


Fifteenth session

The Hague, 16-24 November 2016

Report of the Bureau on the Study Group on Governance
Contents

	<i>Page</i>
I. Introduction	2
II. Cluster I: Increasing the efficiency of the criminal process	2
A. Provisional amendment to rule 165	2
B. Other matters related to increasing the efficiency of the criminal process	3
C. Future work.....	3
III. Cluster II: Governance and Budgetary Process.....	3
A. Mandate	3
B. Analysis	4
C. Conclusions	9
IV. Recommendations	10
A. For inclusion in the omnibus resolution.....	10
B. For inclusion in the mandates annexed to the omnibus resolution	11
Annex I: Report of the Study Group on Governance Cluster I in relation to the provisional amendments to rule 165 of the Rules of Procedure and Evidence	12
Annex II: Program of Work	12
Annex III: Interim report of the Court on the Court-wide impact of the “OTP Basic-Size”	15
Annex IV: Briefing by the Chair of the Committee on Budget and Finance to The Hague Working Group	15
Annex V: Report of the Committee on Budget and Finance on the work of its twenty-seventh session	22

* Reissued for technical reasons.

I. Introduction

1. The Study Group on Governance (the “Study Group” or “SGG”) was established via a resolution¹ of the Assembly of the States Parties (the “Assembly”) in December 2010 “to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence [...]”; and “to facilitate this dialogue with a view to identifying issues where further action is required, in consultation with the Court, and formulating recommendations to the Assembly through the Bureau”. It was further decided that “the issues to be dealt with by the Study Group include, but are not limited to, matters pertaining to the strengthening of the institutional framework both within the Court and between the Court and the Assembly, as well as other relevant questions related to the operations of the Court”.
2. The Study Group, in 2011, dealt with the relationship between the Court and the Assembly, strengthening the institutional framework within the Court and increasing the efficiency of the criminal process. Following requests of the Assembly in its tenth, eleventh, twelfth, thirteenth and fourteenth sessions the dialogue between the organs of the Court and States Parties was continued throughout 2012, 2013, 2014, 2015 and 2016.
3. The fourteenth Assembly took note of the report of the Bureau on the Study Group and the recommendations contained therein and extended the mandate of the Study Group for a further year (ICC-ASP/14/Res.4, para 54).
4. Following decisions on 24 February 2016 and 18 April 2016, the Bureau reported that it had appointed Ambassador María Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan) as co-Chairs of the Study Group. In addition, focal points for two clusters were appointed: (a) Cluster I: Increasing the efficiency of the criminal process. Co-focal points: Ms. Erica Lucero (Argentina) and Ms. Marisa Macpherson (New Zealand); and (b) Cluster II: Governance and budgetary process. Co-focal points: Mr Reinhard Hassenpflug (Germany) and Ms Lourdes Suinaga (Mexico).
5. The Study Group held a number of regular meetings between May and October 2016, as well as several informal meetings by the co-Chairs and co-focal points with the States Parties and the organs of the Court.
6. This report on the Study Group describes the activities of the Study Group in the past year and contains recommendations regarding the continuation of its work.

II. Cluster I: Increasing the efficiency of the criminal process

7. The program of work for Cluster I in 2016 focused on two areas: a) provisional amendment to rule 165; and b) other matters related to increasing the efficiency of the criminal process.

A. Provisional amendment to rule 165

8. On 10 February 2016 the judges of the ICC, during their 34th plenary session, provisionally amended rule 165 of the Rules of Procedure and Evidence. Rule 165 relates to procedures for offences against the administration of justice. The provisional amendment was adopted in accordance with article 51(3) of the Rome Statute which provides for a two-thirds majority of judges to draw up provisional Rules in specified circumstances.
9. As this was the first occasion on which article 51(3) of the Rome Statute had been invoked, the Bureau considered the matter and on 1 April 2016 decided that the provisional amendments would be discussed in the framework of the Study Group on Governance in The Hague and then continue to be discussed in the Working Group on Amendments (the “WGA”) in New York as that process would allow States Parties to prepare themselves better for consideration of the amendments at the fifteenth session of the Assembly.

¹ ICC-ASP/9/Res.2.

10. Cluster I therefore met on three occasions for informal consultations regarding the provisional amendments. The consultations took place on 3 May, 19 May, and 21 June. At these consultations States Parties had the opportunity to express their views on the provisional amendments. States Parties were also invited to provide written comments to the co-chairs of the SGG or the co-focal points of Cluster I. The Principal Legal Adviser to the Presidency of the Court, Mr. Hiram Abtahi, was invited to attend the consultations to provide the background to the Judges' decision and to answer questions from States.

11. After such consultations, as no final view could be reached by the SGG, it was not in a position to make a concrete recommendation to the WGA. The SGG therefore adopted a report dated 27 July 2016 (attached) outlining the views expressed and the responses from the representative of the Presidency and transmitted it to the WGA in order for the WGA to continue with the discussion with an aim to making an appropriate recommendation to the Assembly.

B. Other matters related to increasing the efficiency of the criminal process

12. A number of other developments relating to the efficiency of the criminal process also took place in 2016.

13. In particular, on 1 February 2016 the *Chambers Practice Manual* was issued by the judges. This is the first update of the *Pre-Trial Practice Manual* released in September 2015. The updated Manual includes best practices identified by the judges across various stages of proceedings, and seeks to contribute to the overall effectiveness and efficiency of the proceedings before the Court.

C. Future work

14. The Study Group aims to continue its ongoing dialogue with the Court, with a view to enhancing the efficiency and effectiveness of the Court, and ensuring the best use of the Court's resources; while, at the same time, fully preserving the ICC's judicial independence and the quality of its work, as well as safeguarding the rights of the accused and victims.

III. Cluster II: Governance and Budgetary Process

A. Mandate

15. The continuation of the specific mandate of the Study Group on Governance (SGG)-Cluster II - "*Governance and Budgetary Process*" for the year 2016, derives from Section L, paragraphs 54, 58 and Section 7, paragraph (e) of annex I of resolution ICC-ASP/14/Res.4, which invited the Bureau to continue consideration of the recommendation in paragraph 44 of the Report of the Committee on Budget and Finance (CBF) on the work of its twenty-third session² (Report of the CBF) taking into account: the Strategic Plan for 2016-2018 of the Office of the Prosecutor (OTP), the Report on the *Basic Size* of the OTP and other relevant documents of the Court.

16. Furthermore, Section 8 paragraph (b) of annex I of resolution ICC-ASP/14/Res.4 invited the Court to share with the SGG any update on the development of qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, while allowing States Parties to assess the Court's performance in a more strategic manner.

