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Container **S-0042-0001: OLA - General (incl. Trust Fund for ICJ disputes)**

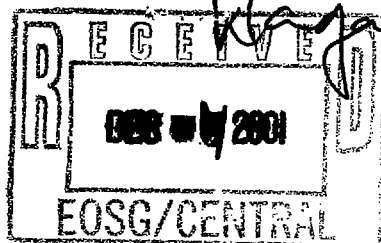
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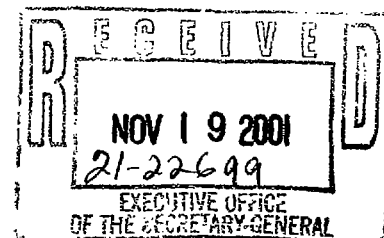
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Sierra Leone
OLA
Note to the Secretary-General

Special Court for Sierra Leone



SP, FYA
Thanks LS
19/11/01

1. During the informal consultations of the Security Council on 8 November 2001 on the Special Court for Sierra Leone, I briefed the Council on the question of the temporal jurisdiction of the Court, the level of the contributions and the preparation for the planning mission to Sierra Leone to discuss with the Government the practical arrangements for the establishment and operation of the Special Court. Members of the Council expressed concern at the long delay in the establishment of the Court and stressed the need for an early dispatch of the planning mission before the election in Sierra Leone. Some suggested that the decision to fund the operations of the Special Court from voluntary contributions should be revisited (Norway, Ireland, Mauritius and Jamaica).

2. The total amount pledged for the first year of operation of the Special Court (\$15.6 m) has not yet been received, although the conditions requested by two major donors have by now been removed after lengthy discussions with the Controller's Office. While it is expected that the total pledged amount will be transferred in the coming days, the shortfall in the pledges for the second and third years remains considerable. You will recall that it was the understanding of the Security Council that the implementation of the Agreement for the Establishment of the Special Court should commence "only after it is ascertained that sufficient contributions are in hand to finance the establishment of the Court and 12 months of its operations and pledges equal to the anticipated expenses of the following 24 months have been obtained". The planning mission, originally scheduled from 26 November to 7 December 2001, has been postponed due to the inability to access the necessary funding (since the Controller has not yet established the Trust Fund), as well as the unavailability of representatives of member States who as members of the Management Committee are scheduled to accompany the mission.

3. On 14 November 2001, I convened a meeting of the group of interested States followed by a meeting of the Management Committee of the Special Court to discuss, among others, the level of the contributions (copy of my briefing notes is attached). A number of States reiterated the budgetary constraints imposed by their national legislation on pledging beyond the current fiscal year and the following year. They expressed concerns that if the Secretariat insist on those conditions the establishment of the Special Court would be further delayed. Moreover, they argued, States need to see the start of the implementation process before they would commit themselves for

not attached

See page 2 and annex to meeting suggested by Mr. Corbett.

done, meeting on 24/11

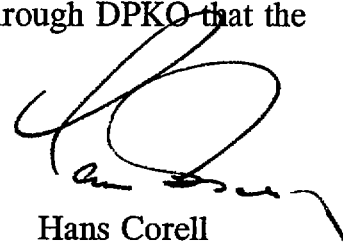
20 Nov.

additional pledges. They urged the Secretariat, therefore, to commence the operation and dispatch the planning mission as soon as practically possible (Canada, U.S). One State added that the budget estimates for the first year of operation are only estimates, and that the amount estimated may not even be spent during the first year (The Netherlands). The U.S proposed that a new date for the planning mission be tentatively fixed, and further consultations be held on the selection of candidates for the judges and the Prosecutor. It was, accordingly, decided to re-schedule the mission tentatively from 7 to 17 January 2002.

4. At this stage of the process when it seems highly unlikely that additional pledges for the second and third years of operation of the Special Court will be forthcoming, a decision is needed as to whether the Secretariat should insist that the conditions for pledges for the additional 24 months be fully met before it commences the operation, or whether it begin the implementation process on the understanding that if pledges for the two subsequent years are not forthcoming, the Secretary-General could at any time revert to the Security Council with a request to reconsider the financing of the Special Court.

