



Assembly of States Parties to the Rome Statute of the International Criminal Court

First session

**New York, 3-10 September 2002
Official Records**

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Criminal Court**

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Note

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of State Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Decision”.

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Part I Proceedings

A. Introduction

1. In accordance with a decision of the Preparatory Commission at its 41st meeting, on 8 July 2002 (PCNICC/2002/2, para. 17), the first session of the Assembly of States Parties to the Rome Statute of the International Criminal Court was held at United Nations Headquarters from 3 to 10 September 2002.

2. Pursuant to General Assembly resolution 56/85 of 12 December 2001, the Secretary-General of the United Nations invited all States Parties to the Rome Statute to participate in the meeting. Other States which had signed the Statute or the Final Act were also invited to participate in the meeting as observers.

3. Also invited, pursuant to the same General Assembly resolution, as observers to the meeting of the Assembly, were representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly pursuant to its relevant resolutions¹ as well as interested regional intergovernmental organizations and other international bodies invited to attend the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998) or accredited to the Preparatory Commission for the International Criminal Court.

4. Further pursuant to resolution 56/85, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court or having consultative status with the Economic and Social Council of the United Nations whose activities were relevant to the activities of the Court were invited to participate in the work of the Assembly of States Parties in accordance with agreed rules.

5. In accordance with rule 94 of the Rules of Procedure of the Assembly of States Parties, the following States were invited to be present during the work of the Assembly: Bhutan, Cook Islands, Democratic People's Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People's Democratic Republic, Lebanon, Malaysia, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Somalia, Suriname, Swaziland, Timor-Leste, Tonga, Turkmenistan, Tuvalu and Vanuatu. The list of delegations to the session is contained in document ICC-ASP/1/INF/1.

6. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, Mr. Hans Corell.

7. At its 1st meeting, on 3 September 2002, the Assembly elected its Bureau, as follows:

President:

H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini (Jordan)

Vice-Presidents:

Mr. Allieu Ibrahim Kanu (Sierra Leone)

Mr. Felipe Paolillo (Uruguay)

Other members of the Bureau:

Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Germany, Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway,

Peru, Romania, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland and Yugoslavia

8. At the same meeting, in accordance with the prior understanding on the composition of the Bureau (PCNICC/2002/2, para. 11), it was decided that Mr. Alexander Marschik (Austria) would act as Rapporteur.

9. Also at the 1st meeting, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, the following States were appointed to serve on the Credentials Committee: Benin, Fiji, France, Honduras, Ireland, Paraguay, Slovenia, Uganda and Yugoslavia.

10. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Mr. Václav Mikulka, acted as Secretary of the Assembly. The Codification Division provided the substantive servicing for the Assembly.

11. At the 1st meeting, the Assembly adopted the following agenda (ICC-ASP/1/1):

1. Opening of the session by the Secretary-General.
2. Silent prayer or meditation.
3. Election of the President.
4. Adoption of the agenda.
5. Adoption of the Rules of Procedure of the Assembly of States Parties.
6. Election of two Vice-Presidents and 18 members of the Bureau.
7. Credentials of representatives of States Parties at the first session:
 - (a) Appointment of the Credentials Committee;
 - (b) Report of the Credentials Committee.
8. Organization of work.
9. Establishment of other subsidiary bodies.
10. Consideration of the report of the Preparatory Commission:
 - (a) Rules of Procedure and Evidence;
 - (b) Elements of Crimes;
 - (c) A relationship agreement between the Court and the United Nations;
 - (d) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;
 - (e) Financial regulations and rules;
 - (f) An agreement on the privileges and immunities of the Court;
 - (g) Any resolution, recommendation or other matters.
11. Adoption of the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors.
12. Adoption of the budget for the first financial period.

13. Adoption of the scale of assessments.
14. Decisions regarding practical arrangements for the transitional period.
15. Appointment of an external auditor.
16. Decisions concerning the next meeting, including dates and venue.
17. Other matters.

12. At the same meeting, the Assembly adopted by consensus the Rules of Procedure of the Assembly of States Parties (part II.C of the present report). Bearing in mind that the Rules of Procedure are silent on the extent of the right of observer States referred to in paragraph 1 of article 112 of the Rome Statute to participate in the Assembly, the Assembly decided that such observer States should be allowed to participate in its deliberations but could not participate in the taking of decisions.

13. Also at the 1st meeting, the Assembly adopted the draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties (ICC-ASP/1/Decision 4).

14. At the same meeting, the Assembly decided to meet in plenary sessions and as a Working Group of the Whole and agreed on a programme of work. In particular, the following items were assigned for the consideration of the Working Group of the Whole: Rules of Procedure and Evidence, Elements of Crimes, an agreement on the privileges and immunities of the Court, a relationship agreement between the Court and the United Nations, financial regulations and rules, basic principles governing a headquarters agreement to be negotiated between the Court and the host country, consideration of remaining draft resolutions or decisions in the report of the Preparatory Commission, decisions concerning the next meeting, including the dates and venue, as well as other matters. At its 2nd meeting, on 3 September 2002, the Assembly also assigned to the Working Group the consideration of the procedure for the nomination and election of judges to the Court.

15. The Assembly also reserved time for general statements after the adoption of its report.

B. Consideration of the report of the Preparatory Commission

16. At the 1st meeting of the Assembly, the report of the Preparatory Commission for the International Criminal Court, as contained in documents PCNICC/2000/1 and Add.1 and 2, PCNICC/2001/1 and Add.1-4, PCNICC/2002/1 and Add.1 and 2 and PCNICC/2002/2 and Add.1-3, was introduced by the Chairman of the Preparatory Committee, Mr. Philippe Kirsch (Canada). The Chairman also briefed the Assembly on the progress made by the advance team of experts working to ensure the early and effective establishment of the Court.

17. Also at the 1st meeting, the Assembly adopted by consensus the draft resolution on the establishment of the Committee on Budget and Finance (ICC-ASP/1/Res.4).

18. At the same meeting, the Assembly adopted by consensus the draft resolution relating to the procedure for the nomination and election of members of the Committee on Budget and Finance (ICC-ASP/1/Res.5). At its 3rd meeting, on 9 September 2002, the Assembly, on the basis of a recommendation of the Bureau,

decided that the period for the nomination of the candidates for membership of the Committee on Budget and Finance should run from 1 December 2002 to 15 February 2003. In that connection, the Secretariat was entrusted with the task of circulating an official note regarding the nomination period. It also decided that the elections of the members of the Committee on Budget and Finance would take place at the second resumed session of the Assembly in April 2003.

19. At its 2nd meeting, on 3 September 2002, the Assembly adopted by consensus the draft budget for the first financial period of the Court (part III of the present report).

20. At the same meeting, the Assembly also adopted by consensus the following resolutions and decisions related to the budget:

(a) Budget appropriations for the first financial period and financing of appropriations for the first financial period (ICC-ASP/1/Res.12);

(b) Scales of assessments for the apportionment of the expenses of the International Criminal Court (ICC-ASP/1/Res.14);

(c) Crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court (ICC-ASP/1/Res.15);

(d) Working Capital Fund for the first financial period (ICC-ASP/1/Res.13);

(e) Provision of funds for the Court (ICC-ASP/1/Decision 1);

(f) Relevant criteria for voluntary contributions to the International Criminal Court (ICC-ASP/1/Res.11);

(g) Interim arrangements for the exercise of authority pending the assumption of office by the Registrar (ICC-ASP/1/Decision 2).

21. Also at the same meeting, the Assembly reached an understanding in connection with the decision relating to the provision of funds for the Court for the first financial period (ICC-ASP/1/Decision 1), that the assessments would be determined based on the membership of the Assembly of States Parties at the date of the adoption of the decision, namely 3 September 2002, and that the assessments of States for which the Rome Statute would enter into force after 3 September 2002 would be treated as miscellaneous income.

22. At its 3rd meeting, on 9 September 2002, the Assembly adopted by consensus the report of the Working Group of the Whole (annex I to the present report). In that connection, the Assembly, on the recommendation of the Working Group of the Whole, adopted by consensus:

(a) Rules of Procedure and Evidence (part II.A of the present report);

(b) Elements of Crimes (part II.B);

(c) Financial Regulations and Rules (part II.D);

(d) Agreement on the Privileges and Immunities of the International Criminal Court (part II.E);

(e) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country (part II.F);

(f) A draft Relationship Agreement between the Court and the United Nations (part II.G).

23. At the same meeting, the Assembly, on the recommendation of the Working Group of the Whole, also adopted by consensus the following resolutions and decisions:

(a) Continuity of work in respect of the crime of aggression (ICC-ASP/1/Res.1);

(b) Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court (ICC-ASP/1/Res.2);

(c) Procedure for the election of the judges for the International Criminal Court (ICC-ASP/1/Res.3);

(d) Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims (ICC-ASP/1/Res.6);

(e) Procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims (ICC-ASP/1/Res.7);

(f) Provisional arrangements for the secretariat of the Assembly of States Parties (ICC-ASP/1/Res.8);

(g) Permanent secretariat of the Assembly of States Parties (ICC-ASP/1/Res.9);

(h) Selection of the staff of the International Criminal Court (ICC-ASP/1/Res.10);

(i) Participation of the International Criminal Court in the United Nations Joint Staff Pension Fund (ICC-ASP/1/Decision 3).

24. In addition, the Assembly, on the recommendation of the Working Group of the Whole, decided to transmit to the International Criminal Court the report of the intersessional meeting of experts held at The Hague from 11 to 15 March 2002 (PCNICC/2002/INF/2), containing summaries of staff regulations and rules relevant for provisional application by the Court at the initial stages of its establishment. Also on the recommendation of the Working Group of the Whole, the Assembly decided to await further developments on the question of the establishment of an international criminal bar (PCNICC/2002/2, para. 14) before taking further action and to consider the matter at a future session.

25. Also at the 3rd meeting, the Assembly approved the appointment of Mr. Bruno Cathala (France) as Director of Common Services for the Court.

26. At the same meeting, the Assembly extended until 31 October 2002 the mandate of the advance team of experts working to ensure the early and effective establishment of the Court.

27. Also at the same meeting, the Assembly fixed 9 September 2002 as the date for opening the nominations for the judges and the Prosecutor of the Court. The Secretariat was also entrusted with the task of circulating an official note regarding the nomination period, which would run from 9 September to 30 November 2002. Drawing attention to paragraph 28 of its resolution ICC-ASP/1/Res.2 on the nomination and election of judges, the Prosecutor and Deputy Prosecutors, which

states that “every effort shall be made to elect the Prosecutor by consensus”, the Bureau encouraged States Parties to consult informally first, before processing their official nominations for the post of Prosecutor with the Secretariat. In order to ensure the integrity of the electoral process, the Bureau also appealed to States Parties to refrain from entering into reciprocal agreements of exchange of support in respect of the election of judges of the Court.

28. At the same meeting, the Assembly postponed taking a decision concerning opening the nomination period for the members of the Board of Directors of the Trust Fund for the benefit of victims until the second resumption of its first session in April 2003.

29. At the same meeting, the Assembly delegated to the Bureau the task of appointing an External Auditor for the Court and requested it to report accordingly to the Assembly at its resumed first session in February 2003.

30. Also at the 3rd meeting, the Assembly was informed that the Bureau had created, pursuant to Assembly resolution ICC-ASP/1/Res.1 on the continuity of work in respect of the crime of aggression, a subcommittee of the Bureau of the Assembly, under the chairmanship of Mr. Allieu Ibrahim Kanu (Sierra Leone). The subcommittee was expected to report and make proposals to the Assembly during its resumed first session in February 2003.

31. At the same meeting, the Assembly was informed, pursuant to its resolution ICC/ASP/1/Res.8 concerning the provisional arrangements for the secretariat of the Assembly of States Parties, that the President would communicate with the Secretary-General of the United Nations the Assembly’s wish that the Secretariat of the United Nations should continue to perform, on a provisional basis, secretariat functions for the Court, and would request his authorization.

32. Also at the same meeting, the Assembly was informed that the Bureau was still consulting on the question of the permanent secretariat of the Assembly of States Parties as contained in Assembly resolution ICC-ASP/1/Res.9, with a view to submitting the related proposals in time for the Assembly to take a decision on such proposals during its second session in September 2003.

C. Adoption of the report of the Credentials Committee

33. At the 3rd meeting, the Assembly adopted the report of the Credentials Committee (annex II to the present report).

D. General statements and address by the Secretary-General of the United Nations

34. Also at the 3rd meeting, the Assembly decided to accept the requests of a number of intergovernmental organizations and other entities and non-governmental organizations to make statements during the time allocated for general statements.

35. At its 3rd and 4th meetings, on 9 September 2002, and at its 5th meeting, on 10 September 2002, the Assembly heard statements by representatives of Denmark (on behalf of the European Union and associated countries), the Netherlands, Italy, Canada, Germany, Croatia, Namibia, Peru, Bulgaria, Norway, the Democratic

Republic of the Congo, Trinidad and Tobago, Nigeria, Uruguay, Portugal, Venezuela, Cyprus, Mongolia, Gabon, Fiji, Belgium, Uganda, South Africa, Argentina, Brazil, Lesotho, Ireland, Bolivia, Ecuador, New Zealand, Senegal, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Liechtenstein, Costa Rica (on behalf of the Rio Group), Spain, Finland, Cambodia, Sierra Leone, France, Sweden and Switzerland. It also heard statements by Mexico, the Russian Federation, Japan, Ukraine, Samoa and Timor-Leste. In addition, the Assembly heard statements by Palestine (on behalf of the Arab Group) and the International Humanitarian Fact-Finding Commission as well as the Coalition for the International Criminal Court, La Fédération Internationale des Ligues des Droits de l'Homme (FIDH), Parliamentarians for Global Action, No Peace Without Justice, Human Rights Watch, Amnesty International, the World Federalist Movement and Women's Caucus for Gender Justice. The list of speakers during general statements is contained in annex III to the present report.

36. Also at the 5th meeting, the Secretary-General of the United Nations addressed the Assembly.

E. Opening for signature of the Agreement on the Privileges and Immunities of the International Criminal Court

37. The Agreement on the Privileges and Immunities of the International Criminal Court was opened for signature by all States at United Nations Headquarters in New York on 10 September 2002. It will remain open for signature until 30 June 2004.

38. During the treaty event organized on the same day, the Agreement was signed by the following countries: Austria, Benin, Finland, France, Iceland, Italy, Luxembourg, Namibia, Norway, Peru, Switzerland, Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland. On the same day, Norway also deposited its instrument of ratification.

F. Next meeting, including the dates and venue

39. At the 3rd meeting, on 9 September 2002, the Assembly decided to convene its next sessions as follows:

- (a) Resumed first session, New York, 3 to 7 February 2003;
- (b) Second resumption of the first session, New York, 21 to 23 April 2003;
- (c) Second session, New York, 8 to 12 September 2003.

40. It also decided that the Committee on Budget and Finance would meet in New York from 4 to 8 August 2003.

Notes

¹ Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92 and decision 56/475.

Part II
Instruments adopted by the Assembly of States Parties

A. Rules of Procedure and Evidence*

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* **Explanatory note:** The Rules of Procedure and Evidence are an instrument for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. In elaborating the Rules of Procedure and Evidence, care has been taken to avoid rephrasing and, to the extent possible, repeating the provisions of the Statute. Direct references to the Statute have been included in the Rules, where appropriate, in order to emphasize the relationship between the Rules and the Rome Statute, as provided for in article 51, in particular, paragraphs 4 and 5.

In all cases, the Rules of Procedure and Evidence should be read in conjunction with and subject to the provisions of the Statute.

The Rules of Procedure and Evidence of the International Criminal Court do not affect the procedural rules for any national court or legal system for the purpose of national proceedings.

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Chapter 1

General provisions

Rule 1

Use of terms

In the present document:

- “article” refers to articles of the Rome Statute;
- “Chamber” refers to a Chamber of the Court;
- “Part” refers to the Parts of the Rome Statute;
- “Presiding Judge” refers to the Presiding Judge of a Chamber;
- “the President” refers to the President of the Court;
- “the Regulations” refers to the Regulations of the Court;
- “the Rules” refers to the Rules of Procedure and Evidence.

Rule 2

Authentic texts

The Rules have been adopted in the official languages of the Court established by article 50, paragraph 1. All texts are equally authentic.

Rule 3

Amendments

1. Amendments to the rules that are proposed in accordance with article 51, paragraph 2, shall be forwarded to the President of the Bureau of the Assembly of States Parties.
2. The President of the Bureau of the Assembly of States Parties shall ensure that all proposed amendments are translated into the official languages of the Court and are transmitted to the States Parties.
3. The procedure described in sub-rules 1 and 2 shall also apply to the provisional rules referred to in article 51, paragraph 3.

Chapter 2

Composition and administration of the Court

Section I

General provisions relating to the composition and administration of the Court

Rule 4

Plenary sessions

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule 5, the judges shall:
 - (a) Elect the President and Vice-Presidents;
 - (b) Assign judges to divisions.
2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, the Rules and the Regulations and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.
3. The quorum for each plenary session shall be two-thirds of the judges.
4. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions shall be taken by the majority of the judges present. In the event of an equality of votes, the President, or the judge acting in the place of the President, shall have a casting vote.
5. The Regulations shall be adopted as soon as possible in plenary sessions.

Rule 5

Solemn undertaking under article 45

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:
 - (a) In the case of a judge:

“I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations.”;
 - (b) In the case of the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court:

“I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.”

2. The undertaking, signed by the person making it and witnessed by the President or a Vice-President of the Bureau of the Assembly of States Parties, shall be filed with the Registry and kept in the records of the Court.

Rule 6

Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators

1. Upon commencing employment, every staff member of the Office of the Prosecutor and the Registry shall make the following undertaking:

“I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.”;

The undertaking, signed by the person making it and witnessed, as appropriate, by the Prosecutor, the Deputy Prosecutor, the Registrar or the Deputy Registrar, shall be filed with the Registry and kept in the records of the Court.

2. Before performing any duties, an interpreter or a translator shall make the following undertaking:

“I solemnly declare that I will perform my duties faithfully, impartially and with full respect for the duty of confidentiality.”;

The undertaking, signed by the person making it and witnessed by the President of the Court or his or her representative, shall be filed with the Registry and kept in the records of the Court.

Rule 7

Single judge under article 39, paragraph 2 (b) (iii)

1. Whenever the Pre-Trial Chamber designates a judge as a single judge in accordance with article 39, paragraph 2 (b) (iii), it shall do so on the basis of objective pre-established criteria.

2. The designated judge shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.

3. The Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions of the single judge be exercised by the full Chamber.

Rule 8

Code of Professional Conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft Code of Professional Conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 20, sub-rule 3.

2. The draft Code shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7.
3. The Code shall contain procedures for its amendment.

Section II

The Office of the Prosecutor

Rule 9

Operation of the Office of the Prosecutor

In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

Rule 10

Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

Rule 11

Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those referred to in article 44, paragraph 4, to represent him or her in the exercise of his or her functions.

Section III

The Registry

Subsection 1

General provisions relating to the Registry

Rule 12

Qualifications and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, and shall transmit the list to the Assembly of States Parties with a request for any recommendations.

2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall, without delay, transmit the list together with the recommendations to the plenary session.

3. As provided for in article 43, paragraph 4, the Court, meeting in plenary session, shall, as soon as possible, elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.

4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President to that effect. The President shall convene a plenary session to decide on the matter. If the Court, meeting in plenary session, decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.

5. The Deputy Registrar shall be elected by the Court, meeting in plenary session, in the same manner as the Registrar.

Rule 13

Functions of the Registrar

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the channel of communication of the Court.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

Rule 14

Operation of the Registry

1. In discharging his or her responsibility for the organization and management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters which may affect the operation of the Office of the Prosecutor. The regulations shall be approved by the Presidency.

2. The regulations shall provide for defence counsel to have access to appropriate and reasonable administrative assistance from the Registry.

Rule 15

Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.

2. The Registrar shall also maintain the other records of the Court.

Subsection 2

Victims and Witnesses Unit

Rule 16

Responsibilities of the Registrar relating to victims and witnesses

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

- (a) Providing notice or notification to victims or their legal representatives;
- (b) Assisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with rules 89 to 91;
- (c) Assisting them in participating in the different phases of the proceedings in accordance with rules 89 to 91;
- (d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

2. In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

- (a) Informing them of their rights under the Statute and the Rules, and of the existence, functions and availability of the Victims and Witnesses Unit;
- (b) Ensuring that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality.

3. For the fulfilment of his or her functions, the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific case.

4. Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

Rule 17

Functions of the Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organizations acting at the request of the Court, as appropriate;

(vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

(b) With respect to witnesses:

(i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) Assisting them when they are called to testify before the Court;

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

Rule 18

Responsibilities of the Unit

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:

(a) Ensure that the staff in the Unit maintain confidentiality at all times;

(b) While recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of

testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

(e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

Rule 19

Expertise in the Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

- (a) Witness protection and security;
- (b) Legal and administrative matters, including areas of humanitarian and criminal law;
- (c) Logistics administration;
- (d) Psychology in criminal proceedings;
- (e) Gender and cultural diversity;
- (f) Children, in particular traumatized children;
- (g) Elderly persons, in particular in connection with armed conflict and exile trauma;
- (h) Persons with disabilities;
- (i) Social work and counselling;
- (j) Health care;
- (k) Interpretation and translation.

Subsection 3

Counsel for the defence

Rule 20

Responsibilities of the Registrar relating to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

- (a) Facilitate the protection of confidentiality, as defined in article 67, paragraph 1 (b);

(b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;

(c) Assist arrested persons, persons to whom article 55, paragraph 2, applies and the accused in obtaining legal advice and the assistance of legal counsel;

(d) Advise the Prosecutor and the Chambers, as necessary, on relevant defence-related issues;

(e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;

(f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in sub-rule 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in sub-rule 1, including the financial administration of the Registry, in such a manner as to ensure the professional independence of defence counsel.

3. For purposes such as the management of legal assistance in accordance with rule 21 and the development of a Code of Professional Conduct in accordance with rule 8, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

Rule 21

Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in rule 20, sub-rule 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person choosing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

Rule 22

Appointment and qualifications of Counsel for the defence

1. A counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.
2. Counsel for the defence engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.
3. In the performance of their duties, Counsel for the defence shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for Counsel adopted in accordance with rule 8 and any other document adopted by the Court that may be relevant to the performance of their duties.

Section IV

Situations that may affect the functioning of the Court

Subsection 1

Removal from office and disciplinary measures

Rule 23

General principle

A judge, the Prosecutor, a Deputy Prosecutor, the Registrar and a Deputy Registrar shall be removed from office or shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and the Rules.

Rule 24

Definition of serious misconduct and serious breach of duty

1. For the purposes of article 46, paragraph 1 (a), “serious misconduct” shall be constituted by conduct that:

(a) If it occurs in the course of official duties, is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

- (i) Disclosing facts or information that he or she has acquired in the course of his or her duties or on a matter which is *sub judice*, where such disclosure is seriously prejudicial to the judicial proceedings or to any person;
- (ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, is of a grave nature that causes or is likely to cause serious harm to the standing of the Court.

2. For the purposes of article 46, paragraph 1 (a), a “serious breach of duty” occurs where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties. This may include, *inter alia*, situations where the person:

(a) Fails to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeatedly causes unwarranted delay in the initiation, prosecution or trial of cases, or in the exercise of judicial powers.

Rule 25

Definition of misconduct of a less serious nature

1. For the purposes of article 47, “misconduct of a less serious nature” shall be constituted by conduct that:

(a) If it occurs in the course of official duties, causes or is likely to cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of the functions of a person referred to in article 47;

(ii) Repeatedly failing to comply with or ignoring requests made by the Presiding Judge or by the Presidency in the exercise of their lawful authority;

(iii) Failing to enforce the disciplinary measures to which the Registrar or a Deputy Registrar and other officers of the Court are subject when a judge knows or should know of a serious breach of duty on their part; or

(b) If it occurs outside the course of official duties, causes or is likely to cause harm to the standing of the Court.

2. Nothing in this rule precludes the possibility of the conduct set out in sub-rule 1 (a) constituting “serious misconduct” or “serious breach of duty” for the purposes of article 46, paragraph 1 (a).

Rule 26

Receipt of complaints

1. For the purposes of article 46, paragraph 1, and article 47, any complaint concerning any conduct defined under rules 24 and 25 shall include the grounds on which it is based, the identity of the complainant and, if available, any relevant evidence. The complaint shall remain confidential.

2. All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations, set

aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations.

Rule 27

Common provisions on the rights of the defence

1. In any case in which removal from office under article 46 or disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.
2. The person concerned shall be afforded full opportunity to present and receive evidence, to make written submissions and to supply answers to any questions put to him or her.
3. The person may be represented by counsel during the process established under this rule.

Rule 28

Suspension from duty

Where an allegation against a person who is the subject of a complaint is of a sufficiently serious nature, the person may be suspended from duty pending the final decision of the competent organ.

Rule 29

Procedure in the event of a request for removal from office

1. In the case of a judge, the Registrar or a Deputy Registrar, the question of removal from office shall be put to a vote at a plenary session.
2. The Presidency shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation adopted in the case of a judge, and any decision adopted in the case of the Registrar or a Deputy Registrar.
3. The Prosecutor shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation he or she makes in the case of a Deputy Prosecutor.
4. Where the conduct is found not to amount to serious misconduct or a serious breach of duty, it may be decided in accordance with article 47 that the person concerned has engaged in misconduct of a less serious nature and a disciplinary measure imposed.

Rule 30

Procedure in the event of a request for disciplinary measures

1. In the case of a judge, the Registrar or a Deputy Registrar, any decision to impose a disciplinary measure shall be taken by the Presidency.

2. In the case of the Prosecutor, any decision to impose a disciplinary measure shall be taken by an absolute majority of the Bureau of the Assembly of States Parties.
3. In the case of a Deputy Prosecutor:
 - (a) Any decision to give a reprimand shall be taken by the Prosecutor;
 - (b) Any decision to impose a pecuniary sanction shall be taken by an absolute majority of the Bureau of the Assembly of States Parties upon the recommendation of the Prosecutor.
4. Reprimands shall be recorded in writing and shall be transmitted to the President of the Bureau of the Assembly of States Parties.

Rule 31

Removal from office

Once removal from office has been pronounced, it shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part.

Rule 32

Disciplinary measures

The disciplinary measures that may be imposed are:

- (a) A reprimand; or
- (b) A pecuniary sanction that may not exceed six months of the salary paid by the Court to the person concerned.

Subsection 2

Excusing, disqualification, death and resignation

Rule 33

Excusing of a judge, the Prosecutor or a Deputy Prosecutor

1. A judge, the Prosecutor or a Deputy Prosecutor seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.
2. The Presidency shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the person concerned.

Rule 34

Disqualification of a judge, the Prosecutor or a Deputy Prosecutor

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia*, the following:

(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

(b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;

(c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

Rule 35

Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused

Where a judge, the Prosecutor or a Deputy Prosecutor has reason to believe that a ground for disqualification exists in relation to him or her, he or she shall make a request to be excused and shall not wait for a request for disqualification to be made in accordance with article 41, paragraph 2, or article 42, paragraph 7, and rule 34. The request shall be made and the Presidency shall deal with it in accordance with rule 33.

Rule 36

Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties of the death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar.

Rule 37

Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall communicate to the Presidency, in writing, his or her decision to

resign. The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties.

2. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall endeavour to give notice of the date on which his or her resignation will take effect at least six months in advance. Before the resignation of a judge takes effect, he or she shall make every effort to discharge his or her outstanding responsibilities.

Subsection 3

Replacements and alternate judges

Rule 38

Replacements

1. A judge may be replaced for objective and justified reasons, *inter alia*:
 - (a) Resignation;
 - (b) Accepted excuse;
 - (c) Disqualification;
 - (d) Removal from office;
 - (e) Death.
2. Replacement shall take place in accordance with the pre-established procedure in the Statute, the Rules and the Regulations.

Rule 39

Alternate judges

Where an alternate judge has been assigned by the Presidency to a Trial Chamber pursuant to article 74, paragraph 1, he or she shall sit through all proceedings and deliberations of the case, but may not take any part therein and shall not exercise any of the functions of the members of the Trial Chamber hearing the case, unless and until he or she is required to replace a member of the Trial Chamber if that member is unable to continue attending. Alternate judges shall be designated in accordance with a procedure pre-established by the Court.

Section V

Publication, languages and translation

Rule 40

Publication of decisions in official languages of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:
 - (a) All decisions of the Appeals Division;

(b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;

(c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;

(d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).

2. Decisions on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.

3. The Presidency may decide to publish other decisions in all the official languages when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

Rule 41

Working languages of the Court

1. For the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language when:

(a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or

(b) The Prosecutor and the defence so request.

2. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings.

Rule 42

Translation and interpretation services

The Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.

Rule 43

Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

Chapter 3

Jurisdiction and admissibility

Section I

Declarations and referrals relating to articles 11, 12, 13 and 14

Rule 44

Declaration provided for in article 12, paragraph 3

1. The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.
2. When a State lodges, or declares to the Registrar its intent to lodge, a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to sub-rule 1, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9, and any rules thereunder concerning States Parties, shall apply.

Rule 45

Referral of a situation to the Prosecutor

A referral of a situation to the Prosecutor shall be in writing.

Section II

Initiation of investigations under article 15

Rule 46

Information provided to the Prosecutor under article 15, paragraphs 1 and 2

Where information is submitted under article 15, paragraph 1, or where oral or written testimony is received pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of such information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute.

Rule 47

Testimony under article 15, paragraph 2

1. The provisions of rules 111 and 112 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.

2. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber.

Rule 48
Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

Rule 49
Decision and notice under article 15, paragraph 6

1. Where a decision under article 15, paragraph 6, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.

2. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

Rule 50
Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.

2. A request for authorization by the Prosecutor shall be in writing.

3. Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.

4. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.

5. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations.

6. The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

Section III

Challenges and preliminary rulings under articles 17, 18 and 19

Rule 51

Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17, paragraph 1, may choose to bring to the attention of the Court showing that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

Rule 52

Notification provided for in article 18, paragraph 1

1. Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.

2. A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month time limit provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

Rule 53

Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its

investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

Rule 54

Application by the Prosecutor under article 18, paragraph 2

1. An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 53 shall be communicated by the Prosecutor to the Pre-Trial Chamber.
2. The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

Rule 55

Proceedings concerning article 18, paragraph 2

1. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.
2. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.
3. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

Rule 56

Application by the Prosecutor following review under article 18, paragraph 3

1. Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.
2. Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.
3. The proceedings shall be conducted in accordance with rules 54, sub-rule 2, and 55.

Rule 57
Provisional measures under article 18, paragraph 6

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered *ex parte* and *in camera*. The Pre-Trial Chamber shall rule on the application on an expedited basis.

Rule 58
Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.
2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.
3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.
4. The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility.

Rule 59
Participation in proceedings under article 19, paragraph 3

1. For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:
 - (a) Those who have referred a situation pursuant to article 13;
 - (b) The victims who have already communicated with the Court in relation to that case or their legal representatives.
2. The Registrar shall provide those referred to in sub-rule 1, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

3. Those receiving the information, as provided for in sub-rule 1, may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

Rule 60
Competent organ to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 130.

Rule 61
Provisional measures under article 19, paragraph 8

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 57 shall apply.

Rule 62
Proceedings under article 19, paragraph 10

1. If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 58, 59 and 61 shall be applicable.

2. The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.

Chapter 4

Provisions relating to various stages of the proceedings

Section I

Evidence

Rule 63

General provisions relating to evidence

1. The rules of evidence set forth in this chapter, together with article 69, shall apply in proceedings before all Chambers.
2. A Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.
3. A Chamber shall rule on an application of a party or on its own motion, made under article 64, subparagraph 9 (a), concerning admissibility when it is based on the grounds set out in article 69, paragraph 7.
4. Without prejudice to article 66, paragraph 3, a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.
5. The Chambers shall not apply national laws governing evidence, other than in accordance with article 21.

Rule 64

Procedure relating to the relevance or admissibility of evidence

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.
2. A Chamber shall give reasons for any rulings it makes on evidentiary matters. These reasons shall be placed in the record of the proceedings if they have not already been incorporated into the record during the course of the proceedings in accordance with article 64, paragraph 10, and rule 137, sub-rule 1.
3. Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

Rule 65

Compellability of witnesses

1. A witness who appears before the Court is compellable by the Court to provide testimony, unless otherwise provided for in the Statute and the Rules, in particular rules 73, 74 and 75.
2. Rule 171 applies to a witness appearing before the Court who is compellable to provide testimony under sub-rule 1.

Rule 66

Solemn undertaking

1. Except as described in sub-rule 2, every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying:

“I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.”
2. A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.
3. Before testifying, the witness shall be informed of the offence defined in article 70, paragraph 1 (a).

Rule 67

Live testimony by means of audio or video-link technology

1. In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence, and by the Chamber itself, at the time that the witness so testifies.
2. The examination of a witness under this rule shall be conducted in accordance with the relevant rules of this chapter.
3. The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the audio or video-link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.

Rule 68

Prior recorded testimony

When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of

previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

(a) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or

(b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

Rule 69

Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Rule 70

Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 71

Evidence of other sexual conduct

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

Rule 72

In camera procedure to consider relevance or admissibility of evidence

1. Where there is an intention to introduce or elicit, including by means of the questioning of a victim or witness, evidence that the victim consented to an alleged crime of sexual violence, or evidence of the words, conduct, silence or lack of resistance of a victim or witness as referred to in principles (a) through (d) of rule 70, notification shall be provided to the Court which shall describe the substance of the evidence intended to be introduced or elicited and the relevance of the evidence to the issues in the case.
2. In deciding whether the evidence referred to in sub-rule 1 is relevant or admissible, a Chamber shall hear in camera the views of the Prosecutor, the defence, the witness and the victim or his or her legal representative, if any, and shall take into account whether that evidence has a sufficient degree of probative value to an issue in the case and the prejudice that such evidence may cause, in accordance with article 69, paragraph 4. For this purpose, the Chamber shall have regard to article 21, paragraph 3, and articles 67 and 68, and shall be guided by principles (a) to (d) of rule 70, especially with respect to the proposed questioning of a victim.
3. Where the Chamber determines that the evidence referred to in sub-rule 2 is admissible in the proceedings, the Chamber shall state on the record the specific purpose for which the evidence is admissible. In evaluating the evidence during the proceedings, the Chamber shall apply principles (a) to (d) of rule 70.

Rule 73

Privileged communications and information

1. Without prejudice to article 67, paragraph 1 (b), communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:
 - (a) The person consents in writing to such disclosure; or
 - (b) The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.
2. Having regard to rule 63, sub-rule 5, communications made in the context of a class of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, under the same terms as in sub-rules 1 (a) and 1 (b) if a Chamber decides in respect of that class that:
 - (a) Communications occurring within that class of relationship are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;
 - (b) Confidentiality is essential to the nature and type of relationship between the person and the confidant; and
 - (c) Recognition of the privilege would further the objectives of the Statute and the Rules.

3. In making a decision under sub-rule 2, the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counsellor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion.

4. The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence, of the performance by ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

(a) After consultations undertaken pursuant to sub-rule 6, ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or

(b) Such information, documents or other evidence is contained in public statements and documents of ICRC.

5. Nothing in sub-rule 4 shall affect the admissibility of the same evidence obtained from a source other than ICRC and its officials or employees when such evidence has also been acquired by this source independently of ICRC and its officials or employees.

6. If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than ICRC, the interests of justice and of victims, and the performance of the Court's and ICRC's functions.

Rule 74

Self-incrimination by a witness

1. Unless a witness has been notified pursuant to rule 190, the Chamber shall notify a witness of the provisions of this rule before his or her testimony.

2. Where the Court determines that an assurance with respect to self-incrimination should be provided to a particular witness, it shall provide the assurances under sub-rule 3, paragraph (c), before the witness attends, directly or pursuant to a request under article 93, paragraph (1) (e).

3. (a) A witness may object to making any statement that might tend to incriminate him or her.

(b) Where the witness has attended after receiving an assurance under sub-rule 2, the Court may require the witness to answer the question or questions.

(c) In the case of other witnesses, the Chamber may require the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

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- (i) Will be kept confidential and will not be disclosed to the public or any State; and
 - (ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.
 4. Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, ex parte, to determine if the assurance should be given to this particular witness.
 5. In determining whether to require the witness to answer, the Chamber shall consider:
 - (a) The importance of the anticipated evidence;
 - (b) Whether the witness would be providing unique evidence;
 - (c) The nature of the possible incrimination, if known; and
 - (d) The sufficiency of the protections for the witness, in the particular circumstances.
 6. If the Chamber determines that it would not be appropriate to provide an assurance to this witness, it shall not require the witness to answer the question. If the Chamber determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.
 7. In order to give effect to the assurance, the Chamber shall:
 - (a) Order that the evidence of the witness be given in camera;
 - (b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;
 - (c) Specifically advise the Prosecutor, the accused, the defence counsel, the legal representative of the victim and any Court staff present of the consequences of a breach of the order under subparagraph (b);
 - (d) Order the sealing of any record of the proceedings; and
 - (e) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.
 8. Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an in camera hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in sub-rule 7 for all or a part of the testimony of that witness.
 9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.
 10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an

opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule.

Rule 75

Incrimination by family members

1. A witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement.

2. In evaluating the testimony of a witness, a Chamber may take into account that the witness, referred to in sub-rule 1, objected to reply to a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

Section II

Disclosure

Rule 76

Pre-trial disclosure relating to prosecution witnesses

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.

2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

Rule 77

Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

Rule 78
Inspection of material in possession or control of the defence

The defence shall permit the Prosecutor to inspect any books, documents, photographs and other tangible objects in the possession or control of the defence, which are intended for use by the defence as evidence for the purposes of the confirmation hearing or at trial.

Rule 79
Disclosure by the defence

1. The defence shall notify the Prosecutor of its intent to:
 - (a) Raise the existence of an alibi, in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; or
 - (b) Raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1, in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the ground.
2. With due regard to time limits set forth in other rules, notification under sub-rule 1 shall be given sufficiently in advance to enable the Prosecutor to prepare adequately and to respond. The Chamber dealing with the matter may grant the Prosecutor an adjournment to address the issue raised by the defence.
3. Failure of the defence to provide notice under this rule shall not limit its right to raise matters dealt with in sub-rule 1 and to present evidence.
4. This rule does not prevent a Chamber from ordering disclosure of any other evidence.

Rule 80
Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3

1. The defence shall give notice to both the Trial Chamber and the Prosecutor if it intends to raise a ground for excluding criminal responsibility under article 31, paragraph 3. This shall be done sufficiently in advance of the commencement of the trial to enable the Prosecutor to prepare adequately for trial.
2. Following notice given under sub-rule 1, the Trial Chamber shall hear both the Prosecutor and the defence before deciding whether the defence can raise a ground for excluding criminal responsibility.
3. If the defence is permitted to raise the ground, the Trial Chamber may grant the Prosecutor an adjournment to address that ground.

Rule 81
Restrictions on disclosure

1. Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.
2. Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an ex parte basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.
3. Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles. When the disclosure of such information may create a risk to the safety of the witness, the Court shall take measures to inform the witness in advance.
4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.
5. Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.
6. Where material or information is in the possession or control of the defence which is subject to disclosure, it may be withheld in circumstances similar to those which would allow the Prosecutor to rely on article 68, paragraph 5, and a summary thereof submitted instead. Such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the Prosecutor.

Rule 82
Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e)

1. Where material or information is in the possession or control of the Prosecutor which is protected under article 54, paragraph 3 (e), the Prosecutor may not subsequently introduce such material or information into evidence without the prior consent of the provider of the material or information and adequate prior disclosure to the accused.

2. If the Prosecutor introduces material or information protected under article 54, paragraph 3 (e), into evidence, a Chamber may not order the production of additional evidence received from the provider of the initial material or information, nor may a Chamber for the purpose of obtaining such additional evidence itself summon the provider or a representative of the provider as a witness or order their attendance.

3. If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), a Chamber may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality.

4. The right of the accused to challenge evidence which has been protected under article 54, paragraph 3 (e), shall remain unaffected subject only to the limitations contained in sub-rules 2 and 3.

5. A Chamber dealing with the matter may order, upon application by the defence, that, in the interests of justice, material or information in the possession of the accused, which has been provided to the accused under the same conditions as set forth in article 54, paragraph 3 (e), and which is to be introduced into evidence, shall be subject *mutatis mutandis* to sub-rules 1, 2 and 3.