17. Consequently, the program of work for SGG-Cluster II in 2016 focused on two areas: a) establishment of a financial envelope; and b) providing the space where the Court shared any update on the development of qualitative and quantitative indicators.

² *Official Records ... Thirteenth session ... 2014* (ICC-ASP/13/20), vol. II, part B.2.

B. Analysis

1. Work Program and Concept Paper/Consultations

18. The Work Program of SGG-Cluster II (annex II) was presented to States Parties, representatives of the three organs of the Court and other stakeholders, at the first formal meeting of the SGG (3 May 2016).

19. The Work Program was well received by all attendees and further circulated for any comments under silence procedure which was not broken and thus, the Work Program was adopted on 9 May 2016 as originally proposed.

20. Bearing in mind the contents of resolution ICC-ASP/14/Res.4, the co-focal points of Cluster II, Mr. Reinhardt Hassenpflug (Germany) and Mrs. Lourdes Suinaga (Mexico), recalled that discussions will be guided based on the recommendation contained in paragraph 44 of the Report of the CBF.

21. In this regard, and as a result of prior informal consultations carried out with representatives of the three organs of the Court in preparation of the Program of Work, co-focal points indicated that discussions on the establishment of a financial envelop would be guided and take into consideration: the One-Court Principle (developed by the Court), the concept of “Basic Size” and the Interim report of the Court on the Court-wide impact of the “OTP Basic-Size”(the Interim Report) (annex III). As for qualitative and quantitative indicators, SGG-Cluster II will facilitate the space where the Court presents any update on the matter.

2. Meetings and discussions

(a) *Establishment of a Financial Envelope*

22. Three formal meetings (May 3, July 6 and August 9) were devoted to the topic. Early discussions began with the submission for consideration of the Program of Work on 3 May whereby representatives of the three organs of the Court made general comments on the contents of the Interim Report as presented for consideration to the CBF during its twenty-sixth session.

23. In their interventions the representatives of the Court underscored the contribution of the “Basic Size” as a planning tool which enhances predictability. They indicated that it was a model based on assessments and averages which had rendered positive results on the internal work and coordination amongst all three organs. The Court added that the “Basic Size” model had allowed each organ to efficiently comply with timeframes, understand the needs and work performed by the others.

24. The Court recalled that in accordance with the Assembly’s request to fully cost the impact of the “Basic Size” on all organs of the Court,³ the Court had engaged in intensive inter-organ consultations, coordinated by a steering group comprised of representatives of senior management of all organs.

25. The Court underlined that the costing of the impact of the “Basic Size” model was not a budgetary exercise, but a planning exercise. While the program budget proposal was based on actual facts, the “Basic Size” model was based on theoretical assumptions which would have to be reviewed regularly, taking into account that there was not enough historical data to create statistical facts.

26. During discussions several delegations expressed concern on the lack of clarity on the use of the concept of “Basic Size”; delegations inquired on the scope of the financial implications that the “OTP-Basic Size” model will have on all organs, and further asked to explain the relation between said model and the annual budget.

27. Delegations pointed out that the model was based on the idea of constant growth, which would be accompanied necessarily by a cost increase; they highlighted that, while the Court should have enough resources to implement its mandate, financial constraints of

³ ICC-ASP/14/Res.1, section J, para. 12.

States should also be taken into account and that the CBF played an important role in ensuring an efficient and responsible use of resources.

28. In this context one delegation specifically inquired on the direct effect that the constant growth projection will have on the budget for 2017, while another asked if the level of arrears of States Parties had been considered among the elements involved when developing the “Basic Size” and highlighted again the importance of knowing its financial implications on the budget

29. A delegation indicated that discussions on the “Basic Size” and those related with budget should be kept separate.

30. Delegations underscored their interest in the “Final Report on the Court-wide impact of the “OTP Basic-Size” (Costing Report)⁴ and inquired on the date when it would be distributed.

31. Taking into consideration inquiries expressed by delegations on knowing the financial implications of the “Basic Size” on all organs of the Court, and the requests to provide further clarity on the relation between said model and the factual based annual budget planning, co-focal points recalled during the meeting on 9 August, that the aim of SGG-Cluster II was to analyze the budgetary needs of the Court and consider the introduction of a financial envelope. The said task was to be performed while considering the OTP’s Strategic Plan (2016-2018), the OTP’s Report on Basic Size, and other relevant documents of the Court.⁵

32. The co-focal points emphasized that the “Basic Size” was the response of the Court to said consideration/analysis and could be a useful tool to determine the feasibility of such enveloping in accordance with the request of the Assembly⁶.

33. Co-focal points further indicated that in consultations with the organs of the Court, its representatives had indicated that the Costing Report to be presented to the CBF would attribute particular attention to the relationship between the “Basic Size” and the annual budget.

34. In addressing the questions posed by several delegations regarding the relation between “Basic Size” and the budget, under the One-Court Principle, the representative of the Presidency indicated that since the “Basic Size” provided all elements that explain how the budget was structured, it helped to understand the rationale behind the Court’s request for resources, how these should be allocated and therefore built upon predictability, transparency and effectiveness.

35. When referring to the Costing Report, the Court recalled that in light of the complexity derived from the intensive inter-organ consultation, the Court would be submitting the Costing Report to the CBF in September 2016 during its twenty-seventh session and that particular attention would be attributed to explaining the usefulness of the “Basic Size” model and the relationship between it and the annual budget.

36. In relation to a question related to the usefulness of the “Basic Size” model and the motivation of the Court to carry out such exercise, the Court stated that the “Basic Size” model was a forecast of the amount of cases that would be dealt with by the OTP and the consequences for the other organs of the Court. The “Basic Size” model consisted in a best guess that the Court could make. The Court expressed its conviction that this model was of real practical use for States Parties, in particular with regard to the financial implications.

37. With regards to the relation between the “Basic Size” and the annual budgeting, the Court explained that, while the annual budget was a concrete reflection of reality in terms of the financial needs of the Court for the following year, the “Basic Size” model was a prediction of the future size of the Court and its financial needs, on the basis that the underlying assumptions materialize. The Court reminded States Parties that disparities may arise between the model and the reality

⁴ ICC/ASP/15/34.

⁵ ICC-ASP/14/Res.4, annex I, para. 7(e).

⁶ ICC-ASP/14/Res.1, section J, para. 12.

38. While the “Basic Size” was a prediction of the reality, the annual budget was a reflection of the immediate reality. Furthermore, the “Basic Size” model was based on assumptions linked to the reality of the world that requires constant adjustment.

39. Delegations welcomed the update by the Court and expressed their expectations that the Costing Report to be submitted to the CBF would be helpful in gaining a better understanding of the relationship between the “Basic Size” and the annual budget and, that the “Basic Size” would eventually contribute to greater financial predictability of the Court’s resource needs.

