

ICC's Funders Seek Greater Efficiency

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As the court asks for a bigger budget, it will need to consider where cost savings can be made.

The gleaming new front desk which greets visitors as they enter the International Criminal Court's, ICC, Hague-based headquarters does not exactly scream austerity.

Renovating the entrance lobby, which is jointly shared with Eurojust, a judicial agency of the European Union, cost 50,000 euro, 66,000 US dollars, according to diplomatic sources.

Given that the ICC is due to move to new premises within the next couple of years, such apparently lavish spending rankles with the governments that pay for it, particularly at a time when they are cutting expenditure at home.

The 25,000 euro spent on the lobby – Eurojust paid the other half – is of course just a tiny fraction of the court's overall budget, set at 109 million euro, 145 million dollars, for 2013. Court insiders say that the new lobby has improved security and saves energy through better insulation, thus reducing costs.

For officials in many of the contributing states, however, this kind of expenditure is symptomatic of the way the court operates, and is one of the reasons why they are reluctant to give it the money it badly needs.

Questions have been raised about a wide range of ICC expenditure, from travel costs to current management structures, and the contributing countries want action.

"We believe there is a need for the ICC to challenge itself more on its needs and required budget so that it can ensure that its operations are as effective and efficient as possible," a spokesperson for the British Foreign and Commonwealth Office told IWPR. "It isn't possible to put a price on justice, but there are areas where we need more information from the court as to how certain budget lines are spent and how they contribute to the overall effectiveness and efficiency of the court."

Other governments that are major contributors to the ICC budget hold similar views, although officials were not willing to be quoted on the record.

DOUBTS ABOUT FINANCIAL PRUDENCE

The ICC's budget is set by the Assembly of the States Parties to the Rome Statute or ASP, made up of the governments which signed up to the court's founding charter. In recent years, the ASP has been criticised for adopting a zero-growth policy for funding the court, even though the geographical scope of investigations has greatly expanded.

Many ASP members question whether the court is getting the most out of its current budget. The thinking is that if the ICC cannot be trusted to make every penny count, then it should not be entitled to more money.

Some have voiced concerns, for example, over the amount being spent to furnish the ICC's new headquarters, which it is due to move into in 2015. New desks in the building reportedly cost 6,000 euro each.

According to the FCO, the British government has asked the court to provide more information about why certain costs are so high, with a view to "challeng[ing] their assumptions in order to reduce costs".

"These areas include things like the cost of office equipment, travel and provision of services," the FCO spokesperson said. "We are asking [the court] to be creative and inventive in how it finds efficiencies, for example through procurement, and revising policies so as to reduce costs – [such as] how long computers are kept for – so that this money can be used in support of the court's work in other areas."

Herman von Hebel, who replaced Silvana Arbia as the court's registrar in March, recognises these concerns and has promised to address them.

"It is all about developing trust," he told IWPR. "What I would like to do is develop a transparent discussion with the ASP to show exactly what our needs are and what we can do with the money that we are being provided with. When we speak about efficiency, there's always room for critically assessing one's own working methods."

Von Hebel says that one of his priorities will be to look at the registry – the body in charge of administrative

and financial management at the ICC – and to explore ways of doing more for less money.

“We need to be very specific about exactly what our needs are,” he said. “I think that this is something that could be done not only within the registry, but on a court-wide basis.”

Von Hebel certainly has the credentials for tackling budgetary constraints, and member states seem to have faith that he will make a difference.

He spent three years as deputy registrar and then registrar at the Special Court for Sierra Leone in Freetown, followed by a similar period as deputy registrar and then registrar at the Special Tribunal for Lebanon, based in The Hague.

Both of those courts rely heavily on short-term voluntary funding, which often places tremendous pressure on their budgets.

“In these other tribunals, I led forthright internal discussions about our needs and resources, and was often perceived as tough in terms of the budget,” Von Hebel said. “Perhaps this is my Dutch nationality, but I hope that this is a reputation I will also have with the Assembly [of States Parties].”

PRESSING NEED FOR MORE FUNDS

There has never been greater urgency for the ICC to show that it is a responsible organisation that can be entrusted with more funding.

The court has come in for serious criticism in recent months following a string of failed investigations that have left prosecutors unable to bring enough evidence against suspects. (See **ICC Under Fire Over Investigations**)

Supporters of the court say the Office of the Prosecutor is overstretched and needs more funding to enable it to conduct investigations to the necessary standard.

Four years ago, the ICC was investigating just four situations, in the Democratic Republic of Congo, Uganda, Darfur and the Central African Republic. Since then, it has added four more investigations, in Kenya, Libya, Mali, and the Ivory Coast.

At the same time, the court’s budget has barely increased at all, inching up from 101 million euro in 2009 to this year’s 109 million.

“We see that there’s a real problem with the number of investigations increasing whilst the number of investigation teams remain the same,” Jonathan O’Donohue, legal adviser at the advocacy organisation Amnesty International, said. “Staff often have to be moved around in order to cover the increased workload. The ultimate goal must be for the court to function effectively, but this is constantly overshadowed by the zero-growth argument.”

Von Hebel recognises that certain areas of the court are in desperate need of more funding, and he hopes that by making savings elsewhere he can persuade member states to increase the overall allocation.

“The prosecutor is in dire need of more resources to do investigations,” said Von Hebel. “Compared with other courts and tribunals, the number of staff per investigation is extremely low. If you have eight situations and just over 60 investigators, then you have a very tough job. We have discussed already with the prosecutor how we can internally streamline to further support this work. All member states have significant financial challenges at the moment, so we need to recognise this and create a culture of transparency, trust and confidence within our organisation.”

