

**Informal and Unofficial Verbatim Notes from the ASP
Working Group on the budget, 28 November 2006 (Morning Session)**

These notes are not an official transcript of the meetings, but may serve as an informal and general overview of the proceedings. Please do not use these notes for official purposes.

Chair: So, if this very provisional and intermediate summary would suffice, then I would like to go immediately further to the other open debate on detention costs. We heard yesterday morning very useful presentations by the Registrar and the representative of the host State and there were a number of questions asked and the host State gave answers to them. In the recommendations contained in paragraph 77bis and 77ter, the CBF calls on the host State and the Court and it does not call on the Assembly, so as I have mentioned yesterday, probably there is no action needed by the Working Group as such and then by the Assembly, and I would therefore simply propose that the explanations that were given yesterday both by the Court and the host State would be reflected in a very brief manner in the report of the Working Group on the budget and that we recommend to the Assembly that it will take note of the CBF recommendations contained in paragraph 73bis and 73ter. Now would that be agreeable to you or are there any other wishes for the floor? I would hope not too many. Thank you very much.

That would then give us time to move on to the next issue which is interim premises, security arrangements, and here I refer to paragraphs 82 and 114 to 119 of the CBF report and paragraph 8 (2). The CBF did not approve eight out of nine assisting security officers requested for by the Court in its program budget, but urges the host State to implement proper arrangements for interim security staff without additional costs for the Court. In paragraph 117, the Committee responded to the Court and the host State that the Court and the host State should endeavor to secure offices for the translation team and the secretariat of the Assembly in paragraph 119. Finally, the committee called on the host State to make every effort to bring the issue of interim premises to a speedy conclusion, but it also called on the Court to look objectively and pragmatically to ensure that the actual level of security stipulated was consistent with the risk. I believe that is not much of an issue, discussing the recommendations of the CBF as such which are really straight forward, but more keeping track with the record development of the issue on interim premises. My understanding is that the Court presently has two floors at the Hoftoren building and that it will get a third one very shortly, and that it then would need two additional ones, so that would make five floors at the Hoftoren building. This is the temporary interim premises and that would then basically suffice until March 2008 when the Court will hopefully get additional accommodation in the B wing of the Arc. Is that a correct statement? Do you have anything to add from the side of the Court or the host state? The Court.

The Court (translated from French): Thank you, Mr Chairman. Just to state that this is indeed very much the condition of the Court; the only slight reservation is on two issues. The question of the Secretariat of the Assembly of State Parties, which is still to paragraph 117 which you have just recalled, Chairman. The second element would be for the new trial which is looming and that would require the hiring of most staff. Those are the two slight caveats which I would add to what you have just said Chairman. Thank you.

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Chair: Thank you very much. Again, as I have said, the CBF recommendations are clear. We would be given what the Registrar just said on the issue of the Secretariat and I think we would not get involved into the discussion of who is occupying which floor in the Hoftoren building. I think we might have taken note of the recommendations without endorsing that specifically. If that would be agreeable to you then we would probably just take note of those recommendations. Is there are request from the floor on that issue?

Then I try to go to another easy one and, therefore I would jump to paragraph 125 of the CBF report and that is the section on the cooperation between the ICC and the Special Court for Sierra Leone. France please.

France (translated from French): My apologies Chairmain for coming in a bit late, but for the interim premises issue my delegation has no objection or comments to make on the recommendation of the CBF with respect to security officials. Nonetheless, my authorities would like to know about the sum in March 2007 for the interim premises and is especially querying the amount of the sum in March for furniture and so on, which is 853.000 Euro. I think this is an issue which needs to be studied further and it should not overload the debate here, but my delegation would be grateful if the Court could assume that the amount is really justified in light of the project, which is just to have interim premises in the Hoftoren building. But also there is the question of prefabricated facilities. I do not expect an immediate answer, but I do think it is a question which warrants further consideration. Thank you.

Chair: The way you suggest to approach that question may be in fact that the Court and the host State could have bilaterally a couple of elements for an answer and if that does not satisfy you, then you are of course free to come back to that issue tomorrow. Is that agreeable to you? Thank you.

Then we would go back to the issue of the Special Court for Sierra Leone. You are all aware of course that the use of the facilities and the services of the ICC by the Special Court for Sierra Leone needs to be cost neutral for the ICC and there is so far, as I understand, some margin of appreciation in what exactly cost neutral means and what cost should be identified and how it should be calculated, and the CBF has made recommendations to this effect in paragraph 125 of its report.

