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Report of the Court on options for outsourcing translation work^{*}

Point I

“The Committee recommended that options for outsourcing translation work should be explored with the aim of finding lower cost providers, particularly for less sensitive work, and requested the Court to provide a report to the Committee on outsourcing options at its next session.”¹

1. Article 50 of the Rome Statute provides as follows:

“The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages.”

2. The decisions requested to be translated under article 50 are all externalised for Arabic, Chinese, Spanish and Russian. The translations into these languages are sent to external translators who are qualified, experienced and sought-after translators and revisers in the legal field. A number of them are also used by the International Court of Justice (ICJ), the Organisation for the Prohibition of Chemical Weapons (OPCW) and United Nations agencies in Geneva for complex legal documents. Judicial decisions represent the jurisprudence of the Court and as such are translated to the highest level of quality required for translations (high stakes, jurisprudence, publications).

3. In order to deal with less complex and less sensitive documents, mostly administrative or open source documents, a call to tender for translation agencies was conducted in 2003. Regular and urgent rates were determined through this process. The rates that the Court pays its external translators have not changed since 2003 when the Court Interpretation and Translation Section (the Section) started its work. The current rates are: 0.15 euro per word for regular translations, and 0.22 euro per word for urgent translations.

4. Annex I to this report offers a comparison of average rates by various organisations paid for translations per 1,000 words.

^{*} Previously issued as ICC-ASP/7/CBF.1/4 and Add.1.

¹ *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. II, part B.2, para. 70.

5. The Section has found that better quality translations are produced by individual external contractors selected after testing compared to translations agencies. However, finding more external translators/revisers to outsource to, who would agree to work for less, would not increase the translation production. Cheaper external sources cannot produce more translations. Cheaper outsourced translations by the Court mean lower quality translations that have to be in-depth revised in-house, which clogs up the translation-revision workflow and results in delays that in turn have to be resolved by additional resources that were planned for other projects.

6. Article 87, paragraph 2, of the Rome Statute provides as follows:

Requests for cooperation and any documents supporting the request shall either be in or accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

7. The current 21 languages in which all requests for judicial cooperation have to be produced are: Albanian, Arabic, Bulgarian, Chinese Mandarin, Croatian, English, French, Georgian, German, Greek, Italian, Japanese, Korean, Latvian, Polish, Portuguese, Russian, Serbian, Slovak, Slovenian and Spanish.²

8. Requests for judicial cooperation include requests for arrest and surrender, warrant of arrest, requests for the freezing of the assets, judicial decision in relation to the requests, among other documents. Such requests, also accompanied by *notes verbales* are to be translated into the above languages. The judicial cooperation also includes files received from countries in the relevant languages as well as any correspondence that ensues. This necessitates additional training of staff of the Section's translation units in languages of judicial cooperation so that the translation into English or French of this correspondence would not have to be outsourced too.³

9. In most cases of primary judicial cooperation documents, the Section outsources the translations as it does not have the requested languages in-house. In order to have reliable external resources for the relevant languages and to expedite the translations, another call to tender was organised in October 2007 by the ICC Procurement upon the request and the specifications given by the Section.

10. Annex II contains the table of agencies that have sent in their bids and their response to the Section's specifications. At present, the Section is in the testing phase of these translation agencies as planned.

11. Current externalisation rates for the Court Interpretation and Translation Section: 2006: 15-16 per cent; 2007: 22-23 per cent. If we compare this rate to other organisations in 2003:

(a)	United Nations Headquarters (UNHQ)	20 per cent
(b)	United Nations Office at Geneva (UNOG)	7 per cent
(c)	United Nations Office at Vienna (UNOV)	15 per cent
(d)	International Civil Aviation Organization (ICAO)	24 per cent
(e)	World Health Organization (WHO)	25 per cent

² It is to be expected that the number of the languages for judicial cooperation will go up as new state parties join and choose the language for judicial cooperation also based on the fact that the Court bears the costs.

