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**Study Group on Governance:
Dialogue on institutional review of the governance
framework of the Assembly of States Parties****Informal summary****Introduction**

1. On 20 October 2011, the Study Group on Governance (“the Study Group”) held a one-day event entitled “A dialogue on the institutional review of the governance framework of the Assembly of States Parties of the International Criminal Court”, which was hosted by the Embassy of the United Kingdom to the Netherlands.
2. The purpose of the dialogue was to allow the Study Group to reflect on the institutional infrastructure of the Rome Statute System, in particular the role of States Parties in governance and management. Nearing the tenth anniversary of the entry into force of the Rome Statute, the dialogue was an opportunity to consider the external governance framework within the Rome Statute system in a more strategic and holistic fashion.
3. The event was divided in three sessions:
 - (a) The Assembly of States Parties: Ambassador Christian Wenaweser (Liechtenstein), President of the Assembly;
 - (b) The Hague Working Group: Ambassador Jorge Lomónaco (Mexico), Vice-President of the Assembly and Coordinator of The Hague Working Group; and
 - (c) The Committee on Budget and Finance: Mr. Santiago Wins, Chair of the Committee.

Session 1: Format of the Assembly of State Parties*Structure of the Assembly*

4. The President recalled that sessions of the Assembly were too dominated by budget discussions, resulting in limited discussion of other issues which merited the Assembly’s attention, such as the challenges identified at the Review Conference (four stocktaking topics), the Court and the United Nations Security Council, the collective obligations of States Parties and a comprehensive debate on budget policy which would include some of key cost drivers identified by the Committee on Budget and Finance (legal aid regime, outreach activities, United Nations Security Council referrals, etc).
5. One way to address this could be to hold two sessions of the Assembly per year, one devoted to political issues and the other to budgetary issues. Another idea that had been suggested in this context was consideration of a biennial budget. Furthermore, he noted the need to address the budget policy and related matters without reference to specific proposed

programme budget, and thus prior to the submission by the Registrar of the annual budget proposal.

6. The President noted, however, the increased budgetary implications of having two sessions.

7. He expressed his view that having additional retreats on conceptual topics, such as victims, would be most useful.

8. As regards the structure of the annual sessions, he suggested that panel discussions could be held, for example on complementarity/cooperation. Furthermore, he questioned the value of the Assembly having a general debate, especially since States already had the opportunity to deliver the general statement during the annual United Nations General Assembly agenda item on the International Criminal Court.

Role of the Bureau

9. The President suggested that the Bureau could play a more active role in assisting the Assembly; for example it had prepared a paper on non-cooperation which, once approved by the Assembly, would allow a Bureau task force to be set up on the topic. Similar task forces could be established by the Bureau on other issues, providing a larger sense of ownership and in the process assisting the President of the Assembly. He also noted the need for a forum other than the annual session of the Assembly for inter-sessional decision-making. To enhance such decision-making, he proposed mechanisms such as open-ended Bureau meetings for certain topics, which could be followed by approval of decisions via a silence procedure.

Relationship between The Hague and New York

10. The President underlined that this link should not depend on personal relationships but should be institutionalized. A better flow of information between delegations in both locations might be necessary in some cases, though this was an internal matter for the respective delegations. He noted that New York-based delegations were not always aware of details of issues discussed in The Hague which were to be decided by the Bureau in New York; the information flow could be improved by having the Vice-President based in The Hague/the Chair of the Study Group address the New York Working Group.

11. He suggested that the mandate of the Study Group should be extended, to provide a permanent platform for dialogue and that it could deliver more concrete results. Furthermore, the judges were interested in its work, although they had not, thus far, been involved.

Discussion

12. It was suggested that the format of the Assembly should be aligned with the core functions of the Court, rather than revolving mainly around the budget. More discussion of the political issues was needed, in particular where the Court needed support and where its credibility was at stake. The Assembly should focus on its key role as set out in article 112 of the Rome Statute, and avoid either micromanagement of the Court or exceeding its statutory mandate; the tasks set out in article 112 should first be fulfilled first and, if time permitted, the budget discussed.

13. As regards the efficiency and effectiveness of the Assembly, it was posited that it should not be the first point for the discussion of technical issues, and it was suggested that the Court could benefit from external expertise. It was noted that the Working Groups and the Study Group had among them experts on some issues, and held substantive technical discussions throughout the year that should not be repeated during the Assembly.