Rule 83

Ruling on exculpatory evidence under article 67, paragraph 2

The Prosecutor may request as soon as practicable a hearing on an ex parte basis before the Chamber dealing with the matter for the purpose of obtaining a ruling under article 67, paragraph 2.

Rule 84

Disclosure and additional evidence for trial

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such orders shall include strict time limits which shall be kept under review by the Trial Chamber.

Section III

Victims and witnesses

Subsection 1

Definition and general principle relating to victims

Rule 85

Definition of victims

For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

Rule 86

General principle

A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.

Subsection 2

Protection of victims and witnesses

Rule 87

Protective measures

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

2. A motion or request under sub-rule 1 shall be governed by rule 134, provided that:

(a) Such a motion or request shall not be submitted ex parte;

(b) A request by a witness or by a victim or his or her legal representative, if any, shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;

(c) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, if any, in addition to the other party, each of whom shall have the opportunity to respond;

(d) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any witness or any victim or his or her legal representative, if any, who would be affected by such protective measure; and

(e) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conduct part of its proceedings in camera.

Rule 88

Special measures

1. Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the special measure is sought prior to ordering that measure.

2. A Chamber may hold a hearing on a motion or a request under sub-rule 1, if necessary in camera or ex parte, to determine whether to order any such special

measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.

3. For *inter partes* motions or requests filed under this rule, the provisions of rule 87, sub-rules 2 (b) to (d), shall apply *mutatis mutandis*.

4. A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.

5. Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

Subsection 3

Participation of victims in the proceedings

Rule 89

Application for participation of victims in the proceedings

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

Rule 90

Legal representatives of victims

1. A victim shall be free to choose a legal representative.

2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.
3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.
4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.
5. A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.
6. A legal representative of a victim or victims shall have the qualifications set forth in rule 22, sub-rule 1.

Rule 91

Participation of legal representatives in the proceedings

1. A Chamber may modify a previous ruling under rule 89.
2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under rules 89 and 90. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.
3. (a) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, including questioning under rules 67 and 68, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber.

(b) The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.

4. For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in sub-rule 2 shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

Rule 92

Notification to victims and their legal representatives

1. This rule on notification to victims and their legal representatives shall apply to all proceedings before the Court, except in proceedings provided for in Part 2.

2. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims concerning the decision of the Prosecutor not to initiate an investigation or not to prosecute pursuant to article 53. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the situation or case in question. The Chamber may order the measures outlined in sub-rule 8 if it considers it appropriate in the particular circumstances.

3. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims regarding its decision to hold a hearing to confirm charges pursuant to article 61. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the case in question.

4. When a notification for participation as provided for in sub-rules 2 and 3 has been given, any subsequent notification as referred to in sub-rules 5 and 6 shall only be provided to victims or their legal representatives who may participate in the proceedings in accordance with a ruling of the Chamber pursuant to rule 89 and any modification thereof.

5. In a manner consistent with the ruling made under rules 89 to 91, victims or their legal representatives participating in proceedings shall, in respect of those proceedings, be notified by the Registrar in a timely manner of:

(a) Proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision;

(b) Requests, submissions, motions and other documents relating to such requests, submissions or motions.

6. Where victims or their legal representatives have participated in a certain stage of the proceedings, the Registrar shall notify them as soon as possible of the decisions of the Court in those proceedings.

7. Notifications as referred to in sub-rules 5 and 6 shall be in writing or, where written notification is not possible, in any other form as appropriate. The Registry shall keep a record of all notifications. Where necessary, the Registrar may seek the cooperation of States Parties in accordance with article 93, paragraph 1 (d) and (l).

8. For notification as referred to in sub-rule 3 and otherwise at the request of a Chamber, the Registrar shall take necessary measures to give adequate publicity to

the proceedings. In doing so, the Registrar may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations.

Rule 93

Views of victims or their legal representatives

A Chamber may seek the views of victims or their legal representatives participating pursuant to rules 89 to 91 on any issue, *inter alia*, in relation to issues referred to in rules 107, 109, 125, 128, 136, 139 and 191. In addition, a Chamber may seek the views of other victims, as appropriate.

Subsection 4

Reparations to victims

Rule 94

Procedure upon request

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:

- (a) The identity and address of the claimant;
- (b) A description of the injury, loss or harm;
- (c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
- (d) Where restitution of assets, property or other tangible items is sought, a description of them;
- (e) Claims for compensation;
- (f) Claims for rehabilitation and other forms of remedy;
- (g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

2. At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

Rule 95

Procedure on the motion of the Court

1. In cases where the Court intends to proceed on its own motion pursuant to article 75, paragraph 1, it shall ask the Registrar to provide notification of its intention to the person or persons against whom the Court is considering making a determination, and, to the extent possible, to victims, interested persons and

interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

2. If, as a result of notification under sub-rule 1:

(a) A victim makes a request for reparations, that request will be determined as if it had been brought under rule 94;

(b) A victim requests that the Court does not make an order for reparations, the Court shall not proceed to make an individual order in respect of that victim.

Rule 96

Publication of reparation proceedings

1. Without prejudice to any other rules on notification of proceedings, the Registrar shall, insofar as practicable, notify the victims or their legal representatives and the person or persons concerned. The Registrar shall also, having regard to any information provided by the Prosecutor, take all the necessary measures to give adequate publicity of the reparation proceedings before the Court, to the extent possible, to other victims, interested persons and interested States.

2. In taking the measures described in sub-rule 1, the Court may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations in order to give publicity, as widely as possible and by all possible means, to the reparation proceedings before the Court.

Rule 97

Assessment of reparations

1. Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.

2. At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

3. In all cases, the Court shall respect the rights of victims and the convicted person.

Rule 98

Trust Fund

1. Individual awards for reparations shall be made directly against a convicted person.

2. The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is

impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.

3. The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.

4. Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.

5. Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.

Rule 99

Cooperation and protective measures for the purpose of forfeiture under articles 57, paragraph 3 (e), and 75, paragraph 4

1. The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the Trial Chamber, pursuant to article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be requested.

2. Notice is not required unless the Court determines, in the particular circumstances of the case, that notification could not jeopardize the effectiveness of the measures requested. In the latter case, the Registrar shall provide notification of the proceedings to the person against whom a request is made and so far as is possible to any interested persons or interested States.

3. If an order is made without prior notification, the relevant Chamber shall request the Registrar, as soon as is consistent with the effectiveness of the measures requested, to notify those against whom a request is made and, to the extent possible, to any interested persons or any interested States and invite them to make observations as to whether the order should be revoked or otherwise modified.

4. The Court may make orders as to the timing and conduct of any proceedings necessary to determine these issues.

Section IV

Miscellaneous provisions

Rule 100

Place of the proceedings

1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State.

2. An application or recommendation changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

3. The Presidency shall consult the State where the Court intends to sit. If that State agrees that the Court can sit in that State, then the decision to sit in a State other than the host State shall be taken by the judges, in plenary session, by a two-thirds majority.

Rule 101

Time limits

1. In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims.

2. Taking into account the rights of the accused, in particular under article 67, paragraph (1) (c), all those participating in the proceedings to whom any order is directed shall endeavour to act as expeditiously as possible, within the time limit ordered by the Court.

Rule 102

Communications other than in writing

Where a person is unable, due to a disability or illiteracy, to make a written request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form.

Rule 103

Amicus curiae and other forms of submission

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

Chapter 5

Investigation and prosecution

Section I

Decision of the Prosecutor regarding the initiation of an investigation under article 53, paragraphs 1 and 2

Rule 104

Evaluation of information by the Prosecutor

1. In acting pursuant to article 53, paragraph 1, the Prosecutor shall, in evaluating the information made available to him or her, analyse the seriousness of the information received.
2. For the purposes of sub-rule 1, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. The procedure set out in rule 47 shall apply to the receiving of such testimony.

Rule 105

Notification of a decision by the Prosecutor not to initiate an investigation

1. When the Prosecutor decides not to initiate an investigation under article 53, paragraph 1, he or she shall promptly inform in writing the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).
2. When the Prosecutor decides not to submit to the Pre-Trial Chamber a request for authorization of an investigation, rule 49 shall apply.
3. The notification referred to in sub-rule 1 shall contain the conclusion of the Prosecutor and, having regard to article 68, paragraph 1, the reasons for the conclusion.
4. In case the Prosecutor decides not to investigate solely on the basis of article 53, paragraph 1 (c), he or she shall inform in writing the Pre-Trial Chamber promptly after making that decision.
5. The notification shall contain the conclusion of the Prosecutor and the reasons for the conclusion.

Rule 106

Notification of a decision by the Prosecutor not to prosecute

1. When the Prosecutor decides that there is not a sufficient basis for prosecution under article 53, paragraph 2, he or she shall promptly inform in writing the Pre-Trial Chamber, together with the State or States that referred a situation under article

14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

2. The notifications referred to in sub-rule 1 shall contain the conclusion of the Prosecutor and, having regard to article 68, paragraph 1, the reasons for the conclusion.

Section II

Procedure under article 53, paragraph 3

Rule 107

Request for review under article 53, paragraph 3 (a)

1. A request under article 53, paragraph 3, for a review of a decision by the Prosecutor not to initiate an investigation or not to prosecute shall be made in writing, and be supported with reasons, within 90 days following the notification given under rule 105 or 106.

2. The Pre-Trial Chamber may request the Prosecutor to transmit the information or documents in his or her possession, or summaries thereof, that the Chamber considers necessary for the conduct of the review.

3. The Pre-Trial Chamber shall take such measures as are necessary under articles 54, 72 and 93 to protect the information and documents referred to in sub-rule 2 and, under article 68, paragraph 5, to protect the safety of witnesses and victims and members of their families.

4. When a State or the Security Council makes a request referred to in sub-rule 1, the Pre-Trial Chamber may seek further observations from them.

5. Where an issue of jurisdiction or admissibility of the case is raised, rule 59 shall apply.

Rule 108

Decision of the Pre-Trial Chamber under article 53, paragraph 3 (a)

1. A decision of the Pre-Trial Chamber under article 53, paragraph 3 (a), must be concurred in by a majority of its judges and shall contain reasons. It shall be communicated to all those who participated in the review.

2. Where the Pre-Trial Chamber requests the Prosecutor to review, in whole or in part, his or her decision not to initiate an investigation or not to prosecute, the Prosecutor shall reconsider that decision as soon as possible.

3. Once the Prosecutor has taken a final decision, he or she shall notify the Pre-Trial Chamber in writing. This notification shall contain the conclusion of the Prosecutor and the reasons for the conclusion. It shall be communicated to all those who participated in the review.

Rule 109
Review by the Pre-Trial Chamber under article 53,
paragraph 3 (b)

1. Within 180 days following a notification given under rule 105 or 106, the Pre-Trial Chamber may on its own initiative decide to review a decision of the Prosecutor taken solely under article 53, paragraph 1 (c) or 2 (c). The Pre-Trial Chamber shall inform the Prosecutor of its intention to review his or her decision and shall establish a time limit within which the Prosecutor may submit observations and other material.
2. In cases where a request has been submitted to the Pre-Trial Chamber by a State or by the Security Council, they shall also be informed and may submit observations in accordance with rule 107.

Rule 110
Decision by the Pre-Trial Chamber under article 53,
paragraph 3 (b)

1. A decision by the Pre-Trial Chamber to confirm or not to confirm a decision taken by the Prosecutor solely under article 53, paragraph 1 (c) or 2 (c), must be concurred in by a majority of its judges and shall contain reasons. It shall be communicated to all those who participated in the review.
2. When the Pre-Trial Chamber does not confirm the decision by the Prosecutor referred to in sub-rule 1, he or she shall proceed with the investigation or prosecution.

Section III
Collection of evidence

Rule 111
Record of questioning in general

1. A record shall be made of formal statements made by any person who is questioned in connection with an investigation or with proceedings. The record shall be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present, and, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during the questioning. It shall also be noted when someone has not signed the record as well as the reasons therefor.
2. When the Prosecutor or national authorities question a person, due regard shall be given to article 55. When a person is informed of his or her rights under article 55, paragraph 2, the fact that this information has been provided shall be noted in the record.

Rule 112

Recording of questioning in particular cases

1. Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article 58, paragraph 7, the questioning shall be audio- or video-recorded, in accordance with the following procedure:

(a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be audio- or video-recorded, the procedure in rule 111 shall be followed;

(b) A waiver of the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video-recorded;

(c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio- or video-recording ends as well as the time of resumption of the questioning;

(d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(e) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(f) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

2. The Prosecutor shall make every reasonable effort to record the questioning in accordance with sub-rule 1. As an exception, a person may be questioned without the questioning being audio- or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the procedure in rule 111 shall be followed.

3. When, pursuant to sub-rule 1 (a) or 2, the questioning is not audio- or video-recorded, the person questioned shall be provided with a copy of his or her statement.

4. The Prosecutor may choose to follow the procedure in this rule when questioning other persons than those mentioned in sub-rule 1, in particular where the use of such procedures could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence. The Prosecutor may make an application to the relevant Chamber.

5. The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in this rule be applied to the questioning of any person.

Rule 113
Collection of information regarding the state of health of the person concerned

1. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor, the person concerned or his or her counsel, order that a person having the rights in article 55, paragraph 2, be given a medical, psychological or psychiatric examination. In making its determination, the Pre-Trial Chamber shall consider the nature and purpose of the examination and whether the person consents to the examination.

2. The Pre-Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Pre-Trial Chamber at the request of a party.

Rule 114
Unique investigative opportunity under article 56

1. Upon being advised by the Prosecutor in accordance with article 56, paragraph 1 (a), the Pre-Trial Chamber shall hold consultations without delay with the Prosecutor and, subject to the provisions of article 56, paragraph 1 (c), with the person who has been arrested or who has appeared before the Court pursuant to summons and his or her counsel, in order to determine the measures to be taken and the modalities of their implementation, which may include measures to ensure that the right to communicate under article 67, paragraph 1 (b), is protected.

2. A decision of the Pre-Trial Chamber to take measures pursuant to article 56, paragraph 3, must be concurred in by a majority of its judges after consultations with the Prosecutor. During the consultations, the Prosecutor may advise the Pre-Trial Chamber that intended measures could jeopardize the proper conduct of the investigation.

Rule 115
Collection of evidence in the territory of a State Party under article 57, paragraph 3 (d)

1. Where the Prosecutor considers that article 57, paragraph 3 (d), applies, the Prosecutor may submit a written request to the Pre-Trial Chamber for authorization to take certain measures in the territory of the State Party in question. After a submission of such a request, the Pre-Trial Chamber shall, whenever possible, inform and invite views from the State Party concerned.

2. In arriving at its determination as to whether the request is well founded, the Pre-Trial Chamber shall take into account any views expressed by the State Party concerned. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor or the State Party concerned, decide to hold a hearing.

3. An authorization under article 57, paragraph 3 (d), shall be issued in the form of an order and shall state the reasons, based on the criteria set forth in that

paragraph. The order may specify procedures to be followed in carrying out such collection of evidence.

Rule 116

Collection of evidence at the request of the defence under article 57, paragraph 3 (b)

1. The Pre-Trial Chamber shall issue an order or seek cooperation under article 57, paragraph 3 (b), where it is satisfied:

(a) That such an order would facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person's defence; and

(b) In a case of cooperation under Part 9, that sufficient information to comply with article 96, paragraph 2, has been provided.

2. Before taking a decision whether to issue an order or seek cooperation under article 57, paragraph 3 (b), the Pre-Trial Chamber may seek the views of the Prosecutor.

Section IV

Procedures in respect of restriction and deprivation of liberty

Rule 117

Detention in the custodial State

1. The Court shall take measures to ensure that it is informed of the arrest of a person in response to a request made by the Court under article 89 or 92. Once so informed, the Court shall ensure that the person receives a copy of the arrest warrant issued by the Pre-Trial Chamber under article 58 and any relevant provisions of the Statute. The documents shall be made available in a language that the person fully understands and speaks.

2. At any time after arrest, the person may make a request to the Pre-Trial Chamber for the appointment of counsel to assist with proceedings before the Court and the Pre-Trial Chamber shall take a decision on such request.

3. A challenge as to whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b), shall be made in writing to the Pre-Trial Chamber. The application shall set out the basis for the challenge. After having obtained the views of the Prosecutor, the Pre-Trial Chamber shall decide on the application without delay.

4. When the competent authority of the custodial State notifies the Pre-Trial Chamber that a request for release has been made by the person arrested, in accordance with article 59, paragraph 5, the Pre-Trial Chamber shall provide its recommendations within any time limit set by the custodial State.

5. When the Pre-Trial Chamber is informed that the person has been granted interim release by the competent authority of the custodial State, the Pre-Trial Chamber shall inform the custodial State how and when it would like to receive periodic reports on the status of the interim release.

Rule 118

Pre-trial detention at the seat of the Court

1. If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 121 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.

2. The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

3. After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor or the detained person or on its own initiative. A hearing must be held at least once every year.

Rule 119

Conditional release

1. The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:

(a) The person must not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;

(b) The person must not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;

(c) The person must not contact directly or indirectly victims or witnesses;

(d) The person must not engage in certain professional activities;

(e) The person must reside at a particular address as specified by the Pre-Trial Chamber;

(f) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;

(g) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

(h) The person must supply the Registrar with all identity documents, particularly his or her passport.

2. At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to sub-rule 1.

3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed.

4. If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

5. When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons. In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with sub-rules 1, 2 and 3. If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with sub-rule 4.

Rule 120

Instruments of restraint

Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the person in the custody of the Court and others or for other security reasons, and shall be removed when the person appears before a Chamber.

Section V

Proceedings with regard to the confirmation of charges under article 61

Rule 121

Proceedings before the confirmation hearing

1. A person subject to a warrant of arrest or a summons to appear under article 58 shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67. At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under sub-rule 7, are made public.

2. In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure:

(a) The person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her;

(b) The Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a judge of the Pre-Trial Chamber shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person;

(c) All evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

3. The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

4. Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing.

5. Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.

6. If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

7. The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.

8. The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

9. The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

10. The Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

Rule 122
Proceedings at the confirmation hearing in the presence of the person charged

1. The Presiding Judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.
2. If a question or challenge concerning jurisdiction or admissibility arises, rule 58 applies.
3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.
4. At no subsequent point may the objections and observations made under sub-rule 3 be raised or made again in the confirmation or trial proceedings.
5. If objections or observations referred to in sub-rule 3 are presented, the Presiding Judge of the Pre-Trial Chamber shall invite those referred to in sub-rule 3 to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.
6. If the objections raised or observations made are those referred to in sub-rule 3, the Pre-Trial Chamber shall decide whether to join the issue raised with the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.
7. During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.
8. The Pre-Trial Chamber shall permit the Prosecutor and the person, in that order, to make final observations.
9. Subject to the provisions of article 61, article 69 shall apply *mutatis mutandis* at the confirmation hearing.

Rule 123
Measures to ensure the presence of the person concerned at the confirmation hearing

1. When a warrant of arrest or summons to appear in accordance with article 58, paragraph 7, has been issued for a person by the Pre-Trial Chamber and the person is arrested or served with the summons, the Pre-Trial Chamber shall ensure that the person is notified of the provisions of article 61, paragraph 2.
2. The Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2 (b). When the person concerned has a counsel known to the

Court, the consultations shall be held in the presence of the counsel unless the Pre-Trial Chamber decides otherwise.

3. The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

Rule 124

Waiver of the right to be present at the confirmation hearing

1. If the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may then hold consultations with the Prosecutor and the person concerned, assisted or represented by his or her counsel.

2. A confirmation hearing pursuant to article 61, paragraph 2 (a), shall only be held when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right.

3. The Pre-Trial Chamber may authorize and make provision for the person to observe the hearing from outside the courtroom through the use of communications technology, if required.

4. The waiving of the right to be present at the hearing does not prevent the Pre-Trial Chamber from receiving written observations on issues before the Chamber from the person concerned.

Rule 125

Decision to hold the confirmation hearing in the absence of the person concerned

1. After holding consultations under rules 123 and 124, the Pre-Trial Chamber shall decide whether there is cause to hold a hearing on confirmation of charges in the absence of the person concerned, and in that case, whether the person may be represented by counsel. The Pre-Trial Chamber shall, when appropriate, set a date for the hearing and make the date public.

2. The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, if possible, to the person concerned or his or her counsel.

3. If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is not available to the Court, the confirmation of charges may not take place until the person is available to the Court. The Pre-Trial Chamber may review its decision at any time, at the request of the Prosecutor or on its own initiative.

4. If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is available to the Court, it shall order the person to appear.

Rule 126**Confirmation hearing in the absence of the person concerned**

1. The provisions of rules 121 and 122 shall apply *mutatis mutandis* to the preparation for and holding of a hearing on confirmation of charges in the absence of the person concerned.
2. If the Pre-Trial Chamber has determined that the person concerned shall be represented by counsel, the counsel shall have the opportunity to exercise the rights of that person.
3. When the person who has fled is subsequently arrested and the Court has confirmed the charges upon which the Prosecutor intends to pursue the trial, the person charged shall be committed to the Trial Chamber established under article 61, paragraph 11. The person charged may request in writing that the Trial Chamber refer issues to the Pre-Trial Chamber that are necessary for the Chamber's effective and fair functioning in accordance with article 64, paragraph 4.

Section VI**Closure of the pre-trial phase****Rule 127****Procedure in the event of different decisions on multiple charges**

If the Pre-Trial Chamber is ready to confirm some of the charges but adjourns the hearing on other charges under article 61, paragraph 7 (c), it may decide that the committal of the person concerned to the Trial Chamber on the charges that it is ready to confirm shall be deferred pending the continuation of the hearing. The Pre-Trial Chamber may then establish a time limit within which the Prosecutor may proceed in accordance with article 61, paragraph 7 (c) (i) or (ii).

Rule 128**Amendment of the charges**

1. If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, the Prosecutor shall make a written request to the Pre-Trial Chamber, and that Chamber shall so notify the accused.
2. Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law.
3. If the Pre-Trial Chamber determines that the amendments proposed by the Prosecutor constitute additional or more serious charges, it shall proceed, as appropriate, in accordance with rules 121 and 122 or rules 123 to 126.

Rule 129
Notification of the decision on the confirmation of charges

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the Prosecutor, the person concerned and his or her counsel. Such decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

Rule 130
Constitution of the Trial Chamber

When the Presidency constitutes a Trial Chamber and refers the case to it, the Presidency shall transmit the decision of the Pre-Trial Chamber and the record of the proceedings to the Trial Chamber. The Presidency may also refer the case to a previously constituted Trial Chamber.

Chapter 6

Trial procedure

Rule 131

Record of the proceedings transmitted by the Pre-Trial Chamber

1. The Registrar shall maintain the record of the proceedings transmitted by the Pre-Trial Chamber, pursuant to rule 121, sub-rule 10.
2. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives of States when they participate in the proceedings, and the victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

Rule 132

Status conferences

1. Promptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial. The Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may postpone the date of the trial. The Trial Chamber shall notify the trial date to all those participating in the proceedings. The Trial Chamber shall ensure that this date and any postponements are made public.
2. In order to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber may confer with the parties by holding status conferences as necessary.

Rule 133

Motions challenging admissibility or jurisdiction

Challenges to the jurisdiction of the Court or the admissibility of the case at the commencement of the trial, or subsequently with the leave of the Court, shall be dealt with by the Presiding Judge and the Trial Chamber in accordance with rule 58.

Rule 134

Motions relating to the trial proceedings

1. Prior to the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on any issue concerning the conduct of the proceedings. Any request from the Prosecutor or the defence shall be in writing and, unless the request is for an ex parte procedure, served on the other party. For all requests other than those submitted for an ex parte procedure, the other party shall have the opportunity to file a response.
2. At the commencement of the trial, the Trial Chamber shall ask the Prosecutor and the defence whether they have any objections or observations concerning the conduct of the proceedings which have arisen since the confirmation hearings. Such

objections or observations may not be raised or made again on a subsequent occasion in the trial proceedings, without leave of the Trial Chamber in this proceeding.

3. After the commencement of the trial, the Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may rule on issues that arise during the course of the trial.

Rule 135

Medical examination of the accused

1. The Trial Chamber may, for the purpose of discharging its obligations under article 64, paragraph 8 (a), or for any other reasons, or at the request of a party, order a medical, psychiatric or psychological examination of the accused, under the conditions set forth in rule 113.

2. The Trial Chamber shall place its reasons for any such order on the record.

3. The Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Trial Chamber at the request of a party.

4. Where the Trial Chamber is satisfied that the accused is unfit to stand trial, it shall order that the trial be adjourned. The Trial Chamber may, on its own motion or at the request of the prosecution or the defence, review the case of the accused. In any event, the case shall be reviewed every 120 days unless there are reasons to do otherwise. If necessary, the Trial Chamber may order further examinations of the accused. When the Trial Chamber is satisfied that the accused has become fit to stand trial, it shall proceed in accordance with rule 132.

Rule 136

Joint and separate trials

1. Persons accused jointly shall be tried together unless the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and can be proceeded against in accordance with article 65, paragraph 2.

2. In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.

Rule 137

Record of the trial proceedings

1. In accordance with article 64, paragraph 10, the Registrar shall take measures to make, and preserve, a full and accurate record of all proceedings, including transcripts, audio- and video-recordings and other means of capturing sound or image.

2. A Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.
3. The Trial Chamber may authorize persons other than the Registrar to take photographs, audio- and video-recordings and other means of capturing the sound or image of the trial.

Rule 138

Custody of evidence

The Registrar shall retain and preserve, as necessary, all the evidence and other materials offered during the hearing, subject to any order of the Trial Chamber.

Rule 139

Decision on admission of guilt

1. After having proceeded in accordance with article 65, paragraph 1, the Trial Chamber, in order to decide whether to proceed in accordance with article 65, paragraph 4, may invite the views of the Prosecutor and the defence.
2. The Trial Chamber shall then make its decision on the admission of guilt and shall give reasons for this decision, which shall be placed on the record.

Rule 140

Directions for the conduct of the proceedings and testimony

1. If the Presiding Judge does not give directions under article 64, paragraph 8, the Prosecutor and the defence shall agree on the order and manner in which the evidence shall be submitted to the Trial Chamber. If no agreement can be reached, the Presiding Judge shall issue directions.
2. In all cases, subject to article 64, paragraphs 8 (b) and 9, article 69, paragraph 4, and rule 88, sub-rule 5, a witness may be questioned as follows:
 - (a) A party that submits evidence in accordance with article 69, paragraph 3, by way of a witness, has the right to question that witness;
 - (b) The prosecution and the defence have the right to question that witness about relevant matters related to the witness's testimony and its reliability, the credibility of the witness and other relevant matters;
 - (c) The Trial Chamber has the right to question a witness before or after a witness is questioned by a participant referred to in sub-rules 2 (a) or (b);
 - (d) The defence shall have the right to be the last to examine a witness.
3. Unless otherwise ordered by the Trial Chamber, a witness other than an expert, or an investigator if he or she has not yet testified, shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying. When a witness testifies after hearing the testimony of others, this fact

shall be noted in the record and considered by the Trial Chamber when evaluating the evidence.

Rule 141

Closure of evidence and closing statements

1. The Presiding Judge shall declare when the submission of evidence is closed.
2. The Presiding Judge shall invite the Prosecutor and the defence to make their closing statements. The defence shall always have the opportunity to speak last.

Rule 142

Deliberations

1. After the closing statements, the Trial Chamber shall retire to deliberate, in camera. The Trial Chamber shall inform all those who participated in the proceedings of the date on which the Trial Chamber will pronounce its decision. The pronouncement shall be made within a reasonable period of time after the Trial Chamber has retired to deliberate.
2. When there is more than one charge, the Trial Chamber shall decide separately on each charge. When there is more than one accused, the Trial Chamber shall decide separately on the charges against each accused.

Rule 143

Additional hearings on matters related to sentence or reparations

Pursuant to article 76, paragraphs 2 and 3, for the purpose of holding a further hearing on matters related to sentence and, if applicable, reparations, the Presiding Judge shall set the date of the further hearing. This hearing can be postponed, in exceptional circumstances, by the Trial Chamber, on its own motion or at the request of the Prosecutor, the defence or the legal representatives of the victims participating in the proceedings pursuant to rules 89 to 91 and, in respect of reparations hearings, those victims who have made a request under rule 94.

Rule 144

Delivery of the decisions of the Trial Chamber

1. Decisions of the Trial Chamber concerning admissibility of a case, the jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations shall be pronounced in public and, wherever possible, in the presence of the accused, the Prosecutor, the victims or the legal representatives of the victims participating in the proceedings pursuant to rules 89 to 91, and the representatives of the States which have participated in the proceedings.

2. Copies of all the above-mentioned decisions shall be provided as soon as possible to:

(a) All those who participated in the proceedings, in a working language of the Court;

(b) The accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1 (f).

Chapter 7

Penalties

Rule 145

Determination of sentence

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.

Rule 146
Imposition of fines under article 77

1. In determining whether to order a fine under article 77, paragraph 2 (a), and in fixing the amount of the fine, the Court shall determine whether imprisonment is a sufficient penalty. The Court shall give due consideration to the financial capacity of the convicted person, including any orders for forfeiture in accordance with article 77, paragraph 2 (b), and, as appropriate, any orders for reparation in accordance with article 75. The Court shall take into account, in addition to the factors referred to in rule 145, whether and to what degree the crime was motivated by personal financial gain.

2. A fine imposed under article 77, paragraph 2 (a), shall be set at an appropriate level. To this end, the Court shall, in addition to the factors referred to above, in particular take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

3. In imposing a fine, the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

4. In imposing a fine, the Court may, as an option, calculate it according to a system of daily fines. In such cases, the minimum duration shall be 30 days and the maximum duration five years. The Court shall decide the total amount in accordance with sub-rules 1 and 2. It shall determine the amount of daily payment in the light of the individual circumstances of the convicted person, including the financial needs of his or her dependants.

5. If the convicted person does not pay the fine imposed in accordance with the conditions set above, appropriate measures may be taken by the Court pursuant to rules 217 to 222 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Presidency, on its own motion or at the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less. In the determination of such period of extension, the Presidency shall take into account the amount of the fine, imposed and paid. Any such extension shall not apply in the case of life imprisonment. The extension may not lead to a total period of imprisonment in excess of 30 years.

6. In order to determine whether to order an extension and the period involved, the Presidency shall sit in camera for the purpose of obtaining the views of the sentenced person and the Prosecutor. The sentenced person shall have the right to be assisted by counsel.

7. In imposing a fine, the Court shall warn the convicted person that failure to pay the fine in accordance with the conditions set out above may result in an extension of the period of imprisonment as described in this rule.

Rule 147
Orders of forfeiture

1. In accordance with article 76, paragraphs 2 and 3, and rules 63, sub-rule 1, and 143, at any hearing to consider an order of forfeiture, Chamber shall hear evidence as to the identification and location of specific proceeds, property or assets which have been derived directly or indirectly from the crime.
2. If before or during the hearing, a Chamber becomes aware of any bona fide third party who appears to have an interest in relevant proceeds, property or assets, it shall give notice to that third party.
3. The Prosecutor, the convicted person and any bona fide third party with an interest in the relevant proceeds, property or assets may submit evidence relevant to the issue.
4. After considering any evidence submitted, a Chamber may issue an order of forfeiture in relation to specific proceeds, property or assets if it is satisfied that these have been derived directly or indirectly from the crime.

Rule 148
Orders to transfer fines or forfeitures to the Trust Fund

Before making an order pursuant to article 79, paragraph 2, a Chamber may request the representatives of the Fund to submit written or oral observations to it.

Chapter 8

Appeal and revision

Section I

General provisions

Rule 149

Rules governing proceedings in the Appeals Chamber

Parts 5 and 6 and rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Section II

Appeals against convictions, acquittals, sentences and reparation orders

Rule 150

Appeal

1. Subject to sub-rule 2, an appeal against a decision of conviction or acquittal under article 74, a sentence under article 76 or a reparation order under article 75 may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision, the sentence or the reparation order.
2. The Appeals Chamber may extend the time limit set out in sub-rule 1, for good cause, upon the application of the party seeking to file the appeal.
3. The appeal shall be filed with the Registrar.
4. If an appeal is not filed as set out in sub-rules 1 to 3, the decision, the sentence or the reparation order of the Trial Chamber shall become final.

Rule 151

Procedure for the appeal

1. Upon the filing of an appeal under rule 150, the Registrar shall transmit the trial record to the Appeals Chamber.
2. The Registrar shall notify all parties who participated in the proceedings before the Trial Chamber that an appeal has been filed.

Rule 152

Discontinuance of the appeal

1. Any party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.
2. If the Prosecutor has filed an appeal on behalf of a convicted person in accordance with article 81, paragraph 1 (b), before filing any notice of discontinuance, the Prosecutor shall inform the convicted person that he or she intends to discontinue the appeal in order to give him or her the opportunity to continue the appeal proceedings.

Rule 153

Judgement on appeals against reparation orders

1. The Appeals Chamber may confirm, reverse or amend a reparation order made under article 75.
2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraphs 4 and 5.

Section III

Appeals against other decisions

Rule 154

Appeals that do not require the leave of the Court

1. An appeal may be filed under article 81, paragraph 3 (c) (ii), or article 82, paragraph 1 (a) or (b), not later than five days from the date upon which the party filing the appeal is notified of the decision.
2. An appeal may be filed under article 82, paragraph 1 (c), not later than two days from the date upon which the party filing the appeal is notified of the decision.
3. Rule 150, sub-rules 3 and 4, shall apply to appeals filed under sub-rules 1 and 2 of this rule.

Rule 155

Appeals that require leave of the Court

1. When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.
2. The Chamber shall render a decision and shall notify all parties who participated in the proceedings that gave rise to the decision referred to in sub-rule 1.

Rule 156

Procedure for the appeal

1. As soon as an appeal has been filed under rule 154 or as soon as leave to appeal has been granted under rule 155, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal.
2. The Registrar shall give notice of the appeal to all parties who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal, unless they have already been notified by the Chamber under rule 155, sub-rule 2.
3. The appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing.
4. The appeal shall be heard as expeditiously as possible.
5. When filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

Rule 157

Discontinuance of the appeal

Any party who has filed an appeal under rule 154 or who has obtained the leave of a Chamber to appeal a decision under rule 155 may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

Rule 158

Judgement on the appeal

1. An Appeals Chamber which considers an appeal referred to in this section may confirm, reverse or amend the decision appealed.
2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

Section IV

Revision of conviction or sentence

Rule 159

Application for revision

1. An application for revision provided for in article 84, paragraph 1, shall be in writing and shall set out the grounds on which the revision is sought. It shall as far as possible be accompanied by supporting material.

2. The determination on whether the application is meritorious shall be taken by a majority of the judges of the Appeals Chamber and shall be supported by reasons in writing.

3. Notification of the decision shall be sent to the applicant and, as far as possible, to all the parties who participated in the proceedings related to the initial decision.

Rule 160

Transfer for the purpose of revision

1. For the conduct of the hearing provided for in rule 161, the relevant Chamber shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

2. The determination of the Court shall be communicated without delay to the State of enforcement.

3. The provisions of rule 206, sub-rule 3, shall be applicable.

Rule 161

Determination on revision

1. On a date which it shall determine and shall communicate to the applicant and to all those having received notification under rule 159, sub-rule 3, the relevant Chamber shall hold a hearing to determine whether the conviction or sentence should be revised.

2. For the conduct of the hearing, the relevant Chamber shall exercise, *mutatis mutandis*, all the powers of the Trial Chamber pursuant to Part 6 and the rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers.

3. The determination on revision shall be governed by the applicable provisions of article 83, paragraph 4.

Chapter 9

Offences and misconduct against the Court

Section I

Offences against the administration of justice under article 70

Rule 162

Exercise of jurisdiction

1. Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.
2. In making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:
 - (a) The availability and effectiveness of prosecution in a State Party;
 - (b) The seriousness of an offence;
 - (c) The possible joinder of charges under article 70 with charges under articles 5 to 8;
 - (d) The need to expedite proceedings;
 - (e) Links with an ongoing investigation or a trial before the Court; and
 - (f) Evidentiary considerations.
3. The Court shall give favourable consideration to a request from the host State for a waiver of the power of the Court to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.
4. If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

Rule 163

Application of the Statute and the Rules

1. Unless otherwise provided in sub-rules 2 and 3, rule 162 and rules 164 to 169, the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70.
2. The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.
3. The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

Rule 164

Periods of limitation

1. If the Court exercises jurisdiction in accordance with rule 162, it shall apply the periods of limitation set forth in this rule.

2. Offences defined in article 70 shall be subject to a period of limitation of five years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated. The period of limitation shall be interrupted if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

3. Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of 10 years from the date on which the sanction has become final. The period of limitation shall be interrupted with the detention of the convicted person or while the person concerned is outside the territory of the States Parties.

Rule 165

Investigation, prosecution and trial

1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.

2. Articles 53 and 59, and any rules thereunder, shall not apply.

3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.

4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

Rule 166

Sanctions under article 70

1. If the Court imposes sanctions with respect to article 70, this rule shall apply.

2. Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine or both.

3. Each offence may be separately fined and those fines may be cumulative. Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

4. In imposing a fine the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

5. If the convicted person does not pay a fine imposed in accordance with the conditions set forth in sub-rule 4, appropriate measures may be taken by the Court pursuant to rules 217 to 222 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Court, on its own motion or at the request of the

Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort impose a term of imprisonment in accordance with article 70, paragraph 3. In the determination of such term of imprisonment, the Court shall take into account the amount of fine paid.

Rule 167

International cooperation and judicial assistance

1. With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.
2. The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

Rule 168

Ne bis in idem

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

Rule 169

Immediate arrest

In the case of an alleged offence under article 70 committed in the presence of a Chamber, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

Section II

Misconduct before the Court under article 71

Rule 170

Disruption of proceedings

Having regard to article 63, paragraph 2, the Presiding Judge of the Chamber dealing with the matter may, after giving a warning:

- (a) Order a person disrupting the proceedings of the Court to leave or be removed from the courtroom; or,
- (b) In case of repeated misconduct, order the interdiction of that person from attending the proceedings.

Rule 171
Refusal to comply with a direction by the Court

1. When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 170, and that direction is accompanied by a warning of sanctions in case of breach, the Presiding Judge of the Chamber dealing with the matter may order the interdiction of that person from the proceedings for a period not exceeding 30 days or, if the misconduct is of a more serious nature, impose a fine.
2. If the person committing misconduct as described in sub-rule 1 is an official of the Court, or a defence counsel, or a legal representative of victims, the Presiding Judge of the Chamber dealing with the matter may also order the interdiction of that person from exercising his or her functions before the Court for a period not exceeding 30 days.
3. If the Presiding Judge in cases under sub-rules 1 and 2 considers that a longer period of interdiction is appropriate, the Presiding Judge shall refer the matter to the Presidency, which may hold a hearing to determine whether to order a longer or permanent period of interdiction.
4. A fine imposed under sub-rule 1 shall not exceed 2,000 euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.
5. The person concerned shall be given an opportunity to be heard before a sanction for misconduct, as described in this rule, is imposed.

Rule 172
Conduct covered by both articles 70 and 71

If conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 162 to 169.

Chapter 10

Compensation to an arrested or convicted person

Rule 173

Request for compensation

1. Anyone seeking compensation on any of the grounds indicated in article 85 shall submit a request, in writing, to the Presidency, which shall designate a Chamber composed of three judges to consider the request. These judges shall not have participated in any earlier judgement of the Court regarding the person making the request.
2. The request for compensation shall be submitted not later than six months from the date the person making the request was notified of the decision of the Court concerning:
 - (a) The unlawfulness of the arrest or detention under article 85, paragraph 1;
 - (b) The reversal of the conviction under article 85, paragraph 2;
 - (c) The existence of a grave and manifest miscarriage of justice under article 85, paragraph 3.
3. The request shall contain the grounds and the amount of compensation requested.
4. The person requesting compensation shall be entitled to legal assistance.

Rule 174

Procedure for seeking compensation

1. A request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request.
2. The Chamber designated under rule 173, sub-rule 1, may either hold a hearing or determine the matter on the basis of the request and any written observations by the Prosecutor and the person filing the request. A hearing shall be held if the Prosecutor or the person seeking compensation so requests.
3. The decision shall be taken by the majority of the judges. The decision shall be notified to the Prosecutor and to the person filing the request.

Rule 175

Amount of compensation

In establishing the amount of any compensation in conformity with article 85, paragraph 3, the Chamber designated under rule 173, sub-rule 1, shall take into consideration the consequences of the grave and manifest miscarriage of justice on the personal, family, social and professional situation of the person filing the request.

