

**Eighth session**

The Hague

18-26 November 2009

**Report of the Bureau on options for replenishing the Contingency Fund and the Working Capital Fund**

1. By resolution ICC-ASP/7/Res.4,<sup>1</sup> the Assembly of States Parties (“the Assembly”) approved the extension of the Contingency Fund indefinitely and requested the Bureau to “consider options for replenishing both the Contingency Fund and the Working Capital Fund, including the three options identified by the Committee on Budget and Finance in the report on the work of its eleventh<sup>2</sup> session, with a view to making recommendations to the Assembly at its eighth session.”

2. The three options for replenishing the Contingency Fund proposed by the Committee on Budget and Finance (“the Committee”) in the report on the work of its eleventh session were:

“138. First, the Assembly could replenish the Fund from time to time as was necessary;

139. Second, the Assembly could decide to replenish the Fund automatically by amendment to the last sentence of regulation 6.6 of the Financial Regulations and Rules. Any amount drawn from the Fund would be added to the assessment of States Parties for the following year; or

140. Third, the Assembly could decide no longer to hold funds in a Contingency Fund and instead continue to provide the commitment authority provided for in regulation 6.7 of the Financial Regulations and Rules with a new provision to charge the costs to States Parties at the end of the financial period (...).”

3. The facilitator presented to the Committee, at its twelfth session, a request for clarification and an alternative proposal submitted in writing by the some States Parties, i.e. the possibility of merging the Working Capital Fund and the Contingency Fund.<sup>3</sup> The report of the Committee on the work of its twelfth session indicated that the Contingency Fund had not been used so far.<sup>4</sup> It was decided that an in-depth discussion of the matter would take place at the thirteenth session of the Committee. The Court was requested to explore the three

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.4, part E.

<sup>2</sup> *Ibid.*, vol. II, part B.2, paras. 137-141.

<sup>3</sup> Report of the Committee on Budget and Finance on the work of its twelfth session (ICC-ASP/8/5), para. 110.

<sup>4</sup> *Ibid.*, para. 113.

options already proposed by the Committee, “as well as possible additional options”, and “to report on the outcome therefore to the Working Group and the Committee well in advance of the thirteenth session of the Committee”.<sup>5</sup>

4. The report of the Court on the options for replenishment of the Contingency Fund<sup>6</sup> was presented to States Parties at the twelfth meeting of The Hague Working Group, on 19 August 2009. The report of the Court reviewed the three options identified by the Committee in the report on the work of its eleventh session and recommended the adoption of the second option, i.e. automatic replenishment.<sup>7</sup>

5. During the twelfth meeting of The Hague Working Group, a majority of States expressed their preference for the first option identified by the Committee in the report on the work of its eleventh session, since this option had the required flexibility, given the limited use and purpose of the Contingency Fund.

6. In its report on the work of the thirteenth session, the Committee was of the view that further experience would be required on the functioning of the Working Capital Fund and the Contingency Fund before a decision on merger could be considered.<sup>8</sup>

7. In recommending an option for replenishing the Fund, the Committee considered that if the Contingency Fund should decrease below €7 million by the end of the year, then the Assembly should decide on its replenishment, including using the interest generated by the Contingency Fund each year and requested the Court to prepare draft amendments to the Financial Regulations and Rules which may be necessary.<sup>9</sup>

8. The topic of the options for replenishing the Contingency Fund was again on the agenda of the meetings of The Hague Working Group of 23 October and 2 November 2009. During the latter meeting, the Group benefited, through a conference call, from additional explanations from the Chairperson of the Committee, Mr. Santiago Wins.

9. The Group endorsed the Committee’s recommendation concerning the replenishment of the Fund by a decision of the Assembly, in case the Fund reaches a level below €7 million. It was also agreed that the topic of the replenishment of the Contingency Fund should be reviewed at a later stage, after the Court goes through a full procedural cycle and, if need be, the Contingency Fund is debited.

10. As for the Committee’s recommendation concerning the use of the interest generated by the Fund for its replenishment, the Group agreed that, at this stage, this option was not viable for the following reasons:

- a) It would create a more complicated mechanism whereby the interest is used to top up the Fund while, at the same time, the approval of the Assembly is needed for the replenishment;
- b) In the absence of any experience on the use of the Fund, the possibility that the Fund would continue increasing to a level that is not needed is not economically practical; and
- c) It could raise concerns as to the possible lack of transparency in the use of the Fund.

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<sup>5</sup> Ibid., paras. 111-112.

<sup>6</sup> ICC-ASP/8/28.

<sup>7</sup> Ibid., paras. 9-10.

<sup>8</sup> Report of the Committee on Budget and Finance on the work of its thirteenth session (ICC-ASP/8/15), para. 137.

<sup>9</sup> Ibid., para. 138.

11. It was agreed that the issue of the possibility of using the interest generated by the Fund could be reviewed at a later stage, in light of further experience regarding the use of the Contingency Fund.

12. The Group agreed that the text set out in the annex be inserted in the resolution concerning the programme budget for 2010, the Working Capital Fund for 2010, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for the year 2010 and the Contingency Fund.

## **Annex**

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res. 4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res. 4 that requested the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Taking note* of the advice of the Committee on Budget and Finance in the reports on the work of its eleventh and thirteen sessions,

1. *Decides* to maintain the Contingency Fund at its current level for 2010;
2. *Decides* that, should the Fund reach a level below €7 million by the end of the year, the Assembly will decide on its replenishment up to an amount it deems appropriate, but no less than €7;
3. *Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

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