40. In this regards, a representative of the Court explained that the “Basic Size” would be used for the annual budgetary planning and may have budgetary consequences. In case of a match between the “Basic Size” model with the annual budget, it was still worth-while looking at the model. The representative of the Court mentioned that only in case of a constant and complete divergence, the “Basic Size” would not be such a useful predictability tool but would bring, nonetheless, greater stability to the Court’s annual budget.

41. The co-focal points further inquired on the possibility of introducing a financial envelope by using the “Basic Size”. They asked if in the case of a match between said model and each annual budget within the projected period (2016-2021) could anticipate the possibility that such an envelope be reached in the 6 year term projected by the “Basic Size”.

42. The representative of the Court indicated that such a case would only imply that the Court had reached a “period of stability” and referred to a caveat in terms of the Rome Statute, based on the understanding that the Court is case-driven.

(b) *Qualitative and Quantitative Indicators*

43. The topic was addressed during the three formal meetings of SGG-Cluster II, particularly, the one which took place on 9 August 2016 where the Court updated delegations on progress made.

44. Court reminded delegations that it had issued its Report on the Development of Performance Indicators for the ICC⁷ in November 2015 indicating that despite the fact that it was still lacking data from some of the stakeholders involved, the Court had been able to consolidate the four key areas as proposed in the November 2015 report as general parameters/key goals:

- (a) “The Court is fair, expeditious and transparent at every stage”;
- (b) “The ICC’s leadership and management are effective”;
- (c) “Security, including protection of those at risk from involvement with the Court”; and
- (d) “Victims have adequate access to the Court”.

The Court recalled that those parameters/key goals had derived from the Court’s Strategic Plan, indicating that was in the process of refining the performance indicators for each of these four parameters.

45. The Court further updated the SGG on the ongoing work on performance indicators and indicated that the second part of the Report (Second Report) would be presented at the fifteenth session of the Assembly. It was highlighted that the Second Report would contain information on the identification of performance indicators. While the predominant part would deal with Court-wide indicators, some would be specific to certain organs.

46. The Second Report would address the key goals one-by-one and outline the work carried out with respect to each of the objectives; it would not include a clear delimitation between Court-wide and organ-specific indicators thus, this distinction would require further attention and reflection in the future.

⁷ Available at: https://www.icc-cpi.int/itemsDocuments/Court_report-development_of_performance_indicators-ENG.pdf.

47. The Court highlighted that as it was still working on the process of collecting data, it was early to make a comparison with previous years this will remain as a work in progress.

48. *In the context of goal (a): fairness, transparency and expeditiousness*, the Court stressed the duration of a trial to be a key component of the Rome Statute (RS)⁸ and essential to measure the efficiency of the Court.

49. It was emphasized that when assessing the duration of a trial it was important to clarify the distinctive features of every case (i.e. number of accused, the complexity of a case, the geographical scope of a case or the amount of evidence) which can influence the overall duration of each stage of the proceedings which included the phase between initial appearance and confirmation of charges hearing; the phase between confirmation of charges and the start of the hearing; the phase between the end of trial hearings and rendering of a judgment (article 74 of the RS); the phase between the judgement (article 74 of the RS) and, where appropriate, sentencing and reparations decisions (articles 75 and 76 of the RS); the phase between the closing date for appeals submissions and the appeal judgement pursuant to article 81 RS.

50. Once these steps had all been taken, data could be collected and analyzed with the aim to compare the duration of each trial stage. This would allow identifying case-specific reasons for delays in certain stages as compared to other cases, thus, providing tangible results through the use of performance indicators.

51. *Regarding goal (b): Effective ICC leadership and management*, the Court anticipated that the Second Report would follow the path and logic of the November 2015 Report. It would be possible to measure the time to produce Court-wide documentation or to measure the time required for the promulgation of administrative instructions. The Court would continue to measure its performance in two key areas: geographical representation and gender balance in the overall staffing and in the recruitment process.

52. *Goal (c): Security, including protection of those at risk from involvement with the Court*, the Court would focus on **physical security** of its staff and all actors in the Court as well as on the challenges connected to ensuring **IT security** (area that would become more and more important to the Court in light of the threats posed by cyber-attacks). **Physical security** would be measured by comparing the amount of incidents that led to actual harm to the total amount of incidents and **IT security** would be measured by juxtaposing the amount of IT incidents that led to data loss versus the number of attempted attacks on the IT system of the Court. The representative of the Court warned on a margin of error inherent in such measurement, particularly regarding IT attacks that go unnoticed.

53. *As regards goal (d): Adequate access to the Court for victims*, attention would be paid to the average time lapse per case between the application to participate and a decision on the participation of victims in proceedings. Such time elapse would be used as indicator.

54. The performance of the field offices and of the Public Information and Outreach Section could be measured by assessing – to the extent possible – their impact on the ground compared to the resources invested.

55. When it comes to reparations, the average time lapse for the awarding of reparations could be measured and, in qualitative terms, the level of satisfaction of the beneficiaries, for example, by using surveys.

56. The Court highlighted the difficulty of measuring certain key goals, such as ensuring fairness at every stage. To measure such difficult concepts, proxy values are needed (i.e. the time for the accused to receive legal aid or the preparation time awarded to the defence).

57. While each of these factors would not be meaningful on its own, various such factors taken together could give an indication of the fairness of proceedings.

58. Delegations expressed their appreciation for the presentation delivered by the representative of the Court and their general satisfaction with the work carried out so far. Delegations considered that performance indicators could constitute a valuable tool to assess the efficiency and the effectiveness of the Court, while acknowledging the inherent difficulties of this exercise.

⁸ Compare article 67(1)(c) and article 64(2) of the Rome Statute.

59. Comments were made in relation to the lack of specificity of some performance indicators, for example, in relation to key goal (b) related to the efficient ICC leadership and management or in relation to transparency. The representative from the Court assured that these comments would be taken into account and would be appropriately reflected in the Second Report.

60. A point was made that first targets should be set for achieving the key goals and only once these targets have been determined, the performance indicators should be connected to them. The representative of the Court confirmed that this was the approach that had been followed.

61. Delegations agreed on the need to assess the impact of the Court in terms of its preventive effect. Different views were expressed with regards to the question on whether conviction rate should constitute a performance indicator. The representative of the Court explained that it had been decided not to include the conviction rate as a performance indicator as this factor would not adequately reflect a Court-wide approach based on fair trial considerations.

62. The Court was of the view that it should be assessed on whether it was able to deliver justice rather than being measured by conviction rate.

