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Request for the inclusion of an additional item in the agenda of the resumed sixth session of the Assembly

Letter dated 7 May 2008 from the President of the International Criminal Court addressed to the President of the Assembly of States Parties

Pursuant to Rule 13 of the Rules of Procedure of the Assembly of States Parties, the Court wishes to request the inclusion of a supplementary item to the agenda of the resumed sixth session of the Assembly of States Parties (2 - 6 June 2008, New York, United States of America): request for approval of transfer of funds between major programmes.

The Court desires to transfer funds between major programmes in the near future, under the conditions put forth in Regulation 4.8 of the Court's Financial Regulations and Rules, which states that "No transfer between appropriation sections may be made without authorization of the Assembly of States Parties, unless such a transfer is made necessary by exceptional circumstances, and is in accordance with criteria agreed upon by the Assembly of States Parties".

The Court is currently confronted with circumstances, concerning the pension of one of its judges, that require transfer of funds between appropriation sections. The transfer concerns the following:

- a) As agreed by the Assembly of States Parties, a provision has been made by the Court in its accounts for the pension and disability allowances of judges covering the period 11 March 2002 until 31 December 2006. The funds were allocated for this purpose in major programme I (Judiciary).
- b) In 2007, a judge was found by the Court to be unable to perform his duties due to permanent ill-health or disability. In addition to the pension and disability premiums for the current judges for the year 2007, the Court has to accrue in its accounts as at 31 December 2007 the disability premium for that judge.
- c) Major programme I does not have sufficient funds to finance this additional premium. The discrepancy is €236,722.

- d) The Court proposes to transfer the required funds of €236,722 from major programme IV (Secretariat of the Assembly of States Parties), which has a positive variance (savings) of €1.601 million in 2007, to major programme I.

After consultation with the Committee on Budget and Finance during its tenth session, the Court is now presenting the issue to the Assembly for its authorization. The Court stands ready to provide any additional information to assist the Assembly in its consideration of this agenda item.

Please accept, Excellency, the assurances of my highest consideration.

(Signed) Philippe **Kirsch**
President
International Criminal Court

Annex I

Explanatory memorandum

1. The Assembly of States Parties (“the Assembly”) decided at its fourth session that the pension scheme for the judges be administered by an external party.¹ At its fifth session, the Assembly endorsed² the recommendation of the Committee on Budget and Finance (“the Committee”) that the Court accept the tender of Allianz/NL to insure the judges’ pension scheme.
2. In April 2008, the Court informed the Committee at its tenth session that a judge had been declared disabled in August 2007 due to permanent ill-health.
3. In accordance with the Conditions of service and compensation of judges at the International Criminal Court,³ the Court must provide an annual disability pension of €90,000 to the former judge.
4. The Court was informed by the potential external insurer of the judges’ pension scheme (Allianz/NL) that the estimated cost of the disability premium for the former judge is €1,407,179. No provision had been made in the 2007 budget for such an amount. However, during previous years, an amount of €450,649 had already been accrued on behalf of the former judge.
5. In order to fund the disability premium of €1,407,179, the Court will use savings in the 2007 budget, in particular €719,808 savings in major programme I (Judiciary) and €236,722 in major programme IV (Secretariat of the Assembly of States Parties). The additional amount of €450,649 already accrued for the pension of the former judge in previous years can therefore also be used for the disability premium. The Court proposes transferring the required €236,722 from major programme IV (Secretariat of the Assembly of States Parties) to major programme I (Judiciary).
6. It is important to emphasize that this proposal has no financial implications for States Parties.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November to 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.9, para. 4.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32) Part II.D.2 (b), paras. 30-31.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part III, resolution ICC-ASP/3/Res.3, annex, appendix 2, article II, para. 3, as amended by resolution ICC-ASP/5/Res.3, para. 27 in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32) part III, resolution ICC-ASP/5/Res.3, and by resolution ICC-ASP/6/6 in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November-14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.6.

7. Under regulation 4.8 of the Financial Regulations and Rules,⁴ the proposed transfer would need the authorization of the Assembly of States Parties. The Court informed the Committee, at its tenth session, of the unexpected disability premium. In its report on the work of its tenth session,⁵ the Committee observed that the authority of the Assembly might be required for the Court to transfer funds between major programmes or appropriation sections. The Court is herewith submitting a request to the resumed sixth session of the Assembly for authorization for the requested transfer of €236,722 from the appropriation of major programme IV (Secretariat of the Assembly of States Parties) to major programme I (Judiciary). This transfer is requested due to insufficient appropriation being available in major programme I to fund the entire disability premium.

⁴ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II. D.

⁵ ICC-ASP/7/3, para. 26.

Annex II

Draft resolution

Funding of the disability pension of a former judge of the International Criminal Court

The Assembly of States Parties,

Noting that the Court resolved, in accordance with appendix 2, article II, of the of the Conditions of service and compensation of judges of the International Criminal Court,⁶ that a judge was unable to perform his duties since August 2007 due to permanent ill-health and is entitled to a disability pension,

Having carefully considered the information provided by the Court and the related observations and recommendations of the Committee on Budget and Finance contained in its report on the work of its tenth session,⁷

Being mindful that based on the Conditions of service and compensation of judges,⁸ an annual disability pension of €90,000 is payable to a former judge,

Considering that the Court has to pay to the external insurer a one-time premium of €1,407,179 for the disability pension of the former judge,

1. *Approves*, in line with regulation 4.8 of the Financial Regulations and Rules,⁹ an appropriation transfer of €236,722 from major programme IV (Secretariat of the Assembly of States Parties) to major programme I (Judiciary), within the 2007 budget, to fund the outstanding premium of the disability pension.

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⁶*Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part III, resolution ICC-ASP/3/Res.3, annex, appendix 2, article II, para. 2.

⁷ ICC-ASP/7/3, para. 26.

⁸*Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), part III, resolution ICC-ASP/3/Res.3, annex, appendix 2, article II, para. 3, as amended by resolution ICC-ASP/5/Res.3, para. 27 in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32) part III, resolution ICC-ASP/5/Res.3, and by resolution ICC-ASP/6/6 in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November-14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.6.

⁹*Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II. D.