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Rolf Einar Fife*

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Abstract

The preparatory work before the entry into force of the Rome Statute of the International Criminal Court ("Rome Statute" or "Statute") is nearing completion. Basic normative structures governing the establishment and work of the future International Criminal Court ("Court") have been negotiated. With the discussions on the first draft Budget ("Budget") and other issues related to the administrative and financial operation of the Court, preparations have taken a significant "practical turn." The fundamental aim of the Budget is to translate the objectives of the Court in monetary terms and to provide the resources needed by the Court's organs and the Assembly of States Parties in order for them to accomplish their mandate.

THE DRAFT BUDGET FOR THE FIRST FINANCIAL PERIOD OF THE COURT

*Rolf Einar Fife**

"Plans are nothing; planning is everything."
—Dwight D. Eisenhower[1]

I. *A "PRACTICAL TURN" IN THE NEGOTIATIONS: THE RELATIONSHIP BETWEEN LEGAL NORMS AND FINANCIAL PLANNING*

The preparatory work before the entry into force of the Rome Statute of the International Criminal Court[2] ("Rome Statute" or "Statute") is nearing completion. Basic normative structures governing the establishment and work of the future International Criminal Court ("Court") have been negotiated. With the discussions on the first draft Budget ("Budget") and other issues related to the administrative and financial operation of the Court, preparations have taken a significant "practical turn." The fundamental aim of the Budget is to translate the objectives of the Court in monetary terms and to provide the resources needed by the Court's organs and the Assembly of States Parties in order for them to accomplish their mandate.

Multilateral negotiations on legal rules and procedures are therefore being capped by discussions of budgetary implications and estimated expenses. This development does not mean that lawyers can leave the budgetary process entirely to financial experts. While administrative and budgetary expertise is required, adequate needs assessments presuppose a keen understanding

* Deputy Director General, Department of Legal Affairs, Norwegian Ministry of Foreign Affairs. The author is the Chairman of the Working Group on the First Year Budget in the United Nations Preparatory Commission for the International Criminal Court and acknowledges his indebtedness to a number of experts in the U.N. Secretariat, the ICTY, and the ICTR, including in particular Sam Muller, Morten Bergsmo, Ken Lasiuk, and Serguei Tarassenko, for enlightening discussions on budgetary issues pertaining to international criminal justice. The author is solely responsible for the contents of this article, which does not as such constitute a statement of the views of the Government of Norway.

1. LOUIS E. BOONE & DAVID L. KURTZ, MANAGEMENT 81 (3d ed. 1987).

2. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9* (1998), *available at* http://www.un.org/law/icc/statute/romefra.htm [hereinafter Rome Statute].

of the specific features of the Court and the Assembly of States Parties, as articulated by the Statute and the draft Rules of Procedure and Evidence.

Moreover, in the process of illustrating and formulating start-up needs, concrete administrative competence from the complex field of international criminal justice proves invaluable. The importance of input from representatives of the International Criminal Tribunals for the former Yugoslavia ("ICTY") and Rwanda ("ICTR") was clearly demonstrated in the first discussions on the first draft Budget, during the eighth session of the United Nations Preparatory Commission for the International Criminal Court, which was held in New York City from September 24, 2001 to October 5, 2001.[3]

II. *DRAWING ON PAST EXPERIENCE WHILE CHARTING NEW WATERS*

At the risk of paraphrasing two worn-out maxims, when considering the budgetary needs of the Court one has to steer clear of two opposed risks. The first risk is re-inventing the wheel. The other risk is repeating the past mistakes of others. In a budgetary context, either or both could be highly damaging.

A number of the Court's functions are broadly similar to those of the ICTY and the ICTR. Obvious benefits can be drawn from a study of their experience. This is particularly true with the start-up phase, where knowledge of past administrative successes and pitfalls is apt to be especially valuable. For example, consider the cost and complexity of managing documents, which may seem trivial at first blush, but entails significant administrative and financial burdens. Without the establishment from 'day one' of central systems for electronic registration, storage, and retrieval of documents, and well as secure systems for digitizing documentary evidence, unnecessary difficulties and expenses are very likely to be incurred. Basic investments focused on planning, equipment, and staff can have a considerable long-term impact on overall effectiveness and running costs. This effect can be multiplied several times if one considers impli-

3. As witnessed by the substantive addresses by the registrars of the ICTY and the ICTR, Hans Holthuis and Adama Dieng, to the plenary of the Preparatory Commission on October 1, 2001, as well as informal interventions by representatives of the tribunals in rounds of questions and answers in the Working Group on the First Year Budget.

cations for court management, communication with investigators in the field or with defense attorneys abroad, and outsourcing of various translation needs.