I had asked Peter Lovell last week what exactly that recommendation meant and unfortunately he is not here anymore, but I hope I can translate very faithfully what he has explained to me. From his explanation it seems to me that what was important for the CBF was not only the recommendation itself but also the sentence just before that recommendation, that the view of the Committee to adopt a commercial approach was not consistent with enhancing a spirit of cooperation between International Organizations. In fact, the CBF was aware of the fact that this was one occasion when the ICC would render service to another international institution, but that there will be many more situations already and situations to come where it would be the ICC that would rely on the assistance of other international organizations such as the UN and that, therefore, if the approach in calculating those costs that would be imposed on the Sierra Leone Special Court is to be perceived as being calculated as if that was a private enterprise according to commercial standards, then this might basically backfire back on the ICC, because the ICC was just as needful for assistance by other international organizations than in this situation it would be able to give to the Special Court for Sierra Leone. So I

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thought that this was an issue that should be drawn to the attention of this WG. I think this is a perfectly sensible approach that the CBF takes here and therefore I think it might be in order to endorse that recommendation specifically in our report and then to recommend to the Assembly that it endorses that recommendation. So, if that is also agreeable to you, that is the way I would suggest we proceed. Thank you very much.

Then we might go back to the issue of cooperation between States and the ICC, and here I refer to paragraph 60 to 64 of the CBF report and also paragraph 43 of the CBF report. Paragraphs 60 to 64 concern different recommendations relating to the jurisdiction, complementarity and cooperation division and paragraph 53, that is relating to the external relations adviser in the judiciary. Now, your coordinator put that issue on the list on his own following the general debate in which many States mentioned and stressed the importance of cooperation between States and the ICC, and I thought that there might be an issue on the other side, that if the ICC should effectively invite cooperation by the States and also be able to absorb that cooperation given by States, that then the ICC should also have adequate resources to do so. In saying this I am in no way intending to make a statement about the validity or non-validity of the CBF recommendation. I just wanted to have a point on the list where States, if they want to address this issue, could do so. If this is not the case then we could just move on to other items. Thank you. There is no request for the floor here.

Then the next issue would then be translation costs. I refer here to paragraph 74 of the CBF report. That is subprogram 3340 - "Court interpretation and translation section" - and in here the CBF did not approve a number of posts that were asked for by the Court and I was approached by some States to bring that to the attention of the WG. If there is a request for the floor on the issue of translation costs? If not, we would also simply take note, or we need not even talk about it, because we had no discussion about it which means that we generally are in agreement with the recommendation.

The next issue on the list would then be the victims and witnesses protection issue. That is the recommendation by the CBF contained in paragraph 75. In paragraph 75, the CBF also makes a few recommendations with respect to the subprogram 3350. It has been my understanding that there are barely costs neutral in the sense, at least that is my reading of it, that they recommended that three P-2 associate protection officers would not be established at the current stage, but should be converted into GTA on the one hand and one additional P-2 associate operations officers. So I think that part is cost neutral and then the last part of the recommendation is simply a reduction in proposed travel costs from, I believe, 474'000 requested by the Court to 303'000, so it is a reduction of about 170'000 euros here. Someone, that I do not remember who it was, mentioned that to me that I should put that on the list. Belgium please.

Belgium (translated from French): Thank you Mr Chairman. The budgetary impact of the CBF recommendation is ... cost neutral, but nonetheless the issue comes up on the feasibility of foreseeing temporary posts for such functions; in other words protection of victims and witnesses and, obviously our concerns here are linked to the ongoing nature of the activities, they need to ensure that information is kept confidential and to have security information on the people who are working in this function and we are taking into account also the necessary timescale and that in order to get those security clearances - so that the proposal fits into temporary posts if there is no change in the budget implications to that. Obviously, it raised

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concerns for our delegation and I would therefore like to have the opinion of other colleagues on that issue. Thank you.

Chair: Thank you very much. Yes, I am sure that is possible. Uganda, you have the floor.

Uganda: Thank you very much Mr Chairman. I prefer to listen to other delegation, but I would like to comment on witness protection and the travels on the different areas where the witnesses may be found. If the requirement is that it is cost neutral, I do not know if this is meant that it costs zero. But take an example of Northern Uganda. People are displaced and, once they are contacted by the Prosecutor, it exposes them to a lot of contribution, so they need to be protected. The mere fact of talking to someone to get information exposes them to a lot of dangers. Therefore you have not only to protect that particular person, but also many people living in the house, not only just the witness. And not only for a day! These costs have to bear in mind and we do not know how long it will take. Thank you.

Chair: Thank you very much. Maybe I expressed myself somehow in a bad way. I meant with cost neutral the first part of the recommendation where the CBF does not approve three P-2 that would allocate those resources for GTA and one additional P-2 somewhere else, so I thought that that part was cost neutral, but it does not mean that it costs nothing. Uganda.

Uganda: Sorry Mr Chairman that I take the floor again. I just wanted to say that those positions in light of the majority of the work that is required. Those positions are actually needed. I mean, who is going to protect these people and who is going to coordinate? There is some oversize involved and it must be carried out by people of a certain grade or hierarchy. So therefore, even that I just mentioned that background without talking about taking care of these responsibilities. Here it is important to fund the official protection and coordination work. Thank you.