Chapter 11

International cooperation and judicial assistance

Section I

Requests for cooperation under article 87

Rule 176

Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance

1. Upon and subsequent to the establishment of the Court, the Registrar shall obtain from the Secretary-General of the United Nations any communication made by States pursuant to article 87, paragraphs 1 (a) and 2.
2. The Registrar shall transmit the requests for cooperation made by the Chambers and shall receive the responses, information and documents from requested States. The Office of the Prosecutor shall transmit the requests for cooperation made by the Prosecutor and shall receive the responses, information and documents from requested States.
3. The Registrar shall be the recipient of any communication from States concerning subsequent changes in the designation of the national channels charged with receiving requests for cooperation, as well as of any change in the language in which requests for cooperation should be made, and shall, upon request, make such information available to States Parties as may be appropriate.
4. The provisions of sub-rule 2 are applicable *mutatis mutandis* where the Court requests information, documents or other forms of cooperation and assistance from an intergovernmental organization.
5. The Registrar shall transmit any communications referred to in sub-rules 1 and 3 and rule 177, sub-rule 2, as appropriate, to the Presidency or the Office of the Prosecutor, or both.

Rule 177

Channels of communication

1. Communications concerning the national authority charged with receiving requests for cooperation made upon ratification, acceptance, approval or accession shall provide all relevant information about such authorities.
2. When an intergovernmental organization is asked to assist the Court under article 87, paragraph 6, the Registrar shall, when necessary, ascertain its designated channel of communication and obtain all relevant information relating thereto.

Rule 178**Language chosen by States Parties under article 87, paragraph 2**

1. When a requested State Party has more than one official language, it may indicate upon ratification, acceptance, approval or accession that requests for cooperation and any supporting documents can be drafted in any one of its official languages.
2. When the requested State Party has not chosen a language for communication with the Court upon ratification, acceptance, accession or approval, the request for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court pursuant to article 87, paragraph 2.

Rule 179**Language of requests directed to States not party to the Statute**

When a State not party to the Statute has agreed to provide assistance to the Court under article 87, paragraph 5, and has not made a choice of language for such requests, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.

Rule 180**Changes in the channels of communication or the languages of requests for cooperation**

1. Changes concerning the channel of communication or the language a State has chosen under article 87, paragraph 2, shall be communicated in writing to the Registrar at the earliest opportunity.
2. Such changes shall take effect in respect of requests for cooperation made by the Court at a time agreed between the Court and the State or, in the absence of such an agreement, 45 days after the Court has received the communication and, in all cases, without prejudice to current requests or requests in progress.

Section II**Surrender, transit and competing requests under articles 89 and 90****Rule 181****Challenge to admissibility of a case before a national court**

When a situation described in article 89, paragraph 2, arises, and without prejudice to the provisions of article 19 and of rules 58 to 62 on procedures applicable to challenges to the jurisdiction of the Court or the admissibility of a case, the Chamber dealing with the case, if the admissibility ruling is still pending, shall take steps to obtain from the requested State all the relevant information about the *ne bis in idem* challenge brought by the person.

Rule 182
Request for transit under article 89, paragraph 3 (e)

1. In situations described in article 89, paragraph 3 (e), the Court may transmit the request for transit by any medium capable of delivering a written record.
2. When the time limit provided for in article 89, paragraph 3 (e), has expired and the person concerned has been released, such a release is without prejudice to a subsequent arrest of the person in accordance with the provisions of article 89 or article 92.

Rule 183
Possible temporary surrender

Following the consultations referred to in article 89, paragraph 4, the requested State may temporarily surrender the person sought in accordance with conditions determined between the requested State and the Court. In such case the person shall be kept in custody during his or her presence before the Court and shall be transferred to the requested State once his or her presence before the Court is no longer required, at the latest when the proceedings have been completed.

Rule 184
Arrangements for surrender

1. The requested State shall immediately inform the Registrar when the person sought by the Court is available for surrender.
2. The person shall be surrendered to the Court by the date and in the manner agreed upon between the authorities of the requested State and the Registrar.
3. If circumstances prevent the surrender of the person by the date agreed, the authorities of the requested State and the Registrar shall agree upon a new date and manner by which the person shall be surrendered.
4. The Registrar shall maintain contact with the authorities of the host State in relation to the arrangements for the surrender of the person to the Court.

Rule 185
Release of a person from the custody of the Court other than upon completion of sentence

1. Subject to sub-rule 2, where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under article 17, paragraph 1 (b), (c) or (d), the charges have not been confirmed under article 61, the person has been acquitted at trial or on appeal, or for any other reason, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State. In this case, the host State shall

facilitate the transfer in accordance with the agreement referred to in article 3, paragraph 2, and the related arrangements.

2. Where the Court has determined that the case is inadmissible under article 17, paragraph 1 (a), the Court shall make arrangements, as appropriate, for the transfer of the person to a State whose investigation or prosecution has formed the basis of the successful challenge to admissibility, unless the State that originally surrendered the person requests his or her return.

Rule 186

Competing requests in the context of a challenge to the admissibility of the case

In situations described in article 90, paragraph 8, the requested State shall provide the notification of its decision to the Prosecutor in order to enable him or her to act in accordance with article 19, paragraph 10.

Section III

Documents for arrest and surrender under articles 91 and 92

Rule 187

Translation of documents accompanying request for surrender

For the purposes of article 67, paragraph 1 (a), and in accordance with rule 117, sub-rule 1, the request under article 91 shall be accompanied, as appropriate, by a translation of the warrant of arrest or of the judgement of conviction and by a translation of the text of any relevant provisions of the Statute, in a language that the person fully understands and speaks.

Rule 188

Time limit for submission of documents after provisional arrest

For the purposes of article 92, paragraph 3, the time limit for receipt by the requested State of the request for surrender and the documents supporting the request shall be 60 days from the date of the provisional arrest.

Rule 189

Transmission of documents supporting the request

When a person has consented to surrender in accordance with the provisions of article 92, paragraph 3, and the requested State proceeds to surrender the person to the Court, the Court shall not be required to provide the documents described in article 91 unless the requested State indicates otherwise.

Section IV

Cooperation under article 93

Rule 190

Instruction on self-incrimination accompanying request for witness

When making a request under article 93, paragraph 1 (e), with respect to a witness, the Court shall annex an instruction, concerning rule 74 relating to self-incrimination, to be provided to the witness in question, in a language that the person fully understands and speaks.

Rule 191

Assurance provided by the Court under article 93, paragraph 2

The Chamber dealing with the case, on its own motion or at the request of the Prosecutor, defence or witness or expert concerned, may decide, after taking into account the views of the Prosecutor and the witness or expert concerned, to provide the assurance described in article 93, paragraph 2.

Rule 192

Transfer of a person in custody

1. Transfer of a person in custody to the Court in accordance with article 93, paragraph 7, shall be arranged by the national authorities concerned in liaison with the Registrar and the authorities of the host State.
2. The Registrar shall ensure the proper conduct of the transfer, including the supervision of the person while in the custody of the Court.
3. The person in custody before the Court shall have the right to raise matters concerning the conditions of his or her detention with the relevant Chamber.
4. In accordance with article 93, paragraph 7 (b), when the purposes of the transfer have been fulfilled, the Registrar shall arrange for the return of the person in custody to the requested State.

Rule 193

Temporary transfer of the person from the State of enforcement

1. The Chamber that is considering the case may order the temporary transfer from the State of enforcement to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.
2. The Registrar shall ensure the proper conduct of the transfer, in liaison with the authorities of the State of enforcement and the authorities of the host State. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.

3. The person shall be kept in custody during his or her presence before the Court. The entire period of detention spent at the seat of the Court shall be deducted from the sentence remaining to be served.

Rule 194

Cooperation requested from the Court

1. In accordance with article 93, paragraph 10, and consistent with article 96, *mutatis mutandis*, a State may transmit to the Court a request for cooperation or assistance to the Court, either in or accompanied by a translation into one of the working languages of the Court.

2. Requests described in sub-rule 1 are to be sent to the Registrar, which shall transmit them, as appropriate, either to the Prosecutor or to the Chamber concerned.

3. If protective measures within the meaning of article 68 have been adopted, the Prosecutor or Chamber, as appropriate, shall consider the views of the Chamber which ordered the measures as well as those of the relevant victim or witness, before deciding on the request.

4. If the request relates to documents or evidence as described in article 93, paragraph 10 (b) (ii), the Prosecutor or Chamber, as appropriate, shall obtain the written consent of the relevant State before proceeding with the request.

5. When the Court decides to grant the request for cooperation or assistance from a State, the request shall be executed, insofar as possible, following any procedure outlined therein by the requesting State and permitting persons specified in the request to be present.

Section V

Cooperation under article 98

Rule 195

Provision of information

1. When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the requested State shall provide any information relevant to assist the Court in the application of article 98. Any concerned third State or sending State may provide additional information to assist the Court.

2. The Court may not proceed with a request for the surrender of a person without the consent of a sending State if, under article 98, paragraph 2, such a request would be inconsistent with obligations under an international agreement pursuant to which the consent of a sending State is required prior to the surrender of a person of that State to the Court.

Section VI
Rule of speciality under article 101

Rule 196
Provision of views on article 101, paragraph 1

A person surrendered to the Court may provide views on a perceived violation of the provisions of article 101, paragraph 1.

Rule 197
Extension of the surrender

When the Court has requested a waiver of the requirements of article 101, paragraph 1, the requested State may ask the Court to obtain and provide the views of the person surrendered to the Court.

Chapter 12 Enforcement

Section I

Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104

Rule 198

Communications between the Court and States

Unless the context otherwise requires, article 87 and rules 176 to 180 shall apply, as appropriate, to communications between the Court and a State on matters relating to enforcement of sentences.

Rule 199

Organ responsible under Part 10

Unless provided otherwise in the Rules, the functions of the Court under Part 10 shall be exercised by the Presidency.

Rule 200

List of States of enforcement

1. A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.
2. The Presidency shall not include a State on the list provided for in article 103, paragraph 1 (a), if it does not agree with the conditions that such a State attaches to its acceptance. The Presidency may request any additional information from that State prior to taking a decision.
3. A State that has attached conditions of acceptance may at any time withdraw such conditions. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.
4. A State may at any time inform the Registrar of its withdrawal from the list. Such withdrawal shall not affect the enforcement of the sentences in respect of persons that the State has already accepted.
5. The Court may enter bilateral arrangements with States with a view to establishing a framework for the acceptance of prisoners sentenced by the Court. Such arrangements shall be consistent with the Statute.

Rule 201
Principles of equitable distribution

Principles of equitable distribution for purposes of article 103, paragraph 3, shall include:

- (a) The principle of equitable geographical distribution;
- (b) The need to afford each State on the list an opportunity to receive sentenced persons;
- (c) The number of sentenced persons already received by that State and other States of enforcement;
- (d) Any other relevant factors.

Rule 202
Timing of delivery of the sentenced person to the State of enforcement

The delivery of a sentenced person from the Court to the designated State of enforcement shall not take place unless the decision on the conviction and the decision on the sentence have become final.

Rule 203
Views of the sentenced person

1. The Presidency shall give notice in writing to the sentenced person that it is addressing the designation of a State of enforcement. The sentenced person shall, within such time limit as the Presidency shall prescribe, submit in writing his or her views on the question to the Presidency.
2. The Presidency may allow the sentenced person to make oral presentations.
3. The Presidency shall allow the sentenced person:
 - (a) To be assisted, as appropriate, by a competent interpreter and to benefit from any translation necessary for the presentation of his or her views;
 - (b) To be granted adequate time and facilities necessary to prepare for the presentation of his or her views.

Rule 204
Information relating to designation

When the Presidency notifies the designated State of its decision, it shall also transmit the following information and documents:

- (a) The name, nationality, date and place of birth of the sentenced person;
- (b) A copy of the final judgement of conviction and of the sentence imposed;

(c) The length and commencement date of the sentence and the time remaining to be served;

(d) After having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

Rule 205

Rejection of designation in a particular case

Where a State in a particular case rejects the designation by the Presidency, the Presidency may designate another State.

Rule 206

Delivery of the sentenced person to the State of enforcement

1. The Registrar shall inform the Prosecutor and the sentenced person of the State designated to enforce the sentence.
2. The sentenced person shall be delivered to the State of enforcement as soon as possible after the designated State of enforcement accepts.
3. The Registrar shall ensure the proper conduct of the delivery of the person in consultation with the authorities of the State of enforcement and the host State.

Rule 207

Transit

1. No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State. If an unscheduled landing occurs on the territory of the transit State, that State shall, to the extent possible under the procedure of national law, detain the sentenced person in custody until a request for transit as provided in sub-rule 2 or a request under article 89, paragraph 1, or article 92 is received.
2. To the extent possible under the procedure of national law, a State Party shall authorize the transit of a sentenced person through its territory and the provisions of article 89, paragraph 3 (b) and (c), and articles 105 and 108 and any rules relating thereto shall, as appropriate, apply. A copy of the final judgement of conviction and of the sentence imposed shall be attached to such request for transit.

Rule 208

Costs

1. The ordinary costs for the enforcement of the sentence in the territory of the State of enforcement shall be borne by that State.
2. Other costs, including those for the transport of the sentenced person and those referred to in article 100, paragraph 1 (c), (d) and (e), shall be borne by the Court.

Rule 209
Change in designation of State of enforcement

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may at any time act in accordance with article 104, paragraph 1.
2. The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought.

Rule 210
Procedure for change in the designation of a State of enforcement

1. Before deciding to change the designation of a State of enforcement, the Presidency may:
 - (a) Request views from the State of enforcement;
 - (b) Consider written or oral presentations of the sentenced person and the Prosecutor;
 - (c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;
 - (d) Obtain any other relevant information from any reliable sources.
2. The provisions of rule 203, sub-rule 3, shall apply, as appropriate.
3. If the Presidency refuses to change the designation of the State of enforcement, it shall, as soon as possible, inform the sentenced person, the Prosecutor and the Registrar of its decision and of the reasons therefor. It shall also inform the State of enforcement.

Section II
Enforcement, supervision and transfer under articles 105, 106 and 107**Rule 211**
Supervision of enforcement of sentences and conditions of imprisonment

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:
 - (a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;
 - (b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

(d) May, where appropriate, give the State of enforcement an opportunity to comment on the views expressed by the sentenced person under sub-rule 1 (c).

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Rule 212

Information on location of the person for enforcement of fines, forfeitures or reparation measures

For the purpose of enforcement of fines and forfeiture measures and of reparation measures ordered by the Court, the Presidency may, at any time or at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning the intention of that State to authorize the person to remain in its territory or the location where it intends to transfer the person.

Rule 213

Procedure for article 107, paragraph 3

With respect to article 107, paragraph 3, the procedure set out in rules 214 and 215 shall apply, as appropriate.

Section III

Limitation on the prosecution or punishment of other offences under article 108

Rule 214

Request to prosecute or enforce a sentence for prior conduct

1. For the application of article 108, when the State of enforcement wishes to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:

(a) A statement of the facts of the case and their legal characterization;

(b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;

(c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;

(d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

2. In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

3. The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

4. If the person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, the Presidency shall consult with the State that surrendered the person and take into account any views expressed by that State.

5. Any information or documents transmitted to the Presidency under sub-rules 1 to 4 shall be transmitted to the Prosecutor, who may comment.

6. The Presidency may decide to conduct a hearing.

Rule 215

Decision on request to prosecute or enforce a sentence

1. The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.

2. If the request submitted under sub-rules 1 or 2 of rule 214 concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court, subject to the provisions of article 110.

3. The Presidency may authorize the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to the State responsible for enforcement of the sentence pronounced by the Court, after the prosecution.

Rule 216

Information on enforcement

The Presidency shall request the State of enforcement to inform it of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

Section IV

Enforcement of fines, forfeiture measures and reparation orders

Rule 217

Cooperation and measures for enforcement of fines, forfeiture or reparation orders

For the enforcement of fines, forfeiture or reparation orders, the Presidency shall, as appropriate, seek cooperation and measures for enforcement in accordance with Part 9, as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection. The Presidency shall, as appropriate, inform the State of any third-party claims or of the fact that no claim was presented by a person who received notification of any proceedings conducted pursuant to article 75.

Rule 218

Orders for forfeiture and reparations

1. In order to enable States to give effect to an order for forfeiture, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) The proceeds, property and assets that have been ordered by the Court to be forfeited; and

(c) That if the State Party is unable to give effect to the order for forfeiture in relation to the specified proceeds, property or assets, it shall take measures to recover the value of the same.

2. In the request for cooperation and measures for enforcement, the Court shall also provide available information as to the location of the proceeds, property and assets that are covered by the order for forfeiture.

3. In order to enable States to give effect to an order for reparations, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) In respect of reparations of a financial nature, the identity of the victims to whom individual reparations have been granted, and, where the award for reparations shall be deposited with the Trust Fund, the particulars of the Trust Fund for the deposit of the award; and

(c) The scope and nature of the reparations ordered by the Court, including, where applicable, the property and assets for which restitution has been ordered.

4. Where the Court awards reparations on an individual basis, a copy of the reparation order shall be transmitted to the victim concerned.

Rule 219
Non-modification of orders for reparation

The Presidency shall, when transmitting copies of orders for reparations to States Parties under rule 217, inform them that, in giving effect to an order for reparations, the national authorities shall not modify the reparations specified by the Court, the scope or the extent of any damage, loss or injury determined by the Court or the principles stated in the order, and shall facilitate the enforcement of such order.

Rule 220
Non-modification of judgements in which fines were imposed

When transmitting copies of judgements in which fines were imposed to States Parties for the purpose of enforcement in accordance with article 109 and rule 217, the Presidency shall inform them that in enforcing the fines imposed, national authorities shall not modify them.

Rule 221
Decision on disposition or allocation of property or assets

1. The Presidency shall, after having consulted, as appropriate, with the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any relevant third party, or representatives of the Trust Fund provided for in article 79, decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court.
2. In all cases, when the Presidency decides on the disposition or allocation of property or assets belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.

Rule 222
Assistance for service or any other measure

The Presidency shall assist the State in the enforcement of fines, forfeiture or reparation orders, as requested, with the service of any relevant notification on the sentenced person or any other relevant persons, or the carrying out of any other measures necessary for the enforcement of the order under the procedure of the national law of the enforcement State.

Section V

Review concerning reduction of sentence under article 110

Rule 223

Criteria for review concerning reduction of sentence

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) Whether the early release of the sentenced person would give rise to significant social instability;

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

Rule 224

Procedure for review concerning reduction of sentence

1. For the application of article 110, paragraph 3, three judges of the Appeals Chamber appointed by that Chamber shall conduct a hearing, unless they decide otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. Those three judges shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a videoconference or in the State of enforcement by a judge delegated by the Appeals Chamber.

2. The same three judges shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible.

3. For the application of article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.

4. For any review under article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The three judges may also decide to hold a hearing.

5. The decision and the reasons for it shall be communicated to all those who participated in the review proceedings as soon as possible.

Section VI

Escape

Rule 225

Measures under article 111 in the event of escape

1. If the sentenced person has escaped, the State of enforcement shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record. The Presidency shall then proceed in accordance with Part 9.

2. However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 207. The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

3. If the sentenced person is surrendered to the Court pursuant to Part 9, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 203 to 206, designate another State, including the State to the territory of which the sentenced person has fled.

4. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where sub-rule 3 is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.

B. Elements of Crimes*

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* **Explanatory note:** The structure of the elements of the crimes of genocide, crimes against humanity and war crimes follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

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General introduction

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21 and the general principles set out in Part 3, are applicable to the Elements of Crimes.

2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.

3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.

4. With respect to mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated.

5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.¹

6. The requirement of “unlawfulness” found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.

7. The elements of crimes are generally structured in accordance with the following principles:

- As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;
- When required, a particular mental element is listed after the affected conduct, consequence or circumstance;
- Contextual circumstances are listed last.

8. As used in the Elements of Crimes, the term “perpetrator” is neutral as to guilt or innocence. The elements, including the appropriate mental elements, apply, *mutatis mutandis*, to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute.

9. A particular conduct may constitute one or more crimes.

10. The use of short titles for the crimes has no legal effect.

¹ This paragraph is without prejudice to the obligation of the Prosecutor under article 54, paragraph 1, of the Statute.

Article 6

Genocide

Introduction

With respect to the last element listed for each crime:

- The term “in the context of” would include the initial acts in an emerging pattern;
- The term “manifest” is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a)

Genocide by killing

Elements

1. The perpetrator killed² one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)

Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.³
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

² The term “killed” is interchangeable with the term “caused death”.

³ This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

Article 6 (c)
Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.⁴
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d)
Genocide by imposing measures intended to prevent births

Elements

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e)
Genocide by forcibly transferring children

Elements

1. The perpetrator forcibly transferred one or more persons.⁵
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.

⁴ The term “conditions of life” may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

⁵ The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 7

Crimes against humanity

Introduction

1. Since article 7 pertains to international criminal law, its provisions, consistent with article 22, must be strictly construed, taking into account that crimes against humanity as defined in article 7 are among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.

2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.

3. “Attack directed against a civilian population” in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.⁶

Article 7 (1) (a)

Crime against humanity of murder

Elements

1. The perpetrator killed⁷ one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

⁶ A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.

⁷ The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts.

Article 7 (1) (b)
Crime against humanity of extermination

Elements

1. The perpetrator killed⁸ one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.⁹
2. The conduct constituted, or took place as part of,¹⁰ a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (c)
Crime against humanity of enslavement

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹¹
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

⁸ The conduct could be committed by different methods of killing, either directly or indirectly.

⁹ The infliction of such conditions could include the deprivation of access to food and medicine.

¹⁰ The term “as part of” would include the initial conduct in a mass killing.

¹¹ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 7 (1) (d)
Crime against humanity of deportation or forcible transfer of population

Elements

1. The perpetrator deported or forcibly¹² transferred,¹³ without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (e)
Crime against humanity of imprisonment or other severe deprivation of physical liberty

Elements

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¹² The term “forcibly” is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.

¹³ “Deported or forcibly transferred” is interchangeable with “forcibly displaced”.

Article 7 (1) (f)
Crime against humanity of torture¹⁴

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-1
Crime against humanity of rape

Elements

1. The perpetrator invaded¹⁵ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.¹⁶
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¹⁴ It is understood that no specific purpose need be proved for this crime.

¹⁵ The concept of “invasion” is intended to be broad enough to be gender-neutral.

¹⁶ It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7 (1) (g)-3, 5 and 6.

Article 7 (1) (g)-2
Crime against humanity of sexual slavery¹⁷

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹⁸
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-3
Crime against humanity of enforced prostitution

Elements

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¹⁷ Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

¹⁸ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 7 (1) (g)-4 Crime against humanity of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-5 Crime against humanity of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.¹⁹
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.²⁰
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (g)-6 Crime against humanity of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

¹⁹ The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

²⁰ It is understood that "genuine consent" does not include consent obtained through deception.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (h) **Crime against humanity of persecution**

Elements

1. The perpetrator severely deprived, contrary to international law,²¹ one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.²²
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (i) **Crime against humanity of enforced disappearance of persons^{23,24}**

Elements

1. The perpetrator:
 - (a) Arrested, detained^{25,26} or abducted one or more persons; or
 - (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.
2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

²¹ This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes.

²² It is understood that no additional mental element is necessary for this element other than that inherent in element 6.

²³ Given the complex nature of this crime, it is recognized that its commission will normally involve more than one perpetrator as a part of a common criminal purpose.

²⁴ This crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute.

²⁵ The word “detained” would include a perpetrator who maintained an existing detention.

²⁶ It is understood that under certain circumstances an arrest or detention may have been lawful.

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

3. The perpetrator was aware that:²⁷

(a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons;²⁸ or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.

6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (j) Crime against humanity of apartheid

Elements

1. The perpetrator committed an inhumane act against one or more persons.

2. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.²⁹

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.

5. The perpetrator intended to maintain such regime by that conduct.

6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

²⁷ This element, inserted because of the complexity of this crime, is without prejudice to the General Introduction to the Elements of Crimes.

²⁸ It is understood that, in the case of a perpetrator who maintained an existing detention, this element would be satisfied if the perpetrator was aware that such a refusal had already taken place.

²⁹ It is understood that “character” refers to the nature and gravity of the act.

7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (k)

Crime against humanity of other inhumane acts

Elements

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.³⁰
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

³⁰ It is understood that “character” refers to the nature and gravity of the act.

Article 8

War crimes

Introduction

The elements for war crimes under article 8, paragraph 2 (c) and (e), are subject to the limitations addressed in article 8, paragraph 2 (d) and (f), which are not elements of crimes.

The elements for war crimes under article 8, paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed conflict including, as appropriate, the international law of armed conflict applicable to armed conflict at sea.

With respect to the last two elements listed for each crime:

- There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
- In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
- There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms “took place in the context of and was associated with”.

Article 8 (2) (a)

Article 8 (2) (a) (i)

War crime of wilful killing

Elements

1. The perpetrator killed one or more persons.³¹
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.^{32,33}

³¹ The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts.

³² This mental element recognizes the interplay between articles 30 and 32. This footnote also applies to the corresponding element in each crime under article 8 (2) (a), and to the element in other crimes in article 8 (2) concerning the awareness of factual circumstances that establish the status of persons or property protected under the relevant international law of armed conflict.

³³ With respect to nationality, it is understood that the perpetrator needs only to know that the victim belonged to an adverse party to the conflict. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

4. The conduct took place in the context of and was associated with an international armed conflict.³⁴

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-1 War crime of torture

Elements³⁵

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.

3. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

4. The perpetrator was aware of the factual circumstances that established that protected status.

5. The conduct took place in the context of and was associated with an international armed conflict.

6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-2 War crime of inhuman treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The perpetrator was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

³⁴ The term “international armed conflict” includes military occupation. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

³⁵ As element 3 requires that all victims must be “protected persons” under one or more of the Geneva Conventions of 1949, these elements do not include the custody or control requirement found in the elements of article 7 (1) (e).

Article 8 (2) (a) (ii)-3
War crime of biological experiments

Elements

1. The perpetrator subjected one or more persons to a particular biological experiment.
2. The experiment seriously endangered the physical or mental health or integrity of such person or persons.
3. The intent of the experiment was non-therapeutic and it was neither justified by medical reasons nor carried out in such person's or persons' interest.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iii)
War crime of wilfully causing great suffering

Elements

1. The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iv)
War crime of destruction and appropriation of property

Elements

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.

4. Such property was protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (v)
War crime of compelling service in hostile forces

Elements

1. The perpetrator coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vi)
War crime of denying a fair trial

Elements

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-1
War crime of unlawful deportation and transfer

Elements

1. The perpetrator deported or transferred one or more persons to another State or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-2
War crime of unlawful confinement

Elements

1. The perpetrator confined or continued to confine one or more persons to a certain location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (viii)
War crime of taking hostages

Elements

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b)

Article 8 (2) (b) (i)

War crime of attacking civilians

Elements

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (ii)

War crime of attacking civilian objects

Elements

1. The perpetrator directed an attack.
2. The object of the attack was civilian objects, that is, objects which are not military objectives.
3. The perpetrator intended such civilian objects to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The perpetrator directed an attack.
2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.
4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.
5. The perpetrator was aware of the factual circumstances that established that protection.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iv)
War crime of excessive incidental death, injury, or damage

Elements

1. The perpetrator launched an attack.
2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.³⁶
3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such

³⁶ The expression “concrete and direct overall military advantage” refers to a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict. It does not address justifications for war or other rules related to *jus ad bellum*. It reflects the proportionality requirement inherent in determining the legality of any military activity undertaken in the context of an armed conflict.

an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.³⁷

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (v)

War crime of attacking undefended places³⁸

Elements

1. The perpetrator attacked one or more towns, villages, dwellings or buildings.

2. Such towns, villages, dwellings or buildings were open for unresisted occupation.

3. Such towns, villages, dwellings or buildings did not constitute military objectives.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vi)

War crime of killing or wounding a person *hors de combat*

Elements

1. The perpetrator killed or injured one or more persons.

2. Such person or persons were *hors de combat*.

3. The perpetrator was aware of the factual circumstances that established this status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

³⁷ As opposed to the general rule set forth in paragraph 4 of the General Introduction, this knowledge element requires that the perpetrator make the value judgement as described therein. An evaluation of that value judgement must be based on the requisite information available to the perpetrator at the time.

³⁸ The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

Article 8 (2) (b) (vii)-1
War crime of improper use of a flag of truce

Elements

1. The perpetrator used a flag of truce.
2. The perpetrator made such use in order to feign an intention to negotiate when there was no such intention on the part of the perpetrator.
3. The perpetrator knew or should have known of the prohibited nature of such use.³⁹
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-2
War crime of improper use of a flag, insignia or uniform of the hostile party

Elements

1. The perpetrator used a flag, insignia or uniform of the hostile party.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict while engaged in an attack.
3. The perpetrator knew or should have known of the prohibited nature of such use.⁴⁰
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

³⁹ This mental element recognizes the interplay between article 30 and article 32. The term “prohibited nature” denotes illegality.

⁴⁰ This mental element recognizes the interplay between article 30 and article 32. The term “prohibited nature” denotes illegality.

Article 8 (2) (b) (vii)-3
War crime of improper use of a flag, insignia or uniform of the United Nations

Elements

1. The perpetrator used a flag, insignia or uniform of the United Nations.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew of the prohibited nature of such use.⁴¹
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-4
War crime of improper use of the distinctive emblems of the Geneva Conventions

Elements

1. The perpetrator used the distinctive emblems of the Geneva Conventions.
2. The perpetrator made such use for combatant purposes⁴² in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew or should have known of the prohibited nature of such use.⁴³
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁴¹ This mental element recognizes the interplay between article 30 and article 32. The “should have known” test required in the other offences found in article 8 (2) (b) (vii) is not applicable here because of the variable and regulatory nature of the relevant prohibitions.

⁴² “Combatant purposes” in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

⁴³ This mental element recognizes the interplay between article 30 and article 32. The term “prohibited nature” denotes illegality.

Article 8 (2) (b) (viii)

The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

Elements

1. The perpetrator:
 - (a) Transferred,⁴⁴ directly or indirectly, parts of its own population into the territory it occupies; or
 - (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (ix)

War crime of attacking protected objects⁴⁵

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁴⁴ The term “transfer” needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

⁴⁵ The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

**Article 8 (2) (b) (x)-1
War crime of mutilation****Elements**

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.⁴⁶
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

**Article 8 (2) (b) (x)-2
War crime of medical or scientific experiments****Elements**

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁴⁶ Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the same element for article 8 (2) (b) (x)-2.

Article 8 (2) (b) (xi)
War crime of treacherously killing or wounding

Elements

1. The perpetrator invited the confidence or belief of one or more persons that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xii)
War crime of denying quarter

Elements

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiii)
War crime of destroying or seizing the enemy's property

Elements

1. The perpetrator destroyed or seized certain property.
2. Such property was property of a hostile party.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.

5. The destruction or seizure was not justified by military necessity.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiv)

War crime of depriving the nationals of the hostile power of rights or actions

Elements

1. The perpetrator effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.
2. The abolition, suspension or termination was directed at the nationals of a hostile party.
3. The perpetrator intended the abolition, suspension or termination to be directed at the nationals of a hostile party.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xv)

War crime of compelling participation in military operations

Elements

1. The perpetrator coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.
2. Such person or persons were nationals of a hostile party.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xvi)

War crime of pillaging

Elements

1. The perpetrator appropriated certain property.

2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.⁴⁷
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xvii)
War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xviii)
War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.
2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.⁴⁸
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁴⁷ As indicated by the use of the term “private or personal use”, appropriations justified by military necessity cannot constitute the crime of pillaging.

⁴⁸ Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

Article 8 (2) (b) (xix)
War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.
2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.
3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xx)
War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute

Elements

[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]

Article 8 (2) (b) (xxi)
War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.⁴⁹
2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁴⁹ For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

Article 8 (2) (b) (xxii)-1

War crime of rape

Elements

1. The perpetrator invaded⁵⁰ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁵¹
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-2

War crime of sexual slavery⁵²

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.⁵³
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁵⁰ The concept of “invasion” is intended to be broad enough to be gender-neutral.

⁵¹ It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 8 (2) (b) (xxii)-3, 5 and 6.

⁵² Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

⁵³ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

**Article 8 (2) (b) (xxii)-3
War crime of enforced prostitution****Elements**

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

**Article 8 (2) (b) (xxii)-4
War crime of forced pregnancy****Elements**

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

**Article 8 (2) (b) (xxii)-5
War crime of enforced sterilization****Elements**

1. The perpetrator deprived one or more persons of biological reproductive capacity.⁵⁴
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.⁵⁵
3. The conduct took place in the context of and was associated with an international armed conflict.

⁵⁴ The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

⁵⁵ It is understood that "genuine consent" does not include consent obtained through deception.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-6
War crime of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxiii)
War crime of using protected persons as shields

Elements

1. The perpetrator moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.
2. The perpetrator intended to shield a military objective from attack or shield, favour or impede military operations.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxiv)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive

emblem or other method of identification indicating protection under the Geneva Conventions.

2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxv)

War crime of starvation as a method of warfare

Elements

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxvi)

War crime of using, conscripting or enlisting children

Elements

1. The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c)

Article 8 (2) (c) (i)-1

War crime of murder

Elements

1. The perpetrator killed one or more persons.

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel⁵⁶ taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-2 War crime of mutilation

Elements

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-3 War crime of cruel treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

⁵⁶ The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-4 War crime of torture

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (ii) War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.⁵⁷
2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁵⁷ For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

Article 8 (2) (c) (iii)

War crime of taking hostages

Elements

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
5. The perpetrator was aware of the factual circumstances that established this status.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (iv)

War crime of sentencing or execution without due process

Elements

1. The perpetrator passed sentence or executed one or more persons.⁵⁸
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not “regularly constituted”, that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.⁵⁹
5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.

⁵⁸ The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

⁵⁹ With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e)

Article 8 (2) (e) (i)

War crime of attacking civilians

Elements

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (ii)

War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The perpetrator directed an attack.
2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.
4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.
5. The perpetrator was aware of the factual circumstances that established that protection.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iv)
War crime of attacking protected objects⁶⁰

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁶⁰ The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

Article 8 (2) (e) (v)
War crime of pillaging**Elements**

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.⁶¹
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-1
War crime of rape**Elements**

1. The perpetrator invaded⁶² the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁶³
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁶¹ As indicated by the use of the term “private or personal use”, appropriations justified by military necessity cannot constitute the crime of pillaging.

⁶² The concept of “invasion” is intended to be broad enough to be gender-neutral.

⁶³ It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements in article 8 (2) (e) (vi)-3, 5 and 6.

Article 8 (2) (e) (vi)-2 War crime of sexual slavery⁶⁴

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.⁶⁵
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-3 War crime of enforced prostitution

Elements

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-4 War crime of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

⁶⁴ Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

⁶⁵ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-5 War crime of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.⁶⁶
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.⁶⁷
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-6 War crime of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁶⁶ The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

⁶⁷ It is understood that "genuine consent" does not include consent obtained through deception.

Article 8 (2) (e) (vii)
War crime of using, conscripting and enlisting children

Elements

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (viii)
War crime of displacing civilians

Elements

1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (ix)
War crime of treacherously killing or wounding

Elements

1. The perpetrator invited the confidence or belief of one or more combatant adversaries that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (x) War crime of denying quarter

Elements

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xi)-1 War crime of mutilation

Elements

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.⁶⁸
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁶⁸ Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the similar element in article 8 (2) (e) (xi)-2.

Article 8 (2) (e) (xi)-2
War crime of medical or scientific experiments

Elements

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused the death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xii)
War crime of destroying or seizing the enemy's property

Elements

1. The perpetrator destroyed or seized certain property.
2. Such property was property of an adversary.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.
5. The destruction or seizure was not required by military necessity.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

C. Rules of Procedure of the Assembly of States Parties

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I. General

Rule 1

Use of terms

For the purposes of these Rules:

“Assembly” means the Assembly of States Parties;

“Bureau” means the Bureau of the Assembly of States Parties as defined in article 112, paragraph 3 (a), of the Statute;

“the Court” means the International Criminal Court;

“Deputy Prosecutor” means the Deputy Prosecutor of the Court;

“judges” means the judges of the Court;

“Observer States” means States which have signed the Statute or the Final Act of the Rome Conference and which, pursuant to article 112, paragraph 1, of the Statute, may be observers in the Assembly;

“Presidency” means the organ composed of the President and the First and Second Vice-Presidents of the Court;

“Prosecutor” means the Prosecutor of the Court;

“Registrar” means the Registrar of the Court;

“Rules” means the Rules of Procedure of the Assembly of States Parties;

“Secretariat” means the Secretariat of the Assembly of States Parties;

“States Parties” means States Parties to the Statute;

“the Statute” means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

Rule 2

Application

1. These Rules shall be applicable to the work of the Assembly, the Bureau and subsidiary bodies of the Assembly.
2. These Rules shall be applicable to the work of any Review Conference convened in accordance with article 121, paragraph 2, and article 123 of the Statute unless the Review Conference decides otherwise.

II. Sessions

Rule 3

Sessions of the Assembly

The Assembly shall hold regular and special sessions in accordance with paragraph 6 of article 112 of the Statute.

Regular sessions

Rule 4

Frequency of sessions

The Assembly shall meet in regular session once a year.

Rule 5

Date of commencement and duration

The date of commencement and duration of each session shall be decided by the Assembly at the previous session.

Rule 6

Notification of session

The Secretariat shall notify the States Parties, the Observer States, the Court and the United Nations at least sixty days in advance of the opening of a regular session.

Rule 7

Temporary adjournment of session

The Assembly may decide at any session to adjourn temporarily and resume its meetings at a later date.

Special sessions

Rule 8

Convening of special sessions

The Assembly may hold special sessions and fix the date of commencement and the duration of each such special session. Special sessions of the Assembly may also be convened by the Bureau on its own initiative or at the request of one third of the States Parties in accordance with paragraph 6 of article 112 of the Statute.

Rule 9

Notification of special session

The Secretariat shall notify the States Parties, the Observer States, the Court and the United Nations at least twenty-one days in advance, of the opening of a special session.

III. Agenda

Regular sessions

Rule 10

Communication of the provisional agenda

The provisional agenda for a regular session shall be communicated by the Secretariat to the States Parties, the Observer States, the Court and the United

Nations at least sixty days before the opening of the session together with any supplementary documentation if necessary.

Rule 11**Drawing up of the provisional agenda**

1. The provisional agenda shall be drawn up by the Secretariat.
2. The provisional agenda shall include, inter alia:
 - (a) Items the inclusion of which has been decided at a previous session of the Assembly;
 - (b) Items relating to the organization of the session;
 - (c) Items relating to the adoption of normative texts;
 - (d) Items relating to the management oversight provided by the Assembly to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
 - (e) Items pertaining to the budget for the Court, to annual financial statements and to a report of an independent auditor;
 - (f) Election of judges, and of the Prosecutor and of one or more Deputy Prosecutors, and elections to fill vacancies in the membership of the Court;
 - (g) Reports from the Bureau;
 - (h) Items relating to any matter submitted to the Assembly of States Parties by the Court pursuant to article 87, paragraphs 5 and 7, of the Statute;
 - (i) Any report by any organ of the Court on its work;
 - (j) Any item proposed by any State Party;
 - (k) Any item proposed by the Court.
3. The United Nations may propose items for consideration by the Assembly. In such cases, the Secretary-General shall notify the President of the Bureau of the Assembly accordingly, providing any relevant information with a view to the possible inclusion of such item in the provisional agenda of the following session of the Assembly.

Rule 12**Supplementary items**

Any State Party, the Court or the Bureau may, at least thirty days before the date fixed for the opening of a regular session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to the States Parties, to Observer States, the Court and the United Nations at least twenty days before the opening of the session.

Rule 13
Additional items

Additional items of an important and urgent character, proposed for inclusion in the agenda less than thirty days before the opening of a regular session or during a session, may be placed on the agenda of the Assembly if the Assembly so decides by a majority of the members present and voting.

Special sessions**Rule 14**
Communication of the provisional agenda

The provisional agenda of the special session shall be communicated by the Secretariat to the States Parties, to Observer States, the Court and the United Nations at least fourteen days before the opening of the session.

Rule 15
Provisional agenda

The provisional agenda of a special session shall consist only of those items proposed in the request for the holding of the session.

Rule 16
Supplementary items

Any State Party, the Bureau or the Court may, at least seven days before the date fixed for the opening of a special session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to the States Parties, to Observer States, the Court and the United Nations.

Rule 17
Additional items

During a special session additional items may be added to the agenda by a two-thirds majority of the members of the Assembly present and voting.