There are, at the same time, striking differences between the Court and the two tribunals. These differences need also to be taken fully into account when budgeting. An obvious difference is that the Court may have to cover more than one geographic area. It may have to acquire the capacity to deal simultaneously with several conflict areas on different continents. The Court's structure must therefore focus on a core capacity as well as on resources for swift capacity-building to respond to various situations. Another difference follows from the particular powers of the Prosecutor to assess information and eventually take steps with a view to triggering the jurisdiction of the Court in accordance with article 15 of the Statute. Moreover, the principle of complementarity with national criminal jurisdictions will apply in accordance with article 17 of the Statute. The Court will thus have to satisfy itself that the State concerned has not taken genuine steps to bring perpetrators of atrocities to justice. For these reasons, early activities of the Court may to a large extent be characterized by pre-investigative fact-finding and inquiries, as well as substantial communication with States. The budgetary impact of these features has to be considered in conjunction with the needs of particular organs of the Court.

Moreover, the Court will also differ from the ICTY and the ICTR in being a treaty-based judicial body separate from the United Nations ("U.N.").[4] It will share this characteristic with the International Tribunal on the Law of the Sea in Hamburg.[5] This means that a number of administrative and budgetary func-

4. Both the ICTY and the ICTY were established by Security Council Resolutions under Chapter VII of the U.N. Charter. *See* International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, pmbl., U.N. Doc. S/RES/827 (1993), *amended by* U.N. Doc. S/RES/1166 (1998); U.N. Doc. S/RES/1329 (2000); Statute of International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between January 1, 1994 and December 31, 1994, pmbl., U.N. Doc. S/RES/955 (1994), *amended by* U.N. Doc. S/RES/1165 (1998); U.N. Doc. S/RES/1329 (2000).

5. Statute of the International Tribunal for the Law of the Sea (Annex VI of the United Nations Convention on the Law of the Sea, Dec. 10, 1982), *available at* http://www.itlos.org/start2_en.html.

tions cannot be serviced from the U.N. Secretariat in New York. Nevertheless, few other features can be compared to the Hamburg tribunal. The latter has competency to deal with inter-State disputes, and jurisdiction is based mainly on express declarations of acceptance. Moreover, the actual establishment of the tribunal could to a large extent depend on administrative support from the U.N. Secretariat's Division for Oceans Affairs and the Law of the Sea, while the Court will have to be self-reliant also in this respect.

The combined effect of the above features makes the Court an exceptional institution, which must be given the means to satisfy demanding tasks of an unprecedented kind. Before proceeding any further it may, however, be useful to briefly recall the role of the Budget in this context.

III. *THE ROLE OF THE BUDGET*

If lawyers are not generally known to have an innate affinity with numbers, international lawyers rarely seem to delve into budgetary documents with relish. However, understanding a budget requires comprehension of its role as a policy and management tool, rather than any particular mathematical insights. The draft Budget for the Court should therefore command the interest of the framers of the International Criminal Court.

The fundamental aim of any budget is rather simple, as illustrated by the original meaning of the term, believed to stem from the ancient French word for small leather bags containing money, *bougettes*. A controller (or comptroller) or, if on behalf of a Sovereign, a treasurer, kept track of them and made sure that they were sufficient to pay for expenses. Throughout history, the budget has remained the key tool for financial control of any activity. It is through this instrument that levels of expenditures are decided and seen in conjunction with revenues, and thereafter controlled during the financial period concerned.

The provisions on financing of the International Criminal Court are contained in part 12 of the Rome Statute. The amount of funds of the Court and of the Assembly of States Parties will be decided on the basis of the level of approved ex-

penses.[6] The budget therefore constitutes the legal basis for incurring expenditures and collecting financial contributions from States.

The Assembly of States Parties is the body with budgetary authority over the Court. The budgetary work will be governed by the Financial Regulations to be adopted by the Assembly pursuant to articles 112 and 113 of the Rome Statute. A draft text was finalized by the Preparatory Commission at its eighth session in October 2001 and provides the framework for the preparation of the draft Budget to be submitted to the Assembly of States Parties at its first session.[7]

The budget must list the resources assigned to the Court. To this effect, it must rely on a needs-based assessment, project certain forecasts, and formulate priorities. For such a novel institution, this amounts to a mission statement. It will provide essential means to enact an institution that hitherto has been on the drawing board.

