

Fifth Session of the Assembly of States Parties to the Rome Statute of  
the International Criminal Court  
24 November 2006, 3-6pm, Plenary & Budget and Finance working group

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**Informal and Unofficial Verbatim Notes from the ASP**  
*24 November 2006, afternoon session*

**President:** We continue the general debate, and we have 3 NGO speakers

**International Criminal Bar:** I represent the Executive Committee of the International Criminal Bar (ICB), which is an independent representative organisation of legal counsel. Our governing council comes from all five continents and major legal systems of the world. We have individual and institutional members, including those appearing before the Court and those on the Court's list of counsel. We work to reduce bureaucratic obstacles to be included into the list of counsel. We're also concerned about legal aid for victims and defence.

The ICC system is modelled after ad hoc tribunals and SCSL system. We are finalizing the memorandum on this issue which will be distributed on Monday. Legal aid system now works in case of *Lubanga*, although this case is comparatively small case and still in its Pre-Trial phase. We suggest that the CBF requests a further report from the Court regarding legal aid in the Pre-Trial stage, to resolve the issue of time-consuming legal aid appeals. The first legal aid request for victims has been granted recently, but also the report from the Court should be requested to provide information regarding the functioning of the legal aid scheme for victims. Thank you.

**President:** Thank you, I give the floor to the representative of the International Federation for Human Rights.

**International Federation for Human Rights (FIDH):** Thank you. We encourage the OTP to continue its investigations in the situation of DRC, including to bring further charges in *Lubanga* case.

The Strategic plan recognises the role of victims to voice their concerns. We welcome the statement of Madame Veil, VTF Board Chair, that the payment of reparations will start next year. We encourage victims of crimes to take part in the proceedings.

We need publicity regarding the situations under investigation. FIDH will continue its co-operation with the OTP on ground, including in Colombia.

We would also like to raise the issue of a fourth situation before the OTP. Regarding the situation in the Central African Republic, we ask the OTP to increase the investigational activity in this matter.

Furthermore it is important that necessary resources are provided to the VTF. We recognise the need for voluntary contributions by States on a regular base. Thank you.

**President:** Thank you, I give the floor to the representative of the International Society of Post-Traumatic Stress Studies.

**International Society of Post-Traumatic Stress Studies:** We do scientific research regarding victims. What is important is what happens with victims after their victimisation,

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trauma after trauma. There is a conspiracy of silence in cases of holocaust and genocides. Victims suffer from the indifference, more even than from the brutality of execution. Wounds continue to fester from generation to generation. It is not only important to help the victims of crime but also to continue to do so after that. The silence of humanity after a trauma can result in a trauma after the trauma. We must heal the first generation of a trauma to end the cycle of repeated violence.

In the Prosecutorial Strategy, you can't overlook the importance of victims. Multidisciplinary co-operation in everything we do is essential to help victims, to help them to articulate their experiences, and to serve the Court in its activities. It will help the victim in its cases, it will help the Court's staff who themselves may be secondarily traumatised and should be healed. Outreach also has psychological impact.

As the UN Secretary-General mentioned, some injuries can be healed with the passage of time, but some can never be healed, we must never forget the victims.

**President:** We have concluded the list of speakers for the general debate. States Parties, non-States Parties and NGOs spoke. I hope it was a productive exercise to provide guidance and support for our Court. It was also an exchange of views on the Review Conference, the twins of peace and justice, and other matters.

We now turn to agenda item 11 regarding the programme budget. We'll hear the presentations of the Registrar and CBF rapporteur. I draw your attention to the proposed draft budget and CBF report.

**Registrar:** It's my pleasure to present the draft budget of the Court to 2007. The basic structure of the budget reflected the CBF recommendations. Budget reflects the strategic plan which is a modern approach in comparison with other international organisations.

For the previous budget, we under spent. With regards to assumptions, for 2007, we expect only one trial. The OTP will continue to follow at least five situations and will consider opening investigation into a fourth situation. In those situations, there will be at least six cases. Contingency fund will be used for forensic examinations and any additional costs.