14. It was suggested that any accountability mechanism should remain within the legal framework, that a legal analysis of article 112 should be carried out, in particular on the meaning of “oversight”, but also on “inspection and evaluation”. The question of how to ensure respect for the independence of the Court also had to be considered. Furthermore, further consideration was merited as to the independence of the Prosecutor being in relation

to the other organs and not vis-à-vis the Assembly. It was posited that any evaluation should be system-wide and not be limited to the Court.

Assembly working methods

15. With respect to the working methods of the Assembly, support was expressed for different mechanisms e.g. the silence procedure or open-ended Bureau meetings, which would avoid the postponement of all decisions until the Assembly session, and this option should be suggested to the new President. It was noted that there was scope to improve the working methods of the Assembly and to make it more policy-oriented. Furthermore, the Assembly's focus on ensuring greater efficiency and effectiveness should not be to the detriment of other issues. It was suggested that technical bodies be established to build expertise and provide recommendations and advice to the Assembly, on issues such as legal aid/victims, etc.

16. It was noted that the silence procedure had been used once, and had required the Secretariat to send a couple hundred faxes to all States Parties, with a 48-hour deadline and that it would be necessary to consider how any objections would be dealt with.

17. It was suggested that the Assembly focus on political issues. This would be facilitated if the outcome of lengthy discussions which take place in mechanisms, such as the Bureau, the Working Groups and the Study Group, in advance of the Assembly are not then re-opened at the Assembly, and that attention be paid to strengthening these bodies. In this connection, reference was made to the substantial investment in time and efforts undertaken by those bodies and the Court throughout the year.

18. As regards the relationship among the different bodies, subsidiary bodies sometimes submitted unresolved issues to the Assembly. The Bureau could, in the inter-sessional period, take stock of the work of the Working Groups, thereby alleviating some of this burden. Alternatively, a State could host an extraordinary session of the Bureau, including cover the costs thereof. It was also suggested that issues before The Hague Working Group be fully addressed rather than be rushed through prior to the Assembly.

Frequency of Assembly sessions

19. As regards the frequency of sessions, some delegations did not see the merit of two sessions of the Assembly per year, with a preference being expressed for one annual session of a reduced duration and with a balanced agenda. Furthermore, one session of 10 days per year was already a heavy burden on smaller delegations. Some participants supported two sessions per year and the possibility of an additional session to be held once every third year was also raised.

20. It was suggested that rather than increasing the number of sessions, States Parties should strengthen the existing subsidiary bodies in order to resolve issues prior to the Assembly. A note of caution was sounded that if the number of sessions was increased, there would be additional room for re-opening of issues.

21. On principle, the frequency of Assembly sessions should be driven by facts and flexibility should be maintained. In considering additional annual sessions, the utility for the Court itself should be considered, since they could distract the Court from its core functions.

22. Furthermore, the success of each session of the Assembly should be assessed through a questionnaire sent to States, as their seemed to have diminished coupled with an increase of unpaid contributions, as well as by considering what States attended the session and demonstrated interest in the agenda items. In this connection, reference was made to the fact that at sessions held in New York, some delegates may have to simultaneously cover other United Nations meetings.

General debate

23. As regards the general debate, some delegations questioned its added value. Furthermore, it was not a veritable debate, but rather a reading of statements, frequently

repetitive. Proposals for improving the general debate included the reduction of speaking time, a restructuring, the delivery of regional statements, a focus on more political issues, and the prior circulation of statements, with a shorter general debate for comment thereon.

24. On the other hand, support was expressed for the general debate as being the only forum of the Assembly where States as well as civil society could express support for the Court.

25. It was recalled that there had been no general debate during the first four or five sessions of the Assembly. The option of a thematic general debate had been discussed in the Bureau in the past, but the Bureau had not been able to reach an agreement on a topic.

26. It was suggested that a high-level meeting of Heads of State and Government be convened every three to four years to discuss the Court. Such a meeting could be held in the margins of the United Nations General Assembly in September.

Venue of the Assembly/Bureau

27. The President indicated that although the cost of a session was less in New York, this should not be the deciding factor in deciding where to have a session, since it was desirable to hold the Assembly in both New York and The Hague. It was suggested that Bureau meetings alternate between New York and The Hague.

President

28. Regarding the workload of the new President, and whether a full-time President was required, the President noted that there would be sufficient work for a full-time President, adding that he would have done more and spent more time in The Hague if he had had additional time. The President cautioned that if there was an expectation for future President to be available on a full-time basis, that the choice of candidates would be very limited as few States would consider funding such a post.