For those who fear a "jurisdictional overreach" of this new institution, the Court's resource basis will show itself to be very limited when seen in conjunction with the expensive nature of international criminal investigations, prosecutions, and trials. A sober assessment on this account may reveal yet another safeguard against unwarranted prosecutorial initiatives and confirms the need for strict priorities in the Court's work. At the same time, ensuring that the Court has the necessary resources in initial fact-finding and analysis prior to taking any investigative steps will be important to establish the Court as a responsible and credible institution effectively integrated in the international system for peace and security.

IV. *THE DURATION OF THE FIRST FINANCIAL PERIOD*

The Rome Statute will enter into force between two and three months after sixty States have expressed consent to be bound by it.[8] At the time of writing this Essay, fifty States have done so. Entry into force may be expected in the latter part of

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6. Rome Statute, *supra* note 2, arts. 112-13.

7. *See Draft Report of the Preparatory Commission for the International Criminal Court, Draft Financial Regulations*, U.N. Doc. PCNICC/2001/L.4/Add.2 (Oct. 4, 2001) [hereinafter *Draft Financial Regulations*].

8. The precise formulation in article 126 of the Rome Statute is "the first day of the month after the 60th day following the date of deposit of the 60th instrument of ratifi-

the year 2002. Nevertheless, the uncertainty about the date has a bearing on the duration of the first Budget and financial planning for the start-up period.

While too short a financial period would not provide sufficient stability and predictability in the build-up phase, an overly long period increases the risk of rigidity in the face of changing conditions. This is the background for regulation 2 of the finalized draft Financial Regulations. It establishes that the financial period shall consist initially of one calendar year unless otherwise decided for the first Budget.[9] In the initial years of the Court's existence, annual budgets are assumed to provide for better adaptation to new conditions than biannual budgets. Uncertainties linked to the date of entry into force of the Statute have motivated an exception from this rule.

When considering the length of this first financial period, the needs for predictability and flexibility have to be reconciled. At the same time, one has to take into account that months will be needed to set in place certain key organs of the Court and of the Assembly of States Parties. Certain expenses can only be incurred after key positions of the Court have been filled. Significantly, the autonomy of the Office of the Prosecutor requires that key decisions on staffing and certain procurements will have to await the assumption of functions of the Prosecutor. Another example is the Committee on Budget and Finance of the Assembly of States Parties, which will consider any supplementary budget proposals during the first financial period as well as the Budget proposal for the second financial period. The Committee will also depend on preparatory work of key organs of the Court. During the first financial period, sufficient time for the effective establishment of such core functions has to be factored in.

This speaks in favor of a longer first financial period than a calendar year. A solution based on simplicity and clarity would, therefore, be to let the first financial period last from the first meeting of the Assembly of States Parties until the end of the subsequent calendar year. In the discussions at the eighth Session of the Preparatory Commission, considerable support was

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cation, acceptance, approval or accession with the Secretary-General of the United Nations." Rome Statute, *supra* note 2, art. 126.

9. *Draft Financial Regulations*, *supra* note 7, regulation 2.

expressed by delegations for such an approach. This solution would also allow for a second financial period coinciding with a calendar year, in conformity with regulation 2. Based on the assumption expressed in the last paragraph of the preamble to U.N. General Assembly Resolution 56/85 of December 12, 2001,[10] the first financial period would thus last from September 2002 until the end of December 2003, i.e. sixteen months.

To offset the likelihood of unforeseen needs arising during this period, a mechanism allowing for a revision of estimates is necessary. Reference is therefore made to the relevant regulations on supplementary budget proposals and appropriation lines in the finalized draft Financial Regulations.[11]

Should circumstances unforeseen at the time of adopting the budget make it necessary, regulation 3.6 would enable the Registrar to submit supplementary budget proposals during the first financial period.[12] In light of the difficulties in accurately foreseeing the Court's needs during the start-up period and before key organs of the Court have been established, this provision can be assumed to be a particularly important safety valve for the Court. This mechanism would also allow key personnel in the Court to prepare revised estimates, if needed.

Attention may also be drawn to regulation 4.2(d) where the need should arise to cover expenses of such an urgent nature that the Assembly of States Parties cannot be convened to approve the appropriations in accordance with regulation 3.6.[13] In such a situation, there may be a possibility to utilize an appropriation line in accordance with regulation 4.2(d).