Increase in the budget comes from outreach programmes of the Court and awareness building, as well as field operations. This is necessary but we understand States' concerns with regard to this budget increase. We must remember that the Court's budget covers not only the case proceedings. There are also costs before or after the trial and this should be budgeted accordingly, including costs of prosecutorial and defence investigations. In 2006, 60 individuals benefited from the witness protection scheme, in comparison to 10 in 2005, and the expenditures on them will be continued.

Regarding outreach, we respond to this Assembly's request from 2005. People from the affected communities should understand what the Court is about, not to be remote from the people whom it is supposed to be serving. We also need local staff. We need to explain the international criminal justice system to the population of countries like DRC, which is alone several times bigger than Germany. And the modern technologies in these countries are not necessarily the most effective method of outreach. The Court also hosted a lot of visits to the Court, including visits by parliamentarians and governments' officials.

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The Court shall be fully equipped to be a real e-Court. The Court would like to develop an electronic Court, to avoid a Mexican lawyer travelling to The Hague for a 10minute hearing.

We are in the early stage of the Court's development. If we don't invest in it now, we'll have to pay more in future. There could be a better dialogue with the CBF. We've submitted a separate document on this. The Court will continue keep Member States informed on the costs of proceedings. Financial efforts of the States have not been in vain during these years.

**President:** Thank you, I know give the floor to the CBF rapporteur Mr. Peter Lowell.

**Mr. Lowell:** Thank you. I will present reports from the sixth and seventh session of the CBF which took place in 2006 – the busiest year so far for the CBF. We had before us a draft programme budget and other issues. We acknowledge the leadership of Karl Paschke, CBF chairperson for first three years and who continues to serve as a CBF member. The nature of the CBF work means that it must challenge some proposals and assumptions; we appreciate the excellent work of the Court. We noticed the under-spending for 2006; the reason for this is that some of the trials which were planned were not commenced, and not all the members of staff have been hired.

CBF agrees that some in-built costs are necessary, but the provisions on inflation should be absorbed. Under-spending on staff will likely continue next year. The Committee recommended new resources for functions that are necessary, but it noted where greater efforts may be made to prioritise work and increase efficiency or where the workload is not tested enough. The cuts proposed by the CBF total around 5 million Euros. The Court has the flexibility to move resources around, and can resort to the contingency fund for unforeseen developments. Some income should be returned next year in accordance with the arrangements with the SCSL, although it is not budgeted.

The structure of the budget will help us have a more structured discussion on the budget in the future. Budget presentation has improved significantly. However, the document remains very long and provides insufficient analysis. The Committee is of the view that a more strategic approach will be more advantageous for all; the chair of the Committee will arrange a meeting with the Court in the beginning of 2007 to discuss this.

Para.48 of report shall not be considered as criticism of the Court. On arrears, the Committee responded to the Assembly's request and recommended an application of the relevant provisions.

On the issue of pensions for judges, the Committee responded to three specific requests from the Assembly. The Committee observes that the Assembly has not provided for the conditions of service of the Prosecutor and his Deputies and pensions for them; this situation should be rectified immediately.

We don't have sufficient time at our sessions and work at night; we propose to have sessions of our Committee during four days. We want to discuss policy issues in April and to leave the session in autumn free for consideration of the budget. There are serious challenges ahead and potential pitfalls, but we'll work on it.

**President:** This concludes the general meeting, the Bureau meets tomorrow.

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**Secretary:** There will be three buses to and from the Hague municipality for the reception.

**President:** Now the Budget and Finance Working Group will have its meeting. The plenary meeting is adjourned

4:20p.m.