Chair: thank you very much. Spain, please.

Spain (translated from Spanish): Thank you Mr Chairman. Our delegation is aware of the fact that in our negotiation process, like this proposal by the CBF, there is temptation that is difficult to remove oneself from. Obviously the temptation is just to create temporary posts rather than permanent post. This is especially in an organization such as the ICC which is going to be in a permanent state of change, obviously because of the factors with regard to the trials, much more than other organizations. And what we would like to put forward to this Assembly is enough caution and I think it is important to the first part of our decision today.

There are certain key posts which for certain reasons require a very special experience and a special training and I see what Uganda said the fact that we need this kind of post. Now, if from the point of view of planning we need them and it is cost neutral, whether they are in a short term or the long term, then there would be no negative consequence in ensuring that in the staff policy of the Court in this particular area, we define the profile of this post, which would be sufficiently attractive in order to seduce (and I think this is the right word) the sort of professional we are looking for, because for posts of this type, I think there are very few candidates who really could achieve the level of excellence which is actually required for this post. An organization of a professional nature must have professionals as coordinators. Thank you.

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Chair: Thank you very much. Trinidad & Tobago.

Trinidad & Tobago: Thank you Mr Chair. Like Italy we want to highlight the absence of a representative of the CBF. We would say it is impolite rather than disruptive that there is no one here. The Court has made a proposal - the CBF is a creature of the Assembly, we have the CBF recommendations and I do not have the opportunity to pose a question to the CBF. So I put a question to the Court. Due to you Mr Chair, the CBF, Mr Registrar, has recommended that your proposal for the establishment for this position into GTA without affecting the type of work contemplated for the protection of victims.

Chair: Thank you very much. Before giving the floor to Mr Cathala, I will finish the list of speakers. Next is the UK.

UK: Thank you Mr Chairman. Firstly, on the question of the presence of the CBF, my understanding, and I may be incorrect, is that the CBF task is what is asked of it by both States Parties and those who seek to take advantage of the input of the CBF. So, I think it would be unwise of us to make judgments about the reasons or not for their participation, particularly when they are not in a position here to give us their feedback on a particular point.

I am moving to the question on hand. You will be delighted to know that I want to reverse my earlier comments on the overall budget. I just want to emphasize that specific consideration of this and other individual aspects must be seen in the wider context on the overall budget on which I spoke earlier. The United Kingdom does not support second guessing the view of the CBF on this or other points. The CBF are impartial technical experts involved as a result of the expertise in such matters. They have made a consideration based on all the information provided to them. I have no doubt and I hope that the dialogue between the Court and the CBF will continue on such aspects and I know there are commitments on both sides for that to continue and also if the States Parties continue to feed in to that dialogue. We note once again the flexibility that the Court possesses within major programs and we would highlight that once again in this case, but both as a matter of principle and in relation to this specific question, we do not support second-guessing the judgment of the CBF in this regard and we support endorsing that recommendation as it stands. Thank you.

Chair: Thank you. France, please.

France (translated): Thank you Mr Chairman. You know the interest for the protection of victims and their participation in trials in the procedures of the Court and, clearly, with regard to that point, we are very concerned in ensuring for victims and witnesses the necessary protection to enable them to participate in discussions before the Court and in the procedures. We want to ensure also that the security recommendation of the CBF, as we find it in paragraph 75 of the report, surprises a different ... with regard to the conversion of this post. From the strict budgetary point of view, I do not think that the conversion of this post into temporary post would be of any benefit to States. I do not think that there would be any financial benefit here, but from the point of view of the expertise and competence of the person to work to ensure the protection of witnesses, I think that we have some doubts, there are some quite differences in this regard in coming to The Hague to work in a temporary or permanent position with regard to ensuring the protection to witnesses. We know that the

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travel for the staff responsible for that security and protection are required. We wonder why the CBF does not want to approve the request for that travel.

Since I have the floor I would like to take just a few minutes to come back to the procedural point, which you raised and which went too quickly off the table to react to it, and that was on translation. We think this is a very important point to ensure that the Court has the necessary means to enable it to be balanced in the use of its two working languages, French and English, and beyond that to ensure that it is able to work, taking into account linguistic diversity of our world as a whole. And from this point of view, we have concerns with regard to the side that, from this year on, it looks likely that the Lubanga trial will be opened. We have some concerns that the CBF is proposing not approving the sums requested by the Court for translation and the fact that today, if you look at the website, the decisions of the Chamber, you can see that from right now there is a significant delay between the English version appearing and the French version appearing. Now I know how much you are aware of this issue and we are very grateful to you for the fact that today we have a possibility of working in the WG on the budget and finance with interpretation and we hope that this will be the case in the future. We caution with great interest this possibility of giving the Court the necessary means to ensure ongoing linguistic diversity. Thank you very much.