63. The view was expressed that, once a solid basis for performance indicators was established and the necessary data was collected, the comparison of data would give new insights on the reasons as to why the Court succeeded in meeting certain key goals or why it failed to do so.

64. In this context, the representative of the Court stressed that each case was different and had its specificities. The Court would keep this factor in mind when identifying performance indicators and when subdividing the *vita* of each case into various phases to allow for comparison and identification of the possible reasons for the deviation from the length of certain phases of individual cases. At the same time, the representative of the Court warned against over-measuring the Court's activities.

65. In relation to a question related to the amount of data needed for the establishment of a reliable baseline, the representative of the Presidency could not provide an immediate answer but highlighted the specificities of each case and the efforts of the Court in this regard, for example in the framework of the "Lessons Learnt" initiative of the Presidency⁹ and the Court's pre-trial manual¹⁰ to speed up processes. He stated that, as a minimum, a representative case from the past would have to be included to measure the Court's performance and to refer to benchmarks.

66. As regards the *data collection*, the representative of the Court indicated that it may be possible to compare the data of the Court with the data collected by other international courts and tribunals and expressed his expectation that this comparative exercise would be initiated in 2017.

67. The Court indicated possible timeframe for the finalization of the Court's work on performance indicators. During 2016, steps had already been taken and to identify the most sensible performance indicators and to underpin these indicators with a solid basis. However, not all the data would be available in 2016.

68. In 2017 a calibration exercise for fine-tuning the indicators would be carried out and additional data would be collected. Although the Court indicated that so far it was not in a position to provide with a reliable indication on the timeframe for the finalization of the work on performance indicators, expressed expectation that the work would be close to finalization in 2017.

⁹ For details compare Report on Lessons Learnt and Synergies in Presidency (CBF/26/10).

¹⁰ For details compare the Court's Pre-Trial Practice Manual of September 2015 contained in annex II of the report of the Bureau on the Study Group on Governance (ICC-ASP/14/30).

C. Conclusions

1. Financial Envelope

69. Discussions showed the commitment of States Parties to the Court and the Court's commitment to improve its efficiency.

70. While delegations acknowledged the efforts carried out by the Court in developing the "Basic Size" model, they inquired constantly on its financial implications on the other organs of the Court and requested the Court on the topic. The Court thereon presented the "Costing Report" to the CBF in September 2016 during its twenty-seventh session.

71. The results of the analysis made by the CBF on said Costing Report were briefed by the CBF Chair on 30 September 2016 (annex IV) to the Hague Working Group and contained in the advance version of the Report of the CBF on the work of its twenty-seventh session¹¹ (annex V, CBF report) pointed out that the "Basic Size" was a conceptual model which described functional resources between the organs but, as projected, represented a substantial resource growth trajectory reaching its end by 2021 and thus, could not be seen as a predictability tool nor served as a "financial envelope".

72. The CBF indicated that the "Basic Size" could not be seen as a predictability tool because increases were based on "assumed"/forecasted activities and noted that the *"Basic Size model was not undertaken within a financial envelope and, thus, presented the Court's simulation of its level of resources required, if the Court is at full assumed capacity"*¹².

73. In such context, the CBF recommended that the Assembly provide their input on the shape of the ultimate trajectory of budgetary growth for the Court and provide their projection of affordability (financial envelope) at the beginning of the Court's budgetary process to align expectations.

74. The discussions held within the SGG-Cluster II have been thorough with regards to the feasibility of establishment of a financial envelope. Some delegations acknowledged that the Court should have the resources it needed to perform its work, others underscored the budgetary constraints of States Parties, the economic reality and the level of arrears as elements that should be taken into consideration.

75. Given the contents of the CBF Report regarding the financial implications of the "Basic Size" not serving as a "financial envelope" it may be concluded that the budgetary level of the Court and an eventual financial envelope would likely have a resource driven approach.

76. The discussions on the feasibility of establishment of a financial envelope have been conducted considering all methodological elements available.

77. The question has been approached as an issue of governance and all possible arguments on the matter, considering the methodological elements provided, have been exchanged. Given the methodological elements that have guided discussions, as mentioned in paragraph 75 supra., it may be concluded that, an eventual financial envelope, would likely have a resource driven approach.

78. In light of the above, the mandate entrusted to SGG-Cluster II on discussions for consideration on the feasibility of establishment of a financial envelope has been fulfilled.

2. Qualitative and Quantitative Indicators

79. After some initial work at the end of 2014, the Court held two consultation sessions in 2015 with a pro bono external consultant, the Open Society Justice Initiative (OSJI), in March and July. The aim was to identify the aspects of the Court's performance that should be measured and to identify possible performance indicators, including the short and long term processes for implementation. Further inter-organ sessions were held and relevant information was gathered.

¹¹ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.2

¹² *Ibid.*, para.167.

80. On 12 November 2015, the Court issued its Report on the Development of Performance Indicators for the ICC¹³.

81. Despite the fact of lacking data from some of the stakeholders involved, in 2016, the Court was able to consolidate the four key areas proposed in the November 2015 report as general parameters:

- (a) “The Court is fair, expeditious and transparent at every stage”;
- (b) “The ICC’s leadership and management are effective”;
- (c) “Security, including protection of those at risk from involvement with the Court”;
- (d) “Victims have adequate access to the Court”.

82. These parameters derive from the Court’s Strategic Plan. The Court indicated that it is in the process of refining the performance indicators for each of these four parameters and in the process of verifying that relevant data can be retrieved and to what extent relevant data already collected in the past can be used for this exercise.

83. In November 2016, the Court will submit to the ASP a Second Report on performance indicators. While aiming at clarifying the concept of performance indicators, this report would not yet be comprehensive due to the fact that the process of data collection had just been initiated.

84. Since the Court intends to take into consideration the feedback of States Parties and civil society after the release of its Second Report, the SGG-Cluster II could continue to facilitate this exchange of views and thus, serve as a space for discussions on this topic.

IV. Recommendations

85. The Study Group through the Bureau submits the following recommendations for the consideration of the Assembly:

A. For inclusion in the omnibus resolution

The Assembly of States Parties,

1. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence and *invites* the Court to further engage in such a dialogue with States Parties;
2. *Takes note* of the Bureau’s report on the Study Group on Governance [ICC-ASP/15/21];
3. *Extends* for another year the mandate of the Study Group, provided in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5 and ICC-ASP/14/Res.4;
4. *Welcomes* the issuance of the Chambers Practice Manual; and *encourages* the judges to continue their work on practice issue in 2017;
5. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt;
6. *Welcomes* the discussions held regarding the recommendation in paragraph 44 of the report of the Committee on Budget and Finance on the work of its twenty-third session, as to the introduction of a financial envelope; ,
7. *Notes* that thorough consideration was given to the analysis of all methodological elements provided thereon, and *further notes* that, given the methodological elements available, the establishment of a financial envelope may likely have a resource driven approach;

¹³ Available at: https://www.icc-cpi.int/itemsDocuments/Court_report-development_of_performance_indicators-ENG.pdf.