29. Furthermore, on the location of the President, there was no rule that Presidents should be New York-based. The incoming fourth President presented a new model of a full-time President, but the location afterwards was a decision for States Parties. The President noted that he had found it very advantageous to be a Permanent Representative to the United Nations, in garnering diplomatic support for the Court, as well as in facilitating many issues with the United Nations system, as had been the case for the first two Presidents.

30. The view was also expressed that in order for the President to be adequately supported, the requisite strengthening of resources of the Secretariat was necessary.

31. As regards the relationship between The Hague and New York, it was suggested that low cost, high-tech means such as video-conferencing could help bridge the gap.

Budget

32. Regarding the proposal for a biennial budget, caution was urged. A biennial budget would require a robust Contingency Fund, with control by States Parties over access by the Court. However, some support was expressed for a biennial budget.

33. It was noted that the Assembly's practice in relation to budget discussions diverted attention from other important and strategic matters. Since enhancing the credibility of the Rome Statute system was of key importance, these discussions should not dominate the work of the Assembly. Support was expressed for a separate discussion on budget policy in the early spring of 2012, prior to the presentation of the Court's proposed programme budget.

34. It was pointed out that the budget was related to the core function of the Court, and the impression of a two-tiered Assembly should be avoided. The important role of the Committee on Budget and Finance in providing interim analysis was recognized.

35. It was noted that States had not yet been faced with a supplementary budget, but would have to consider how to deal with it where the technical body, the Committee on Budget and Finance, had not yet given its views thereon.

Session 2: The role of the Bureau

36. The Coordinator of The Hague Working Group, Ambassador Jorge Lomónaco (Mexico), highlighted the major challenges faced by the Working Group, which included diminished participation by States Parties and their Ambassadors, the lack of time for in-depth analysis of issues, and the attainment of concrete results.

37. He referred to the high number of meetings held and noted that it was necessary to examine how the work might be better organized. He recalled that the President had recommended that the incoming President maintain the efficient division of labour between the two Vice-Presidents as Coordinators of The Hague and New York Working Groups.

38. The Vice-President identified three basic elements necessary to improve the work of the Working Group:

(a) To avoid deferring the consideration of issues until the end of the year, which happened due to the fact that the requisite input from the Court was not necessarily available in a timely manner as expected by the facilitators and also because on occasions the Working Group would dwell too much on a topic;

(b) To promote the participation of more delegates beyond the “core group” of active delegates, in particular encouraging participation from Africa and the Caribbean; he also noted that sometimes at Assembly sessions held in New York there was a larger number of Hague-based Ambassadors than Permanent Representatives; and

(c) To focus on issues requiring action and having tangible impact.

39. As regards the relationship between The Hague Working Group and subsidiary bodies of the Assembly, the Working Group benefited from briefings of the Committee on Budget and Finance. However, as regards the outcome of The Hague’s Working Group, sometimes it was subject to endorsement or was re-opened for discussion by New York Working Group members; this had created some resentment as the output of the New York Working Group was not subject to the same review.

40. He noted the structural advantages of The Hague as being the close proximity to the Court and the continuous interaction with Court officials, which in turn allowed a better grasp of some problems and their possible solution; the ability of Hague-based delegates to dedicate significant amounts of time to the Court and thereby develop a greater sense of ownership; and less “contamination” with other issues than may occur in New York where other multilateral issues may affect consideration of Rome Statute topics.

41. The Vice-President noted that reaching an agreement on the composition of the Bureau prior to the tenth session of the Assembly was a prior step to identifying a new Vice-President, who would come from a Bureau member. The diminishing participation of a limited core of active delegates was a possible reason for the difficulty in identifying the new Vice-President.

42. As regards proposals for enhancing the work of the Assembly, he expressed his concern that streamlining the work of the Assembly was being linked to the programme budget. He hoped that the discussion on budget policy, an important item, could begin in 2012, but was of the view that other issues should not be subordinated to the budget topic and that other actors would be sensitive to the concerns of States Parties.

43. As regards the division of work between the Working Groups, there were many activities that had to be carried out in close proximity to the Court. The Vice-President noted that New York and The Hague shared many commonalities, e.g. the geographical spread of participation, and the engagement of Ambassadors, and he stressed the need for greater interaction between delegates in both locations. He also noted that national delegations were as much responsible for any disconnect between the two Groups, due perhaps to the distance and time difference.

44. Furthermore, he highlighted the need to streamline the work of the Working Groups by limiting the number of topics per group to four or five per year, according priority to crucial issues.

