do otherwise. In general, the Committee would focus on the proposed programme budget and related budgetary matters in October each year, while considering various policy issues at its April session. The Committee agreed that the Chairperson should consult informally with all Committee members, the Secretariat of the Assembly and the Court in shaping the agenda for each session well in advance, in accordance with the Committee's mandate and with the instructions of the Assembly.

130. For its next session, the Committee indicated its wish to consider the budget presentation⁸ with a view to improving the quality of the budget approval process. The Committee also decided to consider at its next session progress made by the Court in implementing human resources systems, and the suitability of the common system for the Court's human resources requirements. It also wished to consider the implementation of SAP-ERP system within the Court and how that could improve future budgeting and reporting. Finally, it also wished to review the operation of the legal aid scheme since the Committee's last consideration of the scheme.

3. Timeliness of documentation

131. The Committee expressed concern that its recommendation to the Court, contained in paragraph 72 of the report on the work of its sixth session, had by and large not been implemented. It wished to **convey once more to the Court the importance that the Committee attached to the timely, staggered and orderly submission to the Secretariat of the Court's reports and other documents, so as to ensure that they were distributed to the Committee at least three weeks in advance of its sessions, thus giving members of the**

⁷ Annex to resolution ICC-ASP/1/Res.4.

⁸ See paragraphs 48 to 50 of this report.

Committee a reasonable time to examine them in a thorough and detailed manner prior to their arrival at the session.

Annex I

List of documents

ICC-ASP/5/1	Report of the Committee on Budget and Finance on the work of its sixth session
ICC-ASP/5/2	Financial statements for the period 1 January to 31 December 2005
ICC-ASP/5/2* Arabic only	Financial statements for the period 1 January to 31 December 2005
ICC-ASP/5/3	Trust Fund for Victims financial statements for the period 1 January to 31 December 2005
ICC-ASP/5/4	Report on the reappointment of the External Auditor
ICC-ASP/5/5	Report of the Office of Internal Audit
ICC-ASP/5/6	Strategic Plan of the International Criminal Court
ICC-ASP/5/7	Report on the strategy of the Court on Information and Communication Technologies
ICC-ASP/5/8	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 16 August 2005 to 30 June 2006
ICC-ASP/5/8/Corr.1 French only	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 16 August 2005 to 30 June 2006
ICC-ASP/5/9	Proposed Programme Budget for 2007 of the International Criminal Court
ICC-ASP/5/9/Corr.1* English only	Proposed Programme Budget for 2007 of the International Criminal Court – Corrigendum
ICC-ASP/5/9/Corr.2	Proposed Programme Budget for 2007 of the International Criminal Court – Corrigendum
ICC-ASP/5/10	Report on the Court Capacity Model
ICC-ASP/5/10* English only	Report on the Court Capacity Model
ICC-ASP/5/11	Provisional agenda
ICC-ASP/5/12	Strategic Plan for Outreach of the International Criminal Court*
ICC-ASP/5/13	Report on the budget performance of the International Criminal Court as at 31 August 2006

ICC-ASP/5/14	Amendments to the conditions of service and compensation for judges of the International Criminal Court - Relocation upon completion of service
ICC-ASP/5/ CBF.2/1	Report of the Registrar on pension schemes applicable to judges in other international tribunals
ICC-ASP/5/CBF.2/2	Report on the future permanent premises of the International Criminal Court - Comprehensive progress report
ICC-ASP/5/CBF.2/3	Report on the governance arrangements for the permanent premises of the International Criminal Court
ICC-ASP/5/CBF.2/4	Report on the conditions of service and compensation of the Prosecutor and Deputy Prosecutors: financial costings for pensions
ICC-ASP/5/CBF.2/5	Report on a procurement tender for the pension scheme for judges
ICC-ASP/5/CBF.2/L.1	Provisional agenda
ICC-ASP/5/CBF.2/L.2/Rev.1	Annotated list of items included in the provisional agenda

