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Item 11 (a) of the provisional agenda*

Consideration of administrative and budgetary matters of the International Tribunal for the Law of the Sea: report on budgetary matters for the financial periods 2019–2020 and 2021–2022

Report on budgetary matters for the financial period 2021

Presented by the Registrar of the International Tribunal for the Law of the Sea

I. Provisional budget performance report for 2021

1. In December 2020, the thirtieth Meeting of States Parties approved a budgetary amount of €24,155,000 for the budget period 2021–2022 (SPLOS/30/17, para. 1). This amount included a provision of €4,500,700 under part C of the budget, Case-related costs, to cover the costs in respect of case No. 28 (*Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*) and case No. 29 (*The M/T “San Padre Pio” (No. 2) Case (Switzerland/Nigeria)*) and to enable the International Tribunal for the Law of the Sea to deal with two urgent proceedings in 2021–2022. The Meeting also decided that a floor rate of 0.01 per cent and a ceiling rate of 22 per cent would be used for establishing the rate of assessment of States parties for the budget of the Tribunal for 2021–2022 (SPLOS/322, para. 8). In accordance with regulation 5.3 of the Financial Regulations and Rules of the Tribunal, the assessed contributions of States parties are determined on the basis of half of the budget for each year of the two-year budget period. Accordingly, the provisional budget performance report for 2021 is also based on half of the approved budget (€12,077,500).

2. As shown in the provisional budget performance report for the financial period 2021 (see annex I), the total expenditure for the period stands at €8,994,216, representing 74.47 per cent of the total appropriations.

3. As stated above, the 2021–2022 budget proposal included provisions for case No. 29. At the request of the parties, case No. 29 was removed from the Tribunal’s list of cases by Order of the President of the Tribunal of 29 December 2021. No meetings on case No. 29 were held in 2021. Expenditure against the 2021 case-related budget of the Tribunal was thus at a very low level. The unused balance of the case-

* SPLOS/32/L.1/Rev.1.



related budget will be surrendered to the States parties with the cash surplus from the financial period 2021–2022. Case No. 28 will be dealt with in 2022 and 2023.

4. Owing to the coronavirus disease (COVID-19) pandemic, not all judges were able to travel to Hamburg, Germany to attend the fifty-first session of the Tribunal in March 2021 in person. As a consequence, the 2021 budget performance shows an underexpenditure under the budget lines “Special allowances” (€84,828) and “Travel to sessions” (€64,235) under section 1, Judges. While the pandemic led to some savings under the budget line “Travel to sessions” the organization of hybrid meetings resulted in some additional expenditure under the budget lines “Temporary assistance for meetings”, “Rental and maintenance of equipment”, “Communications” and “Purchase of equipment”.

5. Section 5, Official travel, shows an underexpenditure in the amount of €69,208, as a result of COVID-19-induced travel restrictions.

6. Under section 7, Operating expenditure, the budget lines “Communications” and “Miscellaneous services and charges (including bank charges)” show overexpenditure of €2,574 and €47,642, respectively.

7. The budget line “Communications” covers charges for telephone, Internet, website, email and courier services. These charges have increased in price, leading to the overexpenditure.

8. The European Central Bank started charging commercial banks interest on cash deposits in 2014 and, in 2019, Deutsche Bank and most other commercial banks in Germany and in other countries of the eurozone began to pass those charges on to their customers. As a consequence, the Tribunal has been charged interest on its cash funds since April 2020. The 2021–2022 budget did not provide for these charges, since they began to be applied after the budget had been approved. The bank will continue charging interest on cash deposits and there are currently no options to reduce those charges. During 2021, the Tribunal paid €38,900 in interest for cash deposits. The provision approved for the budget period 2021–2022 under the budget line “Miscellaneous services and charges (including bank charges)” will be overspent at the end of the budget period.

9. At the end of the first year of the 2021–2022 budget period, the performance rate stands at 74.47 per cent. The final report will be issued following the end of the two-year budget period.

II. Report on action taken pursuant to the Financial Regulations and Rules of the International Tribunal for the Law of the Sea

A. Cash surplus from the financial period 2019–2020

Excess of income over expenditure

10. In June 2021, the thirty-first Meeting of States Parties took note (see [SPLOS/31/9](#), para. 28) of the report of the external auditor for the financial period 2019–2020 ([SPLOS/31/4](#)), which had been submitted to it by the Tribunal. According to the report, the final excess of income over expenditure as at 31 December 2020 amounted to €607,346.

11. As explained in the report on budgetary matters for the financial period 2019–2020 (see [SPLOS/31/3](#), para. 2), the total expenditure for that period stands at €19,922,264, representing 97.08 per cent of the total appropriations (€20,521,200).