8. *Acknowledges* that, at the present stage the mandate of the Study Group with regards to the consideration of the feasibility of establishment of a financial envelope, in the context of the review of the governance and budgetary process, has been fulfilled;

9. *Welcomes* the work of the Court and the substantial results achieved to identify qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, while allowing States Parties to assess the Court's performance in a more strategic manner;

B. For inclusion in the mandates annexed to the omnibus resolution

With regard to the Study Group on Governance,

(a) *requests* the Study Group to report back to its sixteenth session;

(b) *invites* the Court to continue to share, with the Study Group on Governance, any update on the development of qualitative and quantitative indicators;

Annex I

Report of the Study Group on Governance Cluster I in relation to the provisional amendments to rule 165 of the Rules of Procedure and Evidence

(See document ICC-ASP/15/7)

Annex II

Program of Work

1. Pursuant to the General Roadmap for Facilitations¹ the Chairpersons of the Study Group on Governance, Ambassador Maria Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan), hereby submit for consideration the programme of work for the Study Group on Governance for the period until the 2016 session of the Assembly of States Parties.

Cluster II: Governance and Budgetary Process

A. Mandate

1. Financial target or envelope

2. The specific mandate for Cluster II this year is derived from annex I of the omnibus resolution (ICC-ASP/14/Res.4), para. 7 (e) which stipulates:

"Invites the Bureau in consultation with the Court to continue its consideration of the recommendation in paragraph 44 of the report of the Committee on Budget and Finance on the work of its twenty-third session, in the context of the review of the budgetary process, taking into account the Strategic Plan for 2016-2018 of the Office of the Prosecutor, the Report on the Basic Size of the Office of the Prosecutor and other relevant documents of the Court."

3. Furthermore, para 58 of the omnibus resolution further refers to the work of the SGG-Cluster II:

"Welcomes the discussion held regarding the recommendation in paragraph 44 of the report of the Committee on Budget and Finance on the work of its twenty-third session, and notes that no consensus has been reached as to the introduction of a financial envelope;"

4. The same provisions are also contained in Section J, para.10 of the budget resolution (ICC-ASP/14/Res.1).

5. It should be recalled that para. 44 of the CBF report on the work of its 23rd session (ICC-ASP/13/20) reads as follows:

"44. The Committee also recommended that States Parties consider whether a financial target or envelope should be set at each Assembly meeting that would define the anticipated outer limits of the budget for the year following the one immediately thereafter. The Committee was of the view that this would enhance budget planning and transparency and allow the Court to establish priorities more clearly."

¹ ICC-ASP/13/Res.5, annex IV, General Roadmap for Facilitations.

2. Qualitative and quantitative indicators

6. 1.2. A direct reference to the work of SGG-Cluster II related to this item can be found in Section J, para. 9 of the budget resolution (ICC-ASP/14/Res.1):

"Acknowledges the discussions conducted in the framework of the Study Group on Governance Cluster II regarding the efforts of the Court to develop qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court's performance in a more strategic manner and invites the Court to share with the Study Group on Governance any update on the development of such indicators;"

7. From this operative paragraph which describes the mandate entrusted to the Court, it can be inferred that the SGG-Cluster II shall continue to serve as an interface for the dialogue between the Court and the States Parties on this topic.

8. A further reference to the mandate of the Court with regards to the development of qualitative and quantitative indicators is also contained in para. 59 of the omnibus resolution (ICC-ASP/14/Res.4):

"Welcomes the efforts of the Court to develop qualitative and quantitative indicators that would allow the Court to demonstrate better its achievements and needs, as well as allowing States Parties to assess the Court's performance in a more strategic manner;"

B. The issue of a "financial target or envelope" for the subsequent budget proposal

3. Goals

9. The goal of the facilitation within Cluster II remains to study and analyze the matter in an open-ended way and to report on its findings. In so doing, Cluster II will continue to consider the recommendation of the establishment of a financial envelope or target in order to contribute to enhancing the predictability and transparency of the financial development of the Court.

10. It should be borne in mind that the Assembly at its fourteenth session had welcomed the work undertaken so far by the Office of the Prosecutor (OTP) on its "Basic Size" model as an instrument that builds upon predictability and certainty of the budgetary needs and had requested the OTP in accordance with the "One-Court-principle" to submit a full costing of the impact of the Basic Size Model on the OTP and the other organs of the Court which should be submitted to the CBF. As during 2015 a presentation of the "Basic Size" model, exchange of views and discussions were carried out within the framework of SGG-Cluster II, in 2016 the SGG would seek to focus the analysis and discussions on the recent developments trying to pursue a more comprehensive approach which would encompass the implications on all organs of the Court. Against this background, the potential effects on the issue of a financial target should be analyzed.

4. Working Methods

- (a) Discussions with States Parties.
- (b) Consultations with the organs of the Court.
- (c) Consultations with the CBF.
- (d) Briefings on the relevant experiences of other criminal courts and tribunals, on the international and national level, if relevant.

5. Timeline

- (a) 3 May: Presentation/discussion of the draft programme of work at the first meeting of the SGG.

- (b) May/June: Consultations with organs of the Court and States Parties.
- (c) June/July: Discussion with States Parties; wrap-up on results and relevant conclusions from discussions.
- (d) August/September: Preparation of report and recommendations.
- (e) End of September: Submission of the report of the SGG, including possible elements for the omnibus resolution. The report on the outcome of the discussions regarding the recommendation of a financial target or envelope will be annexed to the report of the SGG.

C. Good governance and the issue of qualitative and quantitative indicators

6. 3.1 Goal

11. The issue of qualitative and quantitative indicators is a Court driven process thus, the primary goal of the SGG-Cluster II facilitation is to serve as an interlocutor for the Court and provide a forum for discussion between the Court and States Parties on the topic with the aim of having a better understanding on how indicators could help to assess the Court's performance. On this basis, Cluster II could formulate recommendations to the Court, if appropriate.

12. On 12 November 2015, the Court issued its *Report on the Development of Performance Indicators for the ICC* which presented an initial set of potential Court-wide indicators for which relevant and supporting data shall be collected during 2016. In the framework of its new Strategic Plan for 2016-18 the OTP has identified 14 overall performance indicators covering those areas over which the OTP has sufficient control.