Regular and special sessions**Rule 18**
Explanatory memorandum

Any item proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents or by a draft decision.

Rule 19
Adoption of the agenda

At each session the provisional agenda and the supplementary list shall be submitted to the Assembly for approval as soon as possible after the opening of the session.

Rule 20
Amendment and deletion of items

Items on the agenda may be amended or deleted by the Assembly by a majority of the members of the Assembly present and voting.

Rule 21
Debate on the inclusion of items

Debate on the inclusion of an item in the agenda shall be limited to three speakers in favour of, and three against, the inclusion. The President may limit the time to be allowed to speakers under this rule.

Rule 22
Modification of the allocation of expenses

No proposal for a modification of the allocation of expenses of the Court for the time being in force shall be placed on the agenda unless it has been communicated to the States Parties at least sixty days before the opening of the session.

IV. Representation and credentials

Rule 23
Representation

1. Each State Party shall be represented by one representative, who may be accompanied by alternates and advisers.
2. Each Observer State may be represented in the Assembly by one designated representative, who may be accompanied by alternates and advisers.
3. The representative may designate an alternate or an adviser to act in his/her capacity.

Rule 24
Submission of credentials

The credentials of representatives of States Parties and the names of alternates and advisers shall be submitted to the Secretariat if possible not later than twenty-four hours after the opening of the session. The credentials shall be issued by the Head of State or Government or by the Minister for Foreign Affairs or by a person authorized by either of them.

Rule 25
Credentials Committee

A Credentials Committee shall be appointed at the beginning of each session. It shall consist of representatives of nine States Parties, which shall be appointed by the Assembly on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives of States Parties and report to the Assembly without delay.

Rule 26**Provisional admission to a session**

Pending a decision of the Assembly upon their credentials, representatives of States Parties shall be entitled to participate provisionally in the Assembly.

Rule 27**Objection to the representation**

If an objection is raised against a representation of a State Party, such objection shall be considered by the Credentials Committee forthwith. The report thereon shall be submitted to the Assembly without delay. Any representative of a State Party to whose admission a State Party has made objection shall be seated provisionally with the same rights as other representatives pending the decision of the Assembly.

Rule 28**Notification regarding participation of representatives of Observer States**

The names of designated representatives of Observer States and of alternates and advisers who accompany them shall be submitted to the Secretariat.

V. Bureau**Rule 29****Composition and function**

1. The Assembly shall have a Bureau consisting of the President, who shall preside, two Vice-Presidents and eighteen members elected by the Assembly from among the representatives of the States Parties for three-year terms. The Bureau shall assist the Assembly in the discharge of its responsibilities.
2. The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.
3. The Bureau shall meet as often as necessary, but at least once a year.

VI. President and Vice-Presidents**Rule 30****General powers of the President**

1. In addition to exercising the powers conferred upon him/her elsewhere by these Rules, the President shall declare the opening and closing of each plenary meeting of the session, direct the discussions in plenary meetings, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. The President shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The President may, in the course of the discussion of an item, propose to the Assembly the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate and the suspension or the

adjournment of the meeting or the adjournment of the debate on the item under discussion.

2. The President, in the exercise of his/her functions, remains under the authority of the Assembly.

Rule 31
Voting rights of the President

The President, or a Vice-President acting as President, shall not vote but shall designate another member of his/her delegation to vote in his/her place.

Rule 32
Acting President

1. If the President finds it necessary to be absent during a meeting or any part thereof, he/she shall designate one of the Vice-Presidents to take his/her place.

2. A Vice-President acting as President shall have the same powers and duties as the President.

Rule 33
Replacement of the President

If the President is unable to perform his/her functions, a new President shall be elected for the unexpired term.

VII. Participation of the President of the Court, the Prosecutor and the Registrar

Rule 34
Participation

The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and the Bureau in accordance with the provisions of these Rules and may make oral or written statements and provide information on any question under consideration.

VIII. Participation of the United Nations

Rule 35
Participation of the United Nations

1. The United Nations shall have a standing invitation to participate, without the right to vote, in the work and deliberations of the Assembly.

2. When issues of interest to the United Nations are taken up by subsidiary bodies, the Secretary-General, if he so desires, or his representative, may participate in the work and deliberations of such subsidiary bodies. The Secretary-General or his representative may make statements, in oral or written form, in the deliberations.

Rule 36
Participation of the Secretary-General

The Secretary-General of the United Nations may participate in meetings of the Assembly and the Bureau. He/She may also designate a member of the United Nations Secretariat to participate on his/her behalf. He/She may make oral or written statements concerning any question under consideration by the Assembly which pertains to United Nations activities and provide information as appropriate.

IX. Secretariat**Rule 37**
Duties of the Secretariat

The Secretariat shall receive, translate, reproduce and distribute documents, reports and decisions of the Assembly, the Bureau and any subsidiary bodies that may be established by the Assembly; interpret speeches made at the meetings; prepare, print and circulate, if so decided by the Assembly or the Bureau, the records of the session; have the custody and proper preservation of the documents in the archives of the Assembly; distribute all documents of the Assembly and the Bureau; and, generally, perform all other work which the Assembly or the Bureau may require.

X. Languages**Rule 38**
Official and working languages

Arabic, Chinese, English, French, Russian and Spanish, which are both the official and working languages of the General Assembly of the United Nations, shall be the official and working languages of the Assembly (hereinafter “languages of the Assembly”).

Rule 39
Interpretation

1. Speeches made in an official and working language of the Assembly shall be interpreted into the other languages of the Assembly.
2. Any representative may make a speech in a language other than the languages of the Assembly. In that case the representative shall provide for interpretation into one of the languages of the Assembly. Interpretation into the other languages of the Assembly by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

Rule 40
Languages of decisions and other documents

All decisions and other official documents shall be published in all languages of the Assembly.

XI. Records

Rule 41

Sound recordings

The Secretariat shall make and keep sound recordings of meetings of the Assembly and the Bureau and, when so decided, of any subsidiary body.

XII. Public and private meetings

Rule 42

General principles

1. The meetings of the Assembly shall be held in public unless the Assembly decides that exceptional circumstances require that the meetings be held in private.
2. As a general rule, meetings of the Bureau and of subsidiary bodies with limited membership shall be held in private unless the body concerned decides otherwise.
3. Meetings of subsidiary bodies with general membership shall be held in public unless the body concerned decides otherwise.
4. Decisions of the Assembly and the Bureau taken at a private meeting shall be announced at the following public meeting. At the close of a private meeting of the Bureau or of any subsidiary body, the President or the presiding officer may issue a communiqué through the Secretariat.

XIII. Minute of silent prayer or meditation

Rule 43

Invitation to silent prayer or meditation

Immediately after the opening of the first plenary meeting and immediately preceding the closing of the final plenary meeting, the President shall invite the representatives to observe one minute of silence dedicated to prayer or meditation.

XIV. Conduct of business

Rule 44

Quorum

1. The President may declare a meeting open and permit the debate to proceed when at least one third of the States Parties participating in the session are present.
2. The presence of an absolute majority of the States Parties constitutes the quorum for voting on matters of substance.

Rule 45

Speeches

No representative may address the Assembly without having previously obtained the permission of the President. The President shall call upon speakers in

the order in which they signify their desire to speak. The President may call a speaker to order if his/her remarks are not relevant to the question under consideration.

Rule 46
Precedence

The Presiding Officer of a subsidiary body may be given precedence for the purpose of explaining the conclusions arrived at by that organ.

Rule 47
Statements by the President of the Court, the Prosecutor and the Registrar

The President of the Court, the Prosecutor and the Registrar or their representatives may make either written or oral statements to the Assembly or the Bureau on any question under their consideration.

Rule 48
Statements by the Secretariat

The chief officer of the Secretariat, or a member of the Secretariat designated by him/her as his/her representative, may make either oral or written statements to the Assembly concerning any question under consideration by it.

Rule 49
Points of order

During the discussion of any matter, a representative of a State Party may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with these Rules. A representative of a State Party may appeal against the ruling of the President. The appeal shall be immediately put to the vote, and the President's ruling shall stand unless overruled by a majority of the States Parties present and voting. A representative rising to a point of order may not speak on the substance of the question under consideration.

Rule 50
Time limit on speeches

The Assembly may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. Before a decision is taken, two representatives of States Parties may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a representative exceeds his/her allotted time, the President shall call him/her to order without delay.

Rule 51
Closing of list of speakers and right of reply

During the course of a debate, the President may announce the list of speakers and, with the consent of the Assembly, declare the list closed. The President may, however, accord the right of reply to a representative if a speech delivered after he/she has declared the list closed makes this desirable.

Rule 52**Adjournment of debate**

During the discussion of any matter, a representative of a State Party may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives of States Parties may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

Rule 53**Closure of debate**

A representative of a State Party may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his/her wish to speak. Permission to speak on the motion shall be accorded only to two representatives of States Parties opposing the closure, after which the motion shall be immediately put to the vote. If the Assembly is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

Rule 54**Suspension or adjournment of the meeting**

During the discussion of any matter, a representative of a State Party may move the suspension or the adjournment of the meeting. Such motion shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speakers moving the suspension or adjournment of the meeting.

Rule 55**Order of procedural motions**

Subject to rule 48, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the question under discussion;
- (d) To close the debate on the question under discussion.

Rule 56**Proposals and amendments**

Proposals and amendments shall normally be submitted in writing to the Secretariat, which shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting unless copies of it have been circulated to all delegations in all languages of the Assembly not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

Rule 57**Decisions on competence**

Subject to rule 55, any motion by a State Party calling for a decision on the competence of the Assembly to adopt a proposal submitted to it shall be put to the vote before a decision is taken on the proposal in question.

Rule 58**Withdrawal of motions**

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by a representative of any State Party.

Rule 59**Reconsideration of proposals**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Assembly, by a two-thirds majority of the States Parties present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two representatives of States Parties opposing the motion, after which it shall be immediately put to the vote.

XV. Decision-making**Rule 60****Voting rights**

Subject to article 112, paragraph 8, of the Statute, each State Party shall have one vote.

Rule 61**Consensus**

Every effort shall be made to reach decisions in the Assembly and in the Bureau by consensus. If consensus cannot be reached, decisions shall be taken by vote.

Rule 62**Consideration of financial implications**

Before the Assembly takes a decision having financial implications, it shall receive and consider a report on such implications from the Secretariat or from the Registrar, as appropriate according to the subject matter, for decisions having financial or administrative implications relating to the Court.

Rule 63**Decisions on matters of substance**

Subject to rule 61, and except as otherwise provided in the Statute and as reflected in these Rules, decisions on matters of substance must be approved by a two-thirds majority of States Parties present and voting.

Rule 64**Decisions on matters of procedure**

1. Subject to rule 61 and except as otherwise provided in the Statute and as reflected in these Rules, decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.
2. If the question arises whether a matter is one of procedure or of substance, the President shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a simple majority of the States Parties present and voting.

Rule 65**Decisions on amendments to proposals relating to matters of substance**

Decisions on amendments to proposals relating to matters of substance, and on parts of such proposals put to the vote separately, shall be made by a two-thirds majority of the States Parties present and voting.

Rule 66**Meaning of the phrase "States Parties present and voting"**

For the purposes of these Rules, the phrase "States Parties present and voting" means States Parties present and casting an affirmative or negative vote. States Parties which abstain from the voting shall be considered as not voting.

Rule 67**Method of voting**

1. The Assembly shall, in the absence of mechanical or electronic means for voting, vote by show of hands or by standing, but a representative of any State Party may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States Parties, beginning with the State Party whose name is drawn by lot by the President. The name of each State Party shall be called in any roll-call, and its representative shall reply "yes", "no" or "abstention". The result of the voting shall be inserted in the records in the English alphabetical order of the names of the States Parties.
2. When the Assembly votes by mechanical or electronic means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. A representative of a State Party may request a recorded vote. In the case of a recorded vote, the Assembly shall, unless a representative of a State Party requests otherwise, dispense with the procedure of calling out the names of the States Parties; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

Rule 68**Conduct during voting**

After the President has announced the commencement of voting, no representative of a State Party may interrupt the voting, except that representatives of States Parties may interrupt on a point of order in connection with the actual conduct of the voting.

Rule 69**Explanation of vote**

Representatives of States Parties may make brief statements consisting solely of explanations of their votes before the voting has commenced or after the voting has been completed. The representative of a State Party sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended. The President may limit the time to be allowed for such explanations.

Rule 70**Division of proposals and amendments**

A representative of a State Party may move that parts of a proposal or of an amendment be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of an amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Rule 71**Order of voting on amendments**

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Assembly shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

Rule 72**Order of voting on proposals**

If two or more proposals relate to the same question, the Assembly shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Assembly may, after each vote on a proposal, decide whether to vote on the next proposal.

Rule 73**Rules of Procedure and Evidence**

1. The Rules of Procedure and Evidence shall be adopted by the Assembly by a two-thirds majority of the members of the Assembly.
2. Any provisional Rules of Procedure and Evidence drawn up in accordance with article 51, paragraph 3, of the Statute shall be put before the next ordinary or special session of the Assembly for its decision as to their adoption, amendment or rejection.

3. Amendments to the Rules of Procedure and Evidence, proposed in accordance with article 51, paragraph 2, of the Statute, shall be forwarded to the President of the Bureau, who shall ensure their translation into all official languages of the Court and transmission to the States Parties. Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly.

Rule 74

Elements of Crimes

1. The Elements of Crimes shall be adopted by the Assembly by a two-thirds majority of the members of the Assembly.

2. Amendments to the Elements, proposed in accordance with article 9, paragraph 2, of the Statute, shall be forwarded to the President of the Bureau, who shall ensure their translation into the official languages of the Court and transmission to the States Parties. Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly.

Rule 75

Increase or reduction in the number of judges

Any proposal by the Presidency, acting on behalf of the Court, regarding an increase or a subsequent reduction in the number of judges, submitted pursuant to article 36, paragraph 2, of the Statute, shall be considered adopted if approved by a vote of two thirds of the members of the Assembly and shall enter into force at such time as decided by the Assembly.

Rule 76

Amendments to the Statute

Amendments to the Statute, proposed pursuant to article 121, paragraph 1, and article 122, paragraph 1, of the Statute on which consensus cannot be reached shall be adopted by the Assembly or by a Review Conference, by a two-thirds majority of States Parties.

Rule 77

Equally divided votes

If a vote is equally divided on matters other than elections, the proposal or motion shall be regarded as rejected.

Rule 78

Elections of officers of the Assembly

All elections of officers of the Assembly shall be held by secret ballot unless, in the absence of any objection, the Assembly decides to proceed without taking a ballot on an agreed candidate or slate.

Rule 79

Restricted balloting for one elective place

When only one person or State Party is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates obtaining the largest number of votes. If in the

second ballot the votes are equally divided, and a majority is required, the President shall decide between the candidates by drawing lots. If a two-thirds majority is required, the balloting shall be continued until one candidate secures two thirds of the votes cast; provided that after the third inconclusive ballot, votes may be cast for any eligible person or State Party. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third of the unrestricted ballots, and the following three ballots thereafter shall be unrestricted, and so on until a person or State Party is elected. These provisions shall not prejudice the application of rules 85 and 86.

Rule 80

Restricted balloting for two or more elective places

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or States Parties to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot to a number not more than twice the places remaining to be filled; provided that after the third inconclusive ballot, votes may be cast for any eligible person or State Party. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled. These provisions shall not prejudice the application of rules 85 and 86.

XVI. Disciplinary proceedings

Rule 81

Removal from office of a judge, the Prosecutor or a Deputy Prosecutor

1. On the receipt of a communication from the Presidency or the Prosecutor concerning a complaint or a recommendation for the removal from office of a judge, the Prosecutor or a Deputy Prosecutor, as the case may be, in accordance with rules 26 and 29, paragraphs 2 and 3, of the Rules of Procedure and Evidence, the President of the Bureau of the Assembly shall circulate such communication among the members of the Bureau and shall convene a meeting of the Bureau.
2. After having heard the person concerned, the Bureau, when the seriousness of the complaint and the nature of the evidence so warrant, may, in accordance with rule 28 of the Rules of Procedure and Evidence, suspend him/her from duty pending final decision.
3. After having gathered, with full respect of the rights of the person concerned as provided for in rule 27 of the Rules of Procedure and Evidence, all the relevant information for the purpose of deciding on the complaint, the Bureau shall transmit to the next ordinary or special session of the Assembly the communication received in accordance with paragraph 1, and the relevant materials, and a recommendation on the alleged responsibility of the person concerned.

4. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor shall be made by the Assembly as provided for in article 46, paragraph 2, of the Statute.

Rule 82

Disciplinary measures

1. On the receipt of a communication from the Presidency or the Prosecutor concerning a complaint or recommendation for disciplinary measures against the Prosecutor or a Deputy Prosecutor, as the case may be, in accordance with rules 26 and 30, paragraphs 2 and 3 (b), of the Rules of Procedure and Evidence, the President of the Bureau of the Assembly shall circulate such communication among the members of the Bureau and shall convene a meeting of the Bureau.

2. After having gathered, with full respect of the rights of the person concerned as provided for in rule 27 of the Rules of Procedure and Evidence, all the relevant information for the purpose of deciding on the complaint, the Bureau shall adopt a decision in accordance with rule 30, paragraphs 2 and 3, of the Rules of Procedure and Evidence.

XVII. Subsidiary bodies

Rule 83

Establishment of subsidiary bodies

The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

Rule 84

Rules of procedure of subsidiary bodies

Unless otherwise decided by the Assembly, these rules shall apply, mutatis mutandis, to the proceedings of subsidiary bodies, except that:

- (a) The presiding officer of a subsidiary body may exercise the right of vote;
- (b) The presence of representatives of a majority of the members of a subsidiary body shall be required for any decision to be taken.

XVIII. Elections of the judges, the Prosecutor and the Deputy Prosecutors

Rule 85

Elections of the judges

The elections of the judges and the elections to fill a vacancy shall be held in accordance with articles 36 and 37 of the Statute.

Rule 86

Elections of the Prosecutor and the Deputy Prosecutors

The elections of the Prosecutor and the Deputy Prosecutors shall take place in accordance with article 42, paragraphs 2, 3 and 4, of the Statute.

XIX. Administrative and budgetary questions

Rule 87

Staff regulations and guidelines

1. The Assembly shall approve the Staff Regulations which shall be proposed by the Registrar, in accordance with article 44, paragraph 3, of the Statute, and which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. When approving the Staff Regulations, the Assembly shall ensure that they fully reflect the provisions of article 44, paragraphs 1 and 2, of the Statute.

2. The Assembly shall establish guidelines for the employment by the Court, in exceptional circumstances, of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court.

Rule 88

Regulations for financial administration

1. The Assembly shall adopt the Financial Regulations and Rules which, in addition to the Statute, shall govern all financial matters related to the Court and the meetings of the Assembly, including its Bureau and subsidiary bodies.

2. The Assembly shall adopt the criteria under which the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities.

3. The Assembly shall decide on salaries, allowances and expenses which shall be received by the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar.

Rule 89

Trust Fund

1. A Trust Fund shall be established by a decision of the Assembly, pursuant to article 79 of the Statute, for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Trust Fund shall be managed according to criteria to be determined by the Assembly.

Rule 90

Budget

The Assembly shall decide on the budget, which shall comprise the expenses of the Court and the Assembly, including its Bureau and subsidiary bodies.

Rule 91

Contributions

The Assembly shall decide on a scale of assessment, under which the contributions of States Parties to the budget shall be assessed, to be based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

XX. Participation of observers and other participants

Rule 92

Observers

1. Representatives designated by entities, intergovernmental organizations and other entities that have received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions to participate, in the capacity of observers, in its sessions and work have the right to participate as observers, without the right to vote, in the deliberations of the Assembly.
2. Representatives designated by regional intergovernmental organizations or other international bodies invited to the Rome Conference, accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly may participate as observers, without the right to vote, in the deliberations of the Assembly.
3. The representatives referred to in paragraphs 1 and 2 above may also participate in the deliberations of subsidiary bodies under the conditions laid down in rule 42 of the present rules of procedure.

Rule 93

Other participants

Non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or having consultative status with the Economic and Social Council of the United Nations whose activities are relevant to the activities of the Court and other non-governmental organizations invited by the Assembly may, through their designated representatives:

- (a) Attend meetings of the Assembly and meetings of its subsidiary bodies under the conditions laid down in rule 42 of the present Rules of Procedure;
- (b) Receive copies of official documents;
- (c) Upon the invitation of the President and subject to the approval of the Assembly, make oral statements through a limited number of representatives on questions relating to their activities at the opening and closing meetings of the Assembly;
- (d) Make oral statements through a limited number of representatives on questions relating to their activities at the opening and closing meetings of subsidiary bodies, when the subsidiary body concerned deems it appropriate.

Rule 94

States not having observer status

At the beginning of each session of the Assembly, the President may, subject to the approval of the Assembly, invite a given State which is not a party and does not have observer status to designate a representative to be present during the work of the Assembly. A representative who is so designated may be authorized by the Assembly to make a statement.

Rule 95**Written statements**

Written statements submitted by the designated representatives referred to in rules 92, 93 and 94 shall be made available by the Secretariat to representatives of the States Parties and Observer States in the quantities and in the language or languages in which the statements are made available to it, provided that a statement submitted on behalf of a non-governmental organization is related to the work of the Assembly and is on a subject in which the organization has a special competence. Written statements shall not be made at the expense of the Assembly and shall not be issued as official documents.

XXI. Amendments**Rule 96****Method of amendment**

These Rules may be amended by a decision of the Assembly taken by a two-thirds majority of the States Parties present and voting after the Bureau has reported on the proposed amendment.

D. Financial Regulations and Rules

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Regulation 1 Applicability

- 1.1 These Regulations shall govern the financial administration of the International Criminal Court.
- 1.2 For the purposes of these Regulations:
- (a) “Assembly of States Parties” means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;
 - (b) “Committee on Budget and Finance” means the Committee established as such by the Assembly of States Parties;
 - (c) “Court” means the International Criminal Court;
 - (d) “Presidency” means the Presidency of the International Criminal Court;
 - (e) “Registrar” means the Registrar of the International Criminal Court;
 - (f) “Rome Statute” means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998.
- 1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.
- 1.4 These Regulations shall be implemented in a manner consistent with the responsibilities of the Prosecutor and of the Registrar as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. The Prosecutor and the Registrar shall cooperate, taking into account the independent exercise by the Prosecutor of his or her functions under the Statute.

Applicability, authority and responsibility

Rule 101.1

Applicability and authority

- (a) **These Rules are in complement to, and limited by the Financial Regulations. They shall govern all the financial administration of the Court, except as may otherwise explicitly be provided by the Assembly of States Parties, or specifically exempted therefrom by the Registrar.**
- (b) **In his/her capacity as principal administrative officer of the Court, the Registrar shall be responsible and accountable for ensuring that these Rules are administered in a coherent manner by all organs of the Court, including through appropriate institutional arrangements with the Office of the Prosecutor with regard to management and administrative functions falling under the authority of that Office by virtue of article 42, paragraph 2, of the Rome Statute.**
- (c) **In the application of the Financial Regulations and Rules, officials shall be guided by the principles of effective financial administration and the exercise of economy.**

- (d) To ensure the application of these principles, the Registrar, or respectively the Prosecutor in areas falling under his/her authority by virtue of article 42, paragraph 2, of the Rome Statute, may issue such instructions or establish such procedures as he/she may deem necessary for the administration of these Rules. He/she may delegate, by administrative instruction, authority for specific aspects of the Financial Regulations and Rules. These administrative instructions will state whether the delegated official may, in turn, assign aspects of this authority to other officials.

Rule 101.2
Responsibility

All Court staff have the responsibility to comply, in the course of their official duties, with the Financial Regulations and Rules, and with administrative instructions which may be issued in connection therewith. Any staff member contravening the Financial Regulations and Rules or any instructions issued in connection therewith may be held personally accountable and financially liable for the consequences of such contraventions.

Regulation 2
The financial period

- 2.1 The financial period shall consist initially of one calendar year unless otherwise decided by the Assembly of States Parties for the first-year budget of the Court. The Assembly of States Parties shall keep under review the financial period.

Regulation 3
Programme budget

- 3.1 The proposed programme budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute. The proposed programme budget shall be divided into parts, sections and, as appropriate, programme support, in accordance with the relevant articles of the Statute. The proposed programme budget shall include funding for the expenses of the Assembly of States Parties, including its Bureau and subsidiary bodies.
- 3.2 The proposed programme budget shall cover income and expenditures for the financial period to which they relate and shall be presented in the currency of the statutory headquarters of the Court.

Presentation, content and methodology

Rule 103.1
Form of proposed programme budget

The proposed programme budget, both for income and expenditures, shall be prepared in such form as the Assembly of States Parties may prescribe.

Rule 103.2**Preparation of proposed programme budget**

1. **The Registrar shall ask the Office of the Prosecutor and relevant Heads of organizational units of other organs of the Court to prepare programme budget proposals for the following financial period at such times and in such detail as the Registrar may prescribe, in accordance with the Financial Regulations and Rules, any prescriptions that the Assembly of States Parties or the Committee on Budget and Finance may make, as well as any further regulations, rules and instructions.**
2. **On the basis of these proposals, the Registrar shall elaborate a consolidated draft programme budget that he/she will submit to the Committee on Budget and Finance.**
- 3.3 The budget narrative shall set out, wherever possible, concrete objectives, expected results and key performance indicators for the financial period. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. The Registrar shall monitor the achievement of objectives and service delivery during the financial period and report in the context of the next proposed budget on actual performance attained.

Rule 103.3**Content of the proposed programme budget**

The proposed programme budget shall contain:

- (a) **The financial framework of the Court, followed by**
 - (i) **A detailed statement of resources by part, section and, where applicable, programme support. For purposes of comparison, the expenditures for the previous financial period and the revised appropriations for the current financial period shall be indicated alongside the resource estimates for the forthcoming financial period;**
 - (ii) **A statement of estimated income, including income classified as miscellaneous in accordance with regulation 7.1;**
 - (b) **The budget proposals, with detailed budget narratives as set out in regulation 3.3;**
 - (c) **Relevant tables and figures on budget estimates and posts.**
- 3.4 The Registrar shall submit the proposed programme budget for the following financial period to the Committee on Budget and Finance at least 45 days prior to the meeting at which the Committee shall consider the proposed programme budget. At the same time, the Registrar shall also submit the proposed programme budget to the States Parties.
 - 3.5 The Committee on Budget and Finance shall consider the proposed programme budget and shall submit its comments and recommendations to the Assembly

of States Parties. The Assembly shall consider the proposed programme budget and take a decision on it.

Rule 103.4

Publication of the adopted programme budget

The Registrar shall arrange for the publication of the programme budget as adopted by the Assembly of States Parties.

- 3.6 Supplementary budget proposals may be submitted by the Registrar with respect to the current financial period if circumstances unforeseen at the time of adopting the budget make it necessary. In this case, the supplementary budget proposal shall be in a form consistent with the approved budget. The provisions of these Regulations shall be applicable to the proposed supplementary budget. Decisions of the Assembly of States Parties on the supplementary budget proposed by the Registrar shall be based on the recommendations of the Committee on Budget and Finance.
- 3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments are for activities which have been approved by the Assembly of States Parties and are expected to occur or continue beyond the end of the current financial period.

Rule 103.5

Maintenance of record of commitments for future financial periods

The Registrar shall maintain a record in the accounts of all commitments for future financial periods (rule 111.7), which shall constitute the first charges against relevant appropriations once these are approved by the Assembly of States Parties.

Regulation 4 Appropriations

- 4.1 The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes of which the appropriations were adopted and up to the amounts adopted.
- 4.2 There shall be adopted an appropriation line, divided into two or more instalments, in each proposed programme budget to cover expenditures if they:
- (a) Result from activities of the Court required by the Rome Statute or the Rules of Procedure and Evidence;
 - (b) Were unforeseeable at the time of adoption of the proposed programme budget;
 - (c) Cannot be met by transfers between appropriation sections in accordance with regulation 4.8; and
 - (d) Are of such an urgent nature that the Assembly of States Parties cannot be convened to approve the appropriations in accordance with regulation 3.6.

The appropriation line shall be funded in accordance with regulation 5.3.

- 4.3 The appropriation line adopted by the Assembly of States Parties in accordance with regulation 4.2 shall constitute an authorization for the Registrar, at his or her own decision or at the request of the Prosecutor or of the Presidency, as the case may be, with the prior concurrence of the Committee on Budget and Finance, to incur obligations and make payments for the purposes for which the appropriation line was adopted and up to the amount provided in the first instalment of the appropriation line. The Registrar may incur obligations and make payments up to the amount provided in each instalment of the appropriation line only after all the previous instalments have been obligated or disbursed. The Registrar shall report to the Committee on Budget and Finance any payment effected or obligation incurred under regulation 4.2.
- 4.4 Appropriations shall be available for obligation during the financial period to which they relate.
- 4.5 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.7.
- 4.6 At the end of the twelve-month period provided in regulation 4.5 the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.5. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

- 4.7 Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates. As of 1 January following the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party shall be surrendered to such State Party if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of assessed contributions;

and thirdly, assessed contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, the amount so apportioned shall be surrendered only to those States Parties which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

- 4.8 No transfer between appropriation sections may be made without authorization by the Assembly of States Parties, unless such a transfer is made necessary by exceptional circumstances, and is in accordance with criteria to be agreed upon by the Assembly of States Parties.
- 4.9 The officials heading the organs referred to in article 34, subparagraphs (c) and (d), of the Rome Statute shall be accountable to the Assembly of States Parties for the proper management and administration of the financial resources for which they are responsible, as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. They shall prudently manage the appropriations so as to ensure that expenditures can be met from funds available, keeping in view the actual contributions received and the availability of cash balances.

Administration of appropriations

Rule 104.1

Authorization to expend appropriations

Authorization by the Registrar to expend budget appropriations may take the form of:

- (a) An allotment of funds or other authorization to commit funds for a specific period and/or a specific purpose; and/or**
- (b) An authorization for the employment of staff or of consultants.**

Rule 104.2

Allotment advice

The Registrar shall issue at least annually a detailed allotment advice to each organ of the Court for the objects of expenditure for which it is responsible.

Rule 104.3

Redeployment between organizational units

The Registrar, or respectively the Prosecutor in areas falling under the authority of his Office by virtue of article 42, paragraph 2, of the Rome Statute, may redeploy resources among organizational units and objects of expenditure, provided such redeployments are within the total appropriations approved by the Assembly of States Parties for an appropriation section.

Regulation 5

Provision of funds

- 5.1 The funds of the Court shall include:
- (a) Assessed contributions made by States Parties in accordance with article 115, subparagraph (a), of the Rome Statute;
 - (b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;
 - (c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;
 - (d) Such other funds to which the Court may become entitled or may receive.
- 5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.4, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided for in article 117 of the Rome Statute. This scale shall be based on the scale adopted by the United Nations for its regular budget, and adjusted in accordance with the principles on which that scale is based, in order to take into account the differences in membership between the United Nations and the Court. The scale shall be adopted by the Assembly of States Parties. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.
- 5.3 The appropriations provided for in regulation 4.2 shall be financed from the assessed contributions from States Parties in accordance with regulation 5.2 up to a limit to be decided upon by the Assembly of States Parties in each budget resolution. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.
- 5.4 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for that financial period. Adjustments to the assessments of States Parties shall be made in respect of:
- (a) Any balance of the appropriations surrendered under regulation 4.7;
 - (b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.10;
 - (c) Miscellaneous income.
- 5.5 After the Assembly of States Parties has reviewed and adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:
- (a) Transmit the relevant documents to the States Parties;
 - (b) Inform the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund;
 - (c) Request them to remit their contributions and advances.

Rule 105.1**Time frame for application of regulation 5.5**

The Registrar shall comply with regulation 5.5 within thirty days of the decision by the Assembly of States Parties approving the budget and the level of the Working Capital Fund.

- 5.6 Assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.5 or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.
- 5.7 Contributions and advances to the Working Capital Fund shall be assessed and paid in the currency of the statutory headquarters of the Court. The contributions and advances to the Working Capital Fund may also be paid in any other currency that is freely convertible into the currency of the statutory headquarters of the Court. Any currency exchange cost will be borne by the State Party which decided to pay in a currency other than the currency of the statutory headquarters of the Court.

Rule 105.2**Applicable rate of exchange for contributions**

The equivalent in euros of contributions paid in other currencies is calculated at the most favourable rate of exchange available to the Court on the date of payment.

- 5.8 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.
- 5.9 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund.
- 5.10 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.

**Regulation 6
Funds**

- 6.1 There shall be established a General Fund for the purpose of accounting for the expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the Working Capital Fund to finance expenditures shall be credited to the General Fund.
- 6.2 There shall be established a Working Capital Fund to ensure capital for the Court to meet short-term liquidity problems pending receipt of assessed

contributions. The amount shall be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with the agreed scale of assessment pursuant to regulation 5.2. Advances shall be carried to the credit of States Parties which have made such advances.

- 6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.
- 6.4 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income.
- 6.5 Trust funds and special accounts funded wholly by voluntary contributions may be established and closed by the Registrar and shall be reported to the Presidency and, through the Committee on Budget and Finance, to the Assembly of States Parties.

Reserve accounts and special accounts funded wholly or in part by assessed contributions may be established by the Assembly of States Parties.

The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.

Rule 106.1

Unexpended voluntary contributions

Voluntary contributions to trust funds, reserve and special accounts remaining unexpended after the related activities of the Court are financially completed shall be disposed of by the Court in accordance with the agreement under which the contribution was made.

Regulation 7

Other income

- 7.1 All other income except:
- (a) Assessed contributions made by States Parties to the budget;
 - (b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;
 - (c) Voluntary contributions in accordance with article 116 of the Rome Statute and regulation 7.3, made by States Parties, other States, international organizations, individuals, corporations and other entities;
 - (d) Direct refunds of expenditures made during the financial period,
- shall be classed as miscellaneous income, for credit to the General Fund.

Rule 107.1**Reimbursement of expenditures**

- (a) Within the same financial period, reimbursements of actual expenditures incurred may be credited to the accounts against which they were originally charged; reimbursements of actual expenditures incurred in prior financial periods shall be credited as miscellaneous income.
- (b) Adjustments which arise subsequent to the closing of an extrabudgetary account (e.g. a trust fund, reserve or special account) shall be debited or credited against miscellaneous income in that selfsame account.

Rule 107.2**Receipt and deposit of contributions and other income**

- (a) An official receipt shall be issued as soon as practicable for all cash and negotiable instruments received.
- (b) Only officials designated by the Registrar shall be authorized to issue official receipts (see also regulation 10.1 (b)). If other officials receive money intended for the Court, they must immediately convey this money to an official authorized to issue an official receipt.
- (c) All moneys received shall be deposited in an official bank account as soon as practicable.

7.2 Voluntary contributions, gifts and donations, whether or not in cash, may only be accepted by the Registrar, provided that they are consistent with the nature and functions of the Court and the criteria to be adopted by the Assembly of States Parties on the subject, in accordance with article 116 of the Rome Statute. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the prior consent of the Assembly of States Parties.

7.3 Voluntary contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.

7.4 Voluntary contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as “gifts” in the accounts of the financial period.

Regulation 8
Custody of funds

- 8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept.

Banking

Rule 108.1

Bank accounts, authority and policy

The Registrar shall designate the banks in which the funds of the Court shall be kept, shall establish all official bank accounts required for the transaction of the Court's business and shall designate those officials to whom signatory authority is delegated for these accounts. The Registrar shall also authorize all bank account closures. Bank accounts of the Court are to be opened and operated in accordance with the following guidelines:

- (a) Bank accounts shall be designated "official accounts of the International Criminal Court" and the relevant authority shall be notified that these accounts are exempt from all taxation and that the immunities set out in article 6 of the Agreement on the Privileges and Immunities of the Court apply to these accounts;
- (b) Banks shall be required to provide monthly statements;
- (c) Two signatures, or their electronic equivalent, shall be required on all cheques and other withdrawal instructions including electronic modes of payment;
- (d) All banks shall be required to recognize that the Registrar is authorized to receive, upon request, or as promptly as is practicable, all information pertaining to official bank accounts of the Court.

Rule 108.2

Bank signatories

Bank signatory authority and responsibility is assigned on a personal basis and cannot be delegated. Bank signatories cannot exercise the approving functions assigned in accordance with rule 110.5. Designated bank signatories must:

- (a) Ensure that there are sufficient funds in the bank account when cheques and other payment instructions are presented for payment;
- (b) Verify that all cheques and other payment instructions are pre-encumbered, dated and drawn to the order of the named payee approved by an Approving Officer (designated in accordance with rule 110.5), as indicated in the accompanying disbursement voucher, payment instructions and original invoice;
- (c) Ensure that cheques and other banking instruments are properly safeguarded and that when they are obsolete they are destroyed in the presence of an internal auditor.

Rule 108.3

Exchange of currencies

Officials responsible for the operation of the Court's bank accounts or for holding the Court's cash or negotiable instruments are not authorized to exchange one currency for another, except to the minimum extent essential for the transaction of official business.

Rule 108.4

Cash advances

- (a) Petty cash advances may only be made by, and to officials designated for this purpose by, the Registrar.
- (b) The relevant accounts shall be maintained on an imprest system and the amount and purposes of each advance shall be defined by the Registrar.
- (c) The Registrar may make other cash advances as may be permitted by the Staff Regulations and Rules, administrative instructions and as may otherwise be approved by him or her.
- (d) Officials to whom cash advances are issued shall be held personally responsible and financially liable for the proper management and safekeeping of cash so advanced and must be in a position to account for the advances at all times. They shall submit monthly accounts, unless otherwise directed by the Registrar.

Rule 108.5

Disbursements/payments

- (a) All disbursements shall be made by cheque, by wire transfer or by electronic funds transfer except to the extent that cash disbursements are authorized by the Registrar.
- (b) Disbursements shall be recorded in the accounts as of the date when they are made, that is, when the cheque is issued, transfer is effected or cash is paid out.
- (c) Except where a paid cheque is returned by the bank or a debit advice is received from the bank, a payee's written receipt shall be obtained for all disbursements.

Rule 108.6

Advance and progress payments

- (a) Except where normal commercial practice or the interest of the Court so requires, no contract or other form of undertaking shall be made on behalf of the Court which requires a payment or payments on account in advance of the delivery of products or the performance of contractual services. Whenever an advance payment is agreed to, the reasons therefor shall be recorded.
- (b) In addition to the above, and notwithstanding regulation 3.7, the Registrar may, where necessary, authorize progress payments.

Rule 108.7

Reconciliation of bank accounts

Every month, unless an exception is authorized by the Registrar, all financial transactions, including bank charges and commissions, must be reconciled with the information submitted by banks in accordance with rule 108.1. This reconciliation must be performed by officials having no actual part in the receipt or disbursement of funds; if the staff situation at the Court or at an

office away from the seat of the Court makes this impracticable, alternative arrangements may be established in consultation with the Registrar.

Regulation 9

Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments.

Rule 109.1

Policy

- (a) **Short-term investments are investments made for less than 12 months.**
- (b) **The Registrar shall ensure, including by establishing appropriate guidelines and by selecting reputable financial institutions that offer sufficient safeguards against any investment losses, that funds are invested in such a way as to place primary emphasis on excluding the risk to principal funds while ensuring the liquidity necessary to meet the Court's cash-flow requirements. In addition to, and without detracting from, these primary criteria, investments shall be selected on the basis of achieving the highest reasonable rate of return and shall accord, to the fullest extent possible, with the independence and impartiality of the Court and with the purposes and principles of the Charter of the United Nations.**

Rule 109.2

Investment ledger

Investments shall be recorded in an investment ledger, which shall show all the relevant details for each investment, including, for example, face value, cost of the investment, date of maturity, place of deposit, market value of the investment from time to time as reflected in the account statements provided by the relevant financial institution, proceeds of sale and income earned. A record of all account statements received from financial institutions relating to any investment shall be maintained.

Rule 109.3

Custody of investments

- (a) **All investments shall be made through, and maintained by, reputable financial institutions designated by the Registrar (see also rule 109.1 (b)).**
 - (b) **All investment transactions, including the withdrawal of invested resources, require the authorization and signature of two officials designated for that purpose by the Registrar.**
- 9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each trust fund or special account.