45. He viewed the suggestion to encourage the designation of Permanent Representatives to the Court as a tool for strengthening the Working Group and, possibly, diplomatic missions in The Hague since it would convey a message to capitals that the multilateral aspect of a posting in the Netherlands was an important factor to bear in mind.

46. On the location of the Presidency, he noted that the 1.5 year quest for the a new President had demonstrated the difficulty in identifying a Permanent Representative in New York capable of dedicating sufficient time and energy to the role. Furthermore, geographical representation was a dominant factor in the process and was a dynamic that might be considered differently in the future. It might be necessary to look beyond New York and to bear in mind that the model of having a full-time President may not be sustainable beyond 2014.

Discussion

47. It was pointed out that the decreasing number of ambassadors present at meetings was probably due to the fact that the Working Group often discussed highly technical, rather than political, issues. There was a call for a greater effort to increase participation and engagement in the Working Group, although it was also stressed that to ensure higher participation, the efficiency of the Working Group had to improve. The point was also made however that the institutional engagement was more important than the level of the person who performed the role as countries established specific posts for dealing with the Court.

48. The need to reconsider the number of facilitations and issues on the agenda was highlighted. New priorities could include the review of the legal framework and the functioning of the Court; the advantages of having a single trial judge (instead of three); whether it was necessary to have five appeals judges sitting the entire time and other related issues which only the Assembly could discuss. However, it was also pointed out that before starting a range of new discussions, States Parties should proceed with the existing items and assess the efficiency of the system.

49. There was broad support for improved interaction between the judges and States Parties, in particular via the heads of the Pre-Trial, Trial and Appeals Divisions. In this connection, reference was made to the judges having different views among themselves, which is why the Study Group would have a preference for collective views. It was also posited that judges would benefit from hearing what the Study Group expected to achieve.

50. The view was expressed that the Court was moving into a different phase and rather than focusing on issues such as universality the focus had shifted to the cases before the Court. Consequently, it was more appropriate for the President of the Assembly to be in The Hague, near the seat of the Court, rather than in New York.

51. As regards possible amendments to the Rules of Procedure and Evidence, it was noted that this task fell within the remit of the Working Group on Amendments, and it was hoped that it would be sufficiently flexible to facilitate discussions of proposals emanating from The Hague Working Group for adoption at the tenth session. The urgency of adopting these amendments was stressed, especially since the annual Assembly session was the only opportunity to take such decisions.

52. As regards finding suitable candidates for the post of President of the Assembly in New York, it was noted that identifying individuals with the appropriate profile had not been difficult, but that the view of some that the new President had to come from one of two regional groups did contribute to the delay in identifying a candidate. In this connection, the point was made that in searching a President for the fifth triennium the Assembly should consider not rotating the post of President among the regional groups, but rather focus on finding the right person for the post.

53. The process for finding a Vice-President should consist of identifying the individual/s with the appropriate profile, whose countries would then be nominated for being part of the Bureau. In this connection, it was noted that there was some competition

to be elected to the Bureau, but that those States should be asked about the concrete contribution they would make in the Bureau, as there would be an expectation to that effect.

Session 3: Budget

54. The Court's budget was taken-up in the third segment of the seminar, where the Chair of the Committee on Budget and Finance (the "Committee"), Mr. Santiago Wins (Uruguay) presented his personal views about the Committee's mandate, role of the Committee within the Court budgetary cycle and the possibility of biennial budgeting.

The Committee's mandate

55. The Committee was established pursuant to ICC-ASP/1/Res.4 on 3 September 2002 and its mandate is described in Rule 9 of the Rules of Procedure of the Committee on Budget and Finance¹, which integrates different elements:

- (a) Technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature;
- (b) Review of the proposed programme budget of the Court, and making the relevant recommendations; and
- (c) Considering reports of the Auditor concerning the financial operations of the Court and transmission of the reports to the Assembly together with any comments.

The Committee's mandate also includes the following responsibilities:

- (a) Appropriations;
- (b) Trust funds;
- (c) Contingency Fund;
- (d) Investment of funds;
- (e) Internal audit;
- (f) Financial statements;
- (g) Ad-hoc inspection work; and
- (h) Receiving requests for opinion or guidance from the Assembly and the Bureau.

56. As an example, the Committee has received on several occasions through the Bureau, requests for opinion or guidance on some items, such as Independent Oversight Mechanism, the Oversight Committee on Permanent Premises, detention facilities; and addressed specific issues with important financial consequences, such as pension of judges, investments, procurement practices, need of coherent rules and regulations for staff, including assessment system, benefits, etc.