13. In this regard, the Swiss Federal Foreign Ministry has expressed its willingness to brief in the upcoming weeks about the conclusions of the Glion retreat, held 6-8 April 2016 at its invitation, to analyze the ICC performance indicators.

7. Working Methods

- (a) Discussions between the Court and States Parties.
- (b) Facilitating a wider discussion on indicators, possibly on the basis of the experience of other courts and tribunals in The Hague as well as of other international organizations and national jurisdictions.

8. Timeline

- (a) 3 May: Presentation/discussion of the draft programme of work at the first meeting of the SGG.
- (b) Mid-June/mid-July: Update by the Court on progress achieved, discussion, comments on relevant conclusions of the *Glion retreat*.
- (c) August: Wrap-up on results & relevant conclusions from discussions
- (d) End of September: Submission of the report on the progress achieved so far and possible input for the specific item on the efficiency and the effectiveness of Court proceedings to the omnibus resolution.

Annex III

Interim report of the Court on the Court-wide impact of the “OTP Basic-Size”

(See ICC-ASP/15/33)

Annex IV

Briefing by the Chair of the Committee on Budget and Finance to The Hague Working Group

Your Excellency, the [Coordinator of the Hague Working Group], Your Excellencies, Distinguished representatives of the States Parties,

I would like to thank you for organizing this meeting and for the opportunity to address you today and to present to The Hague Working Group the main outcomes of our discussions at the twenty-seventh session of the Committee that we have just concluded.

First of all, I would like to take this opportunity to thank my colleagues from the Committee for their devotion and hard work in the course of the last two weeks and the weeks prior to the session. I would also like to thank the Secretariat's staff for their support. Furthermore, I would like to thank the Court for their work in relation to our twenty-seventh session. I will now outline the main outcomes of our discussions.

A. Budget process and budget document

At its twenty-seventh session, the Committee noted the improved budget presentation while making suggestions on the format of the budget, as to ensure a more homogenous approach throughout the budget document and as to allow for a comparative analysis of figures.

It is the Committee's view that the efforts of the Court in this regard are part of an ongoing process and that several aspects need to be continued to be strengthened in the future, such as:

- (a) Improved context setting (time series to identify trends, key organ assumptions, cost drivers);
- (b) Enhanced presentation of Court-wide issues (IT investment, furniture and equipment);
- (c) Better assessment of the efficiency of the Court (efficiency targets that allow for accountability); and
- (d) Identification of Court-wide synergies.

B. Financial and budgetary matters

1. Status of contributions

The Committee reviewed the status of contributions and noted with great concern that the outstanding contributions for the 2016 approved budget of €136.58 million stood at €17.88 million (13.1 per cent). Outstanding contributions from previous years stood at €15.95 million. Thus, total outstanding contributions, including the regular budget, the Contingency Fund and interest on the host State loan, stood at €34.16 million as of 15 September 2016.

The Committee noted with concern that, as at 15 September 2016, 37 States Parties had not yet paid their contributions. The Committee stressed the importance of

contributions being paid in full and in a timely manner. Not meeting the obligations in relation to the payment of contributions may seriously jeopardize the daily operations of the Court. If contributions remain unpaid at the end of the year, the Court may need to resort to the Working Capital Fund, the level of which may not be sufficient to cater for liquidity shortfalls. Furthermore, the outstanding interest for the host State loan for the premises stood at about €427,000 as at 15 September 2015.

The Committee urged all States Parties to make their payments on time, in order to ensure that the Court has sufficient funds throughout the year, in accordance with the Financial Regulations and Rules. The Committee requested the Court to notify once more States Parties which had not paid the contribution in full of their payment obligations before the fifteenth session of the Assembly in November 2016. Furthermore, the Committee recalled its previous recommendation that the President of the Assembly and Court officials take up this issue with States that have outstanding dues to the Court, whenever they have bilateral meetings.

2. Budget Performance as of 30 June 2016

The Committee had before it the Report on Budget Performance of the International Criminal Court as at 30 June 2016, as well as the forecast performance as at 31 December 2016. The Committee noted that the implementation rate at mid-year was 48.3 per cent, or €67.45 million, against the 2016 approved budget of €139.59 million, which represents a decrease of 6.8 per cent compared to last year's implementation of 55.1 per cent as at 30 June 2015.

The Court forecasts an implementation rate of 97.0 per cent, or €135.35 million, including the interest paid for the premises amounting to €2.19 million, against the approved budget for 2016 of €139.59 million, which represents a decrease of 0.1 per cent compared to last year's implementation of 97.1 per cent as at 31 December 2015.

The Court's forecast implementation of 97.0 per cent against the 2016 approved budget could create room to absorb additional expenditure arising from Contingency Fund notifications. So far, the Committee received three Contingency Fund notifications. Costs that will not be absorbed within the regular budget, will have a significant impact on the balance of the current Contingency Fund level of €5.79 million as of 30 June 2016 and will require its replenishment.

3. Consideration of the 2017 Proposed Programme Budget

The Committee noted that the 2017 Proposed Programme Budget submitted by the Court, of a total amount of €147.25 million (excluding the interest for the host State loan of €2.99 million), which represents an increase of €9.86 million (7.2 per cent) over the 2016 approved budget of €137.39 million, excluding the interest.

(a) Assumptions

The Committee was informed that Court's judicial and prosecutorial (including investigative) activity was expected to be extensive in 2017:

- (a) 11 situation countries;
- (b) 9 preliminary examinations;
- (c) 6 active investigations; and
- (d) 2 final appeals.

(b) Presentation and macro analysis of the 2017 Proposed Programme Budget

The Committee noted that some expenditures included in the 2016 budget proposal pertained to that budget year only and, therefore would not necessitate resource allocation in the proposed programme budget for 2017 (e.g. rent for the interim premises amounting to €952,200, the expenditures of €438,300 for the project director's office and the

inauguration of the premises). Such non-recurrent expenses reduce the baseline for the comparison of the proposed budget increase for core activities of the Court to €135.99 million.

The Committee analyzed the trends in the implementation rate of the various major programmes, which provide a technical justification to what the Committee considered responsible reductions, in particular by targeting those major programmes that had shown patterns of under-implementation over the last years.

(c) *Major Programme I: Judiciary*

The 2017 proposed budget for Major Programme I amounted to €13.24 million representing an increase of €813,100 (6.5 per cent), against the 2016 approved budget of €12.43 million.

The Committee noted that €580,900 of this increase was associated to the costs for 18 judges' salary entitlements. As regards Resolution ICC-ASP/3/Res.3, whereby the conditions of service and compensation of judges at the Court shall be reviewed by the Assembly as soon as practicable, following the review of the conditions of service of the judges at the International Court of Justice by the UN General Assembly.