5. In the light of the clear message received from the Security Council that implementation must begin and the remarks of the major donors at the meeting on 14 November 2001, I would appreciate it if a meeting to discuss financing could be arranged at your convenience with the Departments concerned. In the meantime, at the request of the members of the Management Committee we have circulated a draft Terms of Reference for the planning mission to them as well as the concerned Secretariat Offices. We have also advised UNAMSIL through DPKO that the November mission has been postponed.

11? Corell
to provide
list of partici-
pants.



Hans Corell

16 November 2001

cc. Mr. Prendergast
Mr. Guéhenno
Mr. Halbwachs

**The Legal Counsel's Briefing Notes for the Group of Interested States for
the establishment of the Special Court for Sierra Leone on 14 November 2001**

1. The United Nations and the Government of Sierra Leone have reached an agreement, in principle, on the draft Agreement for the Establishment of a Special Court for Sierra Leone and the Statute annexed thereto. The Government of Sierra Leone, however, is seeking to re-open the question of the temporal jurisdiction of the Court and extend it to 1991. After extensive consultations, the Office of Legal Affairs suggested in a letter of 19 October 2001 to the Permanent Mission of Sierra Leone that the beginning date of the temporal jurisdiction of the Court established at 30 November 1996, be maintained. We are still awaiting the reply of the Government.

2. The status of the contributions to the Trust Fund for the Special Court for the first year of operations is as follows, based on figures received from the Controller on 8 November 2001:

Period	Budget Estimate	Pledged	Contributions Received (Millions of US dollars)	Shortfall
First year	\$16.8	\$15.6	\$10.4	\$ 6.4
Second year	\$20.4	\$13.0		\$ 7.4
Third year	\$19.6	\$ 7.4		\$12.2

We understand that additional contributions will be paid within the next few days.

3. You will recall that in his letter to Member States dated 23 March 2001, quoted in his letter to Member States dated 18 June 2001, the Secretary-General stated that:

"...the Council has agreed with my proposal (contained in S/2001/40 of 12 January 2001) that implementation of the revised Agreement shall commence only after it is ascertained that sufficient contributions are in hand to finance the establishment of the Court and 12 months of its operations and pledges equal to the anticipated expenses of the following 24 months have been obtained." (emphasis added)

As it appears, the contributions and pledges fall far short of the conditions set by the Secretary-General in his proposals.

4. The Office of Legal Affairs has made preparations, including drawing up draft terms of reference, with a view to organizing a planning mission to Sierra Leone for the purpose of discussing with the Government practical arrangements for the establishment and operation of the Special Court, including premises, the provision of local personnel and services, and the launching of the investigative and prosecutorial process. The planning mission will be led by the Office of Legal Affairs and will be composed, in addition, of an Interim Prosecutor, investigators, an Interim Registrar, court administrators, Security Officer, Building Management expert, UNOPS representative in the region and representatives of the Members of the Management Committee elected by the group of interested States (Canada, Lesotho, Nigeria, The Netherlands, the U.K. and the U.S.). It is expected that the Agreement with the Government of Sierra Leone will be signed at the conclusion of the mission, thus paving the way for the establishment and operation of the Special Court.

5. We had hoped to organize the planning mission late November/early December. However, this may now not be possible for several reasons. Because of the development in matters before the Sixth Committee of the General Assembly, members of the Management Committee have approached the Secretariat, indicating that they may not be available during this period. A more serious obstacle is that the pledges and payments still fall far short of the conditions agreed upon between the Security Council and the Secretary-General. If the gap persists, the Secretary-General may have no other choice than to revert to the Council in respect of the funding. In this connection attention is drawn to his indication in the last paragraph of his letter to the Security Council dated 13 July 2001 (S/2001/693).