*Budget and Finance Working Group, 24 November 2006, afternoon session*

**Chairperson:** The basic documents are ICC-ASP/5/9 (proposed programme budget) and ICC-ASP/5/23 and corr.1 (report from seventh session of CBF) and ICC-ASP/5/1 (report from the sixth session of CBF). There are also other relevant documents. There is a proposal by Australia, New Zealand, and Canada which has been distributed (ICC-ASP/5/WP.1). I propose that we take the CBF reports as basis for our work. If I do not indicate specifically, when I mention the CBF report, I mean its report from the seventh session. Of course, any delegation can make any proposals, but let's just use the CBF report as basis for our discussion. Do we all agree? No objections; it is so decided. We have with us today Mr. Martin Sinclair, representative of the External Auditor. Welcome and you have the floor.

**Mr. Sinclair:** I represent the UK National Audit Office and represent the external auditor. The auditor revealed some material weaknesses; we have an unqualified auditing opinion. The Court's staff deals with finances with diligence. We reviewed the estimations of liabilities regarding judges' pensions and conclude that they are reasonable. We encourage the Court to continue the development of a budget monitoring electronic system.

The office of the internal auditor has been established and he produced a risk assessment report. The Court shall consider the adoption of IPSAS. We recommend to the Court an adoption of independent IPSAS financial standard.

The ICC created an oversight committee consisting of the President, Prosecutor, and Registrar, and the head of the internal office audit as the secretary of this committee, but there are no externals; we recommend that an independent auditing committee be established with the majority of externals in it.

Procurement control should operate effectively; procurement planning should be established to have expenses evenly distributed throughout the year.

Now, with regards to the report of the VTF for 2005 financial year, we placed an unqualified auditing opinion.

My appreciation for the Registrar and members of the Court's staff. I'm happy to respond to the members' questions.

**Chairperson:** Thank you for this excellent report. Any questions or other issues regarding the external auditor's report? No questions; I thank you again, Mr. Sinclair. Now, are there questions for Registrar and to Mr. Lowell of the CBF? Any questions? We have now an informal segment for 30 min.

**South Africa:** Thank you to everybody. I have a general question with regard to how the budget is presented. The budget does not indicate how previous budgets and reports are

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implemented. For example, post 103 was approved but for what area was it used? Where those posts lie, we want to know. We would like to know how the CBF recommendation to cut certain posts correlates with the previous decisions of the Assembly.

**Chairperson:** Thank you. Any other questions? Please, push the button.

**France:** Thank you, congratulations. For the CBF, you have frequently suggested temporary staff, but they are actually usually are more expensive. On the premises, you've considered an option of prefabricated premises, but this option is now abandoned.

**Belgium:** We would like to know how the temporary staff proposal correlates with the confidentiality requirements, which are crucial for the protection of victims and witness.

**Registrar:** I present you the senior official of the Registry responsible for the budgeting process, Mr. Ralph Martens, who will respond to your questions.

**Representative of Registry:** Currently there are 168 GTAs; there are still around 40 advertised posts which are in different phases of recruitment; there are also frozen posts. We re-calculated the budget on the assumption that we had enough space. If we're not receiving sufficient space next year, it's likely that we move to the third location, and we'll have to make additional costs, because of the new infrastructure, new security and services people. It is a situation regarding the interim premises.

**Mr. Lowell:** We recommended GTA posts where it is necessary. Regarding security, this issue has not been raised by the Court with us; we think that the same principles apply.

**Chairperson:** More questions, and then I need to close the floor. But we'll have more opportunities to raise issues throughout the session.

**Germany:** Congratulations, chairman, we sincerely support your view. My question is regarding the strategic part of the Court's budget. Mr. Cathala mentioned relying on the contingency fund but the Court has not yet resorted to it. And it's a very skilful way to manage the budget, because we have 10 million Euros in it, and I congratulate the Court on doing it, because it helps the Contracting Parties to keep the level of their contributions lower.

**South Africa:** Thank you very much for giving me the floor again. Para.53 of the CBF report: CBF recommends not to approve the proposed post, it's just an example. Do the existing posts actually substitute responsibilities of the posts which are not recommended for approval, and have the mentioned posts been filled? The same question can be raised with regards to outreach.