³ A State Party recently sent a number of questions in relation to one of the cases to the Court in a language that is not on the list of the languages that the Section's translators work from.

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|-----|--|--------------|
| (f) | United Nations Educational, Scientific,
Cn Cultural Organization (UNESCO) | 35 per cent; |
| (g) | World Meteorological Organization (WMO) | 40 per cent |

we can see that externalisations (even if we take into account the age of the report) vary a great deal from organisation to organisation.

Point II

“The Committee noted that the International Criminal Tribunal for the former Yugoslavia and some other international organizations had achieved significant savings from outsourcing translation functions.”⁴

12. The Section has extensive contacts with the language services of the three other international organisations based in The Hague. Two of them are judicial institutions and one is a highly specialised agency (ICJ, ICTY, OPCW). Best practices and experiences are shared among the organisations.

13. In the case of the ICTY, main “savings” in the “translation functions” are known to the management of the Court Interpretation and Translation Section and are as follows:

- (a) Temporary contracts were issued to non-qualified staff to translate for the Office of the Prosecutor which needed to have potential evidence translated in relation to a disclosure deadline. In this specific case, 90 GTA contracts were issued for G-2 and G-3 staff (Data Entry Clerks) who worked on a tight roster to finish the project which was financed from outside sources, i.e. outside the regular ICTY budget. The replication of the working conditions that were allowed to happen at that time at the ICTY will not be tolerated at the International Criminal Court (ICC).⁵
- (b) The Document Management System was introduced in the ICTY after almost ten years of on-going translations to avoid duplication which has plagued the ICTY language services as there was no unified document management. Some savings resulted due to the fact that duplications ceased.⁶
- (c) Another savings in the ICTY budget was made when the French transcript was abolished in a case where there were no francophone parties in the proceedings. It has to be remembered that the court reporting, i.e. transcripts of hearings, are included in the budget of the Conference and Language Services Section of the ICTY (CLSS) which is not the case at the ICC. Moreover, the real time French transcript which was not used in the ICTY (where only English transcript is available in real time) will be used at the ICC.⁷

⁴ *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. II, part B.2, para. 70.

⁵ Weekends and evening work without compensation with numbers of words translated (by unqualified staff) exceeding all norms.

⁶ At the ICC, a document management system was in live production in the Division of Court Services for the Translation and Interpretation Section in July 2007. Prior to that, the Section already had a translation database which ensured no duplications. The translation management system (which is a module of the Court Management System – CMS) which is currently in use was developed to the specifications of the Registry’s Language Services, in consultation and with full cooperation of the Language Services Unit of the office of the Prosecutor.

⁷ See decision ICC-01/04-01/06-1091 of 14 December 2007 on the simultaneous French transcript.

14. While the Court Interpretation and Translation Section is eager to take on practices from other organisations that will ensure savings, a number of terms and references governing the language regime at the ICTY are very different at the ICC.

Article 50, paragraph 2 of the Rome Statute provides as follows:

“The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.”

15. ICTY was never a bilingual Court that the ICC is striving to be in accordance with its Statute and its Strategic Plan. All official external and internal communications, e.g. administrative instructions, are issued in both English and French.

16. **It is our premise that the achievement of bilingualism should be based on the recruitment of staff capable of working in both English and French, and not on the capacity of the translation resources of the Court to uphold article 50 of the Statute.** However, at present, the bilingualism objectives of the Statute – and the Strategic Plan of the Court - are far from reached and the lack of bilingual staff is compensated by the burden on the translation units of the Section.

17. Since it was felt that recruiting bilingual staff would impinge on the principle of geographic distribution, the staff recruited are overwhelmingly English speakers. This has a serious impact on the documents requested for translation into English or French. Very few documents of administrative relevance are drafted directly in French. For example, all vehicle rental contracts for field offices in French-speaking countries had first to be translated into English, even though the final agreements were signed in French, the work carried out to draft the final agreement (procurement, financial, legal) had to be done in English. This type of discrepancy between the ambition of the Statute, the strategic plan of the Court and the reality of the implementation of the former and the latter is the main reason for additional burden on the translation resources.