Rule 109.4

Income from investments

- (a) **Income derived from General Fund investments shall be credited to miscellaneous income.**
- (b) **Income derived from Working Capital Fund investments shall be credited to miscellaneous income, as provided for in regulation 6.4.**
- (c) **Income derived from investments pertaining to trust funds, reserve and special accounts shall be credited to the trust fund, reserve or special account concerned.**
- (d) **Gains from investments must be recorded by the Registrar and reported to the Auditor.**

Rule 109.5

Losses

- (a) **Any investment losses must be recorded at once by the Registrar. The Registrar may authorize the writing-off of investment losses with the approval of the Committee on Budget and Finance. At its request, the Committee on Budget and Finance shall be provided with the official copies of the relevant investment ledger and all account statements received from financial institutions relating to such investment. A detailed statement of investment losses shall be provided to the Presidency, to the Assembly of States Parties through the Committee on Budget and Finance, and to the Auditor.**
- (b) **Investment losses shall be borne by the trust fund, reserve or special account from which the principal amounts were obtained. (See also rule 110.10 with respect to the writing-off of losses of cash and receivables.)**

Regulation 10
Internal control

10.1 The Registrar shall:

- (a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;
- (b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;
- (c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:
 - (i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;
 - (ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly

of States Parties, or with the purposes and rules relating to trust funds and special accounts;

- (iii) The economic use of the resources of the Court.

Internal audit

Rule 110.1

Internal financial control

- (a) **There shall be an Office of Internal Audit which shall conduct independent audits of the financial transactions and the administrative systems underlying such transactions, in conformity with generally accepted common auditing standards and notably evaluating compliance of all transactions with established regulations, rules, policies, procedures and administrative instructions. As a result of its audit, the Office of Internal Audit shall provide comments and recommendations to the Registrar and, in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, also to the Prosecutor.**
- (b) **The Office of Internal Audit shall have free access to all books, records and other documents which are, in its opinion, necessary for the performance of the audit.**

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

Obligations

Rule 110.2

Authority

The utilization of all funds requires the prior authorization of the Registrar, who is responsible for ensuring that the obligations of the Court remain within the appropriations as adopted by the Assembly of States Parties, and are incurred only for the purposes approved by the Assembly of States Parties. In areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, the Registrar shall authorize the utilization of funds upon the request of the Office of the Prosecutor.

Rule 110.3

Certification and approval

Notwithstanding bank signatory functions assigned in accordance with rule 108.2, all commitments, obligations and expenditures require at least two authorizing signatures, in either conventional or electronic form. All commitments, obligations and expenditures must first be signed (“certified”) by a duly designated Certifying Officer (rule 110.4). Following certification, duly designated Approving Officers (rule 110.5) must then sign to “approve” the

payments and the recording of expenditures in the accounts. Expenditures recorded against an established, certified obligation do not require additional certification provided that they do not exceed the amount obligated by more than 10 per cent or €1,500 (or its equivalent in other currencies), whichever is lower. Expenditures under €1,500 (or its equivalent in other currencies), for which the recording of an obligation is unnecessary, require both certification and approval.

Rule 110.4

Certifying Officers

- (a) One or more officials shall be designated by the Registrar as the Certifying Officer(s) for the account(s) pertaining to a section or subsection of an approved budget. Certifying authority and responsibility is assigned on a personal basis and cannot be delegated. A Certifying Officer cannot exercise the approving functions assigned in accordance with rule 110.5. The Office of the Prosecutor will communicate to the Registrar the names of those officials that should be designated as the Certifying Officer(s) in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute.
- (b) Certifying Officers are responsible for managing the utilization of resources, including posts, in accordance with the purposes for which those resources were approved, the principles of efficiency and effectiveness, and the Financial Regulations and Rules of the Court. Certifying Officers must maintain detailed records of all obligations and expenditures against the accounts for which they have been delegated responsibility. They must be prepared to submit any supporting documents, explanations and justifications requested by the Registrar.

Rule 110.5

Approving Officers

- (a) One or more officials shall be designated by the Registrar as the Approving Officer(s), to approve the entry into the accounts of expenditures relating to contracts, agreements, purchase orders and other forms of undertaking.
- (b) Approving Officers shall give their approval after verifying that:
 - (i) The commitment, obligation or expenditure has been certified by a duly designated Certifying Officer;
 - (ii) Payment has not previously been made;
 - (iii) Supporting documents have no irregularities on their face which indicate that the payment is not properly due;
 - (iv) Services, supplies or equipment have been received in accordance with the contract, agreement, purchase order or other form of undertaking by which they were ordered and, if the cost exceeds €3,000 (or its equivalent in other currencies), in accordance with the purpose for which the relevant financial obligation was established.

Approving officers shall not approve a payment if any other information known to them would bar the payment.

- (c) Approving Officers must maintain detailed records and must be prepared to submit any supporting documents, explanations and justifications requested by the Registrar.
- (d) Approving authority and responsibility is assigned on a personal basis and cannot be delegated. An Approving Officer cannot exercise the certifying functions assigned in accordance with rule 110.4 or the bank signatory functions assigned in accordance with rule 108.2.

Rule 110.6

Establishment and revision of obligations

- (a) Apart from the employment of staff against an authorized staffing table, and consequential commitments under the Staff Regulations and Rules, no undertaking, including by contract, agreement or purchase order, for an amount exceeding €3,000 (or its equivalent in other currencies) shall be entered into until the appropriate credit(s) has/have been reserved in the accounts. This shall be done through the recording of an obligation(s), against which relevant payments or disbursements, made only on fulfilment of contractual and other obligations, shall be recorded as expenditure. An obligation shall be recorded in the accounts as unliquidated during the period set forth in regulation 4.5 and until such point as it is re-obligated, liquidated or cancelled in accordance with regulation 4.5.
- (b) If, in the time that elapses between the establishment of an obligation and the processing of final payment, the cost of the relevant goods or services has, for whatever reason, increased by less than €3,000 (or its equivalent in other currencies) or 10 per cent of the obligation, whichever is lower, no change need be made to the amount of the original obligation. If, however, the increase in costs exceeds either of these thresholds, the original obligation must be revised to reflect this increase in requirements and further certification is required. All increases in obligations, including those resulting from currency fluctuations, shall be subject to the same procedures as apply to the incurring of original obligations.

Rule 110.7

Review, re-obligation and cancellation of obligations

- (a) Outstanding obligations must be reviewed periodically by the responsible Certifying Officer(s). If an obligation is determined to be valid but cannot be liquidated during the period set forth in regulation 4.4, the provisions of regulation 4.5 shall be applied. Obligations that are no longer valid shall be cancelled from the accounts forthwith, and the resulting credit surrendered.
- (b) When any obligation previously recorded in the accounts is, for any reason, reduced (other than by payment) or cancelled, the Certifying Officer shall accordingly ensure that appropriate adjustments are recorded in the accounts.

Rule 110.8**Obligating documents**

An obligation must be based on a formal contract, agreement, purchase order or other form of undertaking, or on a liability recognized by the Court. All obligations must be supported by an appropriate obligating document.

Management services agreements**Rule 110.9****Management and other support services**

- (a) Management and other support services may be provided to other international courts or in support of activities in the field of international justice financed from trust funds or special accounts on a reimbursable, reciprocal or other basis as are consistent with the independence and impartiality of the Court as well as its policies, aims and activities. The management and other support service shall be approved by the Registrar and by the Office of the Prosecutor, if the management and other support service is related to areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute.
- (b) Each management services and support services agreement shall be covered by a written agreement between the Court and the entity on whose behalf the services are to be provided. Such agreements shall, *inter alia*, specify the services which the Court is to provide in return for full reimbursement to the Court of any costs incurred by the Court in providing these services.
- (c) Separate accounts shall be maintained to record all financial transactions relating to management services agreements. Any interest earned on funds held shall be credited to the respective management services account. The amounts included in the agreement for reimbursement of costs to the Court shall be charged to the related management services account and credited to the Court's account as extrabudgetary income.

10.3 The Registrar may make such *ex gratia* payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties.

Writing off losses of cash, receivables and property**Rule 110.10****Writing off losses of cash and receivables**

- (a) The Registrar may, after full investigation, authorize the writing off of losses of cash and the book value of accounts and receivables deemed to be

irrecoverable. A detailed statement of losses of cash and receivables shall be provided to the Auditor not later than three months following the end of the financial period.

- (b) The investigation shall, in each case, fix the responsibility, if any, attaching to any Court official for the loss or losses. Such official(s) may be required to reimburse the Court either partially or in full. Final determination as to all charges to be made against staff members or others as the result of losses will be made by the Registrar.

Rule 110.11

Writing off losses of property

- (a) The Registrar may, after full investigation, authorize the writing off of losses of property of the Court, and adjust the record to bring the balance shown into conformity with actual, physical property. A detailed statement of losses of non-expendable property shall be provided to the Auditor not later than three months following the end of the financial period.
- (b) The investigation shall, in each case, fix the responsibility, if any, attaching to any Court official for the loss or losses. Such official(s) may be required to reimburse the Court either partially or in full. Final determination as to all charges to be made against staff members or others as a result of losses will be made by the Registrar.

10.5 Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the Presidency, and in accordance with the Financial Rules, deems that, in the interests of the Court, a departure from the rule is desirable.

Procurement

Rule 110.12

General principles

Procurement functions include all actions necessary for the acquisition, by purchase or lease, of property, including products and real property, and of services, including works. The following general principles shall be given due consideration when exercising the procurement functions of the Court:

- (a) Best value for money;
- (b) Fairness, integrity and transparency;
- (c) Effective international competition;
- (d) The interests of the Court.

Rule 110.13

Authority and responsibility on procurement

- (a) The Registrar is accountable for all procurement functions of the Court. He/she shall establish the procurement systems of the Court and shall

ensure that procurement functions are carried out in accordance with the relevant financial regulations and rules. To this end, the Registrar shall:

- (i) Establish the necessary controls, including those for delegation of authority;
 - (ii) Issue administrative instructions to protect the integrity of the procurement process and the interests of the Court;
 - (iii) Establish Procurement Review Committees (rule 110.14).
- (b) No procurement contract shall be entered into on behalf of the Court except by the Registrar or a chief procurement officer designated by the Registrar. With regard to other procurement functions, authority may be further delegated to other officials.

Rule 110.14

Procurement Review Committees

- (a) The Registrar shall establish a Procurement Review Committee at the seat of the Court, to render written advice to the Registrar on procurement actions leading to the award or amendment of procurement contracts, which, for purposes of these Regulations and Rules, includes agreements or other written instruments such as purchase orders, and contracts that involve income to the Court. The Registrar shall establish the composition and the terms of reference of the Committee, which shall include the types and monetary values of proposed procurement actions subject to review.
- (b) At offices away from the seat of the Court, the Registrar may, in consultation with the head of that office, establish Procurement Review Committees, if this is warranted by the volume of local procurement actions of that office.
- (c) Where the advice of a Procurement Review Committee is required, no commitment may be entered into before such advice is acted upon by the Registrar or his/her authorized delegate. In cases where the Registrar or his/her authorized delegate decides not to accept the advice of such Committee, he/she shall record in writing the reasons for the decision.

Rule 110.15

Competition

Except as provided in rule 110.17, procurement contracts shall be awarded on the basis of effective competition, and to this end the competitive process shall, as necessary, include:

- (a) Acquisition planning for developing an overall procurement strategy and procurement methodologies;
- (b) Market research for identifying potential suppliers;
- (c) Consideration of prudent commercial practices;
- (d) Formal methods of solicitation, utilizing invitations to bid or requests for proposals on the basis of advertisement or direct solicitation of invited suppliers; or informal methods of solicitation, such as requests for

quotations. The Registrar shall issue administrative instructions concerning the types of procurement activities and monetary values for which such methods of solicitation are to be used.

Competition should be on as wide a geographical basis as practicable and suited to market circumstances. The Registrar may, however, in the interest of the Court, determine that specific invitations to bid or requests for proposals shall be limited to suppliers from States Parties only.

Rule 110.16

Formal methods of solicitation

- (a) When a formal invitation to bid has been issued, the procurement contract shall be awarded to the qualified bidder whose bid substantially conforms to the requirements set forth in the solicitation document and is evaluated to be the lowest cost to the Court.
- (b) When a formal request for proposals has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal is the most responsive to the requirements set forth in the solicitation document.
- (c) The Registrar may, in the interest of the Court, reject bids or proposals for a particular procurement action, recording the reasons for rejection in writing. The Registrar shall then determine whether to undertake a new solicitation, or to directly negotiate a procurement contract pursuant to rule 110.17 (b), or to terminate or suspend the procurement action.

Rule 110.17

Exceptions to the use of formal methods of solicitation

- (a) The Registrar may determine for a particular procurement action that using formal methods of solicitation is not in the best interest of the Court:
 - (i) When there is no competitive marketplace for the requirement, such as where a monopoly exists, where prices are fixed by legislation or government regulation, or where the requirement involves a proprietary product or service;
 - (ii) When there has been a previous determination or there is a need to standardize the requirement;
 - (iii) When the proposed procurement contract is the result of cooperation with an organization of the United Nations system, pursuant to rule 110.18;
 - (iv) When offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive;
 - (v) When, within a reasonable prior period, a formal solicitation has not produced satisfactory results;
 - (vi) When the proposed procurement contract is for the purchase or lease of real property;

- (vii) When there is a genuine exigency for the requirement;
 - (viii) When the proposed procurement contract relates to obtaining services that cannot be objectively evaluated;
 - (ix) When the Registrar has determined that a formal solicitation will not give satisfactory results;
 - (x) When the value of the procurement is below the monetary threshold established for formal methods of solicitation.
- (b) When a determination is made pursuant to paragraph (a) above, the Registrar shall record the reasons in writing and may then award a procurement contract, either on the basis of an informal method of solicitation, or on the basis of a directly negotiated contract, to a qualified vendor whose offer substantially conforms to the requirement at an acceptable price.

Rule 110.18
Cooperation

- (a) The Registrar may cooperate with organizations of the United Nations system to meet the procurement requirements of the Court, including those of offices away from the seat of the Court, provided that the regulations and rules of those organizations are consistent with those of the Court. The Registrar may, as appropriate, enter into agreements for such purposes. Such cooperation may include carrying out common procurement actions together, or the Court entering into a contract in reliance on a procurement decision of a United Nations organization, or requesting a United Nations organization to carry out procurement activities on behalf of the Court.
- (b) The Registrar may, to the extent authorized by the Committee on Budget and Finance, cooperate with the Government of a State Party, another public international organization, non-governmental organization or specialized private enterprise in respect of procurement activities and, as appropriate, enter into agreements for such purposes.

Rule 110.19
Written contracts

- (a) Written procurement contracts shall be used to formalize every procurement for a monetary value over specific thresholds established by the Registrar. Such arrangements shall, as appropriate, specify in detail:
- (i) The nature of the products or services being procured;
 - (ii) The quantity being procured;
 - (iii) The contract or unit price;
 - (iv) The period covered;
 - (v) Conditions to be fulfilled, including the Court's general conditions of contract;
 - (vi) Terms of delivery and payment;

- (vii) Name and address of supplier.
- (b) The requirement for written procurement contracts shall not be interpreted to restrict the use of any electronic means of data interchange. Before using any electronic means of data interchange, the Registrar shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality of the information.

Property management

Rule 110.20

Authority and responsibility on property management

- (a) The Registrar is responsible for the management of the property of the Court, including all systems governing its receipt, recording, utilization, safe keeping, maintenance and disposal, including by sale, and shall designate the officials responsible for performing property management functions.
- (b) A summary statement of non-expendable Court property shall be provided to the Auditor not later than three months following the end of the financial period (see rule 111.8 (b) (ii)).

Rule 110.21

Physical inventories

Physical inventories shall be taken of supplies, equipment or other property of the Court or entrusted to the charge of the Court at such intervals as deemed necessary to ensure adequate control over such property. Where property is of a kind used and/or administered by only one organizational unit, the Registrar may, at his or her discretion, delegate his or her responsibility for making arrangements for the conduct of physical inventories to the head of that organizational unit.

Rule 110.22

Property Survey Board

- (a) The Registrar shall establish a Property Survey Board, to render written advice to her/him in respect of loss, damage or other discrepancy regarding the property of the Court. The Registrar shall establish the composition and terms of reference of the Board, which shall include procedures for determining the cause of such loss, damage or other discrepancy, the disposal action in accordance with rule 110.27, and the degree of responsibility, if any, attaching to any Court official or other party for such loss, damage or other discrepancy.
- (b) Where the advice of the Board is required, no final action in respect of the loss, damage or other discrepancy may be taken before such advice is received. In cases where the Registrar decides not to accept the advice of the Board, she/he shall record in writing the reasons for that decision.

Rule 110.23

Receipt of supplies and equipment

All supplies, equipment or other property received by the Court shall immediately be inspected to ensure that their condition is satisfactory and in accordance with the terms of the related purchase contract. A receiving report shall be issued for all items received and they shall immediately be entered into the appropriate property inventory.

Rule 110.24

Property issues to individuals

The issue to individuals of equipment or other property for their use (e.g. tools, cameras, etc.) shall be recorded in the property records as “issued on loan”. The records shall be supported by a receipt from the individual concerned, and such receipts shall be renewed every year. In case the individual is transferred to another organizational unit or is separated from the service, the property shall be returned to stock and the loan record cancelled.

Rule 110.25

Transfer between organizational units

Issues of supplies, equipment or other property from one organizational unit to another which are not expected to be returned shall be transferred from the records of the issuing organizational unit to the records of the receiving unit. In such cases, the latter shall provide a receipt to support the records of the issuing unit. Where there is an expectation of an eventual return of the items to the issuing unit, it will be shown as “issued on loan” in the records of the issuing unit and as “received on loan” in the records of the receiving unit.

Rule 110.26

Vouchers

All transactions related to supplies, equipment or other property shall be recorded, and these records shall be supported by appropriate vouchers or evidence of receipt and issue, except for such items where the maintenance of detailed records is deemed to be uneconomical or impractical by the Registrar and the Auditor.

Rule 110.27

Sale/disposal of property

- (a) The Registrar shall be responsible for the disposal of property by sale. He/she may delegate authority as necessary.
- (b) Sales of supplies, equipment or other property declared surplus or unserviceable shall be based on competitive bidding, unless the Property Survey Board:
 - (i) Estimates that the sales value is less than €5,000;
 - (ii) Considers that the exchange of property in partial or full payment for the replacement equipment or supplies is in the best interests of the Court;

- (iii) **Deems it appropriate to transfer surplus property from one office or programme for use in another and determines the fair market value at which the transfer(s) shall be effected;**
 - (iv) **Determines that the destruction of the surplus or unserviceable material will be more economical or is required by law or by the nature of the property;**
 - (v) **Determines that the interests of the Court will be served by disposal by gift or at nominal prices to the United Nations or any other intergovernmental organization, a Government or government agency or some other non-profit organization.**
- (c) **Except as provided for in paragraph (b) above, property shall be sold on the basis of payments on or before delivery.**

Regulation 11

The accounts

11.1 The Registrar shall submit to the Auditor accounts for the financial period not later than 31 March following the end of such period. In addition, the Registrar shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show:

- (a) The income and expenditures of all funds;
- (b) The status of appropriations, including:
 - (i) The original budget appropriations;
 - (ii) The appropriations as modified by any transfers;
 - (iii) Credits, if any, other than the appropriations adopted by the Assembly of States Parties;
 - (iv) The amounts charged against those appropriations and/or other credits;
- (c) The assets and liabilities of the Court.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Court.

11.2 The accounts of the Court shall be presented in the currency of the statutory headquarters of the Court. Accounting records may, however, be kept in such other currency as the Registrar may deem necessary.

11.3 Appropriate separate accounts shall be maintained for all trust funds, reserve and special accounts.

Rule 111.1

Authority and responsibility for accounts

Responsibility for the accounts is assigned to the Registrar. He/she shall prescribe and maintain financial records and subsidiary records. He/she shall

establish all accounting procedures of the Court and designate the officials responsible for performing accounting functions.

Rule 111.2

Principal accounts

In accordance with regulations 11.1 and 11.3, the principal accounts of the Court shall include detailed, comprehensive and up-to-date records of assets and liabilities for all sources of funds. The principal accounts shall consist of:

- (a) Programme budget accounts, showing
 - (i) Original appropriations;
 - (ii) Appropriations as modified by transfers;
 - (iii) Credits (other than appropriations made available by the Assembly of States Parties);
 - (iv) Expenditures, including payments and other disbursements and unliquidated obligations;
 - (v) Unencumbered balances of allotments and appropriations;
- (b) General ledger accounts, showing: all cash at banks, investments, receivables and other assets, payables and other liabilities;
- (c) The Working Capital Fund and all trust funds or other special accounts.

Rule 111.3

Accrual basis accounting

Unless otherwise directed by the Registrar, or by the particular terms governing the operation of a trust fund, reserve or special account, all financial transactions shall be recorded in the accounts on an accrual basis.

Rule 111.4

Currency of accounting records

All accounts shall be maintained in euros. At offices away from the seat of the Court, accounts may also be maintained in the currency of the country in which they are situated provided that all amounts are recorded both in local currency and in the euro equivalent.

Rule 111.5

Accounting for exchange rate fluctuations

- (a) The Registrar shall establish the operational rates of exchange between the euro and other currencies, on the basis of the operational rates of exchange established by the Secretariat of the United Nations. The operational rate(s) of exchange shall be used for the recording of all Court transactions.
- (b) Payments in currencies other than the euro will be determined on the basis of the operational rate(s) of exchange prevailing at the time of payment. Any difference between the actual amount(s) received on exchange and the amount(s) that would have been obtained at the

operational rate(s) of exchange shall be accounted for as loss or gain on exchange.

- (c) When closing the final accounts for a financial period, any negative balance on the account for “loss or gain on exchange” shall be debited to the relevant budget account, while any positive balance shall be credited to miscellaneous income.

Rule 111.6

Accounting for proceeds from the sale of property

The proceeds from the sale of property shall be credited as miscellaneous income except:

- (a) Where the Property Survey Board has recommended the application of these proceeds directly against the purchase price of replacement equipment or supplies (any balance shall be taken into account as miscellaneous income);
- (b) When the trade-in property is not considered to be a sale, and the allowance shall be applied against the cost of the replacement property;
- (c) Where the normal practice is to secure and use certain material or equipment in connection with a contract and to salvage and sell such material or equipment at a later stage;
- (d) When the proceeds from the sale of surplus equipment shall be credited to the relevant programme account, provided that it has not been closed;
- (e) When equipment transferred from one programme for use in another and the account of the releasing programme is open, the fair market value of such equipment shall be credited to the account of the releasing programme and charged to the account of the receiving programme.

Rule 111.7

Accounting for commitments against future financial periods

Obligations established prior to the financial period to which they pertain, pursuant to regulation 3.7 and rule 103.5, shall be recorded against a deferred charge account. Deferred charges shall be transferred to the appropriate account when the necessary appropriations and funds become available.

Rule 111.8

Financial statements

- (a) For all accounts of the Court, financial statements covering the financial period, as of 31 December, shall be submitted to the Auditor in euros not later than 31 March following the end of such period. Copies of financial statements shall also be transmitted to the Committee on Budget and Finance. Additional financial statements may be prepared as and when the Registrar deems necessary.
- (b) Financial statements submitted to the Auditor for all accounts shall include:

- (i) **A statement of income, expenditures (including ex gratia payments) and changes in reserves and fund balances;**
- (ii) **A statement of assets (including written-off assets), liabilities, reserves and fund balances;**
- (iii) **A statement of cash flows;**
- (iv) **Such other schedules as may be required;**
- (v) **Notes to the financial statements.**

Rule 111.9

Archives

Accounting records, other financial and property records, and all supporting documents shall be retained for such periods as may be determined by the Registrar, through administrative instruction, in agreement with the Auditor. This period may not be less than ten years. Once this period has elapsed the records and supporting documents may be destroyed on the authority of the Registrar. Where appropriate, such records and supporting documents shall be preserved by electronic means. Records on activities and transactions in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, may only be destroyed with the explicit consent of the Prosecutor.

Regulation 12

Audit

- 12.1 The Assembly of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed.
- 12.2 The audit shall be conducted in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly of States Parties and in accordance with the additional terms of reference set out in the annex to these Regulations.
- 12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Court.
- 12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit.
- 12.5 The Assembly of States Parties may request the Auditor to perform certain specific examinations and issue separate reports on the results.
- 12.6 The Registrar shall provide the Auditor with the facilities required in the performance of the audit.
- 12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to

matters referred to in regulation 12.3 and in the additional terms of reference as set out in the annex to these Regulations.

- 12.8 The Registrar, in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, shall examine the audit reports, including reports referred to in regulation 12.5, and shall forward the financial statements and the audit report to the Committee on Budget and Finance, with such comments on the audit report as they deem appropriate.
- 12.9 The Committee on Budget and Finance shall examine the financial statements and audit reports, including reports referred to in regulation 12.5 and the comments of the Registrar and other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate, for consideration and approval.

Regulation 13

General provisions

- 13.1 These Regulations shall become effective on a date to be decided upon by the Assembly of States Parties and shall apply to the initial financial period agreed to by the Assembly of States Parties and to subsequent financial periods as provided for in regulation 2.1.
- 13.2 These Regulations may be amended by the Assembly of States Parties.

Rule 113.1

Effective date

These Rules shall become effective on the same day on which the Regulations become effective.

Rule 113.2

Amendment of Rules

- (a) **These Rules may be amended by the Assembly of States Parties.**
- (b) **Unless the Assembly of States Parties is seized of a specific proposal for amendment of a rule, the Presidency, acting upon proposals jointly presented by and in agreement with the Prosecutor and the Registrar, may amend the Rules if the Presidency is convinced that the amendment contributes towards better ensuring the principles of effective financial administration and the exercise of economy, as enshrined in regulation 1.3.**
- (c) **An amendment enacted by the Presidency will apply provisionally until such time as the Assembly of States Parties, acting upon a recommendation of the Committee on Budget and Finance, decides to endorse the amendment. If the Assembly of States Parties decides not to endorse the amendment, the unamended rule, or any rule that the Assembly of States Parties decides to adopt in its place, shall become effective as of the day on which the Assembly of States Parties takes that decision.**

Annex

Additional terms of reference governing the audit of the International Criminal Court

1. The Auditor shall perform such audit of the accounts of the Court, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

(a) That the financial statements are in accord with the books and records of the Court;

(b) That the financial transactions reflected in the statements have been in accordance with the financial rules and regulations, the budgetary provisions and other applicable directives;

(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Court's depositaries or by actual count;

(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Court and the Assembly of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements, which shall read as follows:

“We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Criminal Court for the financial period ended 31 December ... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances.”

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with the Financial Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Court for the financial period shall be submitted to the Assembly of States Parties in accordance with regulations 12.8 and 12.9. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept; where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Assembly of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Court's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Court to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Assembly of States Parties after making allowance for duly authorized transfers within the budget;

- (vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;
 - (vii) Expenditure not in conformity with the authority which governs it;
 - (d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the records;
 - (e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Assembly of States Parties should have early knowledge.
7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Assembly of States Parties, the Prosecutor or the Registrar.
8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.
9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.
10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.

E. Agreement on the Privileges and Immunities of the International Criminal Court

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Agreement on the Privileges and Immunities of the International Criminal Court

The States Parties to the present Agreement,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas article 4 of the Rome Statute provides that the International Criminal Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the International Criminal Court shall enjoy in the territory of each State Party to the Rome Statute such privileges and immunities as are necessary for the fulfilment of its purposes;

Have agreed as follows:

Article 1

Use of terms

For the purposes of the present Agreement:

- (a) “The Statute” means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;
- (b) “The Court” means the International Criminal Court established by the Statute;
- (c) “States Parties” means States Parties to the present Agreement;
- (d) “Representatives of States Parties” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;
- (e) “Assembly” means the Assembly of States Parties to the Statute;
- (f) “Judges” means the judges of the Court;
- (g) “The Presidency” means the organ composed of the President and the First and Second Vice-Presidents of the Court;
- (h) “Prosecutor” means the Prosecutor elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- (i) “Deputy Prosecutors” means the Deputy Prosecutors elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- (j) “Registrar” means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;
- (k) “Deputy Registrar” means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;
- (l) “Counsel” means defence counsel and the legal representatives of victims;

(m) “Secretary-General” means the Secretary-General of the United Nations;

(n) “Representatives of intergovernmental organizations” means the executive heads of intergovernmental organizations, including any official acting on his or her behalf;

(o) “Vienna Convention” means the Vienna Convention on Diplomatic Relations of 18 April 1961;

(p) “Rules of Procedure and Evidence” means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

Article 2

Legal status and juridical personality of the Court

The Court shall have international legal personality and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It shall, in particular, have the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings.

Article 3

General provisions on privileges and immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

Article 4

Inviolability of the premises of the Court

The premises of the Court shall be inviolable.

Article 5

Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 6

Immunity of the Court, its property, funds and assets

1. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, funds and assets of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Court, the property, funds and assets of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, controls or moratoria of any nature.

Article 7**Inviolability of archives and documents**

The archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 8**Exemption from taxes, customs duties and import or export restrictions**

1. The Court, its assets, income and other property and its operations and transactions shall be exempt from all direct taxes, which include, inter alia, income tax, capital tax and corporation tax, as well as direct taxes levied by local and provincial authorities. It is understood, however, that the Court shall not claim exemption from taxes which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. The Court shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Court for its official use and in respect of its publications.

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the competent authorities of that State Party.

Article 9**Reimbursement of duties and/or taxes**

1. The Court shall not, as a general rule, claim exemption from duties and/or taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Court for its official use makes major purchases of property and goods or services on which identifiable duties and/or taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or reimbursement shall be accorded in respect of charges for public utility services provided to the Court.

Article 10**Funds and freedom from currency restrictions**

1. Without being restricted by financial controls, regulations or financial moratoriums of any kind, while carrying out its activities:

(a) The Court may hold funds, currency of any kind or gold and operate accounts in any currency;

(b) The Court shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) The Court may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities;

(d) The Court shall enjoy treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

2. In exercising its rights under paragraph 1, the Court shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Court.

Article 11

Facilities in respect of communications

1. The Court shall enjoy in the territory of each State Party for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications or correspondence of the Court.

3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.

4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Court shall have the right to operate radio and other telecommunication equipment on any frequencies allocated to it by the States Parties in accordance with their national procedures. The States Parties shall endeavour to allocate to the Court, to the extent possible, frequencies for which it has applied.

Article 12

Exercise of the functions of the Court outside its headquarters

In the event that the Court, pursuant to article 3, paragraph 3, of the Statute, considers it desirable to sit elsewhere than at its headquarters at The Hague in the Netherlands, the Court may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

Article 13**Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations**

1. Representatives of States Parties to the Statute attending meetings of the Assembly and its subsidiary organs, representatives of other States that may be attending meetings of the Assembly and its subsidiary organs as observers in accordance with article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to meetings of the Assembly and its subsidiary organs shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention;
- (b) Immunity from legal process of every kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue to be accorded notwithstanding that the persons concerned may have ceased to exercise their functions as representatives;
- (c) Inviolability of all papers and documents in whatever form;
- (d) The right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags and to receive and send electronic communications;
- (e) Exemption from immigration restrictions, alien registration requirements and national service obligations in the State Party they are visiting or through which they are passing in the exercise of their functions;
- (f) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys under the Vienna Convention;
- (h) The same protection and repatriation facilities as are accorded to diplomatic agents in time of international crisis under the Vienna Convention;
- (i) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives described in paragraph 1 attending the meetings of the Assembly and its subsidiary organs are present in a State Party for the discharge of their duties shall not be considered as periods of residence.

3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the State Party of which he or she is a national or of the State Party or intergovernmental organization of which he or she is or has been a representative.

Article 14**Representatives of States participating in the proceedings of the Court**

Representatives of States participating in the proceedings of the Court shall, while exercising their official functions, and during their journey to and from the place of the proceedings, enjoy the privileges and immunities referred to in article 13.

Article 15**Judges, Prosecutor, Deputy Prosecutors and Registrar**

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Court is sitting. On journeys in connection with the exercise of their functions, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall in all States Parties through which they may have to pass enjoy all the privileges, immunities and facilities granted by States Parties to diplomatic agents in similar circumstances under the Vienna Convention.

3. If a judge, the Prosecutor, a Deputy Prosecutor or the Registrar, for the purpose of holding himself or herself at the disposal of the Court, resides in any State Party other than that of which he or she is a national or permanent resident, he or she shall, together with family members forming part of his or her household, be accorded diplomatic privileges, immunities and facilities during the period of residence.

4. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

5. Paragraphs 1 to 4 of this article shall apply to judges of the Court even after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10, of the Statute.

6. The salaries, emoluments and allowances paid to the judges, the Prosecutor, the Deputy Prosecutors and the Registrar by the Court shall be exempt from taxation. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in a State Party for the discharge of their functions shall not be considered as periods of residence for purposes of taxation. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources.

7. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors and Registrars and their dependants.

Article 16**Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry**

1. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of their employment with the Court;

(c) Inviolability for all official papers and documents in whatever form and materials;

(d) Exemption from taxation on the salaries, emoluments and allowances paid to them by the Court. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources;

(e) Exemption from national service obligations;

(f) Together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(g) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(h) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the State Party concerned;

(i) Together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(j) The right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up post in the State Party in question and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of the staff of the Office of the Prosecutor, members of the staff of the Registry and their dependants.

Article 17**Personnel recruited locally and not otherwise covered by the present Agreement**

Personnel recruited by the Court locally and not otherwise covered by the present Agreement shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for

the Court. Such immunity shall continue to be accorded after termination of employment with the Court for activities carried out on behalf of the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Court.

Article 18

Counsel and persons assisting defence counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of his or her functions, including the time spent on journeys, in connection with the performance of his or her functions and subject to production of the certificate referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of his or her personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by him or her in official capacity, which immunity shall continue to be accorded even after he or she has ceased to exercise his or her functions;

(c) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions;

(d) For the purposes of communications in pursuance of his or her functions as counsel, the right to receive and send papers and documents in whatever form;

(e) Exemption from immigration restrictions or alien registration;

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(g) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel shall be provided with a certificate under the signature of the Registrar for the period required for the exercise of his or her functions. Such certificate shall be withdrawn if the power or mandate is terminated before the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel is present in a State Party for the discharge of his or her functions shall not be considered as periods of residence.

4. The provisions of this article shall apply *mutatis mutandis* to persons assisting defence counsel in accordance with rule 22 of the Rules of Procedure and Evidence.

Article 19
Witnesses

1. Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention;

(b) Without prejudice to subparagraph (d) below, immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(c) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;

(d) Inviolability of papers and documents in whatever form and materials relating to their testimony;

(e) For purposes of their communications with the Court and counsel in connection with their testimony, the right to receive and send papers and documents in whatever form;

(f) Exemption from immigration restrictions or alien registration when they travel for purposes of their testimony;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Witnesses who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their appearance is required by the Court and specifying a time period during which such appearance is necessary.

Article 20
Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention;

(b) Immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned;

(c) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court;

(d) Exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.

2. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying their participation in the proceedings of the Court and specifying a time period for that participation.

Article 21

Experts

1. Experts performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent exercise of their functions, including the time spent on journeys in connection with their functions, subject to production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions for the Court, which immunity shall continue to be accorded even after the termination of their functions;

(c) Inviolability of papers and documents in whatever form and materials relating to their functions for the Court;

(d) For the purposes of their communications with the Court, the right to receive and send papers and documents in whatever form and materials relating to their functions for the Court by courier or in sealed bags;

(e) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(f) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(h) Exemption from immigration restrictions or alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying

that they are performing functions for the Court and specifying a time period for which their functions will last.

Article 22

Other persons required to be present at the seat of the Court

1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, including the time spent on journeys in connection with their presence, be accorded the privileges, immunities and facilities provided for in article 20, paragraph 1, subparagraphs (a) to (d), of the present Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Other persons required to be present at the seat of the Court shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 23

Nationals and permanent residents

At the time of signature, ratification, acceptance, approval or accession, any State may declare that:

(a) Without prejudice to paragraph 6 of article 15 and paragraph 1 (d) of article 16, a person referred to in articles 15, 16, 18, 19 and 21 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court:

- (i) Immunity from personal arrest and detention;
- (ii) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by that person in the performance of his or her functions for the Court or in the course of his or her appearance or testimony, which immunity shall continue to be accorded even after the person has ceased to exercise his or her functions for the Court or his or her appearance or testimony before it;
- (iii) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions for the Court or his or her appearance or testimony before it;
- (iv) For the purposes of their communications with the Court and for a person referred to in article 19, with his or her counsel in connection with his or her testimony, the right to receive and send papers in whatever form;

(b) A person referred to in articles 20 and 22 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for his or her appearance before the Court:

- (i) Immunity from personal arrest and detention;
- (ii) Immunity from legal process in respect of words spoken or written and all acts performed by that person in the course of his or her appearance

before the Court, which immunity shall continue to be accorded even after his or her appearance before the Court.

Article 24

Cooperation with the authorities of States Parties

1. The Court shall cooperate at all times with the appropriate authorities of States Parties to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in the present Agreement.

2. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under the present Agreement to respect the laws and regulations of the State Party in whose territory they may be on the business of the Court or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

Article 25

Waiver of privileges and immunities provided for in articles 13 and 14

Privileges and immunities provided for in articles 13 and 14 of the present Agreement are accorded to the representatives of States and intergovernmental organizations not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the work of the Assembly, its subsidiary organs and the Court. Consequently, States Parties not only have the right but are under a duty to waive the privileges and immunities of their representatives in any case where, in the opinion of those States, they would impede the course of justice and can be waived without prejudice to the purpose for which the privileges and immunities are accorded. States not party to the present Agreement and intergovernmental organizations are granted the privileges and immunities provided for in articles 13 and 14 of the present Agreement on the understanding that they undertake the same duty regarding waiver.

Article 26

Waiver of privileges and immunities provided for in articles 15 to 22

1. The privileges and immunities provided for in articles 15 to 22 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:

(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) In the case of the Registrar, by the Presidency;

(c) In the case of the Deputy Prosecutors and the staff of the Office of the Prosecutor, by the Prosecutor;

(d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(e) In the case of personnel referred to in article 17, by the head of the organ of the Court employing such personnel;

(f) In the case of counsel and persons assisting defence counsel, by the Presidency;

(g) In the case of witnesses and victims, by the Presidency;

(h) In the case of experts, by the head of the organ of the Court appointing the expert;

(i) In the case of other persons required to be present at the seat of the Court, by the Presidency.

Article 27

Social security

From the date on which the Court establishes a social security scheme, the persons referred to in articles 15, 16 and 17 shall, with respect to services rendered for the Court, be exempt from all compulsory contributions to national social security schemes.

Article 28

Notification

The Registrar shall communicate periodically to all States Parties the categories and names of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor, the staff of the Registry and counsel to whom the provisions of the present Agreement apply. The Registrar shall also communicate to all States Parties information on any change in the status of these persons.

Article 29

Laissez-passer

The States Parties shall recognize and accept the United Nations laissez-passer or the travel document issued by the Court to the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry as valid travel documents.

Article 30

Visas

Applications for visas or entry/exit permits, where required, from all persons who are holders of the United Nations laissez-passer or of the travel document issued by the Court, and also from persons referred to in articles 18 to 22 of the present Agreement who have a certificate issued by the Court confirming that they are travelling on the business of the Court, shall be dealt with by the States Parties as speedily as possible and granted free of charge.

Article 31**Settlement of disputes with third parties**

The Court shall, without prejudice to the powers and responsibilities of the Assembly under the Statute, make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;
- (b) Disputes involving any person referred to in the present Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

Article 32**Settlement of differences on the interpretation or application of the present Agreement**

1. All differences arising out of the interpretation or application of the present Agreement between two or more States Parties or between the Court and a State Party shall be settled by consultation, negotiation or other agreed mode of settlement.
2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6 of this article.
3. The arbitral tribunal shall be composed of three members: one to be chosen by each party to the difference and the third, who shall be the chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within two months of the appointment of a member by the other party, that other party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within two months following their appointment, either party may invite the President of the International Court of Justice to choose the chairman.
4. Unless the parties to the difference otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.
5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of the present Agreement and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties to the difference.
6. The decision of the arbitral tribunal shall be communicated to the parties to the difference, to the Registrar and to the Secretary-General.

Article 33**Applicability of the present Agreement**

The present Agreement is without prejudice to relevant rules of international law, including international humanitarian law.

Article 34**Signature, ratification, acceptance, approval or accession**

1. The present Agreement shall be open for signature by all States from 10 September 2002 until 30 June 2004 at United Nations Headquarters in New York.
2. The present Agreement is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General.
3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General.