Annex II

Status of contributions as at 13 October 2006

	States Parties	Prior Year Assessed Contributions	Prior Year Receipts	Prior Year Outstanding Contributions	2006 Assessed Contributions	2006 Contributions Receipt	2006 Outstanding Contributions	Total Outstanding Contributions
1	Afghanistan	5,266	5,266	-	3,199	381	2,818	2,818
2	Albania	13,436	13,436	-	7,996	948	7,048	7,048
3	Andorra	14,873	14,873	-	7,996	7,996	-	-
4	Antigua and Barbuda	8,677	8,677	-	4,798	4,798	-	-
5	Argentina	2,999,978	1,876,392	1,123,586	1,528,893	-	1,528,893	2,652,479
6	Australia	4,955,953	4,955,953	-	2,546,022	2,546,022	-	-
7	Austria	2,716,797	2,716,797	-	1,373,765	1,373,765	-	-
8	Barbados	28,248	28,248	-	15,993	15,993	-	-
9	Belgium	3,350,429	3,350,429	-	1,709,609	1,709,609	-	-
10	Belize	3,099	3,099	-	1,599	1,599	-	-
11	Benin	6,196	6,196	-	3,199	381	2,818	2,818
12	Bolivia	27,265	4,914	22,351	14,393	-	14,393	36,744
13	Bosnia & Herzegovina	9,912	9,912	-	4,798	4,798	-	-
14	Botswana	35,942	35,942	-	19,191	19,191	-	-
15	Brazil	5,207,107	1,754,131	3,452,976	2,435,673	-	2,435,673	5,888,649
16	Bulgaria	50,197	50,197	-	27,187	27,187	-	-
17	Burkina Faso	3,863	189	3,674	3,199	-	3,199	6,873
18	Burundi	1,474	91	1,383	1,599	-	1,599	2,982
19	Cambodia	6,196	6,196	-	3,199	3,016	183	183
20	Canada	8,560,895	8,560,895	-	4,498,719	4,498,719	-	-
21	Central African Republic	3,099	1,716	1,383	1,599	-	1,599	2,982
22	Colombia	490,334	490,334	-	247,885	247,885	-	-
23	Congo	1,840	-	1,840	1,599	-	1,599	3,439
24	Costa Rica	86,766	57,491	29,275	47,978	-	47,978	77,253
25	Croatia	115,867	115,867	-	59,173	59,173	-	-
26	Cyprus	120,210	120,210	-	62,371	62,371	-	-
27	Democratic Republic of the Congo	9,912	2,525	7,387	4,798	-	4,798	12,185
28	Denmark	2,244,582	2,244,582	-	1,148,269	1,148,269	-	-
29	Djibouti	2,902	2,902	-	1,599	189	1,410	1,410
30	Dominica	3,099	3,099	-	1,599	75	1,524	1,524
31	Dominican Republic	20,165	-	20,165	55,974	-	55,974	76,139
32	Ecuador	62,572	47,550	15,022	30,386	-	30,386	45,408
33	Estonia	35,942	35,942	-	19,191	19,191	-	-
34	Fiji	12,392	12,392	-	6,397	740	5,657	5,657
35	Finland	1,645,156	1,645,156	-	852,406	852,406	-	-
36	France	18,959,201	18,959,201	-	9,643,539	9,643,539	-	-
37	Gabon	30,972	27,213	3,759	14,393	-	14,393	18,152
38	Gambia	3,099	3,099	-	1,599	189	1,410	1,410
39	Georgia	7,632	7,632	-	4,798	511	4,287	4,287
40	Germany	27,532,250	27,532,250	-	13,852,792	13,852,792	-	-
41	Ghana	13,010	13,010	-	6,397	6,397	-	-
42	Greece	1,648,219	1,648,219	-	847,608	847,608	-	-
43	Guinea	8,589	509	8,080	4,798	-	4,798	12,878
44	Guyana	1,474	1,474	-	1,599	138	1,461	1,461
45	Honduras	15,333	9,701	5,632	7,996	-	7,996	13,628
46	Hungary	386,819	386,819	-	201,507	201,507	-	-
47	Iceland	104,719	104,719	-	54,375	54,375	-	-
48	Ireland	1,050,232	1,050,232	-	559,741	559,741	-	-
49	Italy	15,251,782	14,538,507	713,275	7,812,386	-	7,812,386	8,525,661
50	Jordan	32,227	32,227	-	17,592	17,592	-	-
51	Kenya	7,259	7,259	-	14,393	14,393	-	-