V. *STRUCTURING THE BUDGETARY PROCESS*

The budgetary process must also be seen in conjunction with the resolution of other outstanding issues prior to the entry into force of the Rome Statute. General directives have been identified and laid out by the Preparatory Commission in a "road map."[14]

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10. G.A. Res. 56/85, 56th sess., U.N. Doc. A/RES/56/85 (2001).

11. *Draft Financial Regulation, supra* note 7, regulations 3.6, 4.

12. *Id.* regulation 3.6.

13. *Id.* regulation 4.2(d).

14. *Roadmap Leading to the Early Establishment of the International Criminal Court*, U.N. Doc. PCNICC/2001/L.2 (Sept. 26, 2001).

To acquire a comprehensive overview of financial needs, it should nevertheless be noted that separate arrangements will be desirable for advance payment of the first meeting of the Assembly of States Parties. Similar considerations may apply to organizational arrangements in order to facilitate the timely operation of certain core capacities of the Court as of 'day one.' It may, in this context, be useful to consider voluntary contributions from governments, including the provision of start-up funds prior to the first Assembly of States Parties. It would be important to ensure transparency and accountability for such funds, for instance through the establishment of a United Nations Trust Fund. Moreover, consideration could be given to convening a pledging or funding conference at the appropriate time. However, these issues fall outside the scope of work on the draft Budget for the first financial period. The following focuses exclusively on the preparation of the first Budget.

A first draft Budget was prepared by the U.N. Secretariat and provided the basis for discussions during the eighth session of the Preparatory Commission.[15] While the draft clearly provided a solid basis for an initial exchange of views, discussions revealed the need for more concrete needs-based assessments reflecting the specific character of the future Court. Moreover, there was a need to take into consideration certain practical and operational requirements highlighted by the experience of the ICTY and ICTR, as well as input from the Host State. A broadly shared view emerged that the ninth session of the Preparatory Commission to be held in April 2002 would not produce the required results unless a new draft Budget was produced, satisfying a number of requests expressed by delegations during the eighth session. Against this background, the Chairman proposed Priority Guidelines for a comprehensive re-drafting of the Budget.[16] A new draft reflecting these guidelines is to be made available by the U.N. Secretariat prior to the ninth session.

The draft Budget is divided in two main parts: the first part analyzes the proposed structure and functions of the Court and

15. *See Draft Budget for the First Financial Year of the Court, Prepared by the Secretariat*, U.N. Doc. PCNICC/2001/WGFYB/L.1 (Aug. 8, 2001).

16. *See* Appendix, *Priority Guidelines for the Preparation of a Revised Draft First Year Budget for the International Criminal Court, in Proceedings of the Preparatory Commission at its eighth session*, U.N. Doc. PCNICC/2001/L.3/Rev.1/Add.1 (Oct. 11, 2001) [hereinafter *Priority Guidelines*].

the Assembly of States Parties, while the second part includes the estimated expenses deriving from the first. This division into two parts also charts the two main stages in the budgetary discussions. The first is an assessment of functions and capacities required during the start-up period. The other is the detailed estimation of the implications thereof, including identification of resources for staffing, procurement, and other expenses. In accordance with Regulation 3.2 of the draft Financial Regulations,[17] the budget shall be in Euros, which is the currency of the statutory headquarters of the Court as of January 1, 2002.

The draft takes the form of a "program planning budget," in conformity with Regulation 3.[18] This is a widely used budgeting method, whether in public or business administration, in national or international institutions, as in the ICTY and the ICTR. The aim is to build flexibility into the budget, in order to avoid rigidity in the face of changing conditions. Program Planning Budgeting Systems ("PPBS") were originally developed by the Rand Corporation in the United States in the late 1950s and introduced in Government departments in the 1960s. They presuppose a budgeting process which integrates several steps, including the identification of objectives of the activity, the analysis of results of the activity in light of stated objectives, the estimation of future program costs, and the analysis of alternatives. Through the integration of these steps it is possible to relate the budget to the objectives and enhance accountability. The process requires a realistic appraisal of future costs and justification of decisions.[19]

A comprehensive budgeting process usually begins with forecasts but draws upon contributions "bottom-up" from within the organization, thus recognizing the key benefit of including those responsible for the implementation of the budget in the process. This enhances the possibilities of a realistic needs assessment, as well as accountability later on. When drawing the budget for the first financial period of the Court, there is no possibility to do so. In practice, the Preparatory Commission and thereafter the Assembly of States Parties will have to face a situation of real "zero-base budgeting," whereby all prior as-

17. *Draft Financial Regulations*, *supra* note 7, regulation 3.2.