The Committee noted that while the salaries of the judges at the International Court of Justice and other international tribunals are made of an annual base salary and a corresponding post adjustment, the salaries of judges at the Court are based on a fix amount of €180,000 per year, meaning that there is no separation between base salary and post adjustment. Consequently, due to the differences in calculating the annual remuneration of judges, a complete alignment to the judges' salaries of the International Court of Justice and other international tribunals is not possible.

The Committee considered that the amount requested by Chambers in order to achieve an alignment with the annual remuneration of other tribunals is not primarily a resource related issue but would have to be considered by the Assembly in the framework of a policy discussion. In this regard, the two possible options that could be envisaged by the Assembly are:

- (a) an annual adjustment of salaries as determined by the Assembly; or
- (b) a periodical review of the salary scheme, establishing a timeline for a review of the salaries.

Any changes of a potential salary scheme will need to include a review of all conditions of service of the judges and their budgetary implications.

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

The 2017 proposed budget for Major Programme II amounted to €46.2 million, representing an increase of €3.04 million (7 per cent), against the 2016 approved budget of €43.2 million.

For 2017, the OTP resource requests are based on the following cost drivers: nine preliminary examinations, nine situations, six active investigations, nine cases pending arrest, three trial teams and two final appeals. The OTP budget proposal is based on the OTP Strategic Plan for 2016-2018, which is linked of the Basic Size model, and an assessment of the OTP resource needs for 2017.

The Committee did not object to the strengthening of investigative teams and the request for additional GTAs in the Investigation and Prosecution Division. However, in light of past expenditure patterns and an average implementation rate of 97 per cent (2011-2015), as well as the time needed to recruit new staff (4-6 months), the Committee was of the view that the OTP could absorb some cost increases.

The proposed 78 GTA conversions met the requirements for conversion set by the Committee. While noting the significant increase in the established posts, the Committee recommended that the Assembly approve these conversions. The Committee noted, in this

connection, a cost saving of €799,400 with the application of a 10 per cent vacancy rate for established posts had already been incorporated in the budget proposal.

The Committee had great difficulty in tracking what had been the original justification in creating each of those 78 GTA position. In this regard, the Committee requested that the Court provide budget information in such a way as to identify ("tag") each GTA position by a certain situation, case or temporary functions, in order to provide the necessary transparency so as to facilitate the Committee's decision on the future budget or requests for further conversions, should the needs arise.

Furthermore, the Committee recommended that for all newly requested GTA positions in future budgets, the Court has to identify, if possible, the duration required for the requested posts in order to reduce the administrative workload of the Human Resources Section and of the hiring officers.

The OTP developed a set of performance indicators to monitor and manage efficiency gains. For 2015, the Investigation Division reported a 1.66 per cent (€264 thousand) efficiency gain in 2015 and expected an efficiency gain of at least one per cent for 2016 (€178 thousand). It was the Committee's view that the OTP should set such efficiency targets for all the divisions and present them clearly in future budget proposals.

(e) *Major Programme III: Registry*

The Committee noted that the Registry requested a budget of €79.6 million for its activities in 2017. This compares to the approved budget for 2016 of €72.7 million which represents an increase of €6.8 million (9.4 per cent).

The Committee noted that in the 2017 proposed programme budget the established posts decreased by five, as a result of the closing down of the field office in Kenya. Thus, the number of established posts was reduced to 574 positions, whereas the number of GTAs increased by 20.4 full-time equivalents (FTE). The Committee considered each proposal for new established posts and each GTA position on its own merit, taking into account the workload and the assumptions for 2017. Wherever no technical justification for a post was provided, the Committee recommended a reduction of the proposed increases.

While looking forward to the full assessment of the External Auditor on the ReVision process, the Committee took note of the amended human resource structure in the Registry, in particular the projection of a high increase in the number of staff, compared to the staff level expected after the Registry's reorganization.

For the Registry, reductions in increases were recommended based on the analysis of the vacancy rate and, in particular, in relation to those positions that had been staggered last year and had not been filled in the meantime.

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

The Committee noted that the Secretariat of the Assembly of States Parties ("the SASP") requested a budget of €2.92 million for 2017. This compares to the approved budget for 2016 of €2.8 million, which represents an increase of €109,000 (3.9 per cent).

The Committee thoroughly reviewed the expected workload of the SASP and the service requirements of States Parties. It noted that the implementation rate for this Major Programme had allowed the SASP to carry out its mandate, including by absorbing additional costs that were not budgeted for or only partially budgeted for.

(g) *Major Programme VI: Secretariat of the Trust Fund for Victims*

The Committee noted that the Secretariat of the Trust Fund for Victims (STFV) requested a budget of €2.5 million for its activities in 2017. This compares to the approved budget for 2016 of €1.9 million, which represents an increase of €617,600 (32.8 per cent).

The Committee carefully scrutinized the request for new established posts in the STFV. While a decision by the Assembly on the structure of the STFV is pending, the Committee noted that the STFV's new structure was not subject to Court-wide efficiency

improvements and was not integrated in the One-Court considerations and, thus, might include duplications or inefficiencies. The Committee recommended the need of an approach based on the One-Court Principle and requested the principals of the Court in the context of the Coordination Council and in the light of the operations foreseen for 2017, including the involvement in reparation proceedings, to work on the redesign of the STFV structure and to report their findings on synergies and efficiencies to the Committee at its twenty-eight session.

(h) *Major Programme VII-2: Permanent Premises Project - Host State Loan*

The proposed 2017 estimate for MP VII-2 amounts to €2.98 million. This represents an increase of €786,800 (35.8 per cent) compared to the approved budget for 2016 of €2.2 million.

The Committee recalled that the Court has a legal obligation to pay interest in full on the host State Loan by the first day of February of each year. The Committee urged those States Parties that must contribute to the payment of the host State loan to make their payments in full and on time, as otherwise the Court will have to make use of its operating funds in order to cover interest payments due from States Parties.

4. Precautionary reserves

With respect to precautionary reserves, the Committee noted that the Working Capital Fund ("the WCF"), which was set up to meet short term liquidity problems pending receipt of assessed contributions, stands at €5.79 million. It was originally set up at a level of €7.4 million that represented one month of the Court's expenditure at the time, in line with recognized international practice.

Due to incremental budget growth, the level of the fund no longer reflects one month of expenditure of the Court. Therefore, the Committee recommended that the Assembly agree in principle to reinstate the WCF at a level of €11.6 million.