Chair: Brazil, you have the floor.

Brazil: Thank you Mr Chairman. My delegation wishes to take the floor just to manifest that we are in favor of the recommendation issued by the CBF in paragraph 75. Even though we consider the protection of witnesses and victims an essential issue, we think that the CBF has an important role and we should have very important reasons not to accept the recommendations issued on this particular point. So, in sum, we favor this recommendation. Thank you very much.

Chair: Thank you very much. Italy, first.

Italy: Thank you Mr Chairman. Witness protection is a complex issue, which has many technical implications. Assessing why the outcomes of the dialogue between the CBF and the Court have led the CBF to such recommendation is a quite difficult here. Once again, we think of the importance to have a CBF representative in the room during the debate of the document containing financial issues. Just to be clear on this point, we do not put any blame on the CBF. We simply suggest that an arrangement should be made before the next budget session. I have said that we have full trust in the CBF technical expertise, but there are still some outstanding issues that would need to be examined when considering the recommendation of the CBF.

Analysis that should have been done by the CBF in dialogue with the Court, once considering what the actual duties of the proposed professionals in the budget proposal from the Court and why they could have been switched with GTA positions. GTA can be recruited, we understand, not only from private companies but also from government officials. If this is the case, the skills of the staff would not be less than the skills of the professionals recruited within the Court. Another issue is for how long should the personnel tasked with the protection of a witness. This personnel could change over time even under national scenes. This might testify that GTA personnel could perform these functions for the ICC.

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There are other issues: we understand that this could have been subject of discussion between the Court and the CBF. We do not favor anyway that this kind of discussion be resumed during the ASP; that it would have been important to have a word of qualification from the CBF here and we said that we have good reasons, because we trust the CBF to support the recommendations. Thank you.

Chair: Thank you very much. The last speaker is Australia.

Australia: Thank you Mr Chairman. We recognize the vital work of the Victims and Witnesses Unit and the issue in general. I'd like to reiterate as a matter of principle the importance my delegation attaches to the work of the CBF, who are chosen for their technical expertise and their impartiality, and we believe the current issue should not be established at the current stage. We support the work of the CBF provided. Thank you Mr Chair.

Chair: Thank you very much. Mr Cathala please.

Mr Cathala (translated): Thank you Mr Chairman. I would like to comment on three of the points of this debate. The first regards the victims and witnesses, the second the flexibility and the third the translation.

With regard to the first point, which is on the protection and on that paragraph in the CBF report, I would like to say that the Court is very aware of the issue of whether putting forward permanent or temporary posts, it is capitalized ... The permanent posts are fixed posts of one, two, three years duration; so after these one, two or three years duration there is a re-evaluation of those so-called permanent posts. I have been ... the idea that countries which have protection should intervene and help the Court because this expertise could be very helpful.

With regard to why we decided that we needed six posts, we thought that we needed four next year. It is absolutely certain that those protection posts are going to be needed throughout the life of the Court. Obviously the persons in those posts may change, but the post as such will be needed. Secondly, there are very few potential candidates for these posts. Why? Because there are actually quite very few countries that have services for protection of witnesses which are structured in this way. This is why the pool of candidates is quite limited. It is very difficult therefore to attract good candidates and we are afraid that there are very few candidates that would agree to relinquish a fixed post in their national protection team to take up a temporary post here. What about the time to train these people to the particular needs of the Court? So, we don't want to waste this time every year with different temporary people. And finally, if we recruit protection persons under GTA post, it is on margin if we could have the same quality of the people we could have if we offered them fixed posts, which are posts of 1, 2 or 3 years duration only.

Secondly, on the issue of flexibility, there were several remarks during the debate on it. Now, flexibility of course does enable us to give the possibility of developing the budget according with the reality of the year. We can't think of everything ahead of time, but we cannot necessarily find flexibility every time.

Finally, coming to the issue of interpretation and translation, I would like to respond to the question put forward on this: the posts we proposed are based on rational and benchmarking,

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because currently we have one to two months delay before translations can appear on the website. Now, we calculated that we should have two and half translators per one reviser in the translation service of the Court and currently we have four translators per one reviser. Now, our aim - that you can find in the paragraph 289 of the budget - there is to have the 13 pages revised per one page translated. Now we are not able to achieve this level if we don't have these P-4 people. One P-4 is for the French, the other P-4 is for the Swahili. Currently we have GTA translators for Swahili and this is, of course, because we don't know if we will be needing them in the future. But we do need P-4 revisers for Swahili, because of those translations.

Chair: We have already passed one o'clock, so we have to interrupt our debate here and we take it up again at 4:30 this afternoon. There are informal consultations under the German chair, of Mexico and Malaga in Europe 2 room. This meeting is adjourned.