18. *Id.* regulation 3.

19. *See* BOONE & KURTZ, *supra* note 1, at 520-21.

sumptions built into an earlier budget do not need to be eliminated, since they do not exist.

VI. *HOW TO ENSURE THE COURT'S CREDIBILITY IN THE FACE OF VARIOUS EXPECTATIONS*

The Budget must provide for the resources necessary to place this new institution on the map in a both credible and responsible way. In the start-up phase, international perceptions and the political environment surrounding the Court, as well as the latter's ability to respond to the former, will play a decisive role in laying the foundations for the Court's reputation. The resources must therefore also provide for an adequate capacity to ensure high-level external relations, communications, and public information.

Early expression of expectations by international public opinion, including possible demands of victims and witnesses, are not unlikely in view of the Court's temporal jurisdiction in principle starting as of the date of entry into force of the Statute. At the same time, governments will carefully consider how the Court will deal with these expectations in a responsible as well as credible way. Certain critical functions will therefore need to be established immediately, including the capacity to collect, preserve, and acknowledge receipt of incoming information and potential evidence. This will allow the Court time to establish basic administrative, prosecutorial, and judicial systems as well as conducting incremental recruitment and procurement processes.

Among immediate practical needs are the establishment of operational information and communication networks as well as arranging for other basic systems necessary for security purposes, a smooth recruitment and procurement process, and similar urgent requirements. From the earliest stages it is important to ensure highly professional financial controls and administrative functions, including budgets. The organs of the Court have to be assisted in making start-up decisions and establishing performance standards based upon organizational objectives. Setting in place a budgeting process for the second financial period, and if the need arises, for revised estimates for the current period, will be important for smooth operation.

The establishment of certain other functions will be time and resource consuming. They will have to be set up by organs

of the Court and will therefore have to await respectively the elections of Judges, the Prosecutor, and the Registrar. The budget for the first financial period must provide for sufficient resources for the Court to sequentially build up the necessary capacities. The flexibility required in order to handle unforeseen situations has to be reconciled with sound budgetary principles ensuring clarity and accountability for the use of funds.

Division between core functions which require continuity and structured posts, on the one hand, and those where upsurge capacity with General Temporary Assistance funds on the other hand should be built-in. This is clearly preferable rather than having too many specified posts and a pre-determined, detailed organizational structure. Examples for the former could be imagined to include staff of Presidency, Security, and Treasury functions. Examples for the latter could be imagined to be investigation capacity, translation, and interpretive functions.

As stated in the Priority guidelines, the Budget should provide for a strong capacity for the Court and the Assembly of States Parties to respond to various challenges.[20] This requires identifying core functions before focusing on posts and organizational structures. Moreover, it is important to fill those functions at a sufficiently senior level, to create a solid basis for effective management of surges of recruitment dictated by circumstances. At the same time, a top-heavy organization should be avoided, which requires adding to senior levels a junior-level workforce. This ability should be designed, financially, administratively, and procedurally, to recruit personnel on short notice.

The Assembly of States Parties and the Court will not be able to rely on the U.N. Secretariat with regard to conference servicing, personnel administration and payment, budgets, finance, and auditing. Provision must therefore be made for adequate resources in these areas.

VII. *THE NEED TO REFLECT AND FACILITATE THE ROLES OF THE DIFFERENT ORGANS OF THE COURT*

The Budget has to fully respect the independent exercise of the functions of the organs of the Court, notably the Prosecutor. This has a bearing also on administrative procedures related to

20. *See Priority Guidelines, supra* note 16.

staffing, procurements, and public relations, in addition to issues such as prosecutorial strategies and court management. A brief analysis of certain key features is sketched in the following.

A. *The Responsibilities of the Presidency as a Distinguishing Feature of the Court*

The Presidency is the highest administrative organ representing the judiciary, it being understood that this shall not affect the independence of the Office of the Prosecutor. The Presidency is empowered to act on behalf of the Court in several provisions of the Statute and the finalized draft text of the Rules of Procedure and Evidence.[21] It will embody these functions in the Court's external relations with the outside world. Particularly in the start-up phase, contacts with a number of international actors, including the Host State, will play a key role in setting the Court on the world map. In this respect, the Presidency will lay the basis for a successful integration of this new institution in the international community, *vis-à-vis* States and international organizations, as well as the media and non-governmental organizations.

Simultaneously to this "outward" role, which will require particular staffing and other resources, the Presidency will have the ultimate responsibility for all "internal" functions of the Court that are not under the authority of the Prosecutor. This role will not be limited to enacting or setting up key judicial functions.