57. In summary, the Committee has a wide mandate, which includes not only scrutinizing every detail of the programme budget proposal, but also evaluation and verification through inspection functions, so far conducted on ad hoc basis. As an example of the volume of work generated in each session of the Committee; the total number of pages the Court had to submit to the Committee in response to its queries during its seventeenth session was around 500 pages.

58. The Committee's work is challenged by the following factors:

- (a) Two meetings a year to deal with an increasing number of issues on its agenda;
- (b) Insufficient human resource support;
- (c) Very short evaluation reports received by the Court or limited emphasis on key evaluation questions of relevance and effectiveness, in cases where the Court has to focus on evaluation process. More emphasis should be on the learning aspect of evaluations and therefore on lessons learned;

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003, annex III.*

- (d) Following-up on the Committee's previous recommendations; and
- (e) The budget process operates in a highly politically sensitive environment.
- (f) Since its inception in 2002, the Committee has achieved considerable savings to the States Parties of more than €35 million as detailed in annex I. Delegates appreciated and praised the work of the Committee and supported its recommendations.

Role of the Committee with the Court's budgetary cycle

59. Budget process:

- (a) The Registrar is responsible for the presentation of the proposed programme budget for the Court;
- (b) The proposed programme budget is prepared based on pre-defined assumptions;
- (c) The proposed programme budget is prepared by different programmes, and submitted to the Budget and Finance Section by the end of March;
- (d) An internal Budget Working Group reviews the budget submissions;
- (e) At the end of June, the Coordination Council has a final discussion and approves the proposed programme budget; and
- (f) In July, the proposed programme budget is sent to the Secretariat of the Assembly for formatting, light editing, translating and printing. An electronic copy is sent to the Committee before receiving a paper version afterwards.

60. There has been an improvement in the budget process; however, there is a room for more improvements, where the budget document lacks coherence as a whole.

What is wrong with the budget?

61. The Court faces challenges on oversight and accountability, management and resource allocation, and human resources management.

62. The Court's budget is different than other organizations'. While result-based budgeting is difficult to apply Court wide, in some areas the Court could have a programme of work linked to expected results. It is suggested that basic priorities should be outlined and a budget frame be established. It also should be considered to combine the strategic framework and the budget presentation.

Accountability

63. The Court has to introduce "Accountability" in its operations as was done by the United Nations, where the General Assembly adopted a special resolution on accountability.² There must be delegation of authority, adequate measures of outputs, and tools in place to deal with managers and organizational units that are performing below agreed targets.

Budget cycle and biennial budget

64. Moving to biennial budget cycle would have an impact on national budgets of the States Parties. The United Nations have a biennial budget cycle except for few agencies or specific activities such as ad hoc international tribunals or peacekeeping missions.

65. However, this does not address the problem of having outdated information at the time of budget approval. In the United Nations biennial budget has the same challenge and the update of information is costly. The Court should carefully review all these aspects and come-up with a proposal to the Committee in order to look at it and recommend it to the Assembly.

² United Nations Document A/RES/64/259.

Annex I

Assembly of States Parties, Committee on Budget and Finance

Total CBF savings to the Court's proposed budgets

Session	Dated	Proposed budget	CBF savings	%	Yearly CBF costs*	Cost to saving	Cost-benefit
First	4-8 August 2003	52,319,841	2,769,345	5.3	38,750		2,730,595
Third	6-10 September 2004	69,563,000	4,844,000	7.0	77,500		4,766,500
Fifth	10-14 October 2005	82,464,400	2,697,100	3.3	77,500		2,619,600
Seventh	9-13 October 2006	93,458,300	4,898,100	5.2	77,513		4,820,587
Ninth	10-18 September 2007	97,570,100	7,396,500	7.6	116,424		7,280,076
Eleventh	4-12 September 2008	105,142,300	3,912,400	3.7	116,810		3,795,590
Thirteenth	24 August - 1 September 2009	102,980,100	298,500	0.3	111,752		186,748
Fifteenth	23-31 August 2010	107,022,700	3,103,100	2.9	114,900		2,988,200
Seventeenth	22-31 August 2011	117,733,000	5,604,700	4.8	123,358		5,481,342
Total		€28,253,741	€35,523,745	4.3	€54,506	2.4	€34,669,239

* 2003-2005 are tentative figures since no data on SAP is available.

Annex II

Budget Process