18. In addition, the Section is supporting several projects in assisting the staff of the Court to work with both working languages, by giving its staff for Language Proficiency Examinations organised by Learning and Development Unit of the Human Resources Section at the ICC,⁸ and by organising courses in practical French for the judges where a senior staff member of the Section with university teaching experience coaches judges on how to read decisions and judicial documents in French. The courses are much appreciated as useful and relevant and will no doubt continue.

19. Article 50, paragraph 3 of the Rome Statute provides as follows:

“At the request of the any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be sued by such a party or State, provided that the Court considers such authorization to be adequately justified.”

(See also Rules 40, 41 and 42 of the Rules of Procedure and Evidence).

⁸ The Learning and Development Unit of the ICC co-organises the Language Proficiency Examinations with other international organisations in The Hague. The Section has been supporting the oral examinations that are recorded and sent to centralised examination centre in the UNHQ since December 2004.

20. ICTY and ICTR are Tribunals dealing with **one** situation. The ICC is currently dealing with **four** situations. Registry's Language Section is expected to deal with several languages in each situation.

A list of all languages used in the ICC is set out in table 1 below.

Table 1: Languages used in the Court

ISO 639-3	Language name	Use in the Court
AAE	Albanian	Judicial cooperation, article 87
ACH	Acoli	Situation language
ALZ	Alur	Situation language
APD	Arabic, Sudanese spoken	Situation language
ARB	Arabic, standard	Official language, article 50
BUL	Bulgarian	Judicial cooperation, article 87
CMN	Chinese Mandarin	Official language, article 50
DEU	German	Judicial cooperation, article 87
ENG	English	Working language, article 50
FRA	French	Working language, article 50
FVR	Fur	Situation language
ELL	Greek	Judicial cooperation, article 87
HRV	Croatian	Judicial cooperation, article 87
ITA	Italian	Judicial cooperation, article 87
JPN	Japanese	Judicial cooperation, article 87
KAT	Georgian	Judicial cooperation, article 87
KDI	Kumam	Situation language
KOR	Korean	Judicial cooperation, article 87
LAV	Latvian	Judicial cooperation, article 87
LED	Lendu	Situation language
LIN	Lingala	Situation language
MLS	Masalit	Situation language
NLD	Dutch	Judicial cooperation, article 87
POL	Polish	Judicial cooperation, article 87
POR	Portuguese	Judicial cooperation, article 87
RUS	Russian	Official language, article 50
SAG	Sango	Situation language
SLK	Slovak	Judicial cooperation, article 87
SLV	Slovenian	Judicial cooperation, article 87
SPA	Spanish	Official language, article 50
SRP	Serbian	Judicial cooperation, article 87
SWC	Swahili, Congo	Situation language
SWH	Swahili, Tanzania	Situation language
TEO	Teso (Ateso)	Situation language
ZAG	Zaghawa	Situation language

Please also note that two new situation-related languages are expected to be added, Sango (for Central African Republic and Alur DRC variant for the Democratic Republic of the Congo).

Point III

The Committee “expressed concern at the low translation rates applied by the Court and the increasing burden of translation costs on the budget of the Court.”⁹

21. The “translation rate applied by the Court” is taken to mean “workload” or numbers of words translated per day. While the Court Interpretation and Translation Section follows the 1,500 words per day which is the usual workload standard for international organisations (they vary between 1,300 and 2,300 depending on difficulty, subject-matter and whether the translation is self-revised) the translations requested from the Court Interpretation and Translation Section are predominantly highly-specialised legal texts that require extensive searches in relation to references.

