International Criminal Court ICC-ASP/12/22

Assembly of States Parties

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Concept paper of the Court on multi-year project funding*

I. Background

1. Regulations 3 to 8 of the Court's Financial Regulations and Rules specify how funds necessary for funding the Court's activities are requested, provided and returned to States Parties.

2. In recent years, it has become evident that it would be beneficial to introduce a specific budgeting and funding mechanism for multi-year projects. Establishing a special account for multi-year project funding would require a resolution of the Assembly of States Parties ("the Assembly"). This is discussed later.

3. Financial regulation 6.5 envisages that "reserve accounts and special accounts funded wholly or in part by assessed contributions may be established by the Assembly of States Parties.

4. The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly, such funds and accounts shall be administered in accordance with these Regulations."

II. Multi-year project characteristics

5. In general, a multi-year project fund is a fund representing the cost of a project of more than one year's duration. It is seen as an appropriate mechanism in situations where the expenses covered by a funding arrangement will occur over several years.

6. Projects spanning several years involve an increased level of uncertainty compared to the Court's regular activities. Even though activities might be carefully planned at the start of a project, it is difficult to allocate activities over several budget years with any reasonable degree of certainty.

7. The timeline of the project activities can also be influenced by external factors which are often beyond the control of the Court's management.

A. Disadvantages of funding projects through the regular programme budget

8. Providing funds through regular programme budget does not afford the flexibility to move the funds from one period to a subsequent financial period. Under the applicable regulations, appropriations are available for obligation during the financial period to which they relate. They expire if not obligated within a one-year period.

* Received by the Secretariat on 2 April 2013 and previously issued as CBF/20/23.

9. This limits the capacity of the project manager to manage the planned activities over several years and such limitation on timing when managing multi-year projects is counterproductive to the continuing nature of the operations. The regular programme budget is suitable mainly for recurrent expenditure of a routine nature and not for project operations, particularly those which are larger in scale.

10. The end result under this option would be that the unused funds each year would be returned and requested again in the next budget year, thus leading to uncertainty, disruption in operations and planning difficulties for States Parties in terms of the timing of funding provision.

B. Advantages of funding projects through a multi-year special account

11. When a project spans more than one financial year, a multi-year funding mechanism can improve the allocation and effectiveness of funding. In this context, multi-year funding is seen as a useful tool because it increases predictability, generates lower administration costs and allows States Parties and the Court to develop a more strategic vision of projects requiring an implementation period of more than one year.

12. A special account for multi-year projects would involve funds being allotted annually against an overall approved financing plan for the duration of the project, split into annual funding amounts. Funds unused against the plan in a financial period would be carried over to subsequent financial periods provided that the expenditures were within the approved overall multi-year budget.

13. A special account for multi-year projects is an option proposed to provide more flexibility in the financing and use of the allotted funds. The difficulties encountered in managing the funds when made available under the annual regular budget no longer arise. This makes it easier to plan and optimize the use of resources. From the States Parties' perspective, there is no need to re-authorize already approved expenditure year after year because of the marginal change in the spending pattern of the project.

14. The effectiveness of programme implementation would not be compromised in any way as all the controls, checks and balances would still be in place. Regular implementation reports would be provided and a robust monitoring and evaluation system adopted for this option to review expenditure on a cumulative basis against a multi-year approved budget. This means that States Parties would have an accurate view of the implementation status at any given point in time and would be able to ensure that the programme performed according to the stated objectives and advocate any remedial measures if and when necessary.

15. The Transition Programme has all the characteristics of multi-year project and the advantages of funding its activities through a special account for multi-year projects as identified above, are all applicable. As requested by the Committee on Budget and Finance ("the Committee"), [1] the Court is looking at options for managing the funding of the 2015 peak in cost. The special account for the Transition Programme could be one viable option.

III. Special Account for the Transition Programme

16. At its tenth session, the Assembly approved that non-integrated elements (2gv) and other related costs should not exceed €19.8 million, and would be approved upon submission year by year in the Court's budget.[2]

17. The most recent estimate of costs for transition activities submitted for the Committee's twentieth session amounts to €19.5 million, including a €1.8 million risk budget. This budget covers activities over the three-year period from 2014 to 2016.

18. The budget would be continuously monitored and revised throughout the duration of the project/programme. However, no further budget submissions would be made, save in

[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eleventh Session, The Hague, 14-22 November 2012* (ICC-ASP 11/20), vol. II, part B.2, para. 148.
[2] *Official Records ... Tenth session ... 2011* (ICC-ASP10/20), vol. I, part III, ICC-ASP/10/Res.6, para. 5.

very rare circumstances if it were to be determined that the necessary activities could not be funded out of the originally proposed budget.

IV. Provision of funds

19. A special account for multi-year projects would be financed annually on the basis of initially determined funding requirements. The scale of assessment applicable to the regular programme budget would be applied.

20. States Parties would have maximum flexibility provided minimum funding requirements were met on a yearly basis. Those minimum funding requirements would be established at the beginning of the project and met by States, which could also provide funding in advance for the following years should they wish to do so.

21. Additionally, it would be possible to finance the fund through a cash surplus, if so determined by Assembly.

22. It is proposed that the special account for multi-year projects be funded through various funding sources. As mentioned above, the Court will assess contributions based on the applicable scale of assessment and will issue contribution letters including: (a) the total amount of contributions assessed for the entire period; and (b) the minimum amount of contributions payable each year. In year one, States Parties may proceed with payments ranging from the minimum amount of contributions required for that year to the maximum amount of contributions required for the whole period (i.e.: three years). The Court will ensure that any payment in excess of the minimum amount due for any given year is considered as an advance payment against future years' minimum contributions.