B. Provisional cash surplus

12. Under regulation 4.4 of the Financial Regulations and Rules of the Tribunal, the provisional cash surplus is determined by establishing the balance between credits (assessed contributions actually received, miscellaneous income received and additional appropriations) and charges (disbursements against appropriations and provisions for unliquidated obligations). For the financial period 2019–2020, the excess of income over expenditure amounts to €607,346 and is calculated as follows (in euros):

Credit	20 529 609
Charges	(19 922 263)
Excess of income over expenditure	607 346

13. Pursuant to regulation 4.3 of the Financial Regulations and Rules of the Tribunal, the amount of unpaid contributions should be deducted from this balance. On this basis, the provisional cash surplus for the 2019–2020 financial period was determined to be -€706,854. This amount was based on the report of the external auditor for the financial period 2019–2020, with financial statements of the Tribunal ([SPLOS/31/4](#)), and is calculated as follows (in euros):

Credit	20 529 609
Charges	(19 922 263)
Cancellation of the 2017–2018 obligations surrendered with 2017–2018 cash surplus	(25 109)
Unpaid 2019–2020 contributions	(1 289 091)
Provisional cash surplus	(706 854)

C. Cash surplus

14. Under regulation 4.4 of the Financial Regulations and Rules of the Tribunal, the cash surplus is determined by crediting to the provisional cash surplus any arrears of contributions from prior periods received during the budget period and any savings from the provisions made for unliquidated obligations for the budget period.

15. The cash surplus for the budget period 2019–2020 stood at €384,387 as at 31 December 2021, as follows:

Provisional cash surplus of -€706,854 + arrears of contributions from prior periods received in 2021 of €1,043,325 + savings from the provisions made from unliquidated obligations of €47,917 = cash surplus of €384,387.

16. The cash surplus, as reflected in paragraph 15, was reviewed by the external auditor in February 2022. On 3 March 2022, the auditor certified that the cash surplus for the financial period 2019–2020 as at 31 December 2021 amounted to €384,387 (see annex II).

D. Surrender of cash surplus

17. Under regulation 4.5 of the Financial Regulations and Rules of the Tribunal, the cash surplus will be surrendered as follows:

(a) Apportionment of cash surplus: the cash surplus, determined as outlined above, will be apportioned among the States parties in proportion to their contributions as determined for the financial period 2019–2020, to which the surplus relates;

(b) Surrender of cash surplus: the cash surplus for the financial period 2019–2020 thus apportioned to the States parties will:

(i) Be surrendered to the States parties, provided that their contribution for the financial period 2019–2020 has been paid in full;

(ii) Be applied to liquidate first, in whole or in part, any arrears in contributions;

(c) Retention of cash surplus apportioned but not surrendered: any cash surplus apportioned to the States parties but not surrendered owing to non-payment or partial payment of the contribution for the budget period in question will be retained by the Registrar until such time as the contribution for that budget period is paid in full.

18. In accordance with regulation 4.5 of the Financial Regulations and Rules of the Tribunal, the cash surplus of €384,387 for the 2019–2020 budget period will be surrendered and deducted from the contributions of States parties for 2023 and for earlier periods, where applicable.

E. Investment of funds of the Tribunal

19. In respect of the investment of funds of the Tribunal, regulation 9 of the Financial Regulations and Rules of the Tribunal stipulates the following:

9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.

...

9.2 Revenue derived from investments shall be credited to investment revenue or as provided in the rules relating to each fund or account.

20. During the financial period 2021, the bank of the Tribunal did not offer any interest on short-term investments of less than 12 months, which is the maximum period allowed for investments under rule 109.1 of the Financial Regulations and Rules. As indicated in paragraph 8, Deutsche Bank started charging the Tribunal interest on cash deposits in April 2020 and will continue to do so in 2022. The Tribunal will continue to explore options for avoiding or minimizing those charges.

F. International Tribunal for the Law of the Sea trust fund

21. At its twenty-eighth session in September 2009, the Tribunal approved the Registrar's proposal to establish a trust fund for the law of the sea in accordance with the Financial Regulations and Rules of the Tribunal. The Registrar established the new International Tribunal for the Law of the Sea trust fund with Deutsche Bank in Hamburg. The trust fund is intended to promote the advancement of human resources in developing countries in the law of the sea and maritime affairs in general. Contributions to the trust fund are used to provide financial assistance for the participation of applicants from developing countries in the Tribunal's internship programme and summer academy.

