



**Statement to the 38<sup>th</sup> Resumed Session of the Committee on Budget and Finance  
10 May 2022**

The Coalition for the International Criminal Court, supported by a Secretariat, is the world's largest partnership advancing the cause of international justice. With member organizations across the globe, the Coalition is leading the fight to end Rome Statute crimes through a commitment to the core values of human rights and justice. The Coalition works to promote a fair, effective, independent, and universal International Criminal Court (ICC) and accountability and redress for victims through the Rome Statute system.

Civil society organizations and human rights defenders, particularly those from situation countries and countries under preliminary examination, play a unique and invaluable role in the Rome Statute system. They often work directly with victims and affected communities and have experienced first-hand the ICC's work, including the effects of its shortcomings.

In recent weeks since the expansion of the conflict in Ukraine, the role of the ICC has been in the spotlight. There has been a welcome showing of support for accountability and the Court's role in Ukraine.

For several years, however, the Coalition has called attention to the growing gap between the Court's increasing workload, and the resources available to it. This gap has negatively impacted the overall effectiveness of the institution. This gap has arisen for a number of interrelated reasons, including the insistence of some states parties to hold the Court's growth to a bare minimum and the resulting inability of the Court to come forward with budget proposals that would be adequate to its needs.

Recent developments only underscore that the chronic underfunding of the Court affects its ability to render justice in all of the situations that come before it.

Indeed, the exceptional call by the Office of the Prosecutor for financial contributions to the Office's Trust Fund for Technological Tools, Psychosocial Support and Specialised Capacity in Sexual and Gender Based Violence crimes and crimes against Children and for gratis personnel clearly confirms that the Court simply does not have the resources it needs in its regular budget to execute its mandate.

We wish to highlight the following concerns regarding the present situation.

First, while the Office has made clear that voluntary contributions will not be earmarked to any specific situation, the timing of the call in conjunction with the opening of a specific situation as a formal investigation and the nature of statements made by contributing states parties to call

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attention to their contributions risk perceptions of selectivity and politicization in the work of the Court.

It could signal that justice for some victims should be prioritized over others, according to the availability of resources provided for in a manner that coincides with the launching of specific investigations. Perceptions of selectivity or inappropriate bias in the Court's work are detrimental to the Court's legitimacy and the legitimacy of the justice it renders where it does act.

Second, as a general matter, voluntary contributions also raise significant risks when it comes to the sustainability of funding and policy considerations in the use of gratis personnel. In addition, voluntary contributions to one organ do not address the existing needs of other organs, offices, or counsel driven by the chronic underfunding of the institution over several years, or resource needs that will be generated by increased activity by the Office of the Prosecutor as the beneficiary of the trust fund and gratis personnel.

Third, regarding gratis personnel, the use of such personnel allows for professionals with highly technical skills and specific expertise to support the work of the Court, but attention should be paid to the impact it may have on the geographic representation and gender balance of the staff of the Court, as well as perceptions of independence or loyalty of gratis personnel to the institution.

For these reasons, voluntary contributions and the provision of gratis personnel should be exceptional. Indeed, while the Rome Statute provides for voluntary contributions (Rome Statute Article 116) and the provision of gratis personnel (Rome Statute Article 44(4)), their use has been regulated by the Assembly of States Parties (ASP) in a manner that underscores their limited and exceptional nature and to protect the Court's independence.<sup>1</sup>

According to the ASP guidelines, the use of gratis personnel at the ICC is envisioned on an exceptional basis to provide otherwise unavailable expertise, for very specialized functions for a limited and specified period of time. The guidelines further stipulate that such personnel should not be seen as a substitute for staff for the Court's regular and normal functions.

ICC states parties should reject a zero-nominal growth approach and adopt a principled approach to the ICC's resources that ensures the Court has long-term and secure funding, based on assessed, not voluntary, contributions for all organs, programmes and activities, in order to meet all the demands placed upon it.

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<sup>1</sup> ["ASP Guidelines for the selection and engagement of gratis personnel at the ICC"](#) (Annex II of ASP Omnibus resolution ICC-ASP/4/Res.4 (2005), pp. 44-48)); ["Relevant criteria for voluntary contributions to the International Criminal Court,"](#) (ASP Resolution (ICC-ASP/1/Res.11), 3 September 2002); [Financial Rules and Regulations of the Court, Regulation 7.2-7.4](#)

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We have recently set out these views in an [Open Letter to the Court and its Assembly](#).

With regard to your discussions and outcomes at this session, we recommend that the Committee:

- Reaffirm that voluntary financial and personnel contributions are limited to activities that are extrabudgetary, should be exceptional, and should be provided in a manner that upholds the Court's independence;
- Ensure sufficient systems are in place to provide for the disclosure of voluntary contributions by the Registrar as required by the [Assembly criteria for voluntary contributions to the ICC](#), as well as request that the Court report transparently on the use of any such contributions and personnel;
- Clarify or ask the Court to clarify that the ICC codes of conduct, including policies on harassment and non-retaliation, are relevant to gratis personnel; and
- Consider, as the Assembly's expert budgetary body, risks to the Court caused by any departure from limiting voluntary contributions to activities that are extrabudgetary.

Voluntary contributions should continue to be seen as an exceptional measure to support the work of the Court, and not open the door to a new method of funding the institution for its statutory functions. This could have profound risks for the court's credibility and could make it more susceptible to attempts to use financial policy as a means of political influence on the Court's execution of its mandate.