22. *Example:* Decision on the confirmation of charges,¹⁰ without its annexes comprised 56,304 words, i.e. 37,992 words in the text and 18,312 in the footnotes. This represented 159 physical pages. To get the actual number of standard pages, 56,304 words are divided by 300 words per page which revealed 187,68 actual pages. The footnotes added 30 pages to the total. There were 559 footnotes which required research in witness statements, evidentiary material and case-law. The decision was in the French original requiring the sourcing of the English original of all decisions and participants' statements quoted, even when source is not referenced in footnotes e.g. for the summary of the prosecution's position. The translator must check the terminology and source it, if not retrieve full "hidden" quotes in the text itself when there are no direct quotation marks. For the majority of the Section's translators this research work is done alongside translation. The Section has one Reference Assistant since January 2008. The Section has no typists and no proofreaders, which means that all inputting of corrections following revision, and proofreading tasks have also to be included in translators' workload.

Point IV

The Committee was informed that the Section undertook work for several other areas of the Court.

23. The mandate and the organisational context of the Court Interpretation and Translation Section was established and approved in 2004:

Provision of high quality language services to ensure efficient conduct of Court business; the Section provides language services to the Presidency, Chambers and Registry, i.e. translation, revision and editing of Court documents; consecutive and simultaneous interpretation required for meetings, trial hearings, press conferences, specialised seminars, diplomatic briefings and other events, held in-house or outside the seat of the Court; recruitment, training, and accreditation of field interpreters required to work for Registry officials in the field and/or at the seat of the Court; provision of relevant information ensuring that all service users are familiar with the procedures and types of all the language services provided and with the requirements of the professions in question.

24. The Language Services Unit of the Office of the Prosecutor has no revisers. The current agreement exists between the two services whereby documents translated by the

⁹ *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. II, part B.2, para. 70.

¹⁰ ICC-01/04-01/06-803: Decision on the confirmation of charges.

Office of the Prosecutor will not be revised and can be used in court. However, in the event that a participant challenges such a translation, it will be revised by the Court Interpretation and Translation Section. Furthermore, for all the events that require interpretation that are connected to the Court, regardless of which Organ has organised them, interpretation services are provided by the Court Interpretation and Translation Section.

25. While it is true that one “other area of the Court” could be considered the Secretariat of the Assembly of States Parties (the Secretariat) and that the Section does provide substantial administrative services to Secretariat by recruiting interpreters on behalf of the Secretariat, corresponding with them and dealing with all administrative issues after the meetings in question are over (e.g. salary slips relayed by the Budget and Finance Section through the Section, questions of payments, delays and additional payments should the sessions run over) this is done in accordance with resolution ICC-ASP/2/Res.3,¹¹ establishing the Permanent Secretariat of the Assembly of States Parties to the International Criminal Court.

Point V

“The Committee agreed that it was appropriate for interpretation and translation functions to be as centralized as possible, but felt that managers responsible for generating work should be responsible for managing the associated costs. Accordingly, the Committee recommended that the Court should consider distributing costs for such work to relevant areas in the proposed programme budget for 2009, and ensure that managers are accountable for the expenditure of such funds.”¹²

26. The Section has drafted the past two budgets on the basis of needs of clients which it solicited in writing and received responses.

27. In order to improve accountability, a new system feature will be created in the Court Management System (CMS) in 2009 for translation requests. A new field for monitoring translation requests per requesting unit will be added. This new field will show the annual translation capacity allocated to this unit, based on the needs. As the unit creates a new request the amount requested will be automatically discounted from the total of words allocated to the unit.

28. The Section will allocate the amount of words per client unit at the beginning of the year, projections from previous year’s statistics and the relevant assumptions. If the unit uses more words/pages than the words allocated to them at the beginning of the year, the number in this field will go red (into minus) but it will still be possible to request the translation. Subsequent policy decision will have to be made on when requesting units will have to pay for their own translations. However, **with the experience of the Section of the past five years, it has been proven that in disciplining the clients of the Section in relation to the quantity of the translation requests, it is more effective to focus on training the clients**

¹¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003* (United Nations publication, Sales No.E.03.V.13, ICC-ASP/2/10), part III, resolution ICC-ASP/2/Res.3, annex, para. 4, whereby “[t]he functions of the Secretariat shall be to provide the Assembly, its Bureau, the Credentials Committee, the Committee on Budget and Finance, the Special Working Group on the Crime of Aggression [...] with substantive servicing as well as administrative and technical assistance in the discharge of their responsibilities under the Rome Statute, where applicable by means of pooling with resources available with the Court.”