Article 35**Entry into force**

1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the tenth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to the present Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of its instrument of ratification, acceptance, approval or accession.

Article 36**Amendments**

1. Any State Party may, by written communication addressed to the Secretariat of the Assembly, propose amendments to the present Agreement. The Secretariat shall circulate such communication to all States Parties and the Bureau of the Assembly with a request that States Parties notify the Secretariat whether they favour a Review Conference of States Parties to discuss the proposal.
2. If, within three months from the date of circulation by the Secretariat of the Assembly, a majority of States Parties notify the Secretariat that they favour a Review Conference, the Secretariat shall inform the Bureau of the Assembly with a view to convening such a Conference in connection with the next regular or special session of the Assembly.
3. The adoption of an amendment on which consensus cannot be reached shall require a two-thirds majority of States Parties present and voting, provided that a majority of States Parties is present.
4. The Bureau of the Assembly shall immediately notify the Secretary-General of any amendment that has been adopted by the States Parties at a Review Conference. The Secretary-General shall circulate to all States Parties and signatory States any amendment adopted at a Review Conference.
5. An amendment shall enter into force for States Parties which have ratified or accepted the amendment sixty days after two thirds of the States which were Parties at the date of adoption of the amendment have deposited instruments of ratification or acceptance with the Secretary-General.

6. For each State Party ratifying or accepting an amendment after the deposit of the required number of instruments of ratification or acceptance, the amendment shall enter into force on the sixtieth day following the deposit of its instrument of ratification or acceptance.

7. A State which becomes a Party to the present Agreement after the entry into force of an amendment in accordance with paragraph 5 shall, failing an expression of different intention by that State:

(a) Be considered a Party to the present Agreement as so amended; and

(b) Be considered a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 37

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General, denounce the present Agreement. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in the present Agreement to which it would be subject under international law independently of the present Agreement.

Article 38

Depositary

The Secretary-General shall be the depositary of the present Agreement.

Article 39

Authentic texts

The original of the present Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General.

IN WITNESS THEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

F. Basic principles governing a headquarters agreement to be negotiated between the Court and the host country

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Preamble

The Assembly of States Parties,

Bearing in mind that, in accordance with article 3, paragraph 2, of the Rome Statute, the Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf,

Approves the following basic principles to govern the preparation of such a headquarters agreement:

I. General principles governing the headquarters agreement

1. Preparation of the headquarters agreement should be governed by the following general principles:

(a) Upon the establishment of the Court, the Government of the Netherlands and the Court should enter, as quickly as possible, into negotiations regarding the conclusion of the headquarters agreement by designating for this purpose their contact points and should proceed with these negotiations in an expeditious manner;

(b) The headquarters agreement should be based on the relevant provisions of the Statute, the Rules of Procedure and Evidence and the Agreement on the Privileges and Immunities of the Court and should be consistent with those instruments;

(c) The headquarters agreement should reflect the specific relationship between the Court and the host country;

(d) The headquarters agreement should address in detail those issues which are not covered or are not sufficiently dealt with in the Statute, the Rules of Procedure and Evidence and the Agreement on the Privileges and Immunities of the Court, but are necessary for the proper implementation of the provisions set forth in those instruments;

(e) The headquarters agreement should be prepared in the light of its primary purpose of enabling the Court to fully and efficiently discharge its responsibilities and fulfil its purposes in the host country;

(f) The headquarters agreement should support the independence of the Court and provide for the long-term stability of the Court;

(g) The headquarters agreement should facilitate the smooth and efficient functioning of the Court, including, in particular, its needs with regard to all persons required by the Court to be present at its seat and with regard to the transfer of evidence in and out of the host country;

(h) The headquarters agreement should attempt, to the extent possible, to resolve in an all-encompassing manner all issues required to facilitate the smooth and efficient functioning of the Court; at the same time it should provide sufficient flexibility to allow for the conclusion of supplementary agreements on matters that were not foreseen during the negotiations of the agreement or are needed for the proper implementation thereof;

(i) The headquarters agreement should capitalize upon the relevant experience of international organizations and tribunals, and in particular with regard to operational issues, the experience of the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda;

(j) The headquarters agreement should ensure that the Court shall enjoy privileges, immunities and treatment that are no less favourable than those accorded to any international organization or tribunal located in the host country;

(k) The headquarters agreement should specify that the host country remains responsible for the fulfilment of all obligations under the headquarters agreement regardless of by whom those obligations are performed;

(l) The headquarters agreement should provide for its provisional application following the conclusion of negotiations between the Court and the Government of the Netherlands and pending the approval of the agreement by the Assembly of States Parties and the completion by the host country of its internal legislative procedures.

II. Specific principles governing the headquarters agreement

2. Part II contains principles on specific issues that need to be addressed in the headquarters agreement. The headquarters agreement may, however, deviate from the organizational structure used in this part.

A. Preamble

3. The preamble should refer, *inter alia*, to article 3, paragraphs 1 and 2, article 4, paragraph 1, and article 48 of the Statute. It should also highlight the main purpose of the agreement.

B. Use of terms

4. The article on the use of terms should include definitions, *inter alia*, of “the Statute”, “the Court”, “Rules of Procedure and Evidence”, “Agreement on the Privileges and Immunities of the Court”, “the premises of the Court”, “the host country”, “the competent authorities”, “judges”, “President”, “the Presidency”, “Prosecutor”, “Deputy Prosecutors”, “Registrar”, “Deputy Registrar”, “officials of the Court”, “victim”, “counsel”, “States Parties”, “Assembly”, “representatives of States Parties” and “Vienna Convention”.

5. Those definitions should be consistent with the Statute, the Rules of Procedure and Evidence and the Agreement on the Privileges and Immunities of the Court.

C. Legal status and juridical personality of the Court

6. Under this principle the headquarters agreement should refer to article 4, paragraph 1, of the Statute, which provides that the Court has international legal personality and also has such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

D. Premises of the Court

7. Under this principle, the headquarters agreement should refer to article 3, paragraph 1, of the Statute, which provides that the seat of the Court shall be established at The Hague in the Netherlands.

8. The headquarters agreement should contain provisions on inviolability of the premises of the Court providing, in particular, that:

(a) No official of the host country shall be allowed to enter the premises of the Court to perform any official duties unless permission has been given by the competent authorities of the Court;

(b) Judicial actions shall not be enforced on the premises of the Court;

(c) In case of fire or other emergency requiring prompt protective action, the consent of the Court to any necessary entry into premises by the competent authorities of the host country shall be presumed;

(d) The premises of the Court shall not become a refuge from justice.

9. The headquarters agreement should contain provisions on law and authority on the premises of the Court providing, in particular, that:

(a) The premises of the Court shall be under the control and authority of the Court;

(b) The Court shall have the power to make regulations operative within the premises and may expel or exclude persons from the premises for violation of its regulations;

(c) Except as otherwise provided in the headquarters agreement, the laws and regulations of the host country shall apply on the premises of the Court.

10. The headquarters agreement should contain provisions on protection of the premises of the Court providing, in particular, that the Government of the host country shall take all the effective and adequate measures necessary to ensure the security, safety and protection of the Court, its property, premises and the immediate vicinity of the Court and shall take the necessary measures to prevent impairment of the dignity and proper functioning of the Court.

11. The competent authorities of the host country shall ensure that the Court is not deprived of any part of its premises without its consent.

12. The competent authorities of the host country shall provide, if so requested by the Court, adequate police or security forces necessary to preserve law and order on the premises.

E. Privileges and immunities of the Court

13. Under this principle, the headquarters agreement should refer to article 48, paragraph 1, of the Statute, which contains the general principle governing the privileges and immunities enjoyed by the Court and provides that the Court shall enjoy in the territory of the host country such privileges and immunities as are necessary for the fulfilment of its purposes.

14. In addition, the headquarters agreement should include specific provisions providing that:

(a) The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes;

(b) The Court and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process except insofar as in any particular case the Court has expressly waived its immunity (it being understood that no waiver of immunity shall extend to any measure of execution) and from search, seizure, requisition, confiscation, expropriation and any other form of interference by an executive, administrative, judicial or legislative body and shall be exempt from restrictions, regulations, controls or moratoria of any nature;

(c) The archives of the Court and in general all papers and documents in whatever form and other materials belonging to the Court wherever located and by whomsoever held shall be inviolable. The headquarters agreement shall provide for the application of any protective measures that the Court may order.

15. Furthermore, under this principle, the headquarters agreement should include the following specific provisions providing that:

(a) The Court's income, assets and other property and its operations and transactions shall be exempt from all direct taxes and the Court shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports and in respect of its publications;

(b) The Court shall be exempt from taxes on, at a minimum, major purchases, for official use, of property, goods or services;

(c) The Court may receive, hold, use, transfer and convert funds, gold, securities or currency of any kind and shall in general enjoy freedom from any form of currency restrictions.

F. Communication facilities

16. Under this principle, the headquarters agreement should provide, in particular, that:

(a) The Court shall enjoy, for any form of its official communications and correspondence, treatment not less favourable than that accorded by the host country to any intergovernmental organization or diplomatic mission and no such official communication or correspondence shall be subject to censorship by the Government of the host country;

(b) The Court shall be entitled to use codes and cipher and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags;

(c) The Court may use all appropriate means of communication and shall have the right to establish and operate at the premises of the Court its own sending and receiving broadcasting facilities and other telecommunications equipment, in accordance with the laws and regulations of the host country. The Court shall be

exempt from the licensing restrictions and permit regime and any fees associated thereto;

(d) The Court shall have the right to publish freely and without restrictions within the host country in conformity with the headquarters agreement.

G. Public services for the premises of the Court

17. Under this principle, the headquarters agreement should include provisions providing, in particular, that:

(a) The competent authorities shall secure, upon the request of the Registrar or a duly authorized official acting on his/her behalf, the provision on equitable terms of public services needed by the Court and that, in cases where such services are made available to the Court by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the Government, and in case of force majeure resulting in a complete or partial disruption of the aforementioned services, the Court shall for the performance of its functions be accorded the priority given to essential agencies and organs of the Government;

(b) Upon request of the competent authorities, the Court shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Court under conditions that shall not unreasonably disturb the carrying out of the functions of the Court.

H. Privileges and immunities of judges, the Prosecutor, Deputy Prosecutors, the Registrar and officials of the Court

18. Under this principle, the headquarters agreement should refer to article 48, paragraph 2, of the Statute, containing general provisions on the privileges and immunities enjoyed by the judges, the Prosecutor, Deputy Prosecutors and the Registrar, and to article 48, paragraph 5, concerning waiver of such privileges and immunities.

19. The headquarters agreement's provisions concerning the privileges and immunities enjoyed by the judges, the Prosecutor, Deputy Prosecutors, the Registrar and officials of the Court should be consistent with those contained in the Agreement on the Privileges and Immunities of the Court and should reflect the specific relationship between the Court and the host country.

20. The headquarters agreement should specify, in particular, that the immunity from legal process in respect of words spoken or written and acts done by the judges, the Prosecutor, Deputy Prosecutors and the Registrar in discharging their functions shall continue to be accorded notwithstanding that the persons concerned are no longer occupying these positions or performing those functions; the salaries, emoluments and allowances paid to the judges, the Prosecutor, Deputy Prosecutors and the Registrar shall be exempt from taxation; members of families of the judges, the Prosecutor, Deputy Prosecutors and the Registrar forming part of their households and who do not have Netherlands nationality or permanent residence

status in the host country shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents.

21. Under this principle, the headquarters agreement should also refer to article 48, paragraph 3, of the Statute of the Court and ensure that the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry (hereinafter officials of the Court) shall enjoy in the host country the privileges and immunities and facilities necessary for the independent performance of their functions. The headquarters agreement should define which categories of staff and members of their family forming part of their household shall be accorded the privileges and immunities, exemptions and facilities as the Government of the host country accords to diplomatic agents of comparable rank within diplomatic missions established in the Netherlands.

22. Spouses and members of families of the judges, the Prosecutor, Deputy Prosecutors, the Registrar and officials of the Court forming part of their household shall be entitled to seek employment in the Netherlands. The conditions for such employment shall be agreed upon between the Court and the competent authorities of the host country.

23. In the event that the Court establishes its own social security regime, all persons to whom such a regime may apply shall be exempt from all compulsory contributions to the social security system of the Netherlands.

24. The headquarters agreement should include a provision for the avoidance of double contributions by persons to whom a social security scheme established by the Court may apply, pending the establishment of such a scheme.

25. The headquarters agreement should further provide that the judges, the Prosecutor, Deputy Prosecutors and the Registrar and officials of the Court shall have the right of unimpeded entry into, exit from and movement within the host country, including unimpeded access to the premises of the Court, as appropriate and for the purposes of the Court.

I. Privileges and immunities of persons taking part in proceedings before the Court

26. The headquarters agreement should ensure that all persons taking part in proceedings before the Court enjoy privileges, immunities and facilities to the extent necessary for the independent performance of their functions or for their presence before the Court. These persons comprise: representatives of States participating in the proceedings of the Court, counsel and persons assisting defence counsel, witnesses, victims, experts and other persons who are required to be present at the seat of the Court.

27. The privileges, immunities and facilities to be accorded by the headquarters agreement to the persons referred to in paragraph 26 should be consistent with those contained in the Agreement on the Privileges and Immunities of the Court and should reflect the special relationship between the Court and the host country.

28. The headquarters agreement should, in particular, provide that persons referred to in paragraph 26:

(a) Shall be accorded privileges, immunities and facilities to the extent necessary for the independent performance of their functions or for their presence before the Court under the Statute and the Rules of Procedure and Evidence;

(b) Shall be accorded immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions;

(c) Shall not be subjected by the host country to any measures that may affect the privileges, immunities and facilities referred to in subparagraph (a);

(d) Shall have the right of unimpeded entry into, exit from and movement within the host country, including unimpeded access to the premises of the Court, as appropriate and for the purposes of the Court;

(e) Shall not be prosecuted or detained or subjected to any other restriction of their liberty by the competent authorities in respect of acts or convictions prior to entry into the territory of the host country;

(f) Shall, with the exception of representatives of States participating in or attending the proceedings, be provided by the Court with a certificate indicating their status, which shall be limited to a period required for the exercise of their functions or of the proceedings in question.

29. The headquarters agreement should provide that the host country shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State in respect of persons surrendered to the Court in accordance with Part 9 of the Statute or persons who appear before the Court pursuant to a summons to appear in accordance with article 58, paragraph 7, of the Statute, or in respect of persons temporarily transferred to the Court in accordance with article 93, paragraph 7, of the Statute or rule 193 of the Rules of Procedure and Evidence, for any acts, omissions or convictions prior to the surrender, the transfer or the appearance before the Court except as provided for in the Statute and the Rules of Procedure and Evidence.

30. The headquarters agreement should provide that the immunity provided for in paragraph 29 shall cease to have effect when the person, having been acquitted or otherwise released by the Court and having had for a reasonable period specified in the headquarters agreement after the date of his/her release an effective opportunity of leaving, has nevertheless remained in the territory of the host country or, having left it, has returned voluntarily.

J. Visas

31. The headquarters agreement should provide that the applications for entry and exit visas for persons taking part in proceedings before the Court are dealt with as speedily as possible and granted free of charge. It should also provide that the host Government shall make adequate arrangements by which entry and exit visas for family of detained persons are processed speedily and, where appropriate, free of charge or for a reduced fee.

K. Cooperation between the Court and the host country

32. Under this principle the headquarters agreement should provide that the Court and the host country are under the obligation to cooperate with each other regarding the implementation of the agreement.

33. The headquarters agreement should further provide that the Court shall cooperate at all times with the competent authorities of the host country to facilitate, to the extent possible, the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges, immunities and facilities accorded under the present agreement and that it is the duty of all persons enjoying privileges, immunities and facilities under the headquarters agreement to respect the laws and regulations of the host country.

34. The headquarters agreement should provide that the competent authorities of the host country shall take effective and adequate action to ensure the appropriate security, safety and protection of persons referred to in the agreement, which is indispensable for the proper functioning of the Court, free from interference of any kind.

35. The headquarters agreement should also include general procedural provisions concerning cooperation in operational matters such as transit, pre-trial detention and the enforcement of sentences under article 103, paragraph 4, of the Statute.

36. The headquarters agreement should provide appropriate ways and means by which the Court shall notify the competent authorities of the host country of the names and categories of persons to which the agreement shall apply.

L. Amendments

37. Under this principle, the headquarters agreement should include a provision providing that the agreement may be amended by mutual consent of the parties.

M. Settlement of disputes

38. Under this principle, the headquarters agreement should provide that the Court, without prejudice to the powers and responsibilities of the Assembly under the Statute, shall make suitable provisions for the settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;

(b) Disputes involving any person referred to in the headquarters agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

39. With reference to disputes that may arise between the Court and the Government of the host country concerning the interpretation or application of the headquarters agreement or of any supplementary agreement that cannot be settled amicably, the agreement should provide that they should be referred, at the request of either party to the dispute, to an arbitral tribunal and should include provisions regarding the composition and functioning of such a tribunal.

N. Applicability of the headquarters agreement

40. The headquarters agreement should be without prejudice to relevant rules of international law, including international humanitarian law.

G. Draft Relationship Agreement between the Court and the United Nations

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Preamble

The United Nations and the International Criminal Court,

Bearing in mind the principles and purposes of the Charter of the United Nations,

Recalling that the Rome Statute of the International Criminal Court reaffirms the purposes and principles of the Charter of the United Nations,

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a whole, as referred to in the Rome Statute, and which threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling also that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling further General Assembly resolution ____ of ____ calling for the conclusion of a relationship agreement between the United Nations and the International Criminal Court,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

I. General provisions

Article 1

Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court (“the Court”), pursuant to the provisions of the Charter of the United Nations (“the Charter”) and the Rome Statute of the International Criminal Court (“the Statute”), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court recognizes the responsibilities of the United Nations under the Charter.
3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

II. Institutional relations**Article 4**
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations where observers are allowed and whenever matters of interest to the Court are under discussion.
2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.
3. Subject to the applicable provisions of the Rules of Procedure and Evidence, the United Nations shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the United Nations.

Article 5
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning the submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:
 - (a) The Secretary-General shall:
 - (i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on

communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of article 123, paragraphs 1 and 2, of the Statute relating to the convening by the Secretary-General of review conferences;

(iii) In addition to the requirement provided in article 121, paragraph 7, of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;

(b) The Registrar shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders, when the Court deems it appropriate;

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

(c) The Court shall keep the United Nations informed about proceedings of the Court in cases that involve crimes committed against the personnel of the United Nations or that involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information relating to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

Article 6

Reports to the United Nations

The Court may, if it deems it appropriate, submit reports on its activities to the United Nations through the Secretary-General.

Article 7

Agenda items

The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 8
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.
2. The United Nations and the Court agree to:
 - (a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, the duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;
 - (b) Cooperate in the interchange of personnel, where appropriate;
 - (c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 9
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas, provided that there are cost savings.

Article 10
Conference services and facilities

1. The United Nations agrees that it shall, subject to availability and to any arrangement on costs and expenses, provide for the purposes of the Court such facilities and services as may be required, including for the meetings of the Assembly and of its Bureau, including translation and interpretation services, documentation and conference services. When the United Nations is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice.
2. The terms and conditions on which any such facilities or services of the United Nations may be provided shall, as appropriate, be the subject of supplementary arrangements.

Article 11
Access to United Nations Headquarters

The United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in article 112, paragraph 1, of the Statute, to United Nations Headquarters when a meeting of the Assembly is to be held.

Article 12
Laissez-passer

The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the staff of the Office of the Prosecutor and the Registry shall be entitled, in accordance with

such special arrangements as may be concluded between the Secretary-General and the Court, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States.

Article 13

Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court. The Registrar shall inform the Assembly of the making of such arrangements.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 14

Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the registration with the United Nations of agreements concluded by the Court with States or international organizations.

III. Cooperation and judicial assistance

Article 15

General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to article 87, paragraph 6, of the Statute.

2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.

3. In the event that the disclosure of information or documents or the provision of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.

Article 16**Testimony of the officials of the United Nations**

1. If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the United Nations undertakes to cooperate with the Court and, if necessary and with due regard to its responsibilities and competence under the Charter and subject to its rules, shall waive that person's obligation of confidentiality.
2. The Secretary-General may be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.

Article 17**Cooperation between the Security Council of the United Nations and the Court**

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), of the Statute, a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.
2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.
3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure to cooperate with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

Article 18**Cooperation between the United Nations and the Prosecutor**

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.
2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional

information as he or she may seek, in accordance with article 15, paragraph 2, of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor and the United Nations or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 19

Rules concerning United Nations privileges and immunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities.

Article 20

Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly, and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

IV. Final provisions

Article 21

Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 22

Settlement of disputes

The United Nations and the Court agree to settle any dispute related to the interpretation or application of the present Agreement by appropriate means.

Article 23

Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

Article 24

Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this ____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.

Part III
Budget for the first financial period of the Court

Budget for the first financial period of the Court

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Introduction

1. At its eighth session, the Preparatory Commission for the International Criminal Court requested the Secretariat to prepare a revised draft budget for the first financial year of the Court, taking into account the priority guidelines proposed by the Coordinator (PCNICC/2001/L.3/Rev.1/Add.1, appendix) for consideration by the Commission at its ninth session. The present document is submitted pursuant to that request. In accordance with regulation 2 of the draft Financial Regulations (PCNICC/2001/1/Add.2 and Corr.1), the financial period shall consist initially of one calendar year unless otherwise decided by the Assembly of States Parties for the first-year budget of the Court. It is proposed that the first financial period should last from the first meeting of the Assembly of States Parties to the end of the subsequent calendar year. Based on the last preambular paragraph of General Assembly resolution 56/85 of 12 December 2001 and the decision of the Preparatory Commission at its 41st plenary meeting on 8 July 2002, that the first meeting of the Assembly be held at United Nations Headquarters in New York from 3 to 10 September 2002, the first financial period would thus stretch from September 2002 to the end of December 2003, namely 16 months. The proposed estimates of the requirements for the first financial period of the International Criminal Court (ICC or “the Court”) relate to the costs of operation of the ICC and the costs related to the meetings of the Assembly of States Parties, the meetings of the Bureau of the Assembly, the Committee on Budget and Finance, two plenary sessions of the Court subsequent to the Inaugural Meeting, a meeting of the Board of Directors of the Victims Trust Fund, as well as the costs related to the Inaugural Meeting.

2. The magnitude of the resource requirements of the Court in the first financial period of its operation would depend upon the level and scope of activities of the Court, bearing in mind the need to provide a stronger capacity for the Court and the Assembly of States Parties to respond to various challenges. The proposed resource requirements are responsive to the necessity to create, among other things, the ability for the Court — financially, administratively and procedurally — to recruit the required staff at short notice.

3. The proposed structure of the organs of the Court, together with the corresponding administrative arrangements, is discussed in Part One of the present document. This takes into account the composition and experience of the most relevant existing international judicial institutions, such as the International Court of Justice (ICJ), the International Tribunal for the Former Yugoslavia (ICTY), the International Tribunal for Rwanda (ICTR) and the International Tribunal for the Law of the Sea (ITLOS). It is anticipated that the overall staffing resource requirements of the Court might consist of 202 posts in 2003 and 61 posts in the period from September to December 2002 (see Part Two, tables 3 and 4). Organizational charts containing details of the proposed staffing structure in 2003 are shown in annexes I.A, B, C and D to the present document. It is emphasized that these charts are purely illustrative and should be interpreted neither as a target for expenditure nor as an agreed blueprint for the future structure of the organs of the Court.

4. The cost estimates are outlined in Part Two. They were calculated on the basis of a number of assumptions, the proposed structure and administrative arrangements for the Court, and experience with similar institutions, such as ICTY. In accordance with regulation 3.2 of the draft Financial Regulations, which, *inter alia*, provides

that the proposed programme budget shall be presented in the currency of the statutory headquarters of the Court, the present draft budget has been set out in euros. The United Nations operational rate of exchange as of June 2002 (US\$ 1.00 = €1.11, or €1 = \$0.900901) was used.

5. Since the first financial period would cover 16 months and it may be particularly difficult to accurately foresee the Court's needs during this initial period, reference is made to regulations 4.2 and 4.3 concerning the appropriation line as well as regulation 3.6 relating to the supplementary budget, of the draft Financial Regulations. Should circumstances unforeseen at the time of adoption of the budget make it necessary, the appropriation line adopted by the States Parties may be utilized or supplementary budget proposals may be submitted by the Registrar with respect to the first financial period. Accordingly, a reserve for unforeseen expenses has been included in the present draft budget.

6. The first and the resumed/special meetings of the Assembly of States Parties will be held at the Headquarters of the United Nations in New York, whereas the Inaugural Meeting of the Court will take place at The Hague. A meeting of the Board of Directors of the Victims Trust Fund will also be held at The Hague. The second meeting of the Assembly of States Parties, the June 2003 meeting of the Bureau and the meeting of the Committee on Budget and Finance in 2003 will take place in New York. During discussions in the Working Group on a Draft Budget for the First Financial Period of the Court, a general preference was expressed for the convening of future meetings at The Hague. At the same time, it was recognized that the initial meetings should be convened at the Headquarters of the United Nations in New York. The dates and duration of the meetings are assumed to be as follows: Assembly of States Parties: six days for the first meeting in September 2002, five days for the resumed/special meeting in January/February 2003, three days for the resumed/special meeting in April 2003 and five days for the second meeting in September 2003; Bureau of the Assembly: one one-day meeting in June 2003; Committee on Budget and Finance: one five-day meeting in August 2003; and Board of Directors of the Victims Trust Fund: one three-day meeting in 2003.

7. It is also foreseen that a one-day plenary session of the Court for the election of the Registrar and a two-week plenary session of the Court for the elaboration and adoption of the Regulations of the Court would be convened in 2003. Accordingly, the costs of those sessions have been included in the present document.

8. The Inaugural Meeting of the Court will be held at The Hague. It is assumed that it would be held in February 2003, shortly after the resumed/special meeting of the Assembly in January/February 2003. In view of the commitment of the Government of the Netherlands to finance the Inaugural Meeting of the Court, only estimates of travel costs and partial daily subsistence allowance in respect of the judges and the Prosecutor have been included.

9. At the ninth session of the Preparatory Commission, the representative of the host Government reiterated the latter's commitment to provide premises for the Court, free of rent, for a period of 10 years starting at the date of entry into force of the Rome Statute. He also confirmed the host Government's offer to build a courtroom in the interim premises, within the overall amount of €10 million that it would make available for the interior layout and design.¹ It is necessary that the

¹ See PCNICC/2002/INF/5, paras. 7 and 8.

appropriate arrangements on the matter be made between the representatives of the Court and the Government of the Netherlands, at the very early stage of the start-up phase, in order to ensure that facilities are in place whenever needed for the proper functioning of the Court.

10. In accordance with the task list contained in Part B of the annex to the Proceedings of the Preparatory Commission at its ninth session (PCNICC/2002/L.1/Rev.1/Add.1), various contacts were held between representatives of the Permanent Mission of the Netherlands to the United Nations and the Secretariat, including two formal meetings on 3 and 16 May 2002, respectively. During those contacts, the Secretariat was informed in detail of the contributions from the host country to the Court. Information and data received from the host country are reflected in the present document.

11. Post requirements are presented in net terms, given that a decision has been taken by the Preparatory Commission against the adoption of a system of staff assessment and tax equalization. Furthermore, the requirements were computed on the basis of the post structure, salaries, allowances and entitlements applicable to the United Nations common system. Should the States Parties adopt different standards, adjustments will have to be made to the budget.

12. The estimates provided in the present draft budget are based on cost parameters for the years 2002 and 2003. The total requirements for the first financial period on the basis of estimates of meetings in New York would be €30,893,500. Since the host Government has committed itself to contribute a non-reimbursable amount of €300,000 to defray the cost of the meetings,² the total costs for holding meetings are presented as net of the €300,000 contribution from the host country. Further details concerning total requirements can be found in paragraphs 120 and 121 as well as tables 1 and 2 in Part Two of the present document.

13. Pursuant to regulation 6.2 of the draft Financial Regulations, an amount of €1,915,700 (based on the practice of the United Nations, at one twelfth the cost of the operations of the Court) is provided for the establishment of a Working Capital Fund to ensure capital to meet short-term liquidity requirements pending the receipt of assessed contributions. Advances shall be made in accordance with the agreed scale of assessment pursuant to regulation 5.2 of the draft Financial Regulations, and shall be carried to the credit of States Parties which have made such advances.

Part One

Proposed structure and administrative arrangements

I. Seat of the Court

14. The seat of the Court is to be established at The Hague in the Netherlands (Statute, art. 3, para. 1). The host State has secured a location for the permanent

² Ibid., para. 9.

premises of the Court.³ Pending the construction of the premises, the Government of the Netherlands has announced that it will make available temporary premises as from the date of establishment of the Court. The premises are an existing building that offers enough room to meet start-up needs as well as expansion of the Court's activities within its walls. Detention facilities will be made available at a different location.

II. Premises requirements

15. During the initial phase of the Court, the temporary premises should accommodate the following needs of the Court:

- (a) The Presidency, consisting of the President and the First and Second Vice-Presidents (Statute, art. 38, para. 3), as well as its staff;
- (b) Office space for an Appeals Division, a Trial Division and a Pre-Trial Division (Statute, art. 39, para. 1), i.e., an additional 15 judges and their staff;
- (c) A courtroom that is available for the Appeals Chamber, the Trial Chambers and the Pre-Trial Chamber;
- (d) The Office of the Prosecutor;
- (e) The Registry;
- (f) A detention facility at a separate location.

16. The experience of the International Tribunal for the Former Yugoslavia has shown that due account should be taken of the need to ensure the separation of the facilities belonging to the Office of the Prosecutor from the rest of the Court.⁴ The particular requirements of the Court, however, will have to be taken into account. The temporary premises provided by the Government of the Netherlands would, if so required, allow for the facilities of the Office of the Prosecutor to be separated from the rest of the Court's offices within the premises to be made available.

17. Apart from the premises to accommodate the needs referred to in paragraph 15 above, appropriate premises will be required for the first meeting of the Assembly of States Parties (Statute, art. 112), the Bureau (art. 112, para. 3 (a)), the Inaugural Meeting of the Court, resumed/special meetings of the Assembly (art. 112, para. 6), the second meeting of the Assembly of States Parties and meetings of the Committee on Budget and Finance.

III. Assembly of States Parties

18. According to the Statute, the Assembly can meet either at the seat of the Court or at the Headquarters of the United Nations (art. 112, para. 6). The first meeting of the Assembly, pursuant to General Assembly resolution 56/85, will be held at United

³ In his statement made at the eighth session of the Preparatory Commission, the Foreign Minister of the Netherlands announced that the permanent seat of the Court's headquarters would comprise some 30,000 square metres of office space, courtrooms, service areas, areas for the public and detention facilities. Construction of the premises is expected to be finished by 2007.

⁴ See report of the Expert Group, A/54/634, para. 250.

Nations Headquarters in New York. The Government of the Netherlands indicated during the eighth session of the Preparatory Commission that it felt a special but by no means exclusive responsibility for the effective functioning of the Court. At that session the Government of the Netherlands also expressed its willingness to contribute financially to the initial meetings of the Assembly, on the basis of an agreed budget, once the political parameters have been assessed.⁵

19. The first meeting of the Assembly will be attended by representatives of at least 60 States Parties, who may be accompanied by alternates and advisers (Statute, art. 112, para. 1). The maximum size of the delegations of the States Parties is not regulated by the Statute. In view of the importance of the first meeting, it could be assumed that delegations will be composed of no less than three persons.⁶

20. In addition, States that have signed the Statute or the Final Act may attend the sessions of the Assembly in the capacity of observers (art. 112, para. 1). One hundred thirty-nine States have signed the Statute and 144 States have signed the Final Act. The composition and size of the observer delegations is not regulated by the Statute. However, by paragraph 12 of resolution 56/85, the General Assembly requested the Secretary-General to invite as observers to the meeting of the Assembly of States Parties representatives of intergovernmental organizations and other entities that have received a standing invitation from the General Assembly, representatives of interested regional intergovernmental organizations and other international bodies invited to the Rome Conference or accredited to the Preparatory Commission. By paragraph 13 of resolution 56/85, the Assembly noted that non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission or having consultative status with the Economic and Social Council whose activities are relevant to the activities of the Court may also participate in the work of the Assembly of States Parties in accordance with agreed rules.

21. The official and working languages of the Assembly are those of the General Assembly of the United Nations (Statute, art. 112, para. 10). According to the Statute, the Assembly shall meet once a year and, when circumstances so require, hold special sessions (art. 112, para. 6).

22. Pursuant to rule 37 of the draft Rules of Procedure of the Assembly of States Parties (PCNICC/2001/1/Add.4), it is envisaged that a secretariat would be responsible for receiving, translating, reproducing, distributing and keeping custody of documents and decisions of the Assembly, the Bureau and any subsidiary bodies that may be established by the Assembly, as well as providing interpretation. Thus, the secretariat will be involved in the substantive servicing of meetings and preparing pre-session, in-session and post-session documentation.

23. With respect to the first meeting of the Assembly of States Parties, the General Assembly, in its resolution 56/85, requested the Secretary-General to undertake the preparations necessary to convene it. Thus, the Secretariat of the United Nations will provide substantive servicing of the first meeting of the Assembly of States Parties. The overall cost requirements based on two meetings per day over a period of six days were estimated at €2,582,200.

⁵ See PCNICC/2001/INF/3, p. 3.

⁶ In the General Assembly Hall at United Nations Headquarters, each delegation is entitled to six seats.

24. The Preparatory Commission noted that the estimate for servicing the Assembly of States Parties and its subsidiary bodies were based on the assumption that the United Nations would provide these services and would be reimbursed accordingly. The reimbursement would include a “programme support” (overhead) fee of 13 per cent of the cost. The Preparatory Commission recommends to the Assembly that it direct the Common Services Division to seek alternative sources of conference servicing with the aim of conducting a comparative assessment of those sources.

25. Three additional meetings of the Assembly of States Parties are contemplated in 2003: a resumed/special meeting of five days’ duration in January/February, a resumed/special meeting of three days’ duration in April and the second meeting of five days’ duration in September. The estimated cost of these meetings would be €3,505,700. These estimates do not include the cost of the first meeting of the Assembly of States Parties referred to above.

IV. Bureau of the Assembly

26. According to the Statute, the Bureau of the Assembly shall meet as often as necessary, but at least once a year (art. 112, para. 3 (c)). In 2002, the Bureau is expected to hold its first meeting, also at United Nations Headquarters in New York.

27. The Bureau will be composed of 21 members elected by the Assembly (Statute, art. 112, para. 3 (a)). It is expected that the Bureau will hold a one-day meeting in June 2003, to discuss organizational matters. The Bureau meetings would require relevant premises arrangements and, if held away from the seat of the Court, would also entail travel and related expenses for the judges, the Prosecutor and the Registrar. In accordance with rule 38, in connection with rule 2, of the draft Rules of Procedure of the Assembly of States Parties, Arabic, Chinese, English, French, Russian and Spanish are the official and working languages of the Bureau. The representative character of the Bureau (Statute, para. 3 (b)) as well as its composition need to be taken into account when assessing resources needed.

V. Inaugural Meeting of the Court

28. Once elected, the 18 judges and the Prosecutor are required to make a solemn undertaking (Statute, art. 45). The Inaugural Meeting of the Court is expected to be held early in 2003. The meeting at which this takes place may be used for the election of the Presidency of the Court by the judges, who might also at the same meeting determine the membership of the Divisions and the Chambers. Thus, appropriate premises arrangements should be envisaged for the Inaugural Meeting of the Court.

29. The Inaugural Meeting will be held at The Hague. The Government of the Netherlands has expressed its commitment to fully finance the meeting.⁷ That includes hotel costs for the judges and the Prosecutor as well as the follow-up meeting of the judges in The Hague for a period of up to two days.

⁷ PCNICC/2002/INF/5, para. 10.

30. The Inaugural Meeting will entail round-trip travel arrangements for the 18 judges and the Prosecutor. The cost thereof will be borne by the Court.

VI. Subsequent meetings of the Court in plenary session

31. In accordance with article 43, paragraph 4, of the Rome Statute and rule 12, paragraph 3, of the finalized draft text of the Rules of Procedure and Evidence (PCNICC/2000/1/Add.1), the Court should meet in plenary session for the election of the Registrar. Accordingly, a one-day plenary session is proposed for this purpose, to be held at the temporary premises of the Court in The Hague after the resumed/special meeting of the Assembly of States Parties in April 2003. The meeting would entail travel and related expenses of nine non-full-time judges who would join the other nine judges serving on a full-time basis as soon as they are elected.

32. In accordance with article 52 of the Rome Statute, the judges shall adopt the Regulations of the Court necessary for its routine functioning. It is proposed that time be made available for the consideration and adoption of the Regulations. Accordingly, a two-week session is suggested for this purpose. This would entail travel and related expenses for the nine non-full-time judges. Such time would also be an occasion for the judges to familiarize themselves with other aspects concerning the judicial and administrative functioning of the Court.

VII. Meeting of the Board of Directors of the Victims Trust Fund

33. In accordance with the draft resolution of the Assembly of States Parties on the establishment of the Victims Trust Fund (PCNICC/2002/WGFI-VTF/L.1), a Board of Directors of the Victims Trust Fund, consisting of five members elected on the basis of, among other considerations, equitable geographical distribution, is envisaged to be elected by the Assembly of States Parties. It is proposed that provision be made for a three-day meeting of the Board of Directors at The Hague in 2003. The meeting would entail travel and daily subsistence allowance for the five members of the Board. The overall estimated costs are €26,100.

VIII. Committee on Budget and Finance

34. The establishment by the Assembly of States Parties of a Committee on Budget and Finance, bearing in mind article 112, paragraphs 2 (b) and (d) and 4, of the Statute has been contemplated in the work of the Preparatory Commission.⁸ The Committee will be composed of 12 members. It is envisaged that the Committee would meet in August 2003 for a five-day session to deal with a draft budget for the second financial period of the Court.

35. It is estimated that €845,000 will be required for the meeting of the Committee on Budget and Finance.

⁸ PCNICC/2001/1, annex I.

IX. Critical needs of the Court during the first financial period

36. The establishment of all necessary Court functions will consume a substantial amount of time and resources. Certain functions will have to be set up by organs of the Court and will therefore have to await the election of the judges, the Prosecutor and the Registrar, respectively. However, certain critical capacities will need to be established immediately in order to satisfy the requirements of the Statute and meet practical needs in the initial phase. These include the capacity to collect, preserve and acknowledge receipt of incoming information and potential evidence. Moreover, they should include an adequate capacity to ensure high-level external relations, communications and public information. Among immediate practical needs are the establishment of operational information and communication networks as well as the setting up of other basic systems necessary for security purposes, a smooth recruitment and procurement process and similar urgent requirements.

37. In addition to satisfying such immediate needs, the budget for the first financial period must provide for sufficient resources for the Court to sequentially build up the necessary capacities. In the following, the above needs will be assessed in relation to each organ of the Court.

38. Some needs are common to more than one organ of the Court. To the extent that the independent role of those organs is not affected, certain basic administrative functions can be carried out by a Common Services Division (see sect. XIV below). In this connection, careful attention is devoted to identifying which specific administrative functions could be carried out by such a division so as to maximize the cost-effectiveness of the Court, without prejudice, in particular, to the independent role of the Office of the Prosecutor.

X. The Presidency

39. The three judges composing the Presidency, i.e. the President and the First and Second Vice-Presidents, shall serve on a full-time basis as soon as they are elected (Statute, art. 35, para. 2) at the Inaugural Meeting. According to the Statute, their salaries, allowances and expenses may be decided upon by the Assembly, and these salaries and allowances cannot be reduced during their term of office (art. 49).

40. The Presidency is entrusted in the Statute (art. 38, para. 3 (a)) with the “proper administration of the Court, with the exception of the Office of the Prosecutor”. In the first financial period, the critical functions for the Presidency (besides the judicial functions referred to in the Statute and the finalized draft text of the Rules of Procedure and Evidence) would be: (a) high-level external relations and communications (to include media/outreach functions), in conjunction with the Registrar, and (b) establishing systems for the functioning of the Chambers, including pre-trial, trial and appeals capacity. Such systems are crucial, as the manner in which the first applications under the relevant provisions of the Statute

are handled will both establish procedures for the future and affect the credibility of the Court.⁹

41. For the purposes of the first financial period, the functions described both in points (a) and (b) in the preceding paragraph will be performed largely by the Presidency, with the Registrar, when elected, providing daily direction.