22. Several contributions to the trust fund from different sources (the Korea Maritime Institute, China, Cyprus and Korwind) were received between 2009 and 2020. During the financial period 2021, two contributions from the Korea Maritime Institute in the amount of €15,000 each and a contribution from Cyprus in the amount of €15,000 were received. During the same financial period, the trust fund was used to support the Tribunal's internship programme and provide financial assistance to interns from developing countries. The performance of the trust fund for 2021 is summarized below (in euros):

Revenue	45 000
Expenditure on participants and authorized activities	(9 161)
Surplus for the period	35 839
Surplus from prior periods	202 792
Total	238 631

G. Nippon Foundation trust fund

23. In March 2007, the Tribunal and the Nippon Foundation signed the Nippon Foundation grant agreement. Pursuant to the agreement, the Foundation contributed an amount of €200,000 to the Nippon Foundation-International Tribunal for the Law of the Sea Capacity-Building and Training Programme on Dispute Settlement under the United Nations Convention on the Law of the Sea.

24. In accordance with regulation 6.5 of the Financial Regulations and Rules of the Tribunal, a trust fund was subsequently established, and a special euro bank account named "Nippon Foundation Grant" was set up with Deutsche Bank. The purpose of the grant is to finance the expenses of participants from developing countries in the aforementioned programme.

25. Since 2007, the Nippon Foundation has made annual contributions to the grant totalling €3,356,310 (including a contribution in the amount of €230,000 in March 2021 for the 2021–2022 programme). The performance of the Nippon Foundation Grant as at 31 December 2021 is reported below (in euros), in accordance with regulation 6.5:

Revenue	230 000
Expenditure on participants and authorized activities	(188 566)
Surplus for the period	41 434
Surplus from prior periods	131 260
Surrender of surplus	(58 020)
Total	117 650

H. Republic of Korea trust fund

26. On 28 February 2020, the Tribunal received a voluntary contribution from the Republic of Korea in the amount of \$195,595. Another contribution from the Republic of Korea in the amount of \$176,033 was received in October 2021. The funds were transferred to a separate bank account and converted to €171,831 and €148,014, respectively. The trust fund was opened to provide financial assistance for the

organization of an International Tribunal for the Law of the Sea workshop for legal advisers (sponsored by the Republic of Korea). The workshop was to be held in November 2021 but had to be postponed due to the COVID-19 pandemic. The performance of the trust fund is summarized below (in euros):

Revenue	148 014
Expenditure	(5 549)
Surplus for the period	142 465
Surplus from prior periods	171 603
Total	314 068

Annex I

Provisional budget performance report for the financial period 2021 as at 31 December 2021

(Euros)

<i>Part/ section</i>	<i>Object of expenditure</i>	<i>2021 approved budget</i>	<i>2021 expenditure</i>	<i>2021 balance</i>	<i>Total expenditure/ approved budget (percentage)</i>
A	Recurrent expenditure				
1	Judges	2 406 100	2 198 399	207 701	91.37
1.1	Annual allowances	1 748 500	1 727 200	21 300	98.78
1.2	Special allowances	467 300	382 472	84 828	81.85
1.3	Travel to sessions	149 400	85 165	64 235	57.00
1.4	Common costs	40 900	3 562	37 338	8.71
2	Judges' pension scheme	984 600	956 709	27 891	97.17
3	Staff costs	4 374 300	3 884 055	490 245	88.79
3.1	Established posts	3 000 100	2 722 500	277 600	90.75
3.4	Common staff costs	1 135 100	1 001 988	133 112	88.27
3.5	Overtime	12 500	6 767	5 733	54.14
3.6	Temporary assistance for meetings	124 350	109 308	15 042	87.90
3.7	General temporary assistance	58 950	32 993	25 957	55.97
3.8	Training	43 300	10 499	32 801	24.25
4	Representation allowance	6 700	6 414	286	95.73
5	Official travel	92 500	23 292	69 208	25.18
6	Hospitality	7 350	3 206	4 144	43.62
7	Operating expenditure	1 702 850	1 690 205	12 645	99.26
7.1	Maintenance of premises (including security)	1 322 350	1 282 431	39 919	96.98
7.2	Rental and maintenance of equipment	194 750	186 157	8 593	95.59
7.3	Communications	97 050	99 624	(2 574)	102.65
7.4	Miscellaneous services and charges (including bank charges)	18 550	66 192	(47 642)	356.83
7.5	Supplies and materials	62 800	55 801	6 999	88.86
7.6	Special services (external audit)	7 350	—	7 350	0.00
8	Library and related costs	174 000	161 849	12 151	93.02
8.1	Library – procurement of books and publications	133 000	132 246	754	99.43
8.3	External printing and binding	41 000	29 603	11 397	72.20
B	Non-recurrent expenditure				
9	Furniture and equipment				
9.1	Purchase of equipment	78 750	35 710	43 040	45.35