Furthermore, the Contingency Fund ("the CF") that was established to meet unforeseen and unavoidable expenses is currently at a level of €1.2 million lower than the level set by the Assembly of €7 million. The Committee recommended restoring the CF €7 million, which would require €1.2 million of assessed contribution for 2017. To fund the increase of the WCF in 2017 would require a payment of €4.2 million. The Committee appreciated that there are other calls on States Parties' contributions this year and, therefore, considered options for funding over a number of years as to restore the WCF to a level of €11.6 million. The Committee also noted that, until full restoration of the WCF is achieved, the CF could act both as a temporary cash reserve, as well as for its intended purpose.

Nonetheless, should the need arise and in line with resolution ICC-ASP-14/Res.1, the Committee was of the view that the Court should be able to request a seasonal credit line of a maximum of €8 million for the period of December 2016 to mid-February 2017, in order to top-up the foreseen liquidity shortfall in the WCF. These funds would be drawn down on a residual basis only after the full utilization of the WCF and the temporary utilization of the CF, whereby the costs incurred would be absorbed within the Court's budget.

C. Institutional reform and administrative matters

1. The Court's Basic Size and its full costing analysis

The Committee noted that the "Basic Size" project has been concluded. The Committee understands that the "Basic Size", is a conceptual model to describe the functional and resource relations between the main organs of the Court and, as projected, represents a substantial resource growth trajectory reaching its end by 2021. The results of the exercise provide a conceptually costed trajectory on the quantity of activity that the Court could effectively manage over the coming years, describing the functional and resource relations between the main organs of the Court.

The Committee recognized that this trajectory cannot be seen as a predictor for actual budgetary increases as it is based on assumed activities. Therefore, any increases resulting from augmented activity will be considered on a year-by-year basis, as this is currently the case. The Committee noted that the "Basic Size" exercise was not undertaken within a financial envelope and, thus, presents the Court's simulation of its level of resources required, if the Court is at full assumed capacity. The Committee recognized that the actual level and the budget growth would differ as they would be based on real life activities.

The Committee recommended that the Assembly provide their input on the shape of the ultimate trajectory of budgetary growth for the Court and provide their projection of affordability at the beginning of the Court's budgetary process to align expectations.

2. Reparations

The Committee observed that the reparations proceedings are an innovative development in the field of international criminal justice, without precedent from other tribunals. Thus, it is difficult to forecast the financial implications of the reparation process. The Committee recalled its earlier assessment that the issue of reparations had a potentially significant impact on the reputation and operations of the Court and requested to be informed about the final pattern of reparations and its administrative and operational cost implications, once the decisions by the Chambers are taken.

3. Legal aid

The Committee noted that €922,000 were requested in the 2017 proposed budget for legal aid for the reparations proceedings in the *Lubanga* and *Katanga* cases, including €400,000 for the defence counsel.

The Committee noted that a clear distinction appeared to have been drawn in the Single Policy Document on the Court's Legal Aid System between the length of time that defence teams and victims' teams would play a role, namely coming to an end respectively after a decision on the appeal and after the reparations phase. The Committee noted that during the reparations phase, reduced activity will be required by the legal team for convicted persons, and that amounts to be allocated to legal aid for defence could be based on a comparison with a "reduced activity" phase. Thus, the Committee recommended that the amount for legal aid for defence during the reparations phase be reduced for convicted persons to €164,248 per year.

D. Audit matters - Annual report of the Audit Committee

The Committee scrutinized the annual report of the Audit Committee on the work carried out in 2016. Both the governance structure and risk management need to be further strengthened. Further to the recommendations of the Audit Committee, the Committee called on all the organs of the Court to improve the implementation of audit recommendations.

E. UN Common System

At its fourteenth session, the Assembly requested the Committee, including by a possible appointment of an independent expert to that end, to evaluate the feasibility of a possible departure from the United Nations Common System and the establishment of an alternative pension scheme for newly recruited staff and to make a recommendation to the fifteenth session of the Assembly in this regard.

The Committee appointed a delegation who met with the Chief Executive Officer of the United Nations Staff Pension Fund, the Vice-Chair of the International Civil Service Commission, and the Chair of the Advisory Committee on Administrative and Budgetary Questions, in addition to exchanges on this topic with other international organizations.

The main conclusion of the Committee was that the UN Common system is the system that best fits the need of the Court. A major negative consequence of leaving the

UN salary scale is that the Court would not be able to remain in the UN pension fund, which is one of the most attractive ones in the market. A departure from the UN Common System would also lead to reduced mobility of staff between the Court and other UN organisations. The Court would need to manage its new system, which would bring about high administrative costs. Thus, the Committee did not recommend a departure from the UN Common System and the establishment of an alternative pension scheme for newly recruited staff.

F. Premises of the Court

1. Cost overrun

As regards the cost overrun identified after the fourteenth session of the Assembly, the Committee considered two complementary options.

One option is to cover the overrun from unspent resources left in the Court's regular budget at the end of 2016. The Court has indicated its willingness to do so. However, the Assembly would need to authorize the Court to use the budget surplus to cover the overrun.

Another option could be the use of the interest of €553,326 that the project funds have accumulated over the years essentially by one-time payments. The OC requested the Committee to consider whether to recommend to the Assembly to use the interest to reduce the cost overrun.

The Court explained that the interest belonged to the project and, since it was not required that it would be returned to States Parties, it could be used to reduce the premises cost overrun, as the interest had accrued on funds belonging to the same project. Thus, the Committee recommended that the Assembly consider using the interest accrued on the project account to finance parts of the cost overrun. Finally, it recommended approving the use of unspent funds in the Court's regular budget to pay for the remaining part of the overrun.

2. Governing structure and total cost of ownership

At its fourteenth session, the Assembly invited the Bureau to continue discussions on the establishment of a new governance structure for the new premises.

The Committee did not believe that the need for a separate new governance structure in the wake of the OC had been demonstrated. From its technical viewpoint it suggested that the new challenges (maintenance, capital replacements and effective oversight) could be efficiently managed within the current organizational set-up of the Court, the Assembly and its working groups.

Under its mandate, the Committee will, as before, have the opportunity, and is fully prepared, to assist through its financial advice. However, within the confines of its mandate, know-how and resources, the Committee would not be able to exercise current oversight.

Concerning capital replacements, the Committee would like to highlight the recommendation of the External Auditor that the Assembly, as soon as possible, review the cost estimates for capital replacements and implement a funding solution.

3. Overpayments

Regarding the surplus deriving from overpayments (€1.8 million) based on an amended calculation; the Committee invited the Court to report at its earliest convenience on the current management of the funds and the options available under the applicable regulations to safeguard their transparent use. On this basis, a strategy for the use of these funds should be worked out.

I thank you for your attention.

Annex V

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

(See Official Records ... Fifteenth session ... 2016 (ICC-ASP/15/20), vol. II, part B.2)