**Trinidad and Tobago:** Thank you for the presentation of the budget. Does the contingency fund have the capacity to accommodate the trials in 2007?

**Registrar:** Regarding the South African question, the existing posts on outreach have been locally recruited, so we propose really additional posts. In GTA we have over expenditure. Some of the funds have been redeployed, but this can only be done within one main area of the budget, with the permission of the Assembly.

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**Representative of the Registry:** If we now arrest somebody, it means 3,4 million euros for next year, so the capacity of the contingency fund would accommodate 2-3 arrests.

**Mr. Lowell:** I have nothing to add.

**Chairperson:** Thank you. Now I present you my proposed working programme. Even if we discuss this now we don't need take action at this moment, even if we rush you now, we will come back to you at a later stage. There are several clusters. First, we will consider the audit reports of internal and external auditors; draft resolution proposed; cluster of outreach; co-operation between the States and the Court. At the end, we'll have a thematic report on budget's preparation and presentation in a general sense, including long-term planning.

I have a request from CICC to deliver an address. In accordance with Rule 39(3) of RPE, they can make statements, if subsidiary body agrees. I see no objections on it, so you have a floor.

**Jonathan O'Donohue, Amnesty International, CICC Budget and Finance Team:** We do not want to undermine the work of the expert body, but the Assembly may review its recommendations, which deserve very serious consideration, especially some issues are important for the Assembly to review the Committee's recommendations.

For example, intensifying the outreach efforts, there is widespread support for it, but the CBF recommends cutting three posts, and this recommendation will undermine the Court's ability to implement the Court's outreach strategy. Lack of outreach materials in local languages needs to be addressed. The 8 posts on outreach must be filled with highly qualified people.

Second concern is regarding the Victims and Witnesses Unit (VWU): cuts of posts proposed and travel. The Committee did not provide any reasons for its recommendation. Qualified staff can't be employed on temporary contracts.

**Chairperson:** Thank you for this important contribution. Now we're back to the consideration of the auditors' report (agenda item 12). In accordance with the Financial Regulations, the auditor provides a report which shall be adopted by the Assembly. The CBF recommendations are in paras.23,24 of its report. Can we endorse them? No objections.

And now for the report of the internal auditor which entirely meets this working group's expectations (ICC-ASP/5/5), can we take note of this report and relevant recommendations? Ok.

Now, agenda item 13, regarding the appointment of the external auditor, who shall be appointed by the Assembly, in accordance with the Financial Regulations and Rules. Previously it was the UK National Audit Office, we have a report of the CBF on re-appointment of the external auditor (ICC-ASP/5/4) where they recommend the re-appointment of the UK National Audit Office. Can we include this suggestion into our recommendation? No objections.

Now we address the issue of maximum assessment rates; we have the proposal which has been distributed. The authors will now explain the idea behind this proposal.

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**New Zealand:** Thank you, it's a proposal on budget (ICC-ASP/5/WP.1); it has been distributed in all languages. The objective of our proposal is to follow the Article 117 of the Rome Statute and to allow Japan to join the Court.

**Chairperson:** Thank you, I ask you to work further as an informal focal point on this issue.

Now we turn to pension scheme of judges and conditions of service and compensation of Prosecutor, paras.83-105 of the CBF report; there are a number of recommendations of the Committee on questions of the pension of judges and conditions of service. I recommend that the ambassador of Mexico act as a facilitator on this issue. We have 15 minutes left. Any additional issue?

**South Africa:** We need to look at the market of prosecutors and registrars: ad hoc tribunals and SCSL. What is the comparison in regard of their conditions of service and compensations? Maybe, the CBF could prepare a report on it.

**Mr. Lowell:** The relevant information is in our report from the sixth session (ICC-ASP/5/1), maybe, there is no information regarding the SCSL in it.

**Chairperson:** Ok, we have 7 minutes left, let's say what we do the rest tomorrow; there will be different issues to be discussed tomorrow.