MAKING A DIFFERENCE

It is too early to tell whether the new registrar’s good intentions will make a meaningful difference to ICC expenditure, and there are few signs that member states are prepared to loosen their purse strings just yet.

This year’s negotiations on the budget are under way, and it is unlikely that anything more than a very slight increase will be agreed when member states meet in New York in November.

Still, diplomatic sources indicate that if the ICC is able to increase the ASP’s confidence in it by demonstrating a high level of transparency, subsequent years could see real steps towards addressing its funding needs.

“The court’s willingness to respond to requests from the ASP on how it views and manages its budget has improved over the last few years,” the FCO spokesperson said. “We can see a growing partnership between the ASP and the court to develop and improve the overall efficiency of its operations.”

A source in another ASP member told IWPR, “The ICC has not always fostered a high level of trust with

member states, which can make it difficult for the court to clearly show that it should be entitled to more funds. Things have improved noticeably since the low point of 2010, though, and we hope this continues.”

Von Hebel says that it is soon to say which areas can be subject to efficiency savings. Nevertheless, a draft report prepared by the consultancy firm PricewaterhouseCoopers offers some clues.

The document, seen by IWPR, was prepared at the request of the ASP’s Committee on Budget and Finance, which wanted an external assessment of the court’s organisational structure and a view on where savings might be made.

The report focuses primarily on changes to the registry and the judiciary. A separate report looking at the Office of the Prosecutor is being worked on at the moment.

“It can be concluded that the registry should seek to reduce its structural complexity with clear hierarchical and escalation lines, with a view to strengthening internal (and thereby external) cooperation and coordination,” the report states.

In his interview with IWPR, Von Hebel indicated that the registry’s managerial structure was an area he would be looking at.

The report also says that the registry suffers from a lack of adequate performance measurements, hampering efficient and targeted application of budget funds.

The report also recommended better communication among different ICC departments, suggesting that some of their functions may overlap.

The PricewaterhouseCoopers consultants also tackled the issue of staffing, which, according to the latest figures from the court, eats up nearly 70 per cent of the budget.

Finally, the report notes a lack of staff motivation in some areas of the court, largely caused by a lack of career opportunities and general dissatisfaction with the performance appraisal system.

MEASURING JUSTICE

In national courts, it is quite common to use a series of benchmarks to measure the effectiveness of the justice process.

Pim Albers is a policy advisor within the Dutch ministry of justice and a senior researcher at the Hague Institute for Global Justice. He says it is normal practice, for example, to look at the duration of cases of a similar type and the ratio between incoming and completed cases.

However, it is not clear whether this would readily translate to the sphere of international justice, given the many variables that affect the success of any given investigation or prosecution.

“A court is not a factory that produces shoes,” Von Hebel said. “There are all sorts of factors that determine the effectiveness of the court. Whilst it may be useful to have a look at some quantitative factors such as the number of court hearings or the number of ongoing investigations, it’s also a question of what you can achieve on the ground, and it’s far too early in the court’s lifespan to make a complete assessment of this.”

Albers recognises that things work very differently at the ICC, and that there are huge challenges in comparing one trial or country situation with another. However, he thinks that some steps could be taken in this direction.

“It would be useful if the ICC could publish a breakdown of the time required by staff in order to reach a judgement,” he said. “It would be useful to measure how long it takes to prepare an indictment, how much time is spent on the investigation, how long the trial phase lasts. Then the court might be able to draw some useful conclusions about where cost savings would make most sense.”

Albers points out that such performance indicators might also reveal other valuable facts about the process of international justice, beyond merely where inefficiencies lie.

He suggests, for example, that it might be helpful to compare the number of indictments with the number of trials concluding, either in a conviction or an acquittal.

“A particularly high ratio... could indicate a high-level of cooperation with the situation country,” he said. “Conversely, a particularly low ratio may mean the level of cooperation is insufficient and steps should be taken. Performance indicators are useful at showing where the bottlenecks lie.”

Patrick Vinck, a research scientist at the Harvard Humanitarian Initiative, a centre within Harvard university, has been looking at ways in which indicators can be used to measure the effectiveness of outreach – the efforts made to communicate with people affected by the trial in the country concerned.

In the past, the court has been criticised for cutting its outreach programmes too quickly, since they are often viewed as a “non-core” function. This is something that Von Hebel wants to change.

“The key challenge is to decide what exactly you are trying to measure and what you are trying to do with outreach,” Vinck said. “If you are only trying to measure how much people have heard about the court or a particular trial, then things are fairly straightforward. But if you’re trying to capture true understanding of the trials, then measuring the impact becomes much more complex.”

Vinck says the methodology he uses is the same as might be used to measure the extent of a disease.

“We interview representative samples of the population and use this data to measure the prevalence of knowledge, attitudes and perceptions,” he said.

Whilst Vinck does not think it makes sense for benchmarks to be used to shape the budget, he nonetheless sees it as important to gather this kind of data, as a way of finding out whether ICC outreach work is effective, and whether more funding is needed. For example, past research into outreach activities in the Central African Republic, CAR, revealed that awareness of the ICC was especially low among women, even though gender-based violence forms a large component of the ongoing case against Jean-Pierre Bemba, a Congolese politician accused of crimes in CAR.

“The budget for outreach in the ICC is ridiculously small,” said Vinck. “By evaluating their own work and effectiveness, outreach units can better demonstrate what their needs are.”

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