Staffing requirements

42. The role of staff of the Presidency will be to support the President and the two Vice-Presidents in the conduct of external as well as internal relations and communications of the Court. Activities in the first financial period will include: (a) providing advice on and initiating relationships with States and international organizations; (b) drafting speeches, presentations and papers to assist in “putting the ICC on the world map”; (c) internal and external strategic decision-making as to issues of primary concern to the ICC; and (d) planning and implementation of such internal and external strategies. It is to be expected that in the first financial period of operation a large amount of standard-setting decisions — operational, administrative, managerial and legal — will have to be made by the Presidency. Adequate staff levels will be required to create the capacity to do so. In addition, there will have to be adequate capacity to deal with ad hoc situations requiring almost immediate action. The minimum structure which will need to be in place would include: (a) Chef de Cabinet (P-5), providing direct support to the President; (b) one Legal Officer (P-3), providing support to the two Vice-Presidents;¹⁰ and (c) one spokesperson (P-4). It is assumed that the Spokesperson for the Presidency would also act as head of the Public Information and Documentation Section to be set up as part of the Registry.¹¹ A further three General Service positions should be provided for the Office of the Presidency, one of them at the Principal level, to provide support to the President. The organizational structure of the Presidency is set out in annex I.A to the present document.

XI. Judges other than those comprising the Presidency

43. While according to article 35 of the Statute judges comprising the Presidency shall serve on a full-time basis as soon as they are elected, it is to be decided by the Presidency, on the basis of the workload of the Court and in consultation with its members, to what extent the remaining judges shall be required to serve on a full-time basis. In addition to the Presidency, it will be necessary in the course of the first financial period to have the budgetary capacity to require a sufficient number of judges to serve at the Court. This will notably be for the purpose of conducting pre-trial procedures (three judges or a single judge), as dictated by the relevant rules of

⁹ In the light of the experience of ICTY and ICTR, all decisions would most likely be subject to appeal. Accordingly, if a Pre-trial Chamber is functioning, the Appeals Chamber would also need to be ready to function in order to deal with any appeals that would arise. In addition, since under the finalized draft text of the Rules of Procedure and Evidence victims may apply directly to the Chambers, this situation might arise even before a referral from the Prosecutor.

¹⁰ It is envisaged that this Legal Officer could also be assigned, if necessary, to tasks in the Chambers Legal Support Section.

¹¹ The combining of these two functions may have to be revisited as the workload of the Court increases. See annexes I.A and I.C, respectively.

procedure and evidence, and for dealing with interlocutory appeals.¹² Accordingly, it would be necessary in the budget for the first financial period to provide, on an as-needed basis, for judges beyond the three which are part of the Presidency. It is proposed that six additional judges should be included in the budget.¹³

44. The salaries, allowances and expenses of those judges are to be decided upon by the Assembly of States Parties in accordance with article 49 of the Statute. The conditions of service and the compensation of the ICC judges are set out in annex VI to the present document.

45. For the staff requirements necessary to assist judges other than those comprising the Presidency, attention is drawn to paragraph 79 below.

XII. Office of the Prosecutor

46. The Office of the Prosecutor will act independently as a separate organ of the Court (Statute, art. 42, para. 1).

47. It is assumed that the Prosecutor will be elected at a resumed/special meeting of the Assembly in early 2003.

48. The Prosecutor can be assisted by one or more Deputy Prosecutors (Statute, art. 42, para. 2). The Deputy Prosecutors shall also be elected by the Assembly, but from a list of candidates provided by the Prosecutor. For each position of a Deputy Prosecutor to be filled, the Prosecutor would have to nominate three candidates (art. 42, para. 4). In view of these requirements, it is unlikely that the first Deputy Prosecutor would be elected during the resumed/special meeting of the Assembly in January/February 2003 (unless consensus regarding the suitable candidates is reached prior to the session). Accordingly, the first Deputy Prosecutor could be elected at a resumed/special meeting of the Assembly to be held in April 2003. Presumably the Prosecutor will, when in office, determine when a second Deputy Prosecutor should be elected. For purposes of the present draft budget, it is assumed that, in the first financial period of the Court, the Prosecutor would need only one Deputy Prosecutor to assist him/her on matters such as recruitment, investigation and prosecution policies, structuring of the Office, etc.

49. The Prosecutor and the Deputy Prosecutor shall serve on a full-time basis (Statute, art. 42, para. 2). They will take up their respective duties after having made a solemn undertaking in accordance with article 45 of the Statute. It would be up to the Assembly of States Parties to decide on the terms of office of both the Prosecutor and the Deputy Prosecutor in accordance with article 42, paragraph 4, of the Statute. Consideration may be given in this respect to the desirability of grading their terms of office in such a manner that the experience and the institutional memory of the Office of the Prosecutor will be preserved and the continuity of its work ensured.

50. As to the staffing needs of the Office, the Prosecutor will have the authority to appoint such qualified staff as may be required, including the appointment of

¹² Statute, art. 39 (2) (b) (ii).

¹³ The budgetary consequences of this flexible approach can be reflected by the requisite vacancy percentage in the budget document, indicating that it is not expected that all budgeted posts will become an actual expenditure until the last few months of the first financial period.

investigators (Statute, art. 44, para. 1). They will be part of the staff of the Court and subject to staff regulations to be proposed by the Registrar, with the agreement of the Presidency and the Prosecutor, and approved by the Assembly (*ibid.*, para. 3). The Prosecutor would also appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children (art. 42, para. 9). The adviser(s) on issues relating to sexual and gender violence and violence against children would form part of the staff of the Office of the Prosecutor.

51. The possible requirement of an upsurge capacity (for example, in the case of a referral of a situation or if an evidence preservation situation arises under article 18, paragraph 6, or article 19, paragraph 8, of the Statute) can be met through the equivalent of general temporary assistance funds during the first financial period. Such upsurge capacity would be essential for the Prosecution Section, the Investigation Section, the Information and Evidence Section, and to the translation and interpretation function of the Office of the Prosecutor. Efficient procedures for the utilization of general temporary assistance funds would contribute to avoiding under- or over-utilization of such temporary staff in the event that upsurge capacity is required.

52. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, the facilities and other resources thereof (Statute, art. 42, para. 2). The establishment of a Common Services Division (see sect. XIV below) would be in full accord with this requirement.

53. In exceptional circumstances, the Prosecutor may employ gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations (Statute, art. 44, para. 4). Gratis personnel shall be employed in accordance with guidelines to be established by the Assembly (*ibid.*).

Staffing requirements

54. While it is difficult to predict whether there will be any referral of a situation to the Court during the first financial period, it is to be expected that the Office of the Prosecutor will receive many communications from the time of the establishment of the Court pursuant to the Prosecutor's *proprio motu* power of preliminary examination under article 15 of the Statute. The requirements of this mode of operation should not be underestimated. The Office of the Prosecutor must exercise due diligence within the parameters of article 15 and avoid being seen as inoperative in the face of complaints. It is important that the Office of the Prosecutor sets the highest standards in its dealings with sources of information relevant to article 15, paragraph 2, as well as with the Pre-Trial Chamber. The Prosecutor will have to take action according to articles 53 to 58 of the Statute as well as Part 9 thereof, and it cannot be excluded that the Office of the Prosecutor, through article 15, paragraph 3, may find itself in an article 18, paragraph 6, or article 19, paragraph 8, situation during the first financial period, requiring investigative steps to preserve evidence. The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence in the course of the investigations (finalized draft text of the Rules of Procedure and Evidence, rule 10). Information which the Prosecutor may receive during the first financial period pursuant to article 15, paragraph 2, article 18, paragraph 6, and article 19, paragraph

8, is potential evidence and must be handled appropriately so as to avoid contamination. In general, the credibility of the Court will be built on the quality of its work from the outset of its existence.

55. **Immediate Office of the Prosecutor.** This Office would include the Prosecutor, at the Under-Secretary-General level,¹⁴ one Deputy Prosecutor, at the Assistant Secretary-General level, one Special Assistant to the Prosecutor at the P-5 level, one Special Assistant to the Deputy Prosecutor at the P-4 level, and one Spokesperson for the Office of the Prosecutor (P-4). The Office would be supported by a pool of three General Service staff with one Administrative Assistant at the Principal level assigned to the Prosecutor.

56. In order to help the Prosecutor recruit the relevant staff and exercise the statutory authority to manage and administer his or her Office, an Administrative Unit directly attached to the Immediate Office of the Prosecutor would be needed. The Unit would include one Budget Officer (P-4), one Personnel Officer (P-3), one Programmer/Analyst (P-3), one Language Coordinator (P-3),¹⁵ and two Administrative Assistants (General Service (Other level)).

57. Accordingly, the overall staffing requirement of the Immediate Office of the Prosecutor would consist of the Prosecutor, one Deputy Prosecutor, at the Assistant Secretary-General level, one P-5, three P-4, three P-3, one General Service (Principal level) and four General Service (Other level) staff.

58. The functional needs of the Office of the Prosecutor suggest that it would need a Prosecution Division, an Investigation Division and a separate Appeals Section from the first financial period onward.

Prosecution Division

59. The **Prosecution Division** would be responsible for functions such as litigation; legal review of information and potential evidence; drafting of charges; directing investigators; advising senior management on investigation and prosecution strategies; drafting general guidelines and policies for the Office of the Prosecutor; drafting legal submissions; providing expert legal advice; and conducting legal research and training. To do this most effectively, the budget for the first financial period should provide for a Prosecution Section, a Legal Advisory and Policy Section and an Appeals Section within the Prosecution Division. The

¹⁴ This level of the Prosecutor is shown for illustration purposes and without prejudice to the future discussion thereon.

¹⁵ Document translation has proved to be one of the most persistent and serious problems in the experience of the ad hoc Tribunals. The ICC Office of the Prosecutor must have its own document translation capacity. The open nature of the Court's territorial jurisdiction necessarily means that this function will have to draw on general temporary assistance staff at the working level. However, there needs to be a permanent language coordination capacity within the Office of the Prosecutor through which needs are assessed, requests channelled, and advice is formulated for the Prosecutor on relevant internal language policies. It is not feasible to predict beforehand what the exact upsurge need for translators and interpreters would be in the event of a referral of a situation or if an evidence preservation situation were to arise under article 18, paragraph 6, or article 19, paragraph 8, during the first financial period. It is essential that the procedures for utilization of general temporary assistance funds for upsurge staff be efficient and sufficiently flexible to allow for the establishment of a translation and interpretation unit in the Office of the Prosecutor within reasonable time.

Prosecution Division should be headed by a Director of Prosecutions at the D-2 level, supported by an Administrative Assistant (General Service (Other level)).

60. The **Prosecution Section** within the Prosecution Division would review information and evidence; direct investigators; litigate; and draft charges and legal submissions on questions of procedure and evidence. The Section would also advise senior management of the Office of the Prosecutor on investigation and prosecution strategies, alongside other sections, and contribute to the drafting of general guidelines and policies of the Office of the Prosecutor. The Section would require five prosecutors, one at the P-5 level (Chief of Section), two at the P-4 level and two at the P-3 level. This team would be supported by a pool of two Secretaries (General Service (Other level)). The Section would probably require additional general temporary assistance staff if a situation were to be referred to the Court during the first financial period.¹⁶

61. The **Legal Advisory and Policy Section** would be required to provide independent specialist legal advice and legal drafting, in particular on questions pertaining to jurisdiction, including the scope of the subject-matter jurisdiction. The Section would also have to assist with the drafting of guidelines and policies relevant to the operation of the Office of the Prosecutor,¹⁷ as well as with the training of members of the Office of the Prosecutor, general temporary assistance staff and gratis personnel.¹⁸ Staff of the Section would include one Senior Legal Adviser (P-5), two Legal Advisers (P-4) and three Legal Advisers (P-3), including legal advisers, as appropriate, with specific expertise on issues of sexual and gender violence and violence against children. Administrative support to the Legal Advisory and Policy Section could be provided by one Secretary (General Service (Other level)).

62. The **Appeals Section**, which should be within the Prosecution Division, and would work with the Prosecution Section and Legal Advisory and Policy Section in

¹⁶ It would be preferable to pool the prosecutors in one section within the Prosecution Division during the first financial period, so as to better enable the Director of Prosecutions to respond in a flexible manner to the needs for prosecutors whether in connection with preliminary examination, investigation or litigation. The time-consuming nature of the investigation of international crimes means that the prosecution's litigation function during the first financial period would, even in the event that there is a referral of a situation, be limited to certain pre-trial questions, in particular admissibility proceedings, where the Prosecution Section should work closely with the Legal Advisory and Policy Section and the Appeals Section. If there is no referral of a situation, the litigation function would be more limited, with an emphasis on article 15, paragraph 3 and subsequent admissibility proceedings, in both of which the Prosecution Section should be assisted by the Legal Advisory and Policy Section and the Appeals Section.

¹⁷ Some of the subjects that will require guidelines are: criteria for full investigation; requesting assistance; interviewing witnesses; interviewing suspects and accused; use of policy and expert witnesses; written statements; search and seizure; field missions; format-of-the-charges document; formal internal review of charges; disclosure; contact with the media; file management; network access; and appeal procedure.

¹⁸ The experience of the ad hoc Tribunals underlines the importance of these functions and that there must be appropriate expertise to execute them from the outset of the work of the Office of the Prosecutor, when precedents on jurisdiction will be set and internal standards will be established for the Prosecutor's action under, inter alia, articles 15, paragraphs 1-3, 17 to 19, 53 and 54. The Legal Advisory and Policy Section should also be responsible for the establishment and maintenance of an electronic legal decisions and submissions database from the start, as well as other electronic services relevant to the elements of applicable offences and key procedural and evidentiary rules.

handling interlocutory appeals (and later appeals proper) before the Appeals Chamber of the Court. The Appeals Section should have one P-5 level post of Senior Appeals Counsel and one Appeals Counsel at the P-4 level. The Section would be supported by one General Service (Other level) staff member.

63. Accordingly, the overall staffing resource requirement of the Prosecution Division and the Appeals Section would consist of one D-2, three P-5, five P-4, five P-3 and five General Service (Other level) posts.

Investigation Division

64. The **Investigation Division** would be responsible for functions such as reception and management of information and potential evidence; preliminary examination; investigative steps to preserve evidence; investigation, including analysis of contextual and systemic facts; and advising senior management on investigation strategy based on, inter alia, assessments of overall victimization. To do this most effectively, the budget for the first financial period should provide for three sections: an Information and Evidence Section, an Investigation Section and an Analysis Section. The Investigation Division would be headed by a Chief of Investigation at the D-1 level assisted by one Administrative Assistant (General Service (Other level)).

65. The **Information and Evidence Section** would be required from the outset of the work of the Office of the Prosecutor.¹⁹ As pointed out above, the Prosecutor shall be responsible for the retention, storage and security of information and physical evidence in the course of the investigations. Information which the Prosecutor may receive during the first financial period pursuant to articles 15, paragraph 2, 18, paragraph 6, and 19, paragraph 8, is potential evidence and must be appropriately handled to avoid contamination. The Section would require one Evidence Management Officer (P-4) and three General Service (Other level) staff. The Section would have to be reinforced with Professional and General Service (Other level) staff on the basis of general temporary assistance funds in the event a situation is referred to the Court or an evidence preservation situation arises under article 18, paragraph 6, or article 19, paragraph 8, during the first financial period.

66. Although it is uncertain whether a full investigation will commence during the first financial period of the Court, the Office of the Prosecutor needs a basic investigative capacity, an Investigation Section, to work alongside other sections in executing preliminary examination under article 15, paragraph 2, and to coordinate and undertake investigative steps to preserve evidence under article 18, paragraph 6, or article 19, paragraph 8, or if an investigation proper is launched. The Section should be headed by a Deputy Chief of Investigation at the P-5 level (Chief of Section) and should have four investigators, two at the P-4 level and two at the P-3 level. The Section would be supported by two General Service (Other level) staff. If a full investigation is launched or an evidence preservation situation arises pursuant to article 18, paragraph 6, or article 19, paragraph 8, during the first financial period,

¹⁹ Article 15 communications or complaints will most likely be submitted to the Court early in the first financial period. It is important for the Office of the Prosecutor to have the capacity to appropriately receive and manage materials submitted together with such complaints.

the Section would have to be reinforced with general temporary assistance staff at the Professional and General Service levels.²⁰

67. The **Analysis Section** would have to be provided for in the first financial period to serve functions such as collecting and analysing potential evidence on systemic facts required by contextual elements of crimes;²¹ analysing military, police and civilian power structures in territorial States; developing evidence relevant to superior responsibility; advising senior management on investigation strategy by assessing overall victimization in territorial States;²² identifying and assisting experts; analysing document collections; developing tools of criminal intelligence-analysis such as time lines and visual aids relevant to factual patterns,²³ providing a mapping and reference service and sensitive sources coordination; and assisting the Legal Advisory and Policy Section with the training of staff members on background information relevant to territorial States. The Section should be led by a Chief Analyst (P-4) and have one Military Analyst (P-3), one Political Analyst (P-3) and one Criminal Intelligence Analyst (P-2), supported by one General Service (Other level) staff member. If a full investigation starts or an evidence preservation situation were to arise under article 18, paragraph 6, or article 19, paragraph 8, during the first financial period, it would be necessary to hire two or three additional analysts (P-2/P-1) with expertise relevant to the territorial State(s) on a general temporary assistance basis.

68. Accordingly, the overall staffing resource requirement of the Investigations Division would consist of one D-1, one P-5, four P-4, four P-3, one P-2 and seven General Service (Other level) staff.

69. Resources should be foreseen for travel of staff of the Office of the Prosecutor, including with regard to functions pursuant to article 15 of the Statute, as well as for special printers, scanners, photocopiers, monitors and software requirements. For reasons of confidentiality and security it is necessary for the Office of the Prosecutor from the beginning of its operation to have a computer network that is entirely separate from the rest of the Court and unconnected with the outside world.

70. The organizational chart of the Office of the Prosecutor is set out in annex I.B. Proposed post requirements are outlined in table 7.

²⁰ In such a situation the Prosecutor may wish to establish a rapid reaction capacity within the Investigation Section, led by regular section members but supplemented by general temporary assistance staff. The Office would also have to turn to general temporary assistance staff in case there was a need for forensic expertise during the first financial period. It is very difficult to estimate the number of general temporary assistance staff that the Investigation Section would require if there was a need for upsurge capacity during the first financial period.

²¹ For example, the existence of an armed conflict or a widespread or systematic attack directed against a civilian population. These requirements refer to systemic facts which differ fundamentally from the crime-specific facts with which criminal investigators normally work in national jurisdictions.

²² The experience of ICTY shows that it is essential to have an appropriate analytical capacity within the Office of the Prosecutor from the outset of its work. By providing an early overview of the overall victimization in a situation referred to the Court, the Analysis Section would play a vital role in developing a proper investigation strategy of the Office of the Prosecutor, which can have significant long-term resource implications (a proper investigation strategy will contribute to a more focused and economical prosecution).

²³ Other such aids would include spreadsheets showing chains or patterns of events, and multi-layered maps showing both background and crime-specific facts.

XIII. The Registry

71. The structure and staffing requirements of the Registry would depend on the level and scope of activities of the Court.

72. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the powers and functions of the Prosecutor (Statute, art. 43, para. 1). It shall be headed by the Registrar, who shall be the principal administrative officer of the Court (*ibid.*, para. 2). Under article 38, paragraph 3 (a), of the Statute, “[t]he President, together with the First and Second Vice-Presidents”, constituting the Presidency, is entrusted with “the proper administration of the Court, *with the exception of the Office of the Prosecutor*” (emphasis added). Moreover, pursuant to article 43, paragraph 2, “the Registrar shall exercise his or her functions under the authority of *the President*” (emphasis added) and, in accordance with paragraph 1 of the same article, is “responsible for the non-judicial aspects of the administration and servicing of the Court”. Article 42 grants the Prosecutor “full authority over the management and administration of the Office, including the staff, facilities and other resources thereof”. Therefore, a distinguishing aspect of the Court is that the Registrar is placed more directly under the judiciary, and the Prosecutor is granted explicit powers regarding the administration of the Office of the Prosecutor.

73. In order to maintain this division between the administrative functions to support the judiciary and the administrative functions which support the Office of the Prosecutor, while at the same time maximizing economy and efficiency, it is advisable in the budget for the first financial period of operation of the Court to provide for the establishment of a Common Services Division. This common administrative branch, although not organizationally part of the Registry, would report to the Registrar. It is anticipated that the judiciary and the Office of the Prosecutor would pool those administrative services that are a common requirement of both.²⁴ The requirements of the Registry in the first financial period take into account this approach.

74. The Registrar shall be elected by the judges. A Deputy Registrar can be elected “if the need arises, and upon the recommendation of the Registrar” (Statute, art. 43, para. 4). It is assumed that the Registrar would be elected by the judges as soon as possible following the resumed/special meeting of the Assembly of States Parties in April 2003. It is further assumed in the present budget that it would not be absolutely essential to have a Deputy Registrar in the first financial period.

Staffing requirements for the Registry

Office of the Registrar

75. The **Immediate Office of the Registrar** would be responsible for the daily management of the judicial pillar of the Court, under the overall authority of the Presidency in conformity with articles 38 and 43 of the Statute. The Immediate Office would also be responsible for liaison and coordination with the Common Services Division on behalf of the judiciary. It would also focus on rendering advice on international law aspects, including the interpretation and application of legal

²⁴ See sect. XIV below.

instruments regarding the status, privileges and immunities of the ICC, international agreements with the host country and as well as with other States, relocation-of-witnesses agreements and donation agreements. This Office would also deal with legal aspects of detention matters. The Immediate Office would consist of the Registrar at the Assistant Secretary-General level, a Legal Officer (P-4) to act as legal adviser, a Special Assistant/Legal Officer (P-3), with a legal background, who would, inter alia, review documents on issues referred to above, one General Service (Principal level) and one General Service (Other level) staff.

76. Moreover, in order to assist the Registrar in the administrative matters that he/she must perform for the Presidency and the Chambers, provision should be made for a separate management function in the form of an Administrative Unit attached to the Immediate Office of the Registrar, which would include a Budget Officer (P-4) and a Personnel Officer (P-3) to liaise with the relevant offices of the Common Services Division, supported by a General Service (Other level) staff. In addition, due to the overwhelming high level of resources that the translation and interpretation services would require, in particular bearing in mind that the Court would be using a diversity of official languages, the Court would have to be staffed with an adequate number of translators/interpreters, sufficient to meet the requirements of the judiciary. It is, therefore, also recommended that a P-4 Language Coordinator be placed within this Unit to coordinate on a daily basis the language requirements of the judiciary.²⁵

77. While it may not be necessary for all judges to serve immediately on a full-time basis as soon as they are elected, it is advisable, as at ICTY, that a **Chambers Legal Support Section** be set up to support the judges who are involved in pre-trial and trial work, and to commence preparatory work as soon as possible. The activities of the Section would include providing substantive legal advice on issues of criminal procedure, interpretation of the Statute or issues of international law; research and editorial support for the drafting of orders, decisions and judgements; case management support for the Registrar and for the organization of the judicial activities of the Chambers; organization of judicial meetings, such as pre-trial conferences, in collaboration with various sections falling under the responsibility of the Registrar; and generally to act as liaison between the judges, the parties and other organs of the ICC.

78. It would be of importance to create from the beginning separate sections for pre-trial, trial and appeals proceedings. In the first financial period, judicial proceedings may primarily take place in the pre-trial phase and on (interlocutory) appeal. Given the importance of such issues for the future functioning of the Court, adequate staffing is needed from the very beginning of its operation.

79. It is envisaged for one Head of the Chambers Legal Support Section to be appointed at the P-5 level, to serve the pre-trial, trial and appeals structures that would be set up. It is proposed that the legal research/assistance function be filled at

²⁵ See also paragraph 56 (Office of the Prosecutor) and related footnote, in which the requirement for a separate translation and interpretation function within the Office of the Prosecutor is set out. Within the judicial pillar, it will be necessary to have a similar translation and interpretation function, which can grow from the post set out here. In the judicial pillar, this function will be responsible for translating/revising and interpreting documents and statements which become part of the case file. The ICTY experience shows that it is essential to have those providing the translation and interpretation services close to the substantive offices which assign them work.

the P-3 level in the first financial period. Two such positions would be necessary. In addition to those posts, administrative support staff would be needed for those judges serving on a full-time basis and the Professional staff. It is recommended that each staff member at the P-5 level and above have a General Service level assistant, and that other Professional staff be supported at the ratio of one General Service level assistant for two Professionals, all to be recruited only at the time the senior position is filled. It will further be necessary to provide for a Secretary (General Service (Other level)) for each judge serving on a full-time basis.²⁶ Thus a total of eight General Service (Other level) staff members would be required.

80. Public Information and Documentation Section. The Section would be headed by the Spokesperson for the Presidency (P-4). It is to be expected that there will be many public affairs functions needing to be fulfilled in the first financial period. A comprehensive web site should be set up and, in general, a strategy would have to be devised and implemented to put the Court on the world map. A related issue concerns targeted outreach functions which may have to be performed as the Court becomes involved in cases originating from various parts of the world. Such outreach programmes are not expected to be activated during the first financial period, but need to be included in the planning for this section. It is proposed that, initially, the information and documentation should be set up under the aegis of the Registrar. In later stages of the development of the Court, the Office of the Prosecutor may assume some of the public information functions in respect of that Office.

81. From the first day of operation it will be essential to have a computer specialist in the Section who can begin constructing a web site. It is proposed that such a specialist be recruited at the P-3 level. It is further proposed that the Section should also include one Information Officer (P-2), and one media assistant (General Service (Other level)).

82. Library and Reference Section. The building up of a good library will be pivotal in the first financial period, especially given the standard-setting work which the Court will be carrying out in its first years of operation. It is therefore proposed that the Section should be staffed with a Librarian (P-3) and, in the course of the first financial period, an Archivist (P-2) and an Administrative Assistant (General Service (Other level)).²⁷ It is assumed that the Court library will become part of the United Nations Library network for the purpose of accessing legal databases, etc.

²⁶ These functions should not be duplicated with the secretarial staff recruited to support the Presidency, i.e. two GS (OL) positions and one GS (PL) position. See para. 42 above.

²⁷ Drawing on the ICTY experience, it will take quite some time before all library requirements have been identified and acquired. In that light, the offer of the ICTY Registrar to place the ICTY library at the disposal of ICC officials in the start-up phase is significant. This can, however, only be a temporary solution, given the close proximity which much of the material must have to its users.

Judicial Services Division

83. Under the direction of the Registrar,²⁸ for the first financial period, the Division would be responsible for managing courtroom operations, providing legal aid through the assignment of defence counsel, recommending protective measures and providing counselling and support to victims and witnesses. In the first financial period, it might consist of the following sections and units.

84. The **Court Management Section** would be responsible for managing the operations and proceedings of the Court, developing directives and regulations to govern the operation of the Court proceedings and related judicial matters (see art. 52 of the Statute). It would also be responsible for conducting research and drafting legal submissions to the Chambers regarding legal issues which may have an impact upon the procedure of the Court sessions insofar as they concern the Registry; providing supervision over the procedural and Court-related aspects of all cases before the Court; advising on different practices on the implementation of the Rules of Procedure and Evidence; as well as coordinating with the Security Section, the Conference Services and Language Section and other sections on the functioning of the courtrooms. It is proposed that the Chief of this Section should be recruited at the P-4 level. It is further proposed, in the light of the standard-setting work that will need to be done, that the Chief of Section should be assisted by a lawyer, who in the first financial period of operation could also act as a Court Officer. This post could be filled at the P-2 level. Also necessary will be the functions of File Clerk and Court Records Management Assistant, which in the first financial period of operation could be combined. This post could be filled by a General Service (Other level) staff. A further function required in the first financial period of operation is that of Court Clerk/Usher (General Service (Other level)).

85. It would be necessary to include in the budget for the first financial period a certain degree of flexibility so as to meet any urgent and unexpected requirements, in areas such as field operations, travel, overtime, court reporting and the making of transcripts.

86. **Victims and Witnesses Unit.** The Statute and the finalized draft text of the Rules of Procedure and Evidence assign a significant role to the Victims and Witnesses Unit. The “clients” of the Unit will include, in addition to witnesses and victims who appear before the Court, other individuals at risk on account of a testimony. In addition to the traditional duties of protection, support and logistical/administrative/operational assistance, the Unit would be required, among other matters, to provide training to the Court, recommend codes of conduct for investigators, NGOs, etc., and advise witnesses in obtaining legal representation.

87. It is assumed that the Victims and Witnesses Unit during the first financial period would need to prepare itself for worldwide operations and deployment at short notice as much as possible before the first witnesses arrive. In this connection, also included in the present budget proposal are funds to allow for upsurge capacity with regard to operations based on the equivalent of general temporary assistance funds used in the

²⁸ The Judicial Services Division could be headed at the D-2 level. It is assumed that during the first financial period there would not be enough activities to justify the establishment of the post. However, should the position become necessary, the appropriation line adopted by the States Parties under regulations 4.2 and 4.3 of the draft Financial Regulations may be utilized, or supplementary budget proposals under draft regulation 3.6 may be submitted by the Registrar.

United Nations system. Based on these assumptions, it is anticipated that the following posts will need to be provided for in the first financial period of the Court.

88. It is proposed that the Chief of the Unit should be recruited at the P-5 level, in the light of the particular requirements of the position and the type of expertise demanded. It is further essential that a Protection Officer at the P-3 level and an Operations Officer (P-3) be included with the initial set-up of the Unit. While the Protection Officer would be involved in setting up the systems and procedures which will be necessary to have in place to enable the Registry to deal with the protection of witnesses, the Operations Officer will have to prepare all systems and mechanisms for the logistical aspects of bringing witnesses to The Hague from all over the world, having them stay there, and getting them back to where they came from. In the initial phases of setting up the Unit, a considerable amount of legal work will need to be done. For this purpose, it is proposed that the legal adviser from the Immediate Office of the Registrar be utilized. In addition, an Administrative Assistant (General Service (Other level)) would be necessary for the Unit. Unless the actual arrival of witnesses is expected in the first financial period, a Support Officer may not be immediately necessary, as the initial work could also be done by the Chief of Section. However, a Support Officer may have to be recruited at short notice, through the use of the provision for temporary assistance.

89. As regards non-staffing costs required for the first financial period, the following general remarks can be made. The Victims and Witnesses Unit would need to procure the appropriate services and equipment in the area of communications and information technology. In the event of the early participation of victims/witnesses in court proceedings, significant funds equivalent to general temporary assistance funds used in the United Nations system would need to be available for contracting primary support services when required.

90. **Victims Participation and Reparation Unit.** This Unit will have to deal with the functions described in articles 15 (3), 19 (3) and 68 (3) of the Statute and rules 16, 50, 59 and 89 to 93 of the finalized draft text of the Rules of Procedure and Evidence relating to participation of victims in the proceedings. It will also have to deal with the functions described in articles 57 (3) (e), 75 and 82 (4) of the Statute and rules 94 to 99 of the draft Rules of Procedure and Evidence relating to reparations to victims. The Unit will have to develop systems and mechanisms for reparations to victims and their participation in the proceedings. The staff required will be one Legal Officer (P-4) and one Associate Legal Officer (P-2).

91. In the light of the activities envisaged under the draft resolution of the Assembly of States Parties on the establishment of the Victims Trust Fund, it is proposed that a post at the P-3 level dealing exclusively with matters related to the Victims Trust Fund be created within the Victims Participation and Reparation Unit of the Registry. The person will be appointed by the Registrar for a six-month period upon the recommendation of the Board of Directors of the Victims Trust Fund. The estimated requirements amount to €48,000.

92. **Defence Counsel Unit.** In the first financial period, and most likely thereafter as well, legal aid and legal detention matters should be handled by the same Office. The Unit would cover two core functions: legal aid and general assistance to defence counsel. The defence (team) and the defendant are in practice one “customer” for

the services to be provided, one party for decisions to be addressed to, and one information structure to be aware of when managing the functions.²⁹

93. For the first financial period, the functions outlined above could be translated into the following positions. Firstly, there would be a need for a Chief of Unit, who would have to initiate, supervise and manage the drafting of rules and policies and liaise with external parties. Such a manager would have to be recruited at the P-4 level in view of the relevance of the matters for fair trial and the financial management and responsibility connected with the post. Secondly, an Associate Legal Officer at the P-2 level would be required to do much of the groundwork regarding the necessary legal research and drafting. It is envisaged that a Secretary (General Service (Other level)) would be necessary to assist the Unit in facilitating communications, distributing material, establishing databases, etc. Although it is assumed that a situation will not be referred to the Court in the first financial period, such a possibility cannot be completely discarded. Thus, a provision in the amount of €200,000 is included in the reserve for unforeseen expenses to cover legal aid costs if and when necessary. In addition, general temporary assistance funds should be available for the possible requirement of specific investigations, field operations, travel and consultants for specific legal or other matters.

94. **Detention Unit.** In the first financial period of operation of the Court, the Detention Unit would be involved in setting up an appropriate detention facility,³⁰ establishing adequate procedures³¹ and setting up training systems for the relevant staff.³²

95. These functions could be translated into the following positions: a Commander of the Unit (P-4), a Deputy Commander (P-2) and one Administrative Assistant (General Service (Other level)). Flexible means of recruiting detention guards, in case of need, could be considered.³³

96. The overall staffing resource requirements of the Registry would consist of one staff at the Assistant Secretary-General level; two P-5; eight P-4; nine P-3; six P-2; and one General Service (Principal level) and 17 General Service (Other level) staff. The organizational structure of the Registry is set out in annex I.C and the proposed post requirements are outlined in table 9.

²⁹ The legal aid function advises detainees on the relevant rules for assignment of counsel (Statute, arts. 55, 67). Most detainees address complaints through their lawyers to the Registry and take an active role in the selection of their co-counsel. In maintaining the physical and mental integrity of detainees, counsel is an important partner for the organization.

³⁰ The establishment of such a facility is crucial for later operations, guaranteeing appropriate detention standards for detainees. The facility would need to include proper cell spaces, recreation space, medical facilities, visiting facilities for small or large groups, cell and visit monitoring equipment, search facilities, interview rooms, etc.

³¹ Standard procedures for detention must be in place before accused persons are detained. These may include post orders, medical emergency procedures, standard operations procedures, etc.

³² It is required that core staff be trained and prepared to deal with the specific needs of detention matters in an international environment in order to be able to train new staff upon detention of individuals at the ICC detention facility.

³³ In this connection, the ICTY experience with a flexible and cost-efficient arrangement with the competent authorities of the Netherlands, whereby cells are rented in conjunction with certain services (prison guards, medical facilities, services for detainees, etc.) on a price-per-cell basis. The cells and the services are leased by the ICTY based on a minimum amount of units, each consisting of 12 cells.

XIV. Common Services Division

97. Particularly for the purposes of the first financial period, the establishment of the Common Services Division is intended to maximize efficiency and economy within the parameters of the strict division of powers set out in the Statute between the judiciary (Presidency, Chambers and Registry) and the Office of the Prosecutor. In this model, the judicial branch of the Court would administratively be overseen by the Presidency until the election of the Registrar, while the Office of the Prosecutor would have its own administrative powers. The Common Services Division is envisaged to provide to the judiciary, the Office of the Prosecutor and the Registry administrative services that are a common requirement for all three. The Division would report to the Registrar, and pending his or her election, to the Presidency. The Registrar and the Prosecutor would cooperate in these matters taking into account articles 42 and 43 of the Statute. Examples of such services would be: general services, building management, finance, many aspects of security, procurement, certain aspects of human resources (including training), information technology and communication matters, and some aspects of conference and language services. It is anticipated that during the first financial period of operation of the Court the division will be heavily tasked with many of the operational start-up matters connected with setting up a new international organization. It is envisaged that the Common Services Division would be granted a sub-budget by both the Registrar (on behalf of the Presidency) and the Prosecutor (for the Office of the Prosecutor) to provide the administrative support which each of them requires and would have budgeted for.

98. For the purposes of the first financial period, it is anticipated that the division would be headed by a Director (D-1), who would oversee the work of general administrators and staff with experience in setting up courts. As the establishment of the Court progresses, certain functions, mainly those that are specifically court-related, would be transferred from the Common Services Division to the Office of the Prosecutor or Registry, as appropriate.³⁴

99. The Common Services Division would be composed of the following offices and sections.

100. **Office of the Director of Common Services.** The Director of Common Services would direct eight sections. He/she would be supported by one Administrative Assistant (General Service (Other level)).

101. **General Services Section.** The Section would be responsible for travel and traffic arrangements as well as building management and transport activities. It would be headed by a Chief of Section (P-4). The Section would consist of a Building Management Unit, a Central Records Unit, a Protocol Unit, a Logistics Unit and a Travel Unit. Accordingly, these units would require one Building Management Officer (P-3), one Archivist (P-3), one Protocol Officer (P-3), one

³⁴ In this connection, attention is drawn to the translation and interpretation function, which for reasons of economy could, in the first financial period or part thereof, be coordinated within the Common Services Division but which will have to be divided into two separate functions quite soon: one for the judicial and one for the prosecutorial pillar (see paras. 56 and 76). It is to be expected that, within the split, certain aspects of the function could be pooled in the Common Services Division. However, the details of the manner and the extent to which that should be done will be best determined by the senior management of the Court at the time.

Logistics Officer (P-3) and one Travel Officer (P-2). One Senior Graphics Design Assistant (General Service (Principal level)) and 10 Service Assistants (General Service (Other level)) would assist in these units. As shown in the organizational structures of the Presidency and the Common Services Division (annexes I.A and I.D to the present document), this section would also include one clerk/driver for the President. This structure assumes that there would be no field operations and that most of the focus would be on basic start-up activities.

102. **Procurement Section.** The Section should be independent of the other sections of the division to avoid any appearance of conflict of interest. It would be headed by a Chief (P-4), and would include one Procurement Officer (P-3) and two Procurement Assistants (General Service (Other level)). As it is anticipated that there would be a large procurement workload in connection with the initial phase, it is expected that much of this work will be outsourced. The minimum staffing may have to be increased to meet extra operational requirements such as activities in the field.

103. During the ninth session of the Preparatory Commission, in addressing the question of procurement requirements for the Court, there was a general sentiment in the Working Group on Financial Issues-Financial Rules that it would be desirable, in principle, for the Court to outsource procurement during the initial phase. At the same time, the Working Group was of the view that such outsourcing should be limited in time and utilized only when reasonably required. Furthermore, it was underscored that outsourcing of procurement should not entirely replace the Court's internal procurement capability during the initial phase. In order to factor in learning and training in that area, it was also considered useful that, having due regard to cost-effectiveness and time-efficiency, a staff member of the Court should be placed within the entity that would provide procurement services to the Court.

104. The Procurement Officer (P-3) within the Procurement Section could be assigned for that purpose. Requirements estimated at €382,600 were included in the section related to the Common Services Division (under contractual services) to provide for the outsourcing of procurement.

105. **Personnel Services Section.** Besides dealing with a surge of recruitment, the Section would have to deal with the setting up of all personnel administration systems and processes, including the commissioning of the preparation of job descriptions. The proposed staffing structure would include one Chief of Section (P-5), one Classification Officer (P-4), one Recruitment Officer (P-3), three Human Resources Assistants (General Service (Principal level)) and one Administrative Assistant (General Service (Other level)).

106. **Budget and Finance Section.** The Section would be responsible for setting up all financial systems and controls, including arrangements for periodic budgetary monitoring. The Budget and Finance Section would also consolidate, in accordance with rule 103.2 of the draft Financial Rules (PCNICC/2002/1/Add.1), programme budgets for financial periods at such times and in such detail as the Registrar may prescribe. Such programme budgets shall be prepared on a results-based budgeting basis, in accordance with regulation 3.3 of the draft Financial Regulations. In addition, it is assumed that the Section would have to administer and process financial assessments of States Parties. The proposed staffing structure would include one Chief Finance Officer (P-5), one Accounts Officer (P-4), one Budget Officer (P-4), one Disbursements Officer (P-3), one Investment Officer (P-3), one

Payroll Officer (P-4), one Cashier (P-3), and one Contributions Officer (P-2). In addition, it would be necessary to include five Finance Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)).

107. **Office of Internal Audit.** Pursuant to rule 110.1 of the draft Financial Rules, provision should be made for an Office of Internal Audit. This Office would conduct independent audits of the financial transactions and the administrative systems underlying such transactions and provide related comments and recommendations to the Registrar and, in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, also to the Prosecutor. The Office would perform its tasks independently and report to the Registrar. Its administrative allocation would be in the Common Services Division.