23. Possible source of funds:

(a) assessed contributions;

(b) voluntary contributions;

(c) surplus funds from the regular budget.

24. In order to enable States Parties to have an overview of Court's financing needs in a single document it is proposed that the special account for multi-year projects and the Court's proposed programme budget be compiled in the same document. However, as mentioned above, multi-year project funding would be adopted by the Assembly only once, in the year in which the project starts.

V. Appropriations

25. Appropriations would remain available until completion of the project.

26. Project activities and performance obligations would be specified. Obligations would be incurred for the purposes for which appropriations were adopted. There would be flexibility to reallocate funds between the project activities and financial periods over which the project is running to ensure the most efficient use of resources.

27. Authorization to expend appropriations would be given through allotment advice in accordance with the Court's Financial Regulation and Rules.

VI. Cash surplus

28. Any provisional cash surplus would be determined at an agreed project end date. The final cash surplus would be determined twelve months after this date and returned to States Parties. Any remaining outstanding obligations would be re-obligated against the appropriations of the current financial period.

29. The surplus would be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period in which the project has ended.

VII. Reporting

30. The Registrar and the project manager will monitor the achievement of objectives and performance delivery during the financial period and report on actual performance.

VIII. Conclusion

31. Taking into account recent experience, the Court is of the view that new financing mechanisms would contribute to the effectiveness of managing non-routine project operations and at the same time provide States Parties with maximum flexibility in terms of timing and sourcing of funding. The Court proposes that a special account for the Transition Programme be established, which would have the characteristics described above and detailed in the attached illustrative Assembly resolution.

Annex

Draft Resolution
Transition Programme

The Assembly of States Parties,

Recalling resolution ICC-ASP/9/Res.1, which requested the Court, in consultation with the Project Director, to identify and quantify the other costs related to the project but not directly related to the construction, such as the costs of relocating the Court from the temporary premises to the permanent premises, movable items such as furniture and ICT hardware, potted greenery and decorations, costs relating to communications and public relations for the project and costs relating to the interim premises, before 1 March 2011, to report on these annually to the Assembly, through the Oversight Committee, to keep the Committee regularly informed of any change thereof, and to consider ways in which to reduce the impact of such costs on the annual budgeting process,

Recalling resolution ICC-ASP/10/Res.6 noting that the Court has quantified 2gv and other related costs, originally estimated at €20.1 million and later reduced to €19.8 million, for non-integrated user equipment, that is loose elements, and other costs such as moving, additional staff and consultancy fees,

Recalling resolution ICC-ASP/11/Res.3 requesting the Court, working in conjunction with the Project Director, to take all preparatory measures needed to ensure its readiness to take occupation of the permanent premises by not later than December 2015 in order to avoid any additional expenditures for the States Parties,

Noting the report of the Committee on Budget and Finance on the work of its twentieth and twenty first session,

Noting the report of the Court on the Transition Programme,

Noting that the end of the construction phase of the permanent premises is foreseen for September 2015,

Noting that the Financial Regulations and Rules and internal and external audit arrangements of the Court are applicable to the programme,

A. Programme budget and timelines

1. *Approves* the overall budget for the programme at no more than €XX million allocated over a three-year period as follows: €XX million in 2014, €XX million in 2015 and €XX million in 2016;

2. *Notes* that the completion date for the Transition Programme is the end of 2016, subject to timely delivery of the permanent premises;

3. *Requests* the Registrar, in this connection, to establish, in accordance with the Financial Regulations and Rules, a special account for the purpose of holding funds provided by States Parties for the Transition Programme;

B. Provision of funds

4. *Decides* that States Parties shall be assessed annually based on the schedule determined above according to the scale of assessments applicable to the Court's regular budget at the time of the assessment;

5. *Invites* States Parties to consider making an advance payment of their share of the total estimated Transition Programme costs in order to reduce peak costs in 2015;

C. Appropriations and cash surplus

6. *Decides* that appropriations shall be available for obligation until year-end 2016;

7. *Decides that* appropriations shall remain available for twelve months following the end of 2016 to the extent that they are required to liquidate any outstanding legal obligations of previous financial periods. The balance of the appropriations remaining unobligated at the close of 2016, after deducting therefrom any contributions from States Parties for the Transition Programme which remain unpaid, shall form part of the Transition Programme cash surplus;

8. *Decides* that the provisional cash surplus for the three-year Transition Programme period shall be determined by establishing the balance between credits (assessed contributions and miscellaneous income actually received) and charges (all disbursements against the appropriations and provisions for unliquidated obligations) during the three-year Transition Programme period;

9. *Decides* that the final cash surplus for the Transition Programme shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during 2017 and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the regular programme budget appropriations for 2018;

10. *Decides* that the Transition Programme cash surplus at the close of the programme shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period in which the programme was closed. As of 1 January following the year of completion of the audit of the accounts for the financial period in which the programme was closed, the amount so apportioned to a State Party shall be surrendered to such State Party in accordance with financial regulation 4.7;

D. Financial reporting

11. *Requests* the Registrar to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the programme on the basis of the most recent information, including an overview of any voluntary contributions received from States Parties;

12. *Requests* the Registrar to report annually to the Assembly, through the Committee on Budget and Finance, on the realization of the previous years' estimates and the level of expenditure.