Significantly, the Presidency shall also be responsible for the "proper administration of the Court, with the exception of the Office of the Prosecutor."[22] In the final instance, this has a bearing on the non-judicial aspects of the administration and servic-

21. The general role of the Presidency is stated in article 38(3) of the Rome Statute. This provision is supplemented by, for example, articles 35(3) and 36(2)(a), which decide the number of judges required to serve on a full time basis. Rome Statute, *supra* note 2, arts. 38(3), 35(3), 36(2)(a). Potentially important competencies in the first year of operation include those specified in Rule 21(3) on assignment of legal assistance for the accused in the Draft Rules of Procedure and Evidence. Other examples include, but are not limited to, Rule 26(2) on receipt of complaints, Rule 29 on procedures in the event of a request for removal from office, and Rule 40 on publication of decisions in official languages of the Court. *Finalized Draft Text of the Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (Nov. 2, 2000), rules 21(3), 26(2), 29, 40 [hereinafter *Rules of Procedure and Evidence*].

22. Rome Statute, *supra* note 2, art. 38(3)(a).

ing of the Court, for which the Registry is responsible.[23] It follows that the Registrar, who shall be the principal administrative officer of the Court, "shall exercise his or her functions under the authority of the President."[24] In keeping with the subordination of the Registry's activities under the judicial functions of the Court, the Registrar is to be elected by the judges.[25] The principle that the Presidency has the administrative authority over the Registrar,[26] is one of the distinguishing features of the Court's organizational structure, as compared to those of the ICTY and the ICTR. The role of the Presidency in this regard is assumed to be particularly important in the interim period until the election of the Registrar by the judges. Pending the Registrar's assumption of his or her functions, the Presidency will have to replace the role of the Registrar as the channel of communication of the Court, pursuant to Rule 13.[27]

In summing up, the Presidency will thus be expected to oversee the establishment of appropriate systems catering for initial public information, as well as judicial and other management needs. Critical requirements would include a capacity to deal with a large workload of high-level external relations and communication. It is therefore necessary to include a spokesperson for the Judiciary. Moreover, capacities need to be built with regard to, *inter alia*, the establishment of systems for running of Chambers, including the Appeals Chamber.

B. *Steps Necessary to Ensure the Independence and Particular Needs of the Office of the Prosecutor*

When making needs assessments in the preparation for the Court's first budget, it is necessary to consider the particular role of the Office of the Prosecutor. The Office will be the "dynamo" generating cases before the Court. This may happen after having received referrals or any substantiated information on crimes

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23. *Id.* art. 43(1).

24. *Id.* art. 43(2). This responsibility of the Presidency is also reflected in rules 13-14 of the draft Rules of Procedure and Evidence, which clarifies that the Statute's reference to the President in this regard must be understood to include the Presidency. *Rules of Procedure and Evidence*, *supra* note 21, rules 13-14.

25. Rome Statute, *supra* note 2, art. 43(4).

26. *See* David Tolbert, *Article 43—The Registry*, *in* COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 641-42 (Otto Triffterer ed., 1999).

27. *Rules of Procedure and Evidence*, *supra* note 21, rule 13.

within the jurisdiction of the Court.[28] Such referrals or information may in principle be received from 'day one' onwards, since the Court will have jurisdiction with respect to crimes committed after the entry into force of the Statute.[29] Thus, in practical terms, it is the Office of the Prosecutor who, sequentially, will be the first organ responsible for the actual implementation of the Statute.

To what extent the outside world's expectations about the Court will actually be met, will therefore depend on whether the Prosecutor is provided with the necessary resources from the start. Since it is (arguably) impossible to foresee in advance which kinds of information and situations the Prosecutor will have to deal with, it is of paramount importance to ensure that the latter is afforded flexibility in organizing these resources in the most efficient way.

A fundamental requirement that needs to be respected when addressing the structure and needs of the Court is that the Office of the Prosecutor "shall act independently as a separate organ of the Court."[30] It is therefore imperative that the Office of the Prosecutor be provided with a separate spokesperson and media function.