¹² *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. II, part B.2, para. 68.

towards improving the timing and planning of requests rather than a simple accountability exercise which will nevertheless be implemented as described above.

Point VI

“In subprogramme 3340 (Court Interpretation and Translation Section) the Committee was concerned at the increasing expense of interpretation and translation work despite the absence of a trial.”¹³

29. The Registry’s translation service translates the documents requested for translation. The demand is not equal throughout the year – an issuance of arrest warrants will, for instance, generate amounts of work that are disproportionate with the resources of the Section. The Section as a rule does not provide language services *proprio motu* but translation and interpretation services are requested by clients as defined above. The needs of the clients are determined by the activities of the Court, for instance pre-trial. Pre-trial activities relate to determining major legal issues before the trial and will require substantial amounts of legal arguments that will subsequently cause more translation requests.

30. While the Court Capacity Model attempts to quantify the needs for one stage of the proceedings and possibly explains the above question, it is important to stress that the Court Capacity Model is limited to that one stage which is the trial, omitting in its calculations the other stages of the judicial proceedings, beginning with the investigations, analysis,¹⁴ pre-trial, appeal, sentence and reparations. The current number of filings in pre-trial stage in four situations without an actual trial is higher than the number of filings in 6 simultaneous trials in the ICTY. An actual trial consists of 80 per cent witness testimony while the 20 per cent will consist of status conferences, legal arguments and opening and closing statements. In this context, the legal arguments prevail in the pre-trial stage when substantial issues have to be discussed in court, submissions filed by the participants, and subsequent decisions made by the judges. Throughout these processes, the Section performs crucial functions. See annex III containing the functional organigram of the Section.

Conclusions

1. The current rate of externalisation of translation by the Section is around 20 per cent which is in line with the size of the organisation and its needs.
2. ICTY experience is borne in mind as is the experience of other similar organisations. Relevant examples are used in the interest of the ICC.
3. The Section’s translators are translating on average the accepted professional standard of words per day. Improvement can be achieved by recruiting professional proofreaders.
4. The Section is a service section; it is functioning on the basis of its mandate as defined in the Statute and Rules, and further expanded in the Regulations of the Court and the Regulations of the Registry.
5. It will be technologically possible in 2009 to have an overview of spending of each client Section at any moment. Decisions in relation to the spending of judicial clients on translation cannot rest with the Section.
6. The Section works for all the stages of judicial proceedings and translating and interpreting for the trial is only one part of its functions.

¹³ Ibid., para. 68.

¹⁴ Even in these stages, the Section provides services to the Registry units and sections that are in field or linked to the field (Security, Victims and Witnesses Unit (VWU), Procurement).

Annex I

Price per word of external translation

Usual rates paid for contractual translation as obtained from Language Divisions concerned or from free-lance translators they contract (per thousand words).¹

Organization	Location	Rate, including electronic version
Council of Europe	Strasbourg	€ 120-134
FAO	Rome	\$ 130-170 according to translator's level
IAEA	Vienna	\$ 153-163
ICAO	Montreal	\$ 150
International Court of Justice	The Hague	\$ 180/190/200+
ICRC	Geneva	SF 260-300
IFAD	Roma	\$ 140-160
ILO	Geneva	SF 210-250
IMF/FMI	Washington	\$ 170-200
IMO	London	£ 95
INTERPOL	Lyon	€ 130
IOM	Geneva	SF 220-240
International Tribunal for the Law of the Sea	Hamburg	SF 242
ITU	Geneva	SF 126- 250
OECD	Paris	€ 130-150
OPCW	The Hague	€ 150
UNESCO	Paris	€ 32-51 (per 320 words)
UNHCR	Geneva	\$ 210
UNHQ/UNOG/UNON/UNOV	New York	\$ 180/190/200+
WFP	Roma	\$ 120-160
WHO	Geneva	SF 220-260
WIPO	Geneva	SF 138-264
WMO	Geneva	SF 220-260
WTO	Geneva	SF 198-253