52	Latvia	43,383	43,383	-	23,989	23,989	-	-
53	Lesotho	3,099	3,099	-	1,599	1,599	-	-
54	Liberia	1,474	-	1,474	1,599	-	1,599	3,073
55	Liechtenstein	16,109	16,109	-	7,996	7,996	-	-
56	Lithuania	62,781	62,781	-	38,382	38,382	-	-
57	Luxembourg	240,412	240,412	-	123,143	123,143	-	-
58	Malawi	3,479	133	3,346	1,599	-	1,599	4,945
59	Mali	6,196	6,196	-	3,199	381	2,818	2,818
60	Malta	41,041	41,041	-	22,390	22,390	-	-
61	Marshall Islands	3,099	1,623	1,476	1,599	-	1,599	3,075
62	Mauritius	34,080	34,080	-	17,592	2,088	15,504	15,504
63	Mexico	-	-	-	3,011,407	3,011,407	-	-
64	Mongolia	3,099	3,099	-	1,599	1,599	-	-
65	Namibia	19,207	19,207	-	9,596	1,140	8,456	8,456
66	Nauru	3,099	1,900	1,199	1,599	-	1,599	2,798
67	Netherlands	5,267,605	5,267,605	-	2,702,751	2,702,751	-	-
68	New Zealand	697,366	697,366	-	353,437	353,437	-	-
69	Niger	3,099	170	2,929	1,599	-	1,599	4,528
70	Nigeria	144,285	95,095	49,190	67,169	-	67,169	116,359
71	Norway	2,084,212	2,084,212	-	1,085,898	1,085,898	-	-
72	Panama	58,247	58,247	-	30,386	23,646	6,740	6,740
73	Paraguay	39,650	39,650	-	19,191	19,191	-	-
74	Peru	301,253	89,190	212,063	147,132	-	147,132	359,195
75	Poland	1,367,620	1,367,620	-	737,259	737,259	-	-
76	Portugal	1,451,826	1,451,826	-	751,652	751,652	-	-
77	Republic of Korea	5,234,106	5,234,106	-	2,872,271	2,872,271	-	-
78	Romania	184,813	184,813	-	95,956	95,956	-	-
79	Saint Vincent and the Grenadines	2,902	1,427	1,475	1,599	-	1,599	3,074
80	Samoa	2,980	2,980	-	1,599	1,599	-	-
81	San Marino	8,677	8,677	-	4,798	4,798	-	-
82	Senegal	15,491	14,930	561	7,996	-	7,996	8,557
83	Serbia	59,483	59,483	-	30,386	30,386	-	-
84	Sierra Leone	3,099	2,132	967	1,599	-	1,599	2,566
85	Slovakia	153,063	153,063	-	81,562	81,562	-	-
86	Slovenia	253,431	253,431	-	131,139	131,139	-	-
87	South Africa	976,808	976,808	-	466,984	466,984	-	-
88	Spain	7,809,797	7,809,797	-	4,030,136	4,030,136	-	-
89	Sweden	3,111,033	3,111,033	-	1,596,062	1,596,062	-	-
90	Switzerland	3,756,070	3,756,070	-	1,914,314	1,914,314	-	-
91	Tajikistan	3,099	2,358	741	1,599	-	1,599	2,340

	States Parties	Prior Year Assessed Contributions	Prior Year Receipts	Prior Year Outstanding Contributions	2006 Assessed Contributions	2006 Contributions Receipt	2006 Outstanding Contributions	Total Outstanding Contributions
92	The former Yugoslav Rep. of Macedonia	18,589	18,589	-	9,596	1,140	8,456	8,456
93	Timor-Leste	2,980	2,980	-	1,599	189	1,410	1,410
94	Trinidad and Tobago	64,453	64,453	-	35,184	35,184	-	-
95	Uganda	17,971	4,945	13,026	9,596	-	9,596	22,622
96	United Kingdom	18,624,084	18,624,084	-	9,798,667	9,798,667	-	-
97	United Republic of Tanzania	17,036	17,036	-	9,596	1,140	8,456	8,456
98	Uruguay	168,641	111,086	57,555	76,764	-	76,764	134,319
99	Venezuela	552,962	355,854	197,108	273,473	-	273,473	470,581
100	Zambia	5,802	3,035	2,767	3,199	-	3,199	5,966
	Total	150,856,549	144,900,884	5,955,666	80,417,200	67,772,959	12,644,241	18,599,907

--- 0 ---