For budgeting purposes there is, moreover, an exigency to protect from day one onwards the confidentiality of information or material received which may constitute the basis for an initiation of investigations *proprio motu* by the Prosecutor. The latter requirement is specified in draft Rule 46 to protect the confidentiality of information received under article 15, paragraph 1 of the Statute, as well as oral or written testimony received under article 15, paragraph 2.[31]

Initial critical needs must be fulfilled with regard to the Prosecutor's role under article 15 of the Statute. Among key tasks, the following may merit particular mention: preliminary inquiry and fact-finding, processing of information, analysis (legal, military, and political) of information, admissibility proceedings, formal investigation, drafting indictments, hearings in a Pre-Trail Chamber, preliminary motions and appeals, and trial

28. Rome Statute, *supra* note 2, art. 42(1).

29. *Id.* art. 11(1).

30. *Id.* art. 42(1).

31. *Rules of Procedure and Evidence*, *supra* note 21, rule 46.

preparation. On the other hand, trials do not seem likely during the first financial period.[32]

C. *Other Judges than the Presidency: The Limited Need for Chambers During the First Financial Period*

Arguably, pre-trial as well as interlocutory appeals functions may be activated in the course of the first financial period, as opposed to trial functions.

This has a bearing on the issue of the remuneration of judges, an issue that raises a number of questions that will be discussed in conjunction with, but separately from the first Budget. The Rome Statute starts with an assumption of eighteen judges on the bench. In accordance with established practice with regard to international judicial institutions, the annual salary of judges at the International Court of Justice is generally assumed to set the standard. The need to set strict budgetary priorities in the start-up phase and not to create misperceptions of financial waste, may motivate giving particular consideration to ways to ensure that judges not be called to serve at the Court before the need arises.

As already indicated, such an immediate need is obvious for the Presidency. It may, moreover, be demonstrated early on with regard to the Pre-Trial and Appeals Chambers. On the other hand, it may be difficult to justify calling other judges to serve full-time at the Court unless there are cases to consider. Once a judge has been called it appears, however, that the system envisaged in the Statute would not permit him or her to return to an earlier profession even if the docket should temporarily be empty. This would also amount to the introduction of an *ad litem* system for judges as the one introduced for the ICTY. Although in principle attractive from a purely budgetary point of view, such an approach would not seem applicable, since it would in fact introduce a personal categorization of sitting judges into two distinct groups or classes.

Consideration could nevertheless be given to allowing a flexible and cost effective system of remuneration. Until such time as judges are called to serve full-time at the Court, they might be able to continue exercising national functions, in ac-

32. Further examples of specific needs are indicated in the *Priority Guidelines*, *supra* note 16.

cordance with article 40, paragraph 2 of the Rome Statute.[33] This provision is clearly less restrictive than the rules on conflict of interest for the judges of the International Tribunal for the Law of the Sea, who often deal with sensitive inter-State disputes.[34] Such an approach has, in fact, already been accepted for the *ad litem* judges of the ICTY. Should some national laws have more restrictive rules on the compatibility of functions, it would be difficult to see how this could have a bearing on the interests and values underpinning the Rome Statute. Seen in such a perspective, there may be reasonable grounds for considering such an approach for the reasons outlined at the outset.

D. *Critical Functions of the Registry During the First Financial Period*

From the outset it will be necessary to envisage a legal advisory function section for the Registry, with capacity to deal with a large workload on operational-legal start-up matters. These include the negotiation and conclusion of various headquarters agreements, agreements on relocation of witnesses, and enforcement of sentences. Moreover, they comprise such diverse issues as negotiation and administration of contracts, handling of personnel matters, grants and donations, and internal control procedures.

It seems self-evident that the International Criminal Court must have adequate physical security. Although clearly present before the terrorist attacks on September 11, 2001, this need is now critical. The Court must be provided with the capacity to set up appropriate security systems. They include information security systems, staff awareness, situation monitoring systems, evacuation protocols for staff on mission, liaison systems with other international organizations, and arrangements with the Host State.

Under the direction of the Presidency, the Registry must also establish early Court management systems. Such functions must have the capacity to set up protocols for records and evi-

33. This provision states that judges "shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence." Rome Statute, *supra* note 2, art. 40(2).

34. *See* Statute of the International Tribunal for the Law of the Sea, *supra* note 5, Annex VI, art. 7 (providing that the "exercise of any . . . administrative function" or acting as "agent, counsel or advocate in any case," are incompatible activities for members of the Tribunal).

dence management. Early consideration must also be given to the establishment of appropriate systems to cover witness protection and victims' needs.

Vital to the credibility and the reputation of the Court is giving priority to the consideration of defense counsel functions. Preparatory steps may be considered with regard to setting up systems of legal aid, financial accountability, and contacts with international bar representatives. Not least in this context, it is essential to provide for adequate library and central registry functions.