¹ <http://www.aipc.ch/>

1. The UN (UNHQ, UNOG, UNOV, UNON) and many other organisations are usually able to guarantee a minimum number of words to send to external translators based on the quantity of material that requires translation and is therefore able to ensure lower prices than other organisations. Specialized UN agencies and international organisations whose translation needs can be compared to the ICC, do not have a quantity they can guarantee to their usual external translators which would allow a price drop.

2. Moreover, the highly-specialised agencies all have higher rates for external translation than the UN because of the type of documents they need translating (specialised in law, in science, in patents). In comparison to the table above, a staff translator at the ICC/ICJ/ICTY²/OPCW translating a document costs the organisation between 0.16 and 0.27 euro per word. This rate also reflects the staff's availability to undertake urgent work, including working after hours and weekends (e.g. resulting from deadlines for appeals in the case of judicial institutions), ability to use language and reference tools, databases and systems specific to the organisation. Staff translators can also translate highly confidential documents which are regularly requested for translation in international courts. The majority of documents requested for translation are authored by staff of the Court. The contact between the authors and the staff translators contributes to the quality of the translation. In addition, the Section's senior translators, editors and revisers carry out editing and paralegal editing of major decisions, jointly working with Legal Officers from Chambers. This editing ensures not only the subsequent quality of the translations but also the quality of the judicial decisions of the Court in general.

3. An additional specificity of the International Criminal Court is that the African languages that are used in the current cases before the ICC cannot be easily found on the external translators market (DRC Swahili, Lingala, Acholi). Staff translators in these languages are especially trained in terminology and usage in relation to the ICC and in some cases legal terminology has to be codified with the help of expert language consultants. If external translators are used, they all have to be trained first, regardless of language.

² ICTY's rate for external translations varies between 0.15 and 0.17 euro per word.

Annex II

Bids by translation agencies in December 2007

STIC Requirements	Apollo Vertalers (Netherlands)	CLS Communication (Switzerland)	Euroscript (Luxemburg)	IDEST (Belgium)	MOSAIC (Canada)	Multi Lingual (Canada)	Pearl (United Kingdom)
Languages as above	All	only CNM-DEU-ENG-FRA-NLD-POR-SPA	all	all except Japanese	all	All	All
Documents "camera ready"	no indication	no indication	no indication	no indication	no indication	no indication	no indication
Timely service	no indication	no indication	no indication	no indication	no indication	no indication	no indication
Accountability	no indication	no indication	no indication	no indication	no indication	no indication	no indication
Normal Rate (€/word)	from 0.17 to 0.21	0.5	from 0.17 to 0.29	from 0.15 to 0.40	from 0.19 to 0.23 (depending on the amount of words)	from 0.19 to 0.23	from 0.16 to 0.19 depending on the language and a flat fee of 72 euros minimum charge under 400 words
Urgent Rate (€/word)	from 0.22 to 0.48	0.65	30% more	from 0.167 to 0.225	from 0.27 to 0.31 (depending on the amount of words)	from 0.23 to 0.31	from 0.20 to 0.24 depending on the language and a flat fee of 72 euros minimum charge under 400 words
Background in legal and diplomatic terminology	no indication	yes (Swiss banks)	yes	yes (European Union)	no (Canada only)	no indication	no indication
International Experience	yes	yes (Swiss banks)	yes	yes (European Union)	no (Canada only)	no indication	no indication