<i>Part/ section</i>	<i>Object of expenditure</i>	<i>2021 approved budget</i>	<i>2021 expenditure</i>	<i>2021 balance</i>	<i>Total expenditure/ approved budget (percentage)</i>
C	Case-related costs	2 250 350	34 377	2 215 973	1.53
12	Judges	1 636 700	5 987	1 630 713	0.37
12.1	Special allowances	1 261 700	–	1 261 700	0.00
12.2	Compensation to judges ad hoc	165 800	–	165 800	0.00
12.3	Travel to meetings, including judges ad hoc	209 200	5 987	203 213	2.86
13	Staff costs	613 650	28 390	585 260	4.63
13.1	Temporary assistance for meetings	588 650	28 042	560 608	4.76
13.2	Overtime	25 000	348	24 652	1.39
	Total	12 077 500	8 994 216	3 083 284	74.47

Annex II

Report of the independent auditor

To the International Tribunal for the Law of the Sea,

We have audited the accompanying cash surplus including the corresponding information (hereinafter referred to as “cash surplus”) of the International Tribunal for the Law of the Sea, Hamburg, Germany, for the biennial financial period 2019–2020, ending 31 December 2020.

Management’s responsibility for the financial statements

The management of the International Tribunal for the Law of the Sea (hereinafter referred to as “the Tribunal”) is responsible for the preparation of the cash surplus in accordance with the Financial Regulations and Rules of the Tribunal. The management is also responsible for such internal control as management determines necessary to enable the preparation of the cash surplus that is free from material misstatements, whether due to fraud or error.

Auditor’s responsibility

Our responsibility is to express an opinion on the cash surplus. We conducted our audit of the cash surplus in accordance with the German generally accepted standards for the audit of financial statements promulgated by the Institut der Wirtschaftsprüfer in Deutschland e. V. (Institute of Public Auditors in Germany), Düsseldorf. Those standards require that we comply with professional ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the cash surplus is free from material misstatement.

The audit involves performing procedures to obtain audit evidence about the amounts and the corresponding information in the cash surplus. The procedures selected depend on the auditor’s judgment. This includes the assessment of the risk of material misstatement of the cash surplus, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Tribunal’s preparation of the cash surplus in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion of the effectiveness of the Tribunal’s internal control. The audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation for the cash surplus.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, based on the findings of our audit, the cash surplus of the International Tribunal for the Law of the Sea, Hamburg, Germany, for the biennial financial period 2019–2020, ending 31 December 2020, and the corresponding information are prepared, in all material respects, in accordance with the Financial Regulations and Rules of the Tribunal.

Basis of accounting and restriction on use

Without modifying our opinion, we draw attention to the Financial Regulations and Rules of the Tribunal, which describe the basis of accounting. The cash surplus

is prepared to comply with those Financial Regulations and Rules. As a result, the cash surplus may not be suitable for another purpose.

Restriction of distribution and limitation of liability

Our report is intended solely for the Tribunal and the Meeting of States Parties. Our report may not be used for other purposes or distributed to other parties without our prior consent.

We prepared the present report exclusively based on the engagement by the Tribunal. The services we performed for the Tribunal in this engagement are governed by the BDO AG Wirtschaftsprüfungsgesellschaft Special Terms and Conditions and by the General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) dated 1 March 2021.

Luebeck, 3 March 2022

BDO AG Wirtschaftsprüfungsgesellschaft

(Signed) Marko **Lüthje**
Wirtschaftsprüfer

(Signed) Dr. Ralf **Wißmann**
Wirtschaftsprüfer

Appendices

Cash surplus for the financial period 2019–2020 of the International Tribunal for the Law of the Sea as at 31 December 2021 (see below)

BDO AG Wirtschaftsprüfungsgesellschaft Special Terms and Conditions (not reproduced; for the text see [SPLOS/30/3](#), annex I, appendix II)

General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) dated 1 March 2021 (not reproduced; for the text see [SPLOS/30/3](#), annex I, appendix III)

International Tribunal for the Law of the Sea: cash surplus for the financial period 2019–2020

(Euros)

Provisional cash surplus as at 31 December 2020

Final excess of income over expenditure 2019–2020	607 346
Cancellation of the 2017–2018 obligations surrendered with 2017–2018 cash surplus	(25 109)
Contributions receivable from States parties with respect to 2019–2020	(1 289 091)

Provisional cash surplus 2019–2020	(706 854)
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Cash surplus as at 31 December 2021

Contributions from prior periods received in 2021	1 043 325
Savings from 2019–2020 obligations	47 917

Cash surplus 2019–2020 as at 31 December 2021	384 387
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