Other important administrative functions may be mentioned. They include recruitment and procurement procedures; general services functions to deal with building management, visa and protocol, travel, asset management, budget, and finance functions; and information technology and communications functions, including electronic systems required for court proceedings. The possibility of outsourcing some of these functions may be considered.

Particular consideration must be given to conference and language services needs. The experience of a number of international institutions, including the United Nations, European Union, and Council of Europe are staggering cases in point. This is compounded by the experience of the ICTY and the ICTR. In addition to servicing in languages of the Court, one must be reminded that the Court will require a high adaptability to all languages where its operations are conducted. From 'day one' translation needs may have to be met. This may also apply to the Office of the Prosecutor, which may require separate servicing. The possibility of sharing common services with other Hague-based international institutions may also be considered.[35]

E. *The Benefits and Limitations of a Common Services Unit*

In order to ensure an effective start-up operation and for broader considerations of cost effectiveness, it follows from the above considerations that there may be benefits in considering the establishment of a Common Services Unit for all organs of the Court.[36] This would require striking a balance between the

35. The above examples are to a large extent drawn from the *Priority Guidelines*, *supra* note 16, which also contains indications of other specific needs.

36. *See id.*

aim of efficiency and cost effectiveness of common services and the need to ensure the independence of various judicial and prosecutorial functions. However, it is assumed that certain "neutral" administrative functions of the Court could be shared without prejudice to the autonomy of such functions. Early recruitment of a director of Common Services may prove crucial in the start-up phase.

VIII. *HOST STATE CONTRIBUTIONS*

The exact expenses will, at the end of the day, depend on a number of factors that are not yet clear. In particular, provisions regarding the premises of the Court have not been included. Important information has, however, been provided by the Host State with regard to contributions to the start-up phase. As recently confirmed in a statement by the Foreign Minister of the Host State,[37] the Netherlands will provide for and finance interim accommodations worthy of the Court in order to enable the Court to start its operations from the first day of its existence. Moreover, the Host State has secured a location for the permanent premises of the Court. It has also expressed its willingness to contribute financially to the initial meetings of the Assembly of States Parties and its Bureau, and to cover fully the expenses of the Inaugural Session of the Court.

The interim premises of the Court will be an existing building complex that offers enough room for start-up needs as well as expansion of the Court's activities within its walls. They are located opposite the premises of ICTY. In his statement, the Foreign Minister indicated that in the first year of the Court's existence the Host Nation will provide office equipment and furniture for up to a 100 staff, over and above the elements of the original Dutch bid-book.[38] Detention facilities will be made available in a different location. Further assessment studies are being conducted by the Host State in order to provide the Preparatory Commission with a more detailed offer at the earliest possible date.

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37. *See Statement by the Minister for Foreign Affairs of the Kingdom of the Netherlands, Jozias J. van Aartsen, presented during the eighth session of the Preparatory Commission on 25 September 2001*, U.N. Doc. PCNICC/2001/INF/3 (Sept. 27, 2001).

38. *Id.*

IX. *THE HUMAN ELEMENT: BUILDING AN ADMINISTRATIVE CULTURE*

When budgeting, it is important not to lose sight of the decisive role of the "human element" in developing an appropriate administrative culture for a new institution, a factor vital to success. Does financial planning have an interface with human resources? The answer is an emphatic yes! The need to take into consideration the recruitment of high quality, dedicated persons ensuring long-term commitment to the institution has to borne in mind from the very beginning. This has a bearing on the Budget.

As forcefully emphasized by the Registrar of the ICTY, Mr. Hans Holthuis, it is essential to "have highly competent, experienced (and) sufficiently senior staff in place right from the beginning."[39] Only this kind of recruitment will "provide the Court, from day-one onwards, a capacity to establish systems, set up effective protocols, training mechanisms . . . [and] to deal responsibly with the surge of activities that an exercise of jurisdiction in accordance with article 13 of the Statute will necessitate."[40] He added that, "in blunt financial terms . . . initial recruitment at the appropriate level of seniority is an investment that will save money later."[41]

Providing the Court with the appropriate resources, ranging from highly qualified personnel to state of the art information and communication technology, will be essential in order to attract dedicated people. To provide for sufficient flexibility in capacity-building, while fully ensuring accountability, will be no less important to motivate them.

39. *See* ICTY Press Release, Statement by Mr. Hans Holthuis, Registrar of the ICTY, to the Plenary of the Preparatory Commission of the International Criminal Court during its eighth session (Oct. 2, 2001).

40. *Id.*

41. *Id.*