108. Accordingly, a provision of €149,800 would have to be made for the Office of Internal Audit, composed of one auditor at the P-5 level, to reflect the level of responsibilities and experience that this function requires, and one staff member at the General Service (Other) level, to provide administrative and secretarial support.

109. **Conference and Language Support Services Section.** In the first financial period of operation, the Section would be mostly responsible for the administrative aspects of translation and simultaneous interpretation services. The proposed structure could be headed by a Chief of Section (P-5) and comprise three Interpreters (P-4), one Head of the Translation Unit (P-4), who will supervise five Translators/Revisers (P-3). It would further be necessary to include two Language Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)). This staffing structure would create the capacity to deal with the official languages of the Court given limited trial activity. Flexibility to recruit on the basis of the equivalent of general temporary assistance funds used in the United Nations will be necessary if other languages and tasks are added to the work of the Section.

110. **Information Technology and Communications Services Section.** The responsibilities of this Section would include computer and communications services. The Section would have to engage in IT development and in setting up structures to support headquarters and field operations. Accordingly, the proposed structure would consist of one Chief of Section (P-5), one Development Officer (P-4), one Computer Systems Officer (P-3), one Programmer/Analyst (P-3), one Associate Computer Officer (P-2), one Associate Audio-visual Officer (P-2), one Associate Computer Training Officer (P-2) and one Associate Database Administrator (P-2), to be supported by seven IT Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)).

111. **Safety and Security Section.** The Section would be responsible for ensuring the security of the Court premises and for coordinating and implementing an information security policy, in concert with both the judicial branch and the Office of the Prosecutor. In the first financial period, the Section would have to set up security systems to cover operations (evacuation systems and protocols, staff security awareness policies and training, and information security policies). In addition, and probably later in the first financial period, the functions of the section may include the requirement to ensure the safety of witnesses in the premises both before and after testifying.

112. The staffing requirements for the first financial period would include a Chief of Security (P-4), an Information Security Officer (P-3), an Associate Security Assessment Analyst (P-2) and one Administrative Assistant (General Service (Other level)). Moreover, it would be necessary to include 20 Security Officers to provide 24-hour/7 days-a-week guard shifts in addition to the more general security services provided by the host State, as has been the custom at ICTY.

113. **Legal Advisory Services Section.** In the first financial period, the Section would provide legal advice to the Director of the Common Services Division on the legal aspects of administrative matters and complex commercial contracts. It would be involved in the review of all human resources structures and policies, all procurement structures and policies, and all other policies that would be put in place. The staffing requirements for the first financial period would include one Legal Officer at the P-4 level and one Legal Officer at the P-3 level, to be supported by a Secretary (General Service (Other level)).

114. It would seem advisable to envisage for the Division of Common Services a category entitled "Other staff costs". Requirements under this heading would provide for: (a) general temporary assistance resources for replacements in the division during periods of extended sick or maternity leave; and (b) resources to meet overtime and night differential requirements that might arise. Similar provisions would be needed for the Office of the Prosecutor and for the Registry.

115. The overall staffing requirements of the Common Services Division would thus consist of 1 D-1, 5 P-5, 13 P-4, 18 P-3, 7 P-2, 5 General Service (Principal level), 34 General Service (Other level) and 20 Security Service staff. The organizational structure of the Common Services Division is set out in annex I.D and the proposed post requirements are outlined in table 11.

XV. External audit

116. In accordance with regulation 12 of the draft Financial Regulations of the Court, an external Auditor shall be appointed by the Assembly of States Parties to conduct audits in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly of States Parties. The Auditor shall issue a report relating to the accounts for the financial period, such report to include information on matters referred to in regulation 12 (3) of the draft Financial Regulations of the Court.

117. Since it has been proposed that the first financial period should extend from September 2002 to the end of December 2003 and owing to the fact that a certain level of activity and related expenditure will occur prior to the appointment of the Registrar, it is considered advisable that an initial audit should cover the period beginning with the very first activities of the Court, including meetings of the Assembly of States Parties, until such time as the Registrar takes up his or her duties. It is contemplated that a subsequent audit would cover the entire first financial period.

118. While the Auditor has yet to be appointed, it is estimated that the total cost of external audit for the first financial period of the Court would be €40,000. This figure is reflected in Part Two of the present document.

XVI. Furniture and equipment

119. During the critical initial phase, it will be necessary to provide for equipment and furniture to enable all the organs of the Court as well as other bodies and services to function efficiently and effectively in the administration of justice. For example, there will be a need for equipment for electronic scanning and digitizing documents to allow for efficient storage and retrieval of documents and information, including the preservation of evidence. Furniture and equipment will also be required for officials and staff members. The Netherlands Government will provide free of charge up to 100 workstations, furniture and equipment, in the first financial period. These are a one-off investment for desktops, chairs and cabinets relating to the 100 workstations. The workstations will include telephones, desktop computers and printers compatible with the future network systems of the Court. This will also include a limited number of scanners and photocopiers. For more details on the matter, see annex V to the present document.

Part Two Provisional estimates for the first financial period of the Court

XVII. Summary of estimates

120. It is estimated that the total cost for the first financial period of the Court would be €30,893,500 (net of the €300,000 contribution from the host country), of which €24,040,800 would relate to the cost of operations of the Court, €2,582,200 to the first meeting of the Assembly of States Parties, to be held in New York in 2002, and €4,570,500 to the cost of the other meetings, including the cost of travel of the judges and the Prosecutor to attend the Inaugural Meeting of the Court and the cost of the meeting of the Board of Directors of the Victims Trust Fund.

121. The requirements estimated at €2,582,200, related to the holding of the first meeting of the Assembly of States Parties are expected to be funded through the Trust Fund to Support the Establishment of the International Criminal Court. Those estimates are summarized in table 1.³⁵

122. It should be understood that these estimates are to a great extent indicative and do not preclude further endeavours for outsourcing. An attempt was made to draw upon the experience of the International Tribunal for the Former Yugoslavia as well as the International Tribunal for Rwanda. However, given its broader scope and jurisdiction, the International Criminal Court is a unique institution and consequently there are elements that of necessity remain highly uncertain. Nonetheless, more precise estimates will be developed as States Parties make further decisions regarding some issues, including, inter alia, in-kind contributions to be provided by States Parties and staff rules.

³⁵ By a resolution of the Assembly of States Parties (PCNICC/2002/1, annex II), the Assembly would decide that the contributions made by States to the Trust Fund should serve as a credit against future assessments against the budget of the Court.

123. The estimates presented below are based on the assumption that there will be no trials or detainees during the first financial period of the Court. Nevertheless, account has been taken of the need to allow a certain degree of scalability and flexibility, which will allow the Court to respond quickly to an upsurge of activities. Such scalability and flexibility are built into the estimates through the provisions for general temporary assistance and the reserve for unforeseen expenses. States Parties may wish to establish adequate policies and procedures for the authorization, use and reporting of expenditures incurred under the reserve for unforeseen expenses, in order to ensure its rigorous and prudent management. It is expected that adequate policy procedures and budget methodology will be worked out by the Registrar, in consultation with the Committee on Budget and Finance, with a view to formulating a results-based budget, in accordance with regulation 3.3 of the draft Financial Regulations. Annex IV summarizes the provisions included under the reserve for unforeseen expenses.

124. It should also be noted that regulation 3.6 of the draft Financial Regulations provides for supplementary budget proposals to be submitted by the Registrar if circumstances unforeseen at the time of adoption of the budget make it necessary.

125. Notwithstanding the foregoing assumptions, the possibility of a situation being referred to the Court cannot be completely precluded. Article 13 of the Statute prescribes that a situation can be referred to the Court by a State Party, the Prosecutor or the Security Council in accordance with Chapter VII of the Charter of the United Nations. With regard to the latter instance, the modalities for cost-sharing would have to be defined between the United Nations and the Court, based on appropriate arrangements between the two institutions.

126. The total resource requirements for the first financial period of operation of the Court is estimated at €24,040,800, net of the requirements for the meetings. Table 2 contains a breakdown of the estimated requirements by object of expenditure.

127. As summarized in table 3, it is estimated that a total of 202 posts (106 in the Professional category and above and 96 in the General Service and related categories, including 20 security posts) would be needed for the year 2003. For the first four months of the Court's operations (September-December 2002), as summarized in table 4, a total of 61 posts (34 in the Professional category and above and 27 in the General Service category, including 10 security posts) would be required to secure the initial functioning of the Court. Total post costs (salaries and common staff costs) are estimated at €11,217,300. These estimates were based on current United Nations standards, adjusted to take into account the higher requirements for common staff costs resulting from the expected high amount of travel on initial appointment and the related removal and installation costs. Thus, common staff costs were augmented by a factor of 30 per cent. Furthermore, the following assumptions were made concerning recruitment: (a) that a system for the expeditious recruitment of staff would be put in place soon after the start of operations; (b) that there would be a large number of qualified individuals willing to join the Court; (c) that recruitment would be carried out in a phased manner; and (d) that the Court would find little difficulty in locally recruiting a significant number of General Service staff. On that basis, an average vacancy rate of 45 per cent was applied for the first four months of operation and, for 2003, an average vacancy rate of 35 per cent was applied.

Table 1
Summary of estimates for the first financial period of the Court by programme
(In thousands of euros)^a

	<i>Estimated requirements</i>
A. Operation of the Court	
1. Presidency and Divisions	2 718.4
2. The Prosecutor	3 961.2
3. The Registry	2 901.9
4. Common Services Division	13 407.3
5. Reserve for unforeseen expenses	1 052.0
Total A	24 040.8
B. Meetings of the Assembly of States Parties, of the Bureau and of the Committee on Budget and Finance^{b,c}	
1. Conference-servicing costs	2 935.3
2. Non-conference-servicing costs	487.1
3. Programme support costs (13% of total of 1 + 2)	444.9
4. Reserve for contingency (15% of total of 1 + 2 + 3)	580.1
Total B	4 447.4
Total (A + B)	28 488.2
C. Inaugural Meeting of the Court (The Hague, 2003)^d	97.0
Total (A + B + C)	28 585.2
D. First meeting of the Assembly of States Parties (New York, 2002)^e	2 582.2
Total (A + B + C + D)	31 167.4
E. Meeting of the Board of Directors of the Victims Trust Fund	26.1
Total (A + B + C + D + E)	31 193.5
F. Contribution of host country (to be applied towards the cost of meetings)	(300.0)
Grand total (A + B + C + D + E + F)	30 893.5

^a Exchange rate: US\$ 1.00 = €1.11.

^b Excluding the first meeting of the Assembly of States Parties, to be held in New York in 2002, and the Inaugural Meeting.

^c See annex III to the present document.

^d The Inaugural Meeting of the Court will be held at The Hague. The meeting will be financed by the host country.

^e This meeting will be funded through the Trust Fund to Support the Establishment of the International Criminal Court.

Table 2
Summary of estimates for the first financial period of operation of the Court by
object of expenditure

(In thousands of euros)

	<i>Estimated requirements</i>
Salaries, allowances and entitlements of judges	2 539.0
Posts ^a	11 217.3 ^a
Other staff costs	1 387.4
Consultants and experts	45.0
Travel	316.4
Hospitality	15.0
Contractual services	851.6
General operating expenses	1 143.0
Supplies and materials	440.0
Furniture	455.2
Office automation equipment	1 091.0
Other equipment	3 236.0
Maintenance of furniture and equipment	252.0
Unforeseen expenses	1 052.0
Total requirements	24 040.8

^a In the period from September to December 2002, the activities of the Court will be carried out by a “core staff”, comprising 61 posts (see annex II to the present document). It was assumed that an average vacancy rate of 45 per cent would be in effect for this period. For 2003, an average vacancy rate of 35 per cent was assumed.

XVIII. Work programme

128. It is assumed that during the first financial period the Court will be dealing mainly with matters related to its internal organization and other start-up needs as well as public and media relations. The Court will need only the minimal level of resources necessary to undertake the tasks of setting up its operations and preparing to receive eventual cases. In accordance with the document entitled “Road map leading to the early establishment of the International Criminal Court” (PCNICC/2001/L.2), the judges and the Registrar will not be elected prior to the year 2003. Thus, for the period from September to December 2002, provision is made only for a small number of “core staff”, comprising 61 posts, including the post of Director of Common Services (D-1).

Table 3
Summary of post requirements for the International Criminal Court for 2003

	<i>Estimated requirements</i>
Professional category and above	
USG	1
ASG	2
D-2	1
D-1	2
P-5	13
P-4	33
P-3 ^a	40
P-2/1	14
Total	106
Other categories	
General Service (PL)	7
General Service (OL)	69
Security and Safety	20
Total	96
Grand total	202

^a Includes one P-3 post to be established for a period of six months, in 2003, in the Victims Participation and Reparation Unit of the Registry.

Table 4
**Post requirements for the Court for the period from September to
 December 2002**

(Core staff requirements)

	<i>Estimated requirements</i>
Professional category and above	
D-1	1
P-5	4
P-4	9
P-3	14
P-2/1	6
Total	34
Other categories	
General Service (PL)	3
General Service (OL)	14
Security and Safety	10
Total	27
Grand total	61

A. The Presidency, the Divisions and the Chambers

Activities

129. According to article 35, paragraph 2, of the Rome Statute, the three judges comprising the Presidency, namely the President, the First Vice-President and the Second Vice-President, shall serve on a full-time basis as soon as they are sworn in. It is expected that in the first financial period of the Court, the Presidency would be concerned mainly with high-level external relations and communication and organizational matters, including actions, undertaken in conjunction with the Registrar, aimed at establishing systems for the functioning of the Chambers. For details concerning the activities of the Presidency in the first financial period of the Court see Part One, paragraph 40, of the present document. The President and the Vice-Presidents will be assisted by one Chef de Cabinet (P-5), one Spokesperson (P-4),³⁶ one Legal Officer (P-3), one clerk/driver for the President (General Service (Principal level)) and two secretaries (General Service (Other level)).

130. The Presidency, on the basis of the workload of the Court and in consultation with its members, will decide to what extent the remaining 15 judges will be required to serve on a full-time basis. Provision is made for 9 judges, including the

³⁶ The spokesperson of the Presidency serves also as the head of the Public Information and Documentation Section of the Registry.

President and the Vice-Presidents, working on a full-time basis, as well as for 9 non-full-time judges.

Resource requirements

131. The estimates included under this heading are related to the salaries, allowances and common costs of judges. It was also considered prudent to include a modest provision for official travel of judges. Requirements for travel related to possible attendance at sessions of the Assembly of the States Parties, the meetings of the Bureau and of the Committee on Budget and Finance were not included under this heading, as they are reflected under the non-conference-servicing costs related to those meetings.

132. On the basis of the above assumptions, resource requirements for the Presidency, the Chambers and the Divisions have been estimated at €2,718,400, as shown in tables 5.A and 5.B.

Salaries and allowances of judges

133. The salaries of the judges (€180,000 per judge per annum) and the special allowances for the President (€18,000 per annum) and the Vice-President (up to a maximum of €10,000 per annum) are estimated in accordance with paragraphs 1 to 3 of annex VI to the present document. Therefore, a provision of €1,510,700 is included to cover 11 months of salary in respect of the equivalent of nine judges and the payment of the special allowances for the President and the two Vice-Presidents. The special allowance is to be paid to the Vice-Presidents for each day they act as President, provided that, on an annual basis, such special allowance does not exceed €10,000 in total.

134. As to the nine non-full-time judges, their annual allowance of €165,000 is estimated in accordance with paragraph 9 of annex VI to the present document. Moreover, it is assumed that up to five non-full-time judges may be eligible for a supplementary annual allowance of €40,000 (per judge per annum), in accordance with annex VI, paragraph 10. Accordingly, a provision of €183,300 has been included to cover 11 months of additional allowance for five such judges.

Common costs of judges

135. The non-salary benefits/allowances of judges are set out in paragraphs 4 to 8 of annex VI to the present document. Accordingly, requirements estimated at €680,000 would provide for business-class travel on appointment, installation allowance, removal of household effects and education grant.

Staff costs

136. Costs related to staff directly assigned to the Presidency and the Divisions are not included under this heading. For administrative purposes, the staff assigned to substantively service the Presidency and the Divisions are included under the Registry, except for the post of clerk/driver for the President (General Service (Principal level)), which is included under the Common Services Division.³⁷ However, for ease of analysis, an organizational chart of the Presidency, the

³⁷ See Part One, para. 101.

Chambers and the Divisions of the Court reflecting the related posts under the Presidency is presented in annex I.A to the present document.

Travel

137. It is assumed that, in the first financial period of the Court's operation, travel of judges would be undertaken essentially for the purpose of establishing contacts and consultations with relevant institutions. Thus, a provision of €31,000 has been included under this heading, to cover the estimated cost of travel for six trips and daily subsistence allowance for 4 to 5 days per trip. Provisions for possible travel of the President in connection with the meetings of the Assembly of States Parties, the meeting of its Bureau, the Inaugural Meeting and the meeting of the Committee on Budget and Finance were not included, as they are reflected in the estimates of non-conference-servicing costs of those meetings.

138. For the one-day plenary session of the Court to elect the Registrar, a provision of €47,100 has been included to cover the estimated cost of travel of nine non-full-time judges to The Hague as well as their special allowance and subsistence allowance payable under the conditions of service of such judges. No additional cost would be required for participation in this session by the other nine judges serving on a full-time basis.

139. Analogous considerations as described in the preceding paragraph have been made in the costing for the nine non-full-time judges to attend the two-week session of the Court to consider and adopt the Regulations of the Court. A provision of €101,300 has been included for this purpose. The total costs for the one-day plenary session and the two-week plenary session are shown in table 5.B.

Table 5.A

Estimates by object of expenditure^a

(In thousands of euros)

A. Presidency, Divisions and Chambers of the Court

<i>Expenditure</i>	<i>Estimated requirements</i>
Salaries and allowances of full-time judges	1 510.7
Allowances of non-full-time judges	348.3
Common costs of judges	680.0
Travel of full-time judges	31.0
Total requirements	2 570.0

^a Does not include requirements for posts directly assigned to the Presidency and the Divisions of the Court. Such requirements are included under the Registry and the Common Services Division (see tables 8 and 10).

Table 5.B
Meetings of the Court in plenary session subsequent to the Inaugural Meeting
(related travel and allowances of non-full-time judges)

(In thousands of euros)

<i>Expenditure</i>	<i>Estimated requirements</i>
Airfare for nine non-full-time judges	76.0
Special allowance	26.8
Subsistence allowance	45.6
Total requirements	148.4

B. Office of the Prosecutor

Activities

140. The structure and staffing of the Office of the Prosecutor in the first financial period of operation of the Court will allow the Prosecutor to carry out the tasks related to the initial establishment of the Office. However, resources are provided under general temporary assistance and the reserve for unforeseen expenses to allow the Office to respond to an upsurge in activities that may require a full prosecutorial and investigative capacity. For further details regarding the activities of the Prosecutor in the first financial period of the Court, see Part One, paragraphs 46-53.

141. Once the Prosecutor is elected, it would be necessary to set up an Immediate Office of the Prosecutor, consisting of the Prosecutor, one Deputy Prosecutor, a Special Assistant to the Prosecutor (P-5),³⁸ a Special Assistant to the Deputy Prosecutor (P-4) and a Spokesperson (P-4). The Immediate Office would also be supported by administrative and secretarial staff. The Prosecution Division, comprising the Prosecution Section, the Legal Advisory and Policy Section and the Appeals Section, will be headed by a Director of Prosecutions at the D-2 level. The Investigation Division, comprising the Information and Evidence Section, the Investigation Section and the Analysis Section, would be headed by a Chief of Investigations at the D-1 level.³⁹

Resource requirements

142. Requirements for the Office of the Prosecutor are estimated at €3,961,200 distributed as described in table 6.

³⁸ The level of the post will be reviewed based on the experience gained during the year 2003 with a view to determining if it should be upgraded.

³⁹ The level of the posts within the Information and Evidence Section and the Analysis Section may be upgraded during the first financial period of the Court.

Table 6
Estimates by object of expenditure
(In thousands of euros)

B. Office of the Prosecutor

<i>Expenditure</i>	<i>Estimated requirements</i>
Posts	3 078.9
Other staff costs	830.3
Travel (including travel for purposes of investigation)	52.0
Total expenditures	3 961.2

Table 7
Post requirements for 2003

B. Office of the Prosecutor

	<i>Estimated requirements</i>
Professional category and above	
USG	1
ASG	1
D-2	1
D-1	1
P-5	5
P-4	12
P-3	12
P-2/1	1
Total	34
Other categories	
General Service (PL)	1
General Service (OL)	16
Total	17
Grand total	51

Posts

143. Requirements estimated at €3,078,900 would provide for 51 posts (34 in the Professional category and above and 17 in the General Service category). Details concerning the staffing and its distribution in the Office of the Prosecutor can be found in Part One (paras. 54-68), table 7 and annex I.B to the present document.

Other staff costs

144. The provision of €830,300 would provide the equivalent of 17 work-months of general temporary assistance at the P-4 level, 32 work-months at the P-3 level, 17 work-months at the P-2 level and 26 work-months of General Service (Other level) (€817,300) as well as overtime and night differential (€13,000).

Travel

145. It is assumed that limited travel would be required in respect of the Prosecutor, the Deputy Prosecutor and other staff in the Office of the Prosecutor. A provision of €52,000 has been made to cover travel, such as for consultations and other business in connection with the installation of the Court. Travel and daily subsistence allowance costs related to possible attendance at sessions of the Assembly of the States Parties, the meeting of its Bureau, the Inaugural Meeting and the meeting of the Committee on Budget and Finance are not included under this heading, as they are reflected under the non-conference-servicing costs related to those meetings.

C. The Registry**Activities**

146. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor, in accordance with article 42 of the Statute. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court and shall exercise his/her functions under the authority of the President of the Court (art. 43, para. 2).

147. In the first financial period of operation of the Court, it is assumed that the Registry will be concerned mostly with administrative functions, matters of internal organization, external relations and communications. Accordingly, it is estimated that in the first financial period requirements for the Registry would amount to €2,901,900. A breakdown of these requirements is given in table 8.

Table 8

Estimates by object of expenditure

(In thousands of euros)

C. Registry

<i>Expenditure</i>	<i>Estimated requirements</i>
Posts	2 550.6
Other staff costs	251.3
Travel	85.0
Hospitality	15.0
Total requirements	2 901.9

Table 9
Post requirements for 2003^a

C. Registry

	<i>Estimated requirements</i>
Professional category and above	
ASG	1
D-2	-
D-1	-
P-5	3
P-4	8
P-3 ^b	10
P-2/1	6
Total	28
Other categories	
General Service (PL)	1
General Service (OL)	19
Security and Safety	-
Total	20
Grand total	48

^a Includes posts to be directly assigned to the Presidency and the Divisions of the Court (1 P-5, 1 P-4, 1 P-3 and 2 General Service (Other level)).

^b Includes one P-3 post to be established for a period of six months, in 2003, in the Victims Participation and Reparation Unit of the Registry.

Resource requirements

Posts

148. Requirements estimated at €2,550,600 will provide 48 posts (28 in the Professional category and above and 20 in the General Service category) in the year 2003 and 12 posts (9 in the Professional category and above and 3 in the General Service category) in the period from September to December 2002, including staff to be directly assigned to the Presidency. Post requirements for 2003 are summarized in table 9. Details concerning the functions and the structure of the Registry can be found in Part One (paras. 75-96) and in annex I.C to the present document.

Other staff costs

149. The provision of €251,300, will provide for temporary assistance equivalent to 16 work-months at the P-3 level, 9 work-months at the P-2 level, 25 work-months at General Service (Other level) and 60 workdays of court reporting service at the approximate rate of €466/day (€244,300) as well as overtime and night differential

(€7,000). The temporary assistance will be needed in case of an upsurge in activities.

Travel

150. Requirements estimated at €85,000 would provide for travel and daily subsistence allowance in respect of the Registrar, the Director of Common Services and other staff of the Registry, including the Common Services Division. It is estimated that the Registrar, the Director of Common Services and the Chiefs of Section will need to travel to New York for consultations at United Nations Headquarters, particularly in connection with the activities contemplated in the draft Relationship Agreement between the Court and the United Nations, and to undertake other occasional travel in the conduct of official business of the Court. Requirements for travel related to possible attendance at the second meeting of the Assembly of the States Parties, the meeting of the Bureau and the meeting of the Committee on Budget and Finance are not included under this heading, as they are reflected under the non-conference-servicing costs related to those meetings.

Hospitality

151. Due to the high degree of public interest that the Court is expected to generate, it is expected that some official hospitality functions (e.g., receptions) will have to be organized, particularly in connection with visits of high dignitaries. Therefore, a provision amounting to €15,000 has been included for hospitality.

D. Common Services Division

152. In order to minimize duplication and ensure maximum efficiency while observing the strict statutory division of powers between the judiciary (Presidency, Chambers and Registry) and the Office of the Prosecutor, a Common Services Division is envisaged to administer a pool of services which will be required to support both the judiciary and the Prosecutor. Such services will include, inter alia, general services, building management, finance, security, procurement, certain aspects of human resources management (e.g. training), information technology and communications infrastructure, and some aspects of conference and language services.

153. It is expected that in the first financial period of operation of the Court the Common Services Division will be heavily involved in a number of operational start-up activities, particularly matters related to internal organization and the installation of infrastructure and systems. For the purposes of the first financial period, it is anticipated that the division would be headed by a Director (D-1), who would oversee the work of general administrators and staff with experience in setting up courts. As the establishment of the Court progresses, certain functions, mainly those that are specifically court-related, would be transferred from the Common Services Division to the Office of the Prosecutor or to the Registry, as appropriate.

Table 10
Estimates by object of expenditure

(In thousands of euros)

D. Common Services Division

<i>Expenditure</i>	<i>Estimated requirements</i>
Posts	5 587.8
Other staff costs	305.7
Consultants and experts	45.0
Contractual services (including external translation)	851.6
General operating expenses	1 143.0
Supplies and materials	440.0
Furniture	455.2 ^a
Presidency	44.0
Divisions	57.0
Office of the Prosecutor	178.0
Registry	151.2
Common Services Division	25.0
Office automation equipment	1 091.0 ^b
Presidency	31.0
Divisions	24.0
Office of the Prosecutor	155.0
Registry	134.0
Common Services Division	747.0
Other equipment (transportation, communications, software, security, etc.)	3 236.0
Maintenance of furniture and equipment	252.0
Total	13 407.3

^a This amount does not include the cost of furniture contributed by the host country.

^b This amount does not include the cost of equipment contributed by the host country.

Table 11
Post requirements for 2003

D. Common Services Division

	<i>Estimated requirements</i>
Professional category and above	
ASG	-
D-2	-
D-1	1
P-5	5
P-4	13
P-3	18
P-2/1	7
Total	44
Other categories	
General Service (PL)	5
General Service (OL)	34
Security and Safety	20
Total	59
Grand total	103

Resource requirements

154. Requirements amounting to €13,407,300, as reflected in table 10, have been estimated for the Common Services Division for the first financial period of the Court.

Posts

155. A provision of €5,587,800 is required to cover the costs of 103 posts (44 in the Professional category and above and 59 in the General Service and related categories, including 20 security and safety posts) for 2003, as summarized in table 11, and 49 posts (25 in the Professional category and above and 24 in the General Service and related categories, including 10 security and safety posts) for the period from September to December 2002.

Other staff costs

156. An amount of €305,700 will provide for the equivalent of 270 workdays of freelance translators and interpreters, at the rate of approximately €598/day, or €161,700 (including pro-rated travel costs), and other supplementary staff (€130,000 calculated on the basis of 2 per cent of the cost of posts) that may be needed in the event of an upsurge in activities or to replace staff on sick or maternity leave, plus overtime and night differential (€14,000).

Consultants and experts

157. The requirement under this heading (€45,000) will provide for the services of experts in information technology and other technical areas.

Contractual services

158. A provision of €851,600 will be needed for the outsourcing of procurement (€382,600), security and safety training in respect of 10 officers in 2002 and 20 officers in 2003, in such areas as security management, close protection of VIPs, firearms, basic firefighting and evacuation and first aid (€80,000), external printing (€50,000), management and technical training (€20,000), information technology training (€60,000) for staff in the Registry, including the Common Services Division, and in the Office of the Prosecutor; external translation (€50,000), covering about 900 pages of less sensitive documents, external audit (€40,000), data-processing services (€157,000) and miscellaneous services (€12,000).

General operating expenses

159. The requirement of €1,143,000 will provide for: communications (€597,000), including commercial communications, such as local and long-distance charges, cellular phone charges, etc., subscription to satellite services such as Inmarsat and Intelsat, pouch and postage; maintenance of premises, including cleaning costs (€222,000); rental of equipment (€152,000); insurance, including personal property and general liability for the Court's facilities and vehicle insurance (€27,000); transportation, handling and installation of miscellaneous items (€56,000); and miscellaneous operating expenses (€89,000) to cover insurance, bank charges, eventual rental of vehicles, taxi fares, cleaning of uniforms and judges' robes, etc.

160. With regard to the premises of the Court, as indicated in paragraph 9, the host Government has expressed its commitment to provide interim accommodations, free of rent. For this purpose, the host Government is willing to spend up to €33 million, of which €10 million will be available for interior design and a fully equipped courtroom. Moreover, the host Government has undertaken to cover the cost of utilities in the first financial period of the Court. Therefore, such costs are not included in the present document. For further details, see annex V to the present document.

Supplies and materials

161. The provision of €440,000 will be required for office and photocopying supplies (€81,000), data-processing supplies (€48,000), premises maintenance supplies and materials (€15,000), audio-visual equipment and supplies (€45,000), petrol, oil and lubricants for the Court's vehicles (€23,000), library books, subscriptions, etc. (€133,000), security and safety supplies and materials (€45,000) and other miscellaneous supplies and materials (€50,000).

Furniture

162. The provision of €455,200 will be required for furniture for the Presidency and the Divisions, the Office of the Prosecutor, the Registry and the Common Services Division. Such furniture includes, inter alia, 14 safes; conference tables (1 for the Presidency and 1 for the Divisions); 31 lockable steel storage cabinets; 19 filing

cabinets; and 100 workstations. It should be noted that, additionally, the host country has committed to provide a large number of items of furniture, as listed in annex V.

Office automation equipment

163. The provision of €1,091,000 will be needed for the acquisition of 102 desktop computers and printers, 7 large heavy-duty printers, 3 scanners, 6 servers, network-active equipment, 1 OTP high-speed printer, a storage area network, 11 laptop computers and other miscellaneous office automation equipment. The additional requirements will be provided as part of the offer from the host country. For further details, see annex V to the present document.

Other equipment

164. The amount of €3,236,000 under this heading will provide for the acquisition of the following equipment: software, including document management software, administration management software, translation software and network security (€2,009,000); communications equipment (€673,000); security and safety equipment (€249,000); transportation equipment, particularly two heavy passenger cars, two light passenger cars, two transport vans and one small bus with capacity for 12 passengers (€255,000) and other miscellaneous equipment (€50,000). The host country has committed to provide the audio-visual equipment needed for the courtroom and the conference rooms.

Maintenance of furniture and equipment

165. It is estimated that an amount of €252,000 would be needed to provide for the maintenance of data-processing equipment, including support contracts for software, servers and network equipment, maintenance of communications equipment, office equipment and furniture, and miscellaneous equipment (such as security equipment).

E. Reserve for unforeseen expenses

166. As explained above, this provision is made in order to give the Court a certain degree of scalability and flexibility so it may readily react to an upsurge in activities. It has been pointed out that the possibility of a situation being referred to the Court or of an evidence preservation situation arising in the first financial period of the Court cannot be completely ruled out. Accordingly, requirements estimated at €1,052,000 are included under this heading to provide for the following additional needs, as reflected in annex IV to the present document: the Judicial Services Division's fund (€555,000, including €200,000 for a legal aid fund); travel that may become necessary for investigation purposes or for other prosecutorial activities (€138,000); information technology and communications equipment (€104,000); contractual translation of about 1,800 pages of less sensitive documents (€100,000); furniture (€80,000); language experts (€44,000); public information activities (€22,000); and external printing (€9,000).

XIX. Preliminary estimates of costs related to the meetings of the Assembly of States Parties, the meeting of the Bureau, the Inaugural Meeting of the Court and the meeting of the Committee on Budget and Finance

167. It should be noted that the costs provided herein are estimated on the basis of past experience related to similar meetings, anticipated workload and information currently available. Actual costs will be able to be determined only after the closure of the meetings, when the actual expenditures become known. It is also expected that revisions to these estimates will be made as additional information becomes available in the future. In particular, the costs and working methods of conference services as reflected in the present document will have to be reviewed in the light of the experience and ongoing reform efforts.

168. The Assembly of States Parties will convene its first meeting in September 2002, at United Nations Headquarters. Subsequently, in the course of the first financial period of the Court, it is envisaged that the following meetings will be held: a resumed/special meeting of the Assembly of States Parties in January/February 2003; the Inaugural Meeting of the Court soon after the resumed/special meeting of the Assembly of States Parties of January/February 2003; a resumed/special meeting of the Assembly of States Parties in April 2003; a meeting of the Bureau in June 2003; the first meeting of the Committee on Budget and Finance in August 2003; and the second meeting of the Assembly of States Parties in September 2003. The above schedule is tentative and subject to changes.

169. The General Assembly, in paragraph 9 of its resolution 56/85 of 12 December 2001, requested the Secretary-General of the United Nations to undertake the preparations necessary to convene, in accordance with article 112, paragraph 1, of the Rome Statute, the first meeting of the Assembly of States Parties to take place upon the entry into force of the Statute, in accordance with article 126, paragraph 1 thereof. The Assembly also decided, in paragraph 10 of the same resolution, that expenses that might accrue to the United Nations as a result of the implementation of that request, as well as expenses resulting from the provision of facilities and services for the meeting in question and any consequent follow-up shall be paid in advance to the Organization. To that effect, the Trust Fund to Support the Establishment of the International Criminal Court was established by the Secretary-General to serve as a vehicle for the collection of contributions from States and other interested entities.

170. In the process leading to the recommendation and adoption of the above-mentioned resolution, the Sixth Committee of the General Assembly had before it a note by the Secretariat concerning the financial implications of the draft resolution.⁴⁰ The note contained estimates in respect of the first meeting of the Assembly of States Parties based on two scenarios: one assuming that four meetings would be held per day, in line with the normal practice of international conferences, and the other assuming that two meetings would be held per day, following the model that the Preparatory Commission had established for itself. Subsequently, the Bureau of the Preparatory Commission requested that the estimates be revised on the basis of the assumption that two meetings would be held per day, over a period

⁴⁰ A/C.6/56/L.25.

of six days. The revised estimates amount to €2,582,200. In this context, it is noted that the inclusion of such estimates in the present document is meant to give States Parties a fuller picture of the costs associated with the holding of the meetings, without prejudice to future decisions concerning eventual arrangements that they may wish to make concerning reimbursements, the granting of credits or other similar schemes to accommodate States contributing to the funding of the first meeting of the Assembly.

171. With respect to the Inaugural Meeting of the Court, only estimates of travel costs and partial daily subsistence allowance in respect of the judges and the Prosecutor (€97,000) were included, as the host Government has committed to finance all the other costs of such a meeting.⁴¹

172. It is expected that, except for the Inaugural Meeting of the Court, the organization of the meetings in question would require extensive involvement of Secretariat staff. Since such meetings should not have any financial implications for the regular budget of the United Nations, States Parties should be advised that, in accordance with the terms of reference of the Trust Fund to Support the Establishment of the International Court, the United Nations shall levy a charge, at a rate of 13 per cent of expenditures for such activities, to defray administrative and other support costs (programme support costs) incurred by the United Nations in their implementation. Such programme support costs would be included in the total costs that would be borne by the States Parties.

173. The estimates contained herein comprise conference-servicing costs, non-conference-servicing costs, programme support costs and a reserve for contingency (see para. 181). Total requirements for the holding of the meetings, excluding the first meeting of the Assembly of States Parties and the portion of the Inaugural Meeting of the Court to be funded by the host Government, are estimated at €4,570,400. Furthermore, the host Government has committed to contribute a non-reimbursable amount of €300,000 to help defray the cost of the meetings.⁴² The breakdown of the costs of the meetings is given in annex III to the present document.

174. States Parties should be advised that the activities associated with the preparation and holding of the meetings of the Assembly of States Parties, the meetings of the Bureau of the Assembly and the meeting of the Committee on Budget and Finance as well as those related to the first financial period of the Court should not have financial implications for the regular budget of the United Nations.

Estimated conference-servicing costs

175. The estimates of the conference-servicing costs (€2,935,200) are based on the assumption that, for all meetings, the working languages will be the six official languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish.

176. The duration and number of meetings as well as documentation requirements are assumed to be as follows:

⁴¹ See PCNICC/2002/INF/5, para. 3.

⁴² *Ibid.*, para. 9.

- First meeting of the Assembly of States Parties (6 days, 12 meetings): 550 pages of pre-session documents, 50 pages of in-session documents and 550 pages of post-session documents;
- Resumed/Special meeting of the Assembly, January/February 2003 (5 days, 10 meetings): 600 pages of pre-session documents, 40 pages of in-session documents and 40 pages of post-session documents;
- Resumed/Special meeting of the Assembly, April 2003 (3 days, 6 meetings): 250 pages of pre-session documents, 40 pages of in-session documents and 10 pages of post-session documents;
- Second meeting of the Assembly (5 days, 10 meetings): 200 pages of pre-session documents, 50 pages of in-session documents and 200 pages of post-session documents;
- Meeting of the Bureau of the Assembly (1 day, 2 meetings): 10 pages of pre-session documents and 10 pages of post-session documents;
- Meeting of the Committee on Budget and Finance (5 days, 10 meetings): 150 pages of pre-session documents, 20 pages of in-session documents and 150 pages of post-session documents.

177. Based on the aforementioned assumptions, conference-servicing requirements, excluding requirements for the first meeting of the Assembly of States Parties, are estimated as follows:⁴³

	<i>(Thousands of euros)</i>
Pre-session documentation	1 792.1
In-session documentation	220.4
Post-session documentation	608.8
Meeting servicing (Interpreters, conference officer, officer for documents distribution and officer for reproduction of documents)	282.7
Other requirements (e.g., sound technicians)	31.2
Travel of conference-servicing staff	-
Total	2 935.2

Estimated non-conference-servicing costs

178. Non-conference-servicing provisions estimated at €487,100 would be needed to cover general temporary assistance (€223,600), possible travel and daily subsistence allowance of the President of the Court, the Prosecutor and the Registrar to attend the meetings (€66,900), public information activities (€65,500), security (€21,400), common services costs (€94,900), communications (€8,900) and miscellaneous supplies and materials (€5,900).

⁴³ For details concerning the first meeting of the Assembly of States Parties, see table III.2 in annex III to the present document.

179. Based on the aforementioned assumptions, non-conference-servicing requirements, excluding the requirements for the first meeting of the Assembly of States Parties, are estimated as follows:⁴⁴

<i>(Thousands of euros)</i>	
Temporary assistance	223.6
Travel, daily subsistence allowance and terminal expenses in respect of Secretariat staff	-
Travel, daily subsistence allowance and terminal expenses in respect of the judges, the Prosecutor and the Registrar	66.9
Public information	65.5
Security	21.4
Common services costs	94.9
Communications	8.9
Miscellaneous supplies and materials	5.9
Total	487.1

Estimated programme support costs

180. As mentioned above, programme support costs, at the rate of 13 per cent of expenditures, shall be charged to defray administrative and other costs incurred by the United Nations in connection with the convening of the meetings. Accordingly, a provision representing about 13 per cent of the conference-servicing and non-conference-servicing costs is included in the estimates. It is estimated that programme support costs, excluding those related to the first meeting of the Assembly of States Parties, would amount to €444,900.

Contingency reserve

181. In accordance with established policies and practice in the United Nations, a provision corresponding to 15 per cent of total estimated costs (including programme support costs) of the meetings should be made for a contingency reserve to cover eventual shortfalls and final expenditures. Therefore, it is estimated that, a reserve amounting to €580,100 would be needed. Requirements for the first meeting of the Assembly of States Parties are not included in these estimates.

Estimated costs of the meeting of the Board of Directors of the Victims Trust Fund

182. It is proposed that provision be made for a three-day meeting of the Board of Directors of the Victims Trust Fund to be held at The Hague in 2003. The meeting would entail business-class travel and daily subsistence allowance for the five members of the Board. The overall estimated costs are €26,100.

⁴⁴ Idem.

	<i>(Euros)</i>
Travel for five members of the Board	21 800
Daily subsistence allowance	4 300
Total	26 100

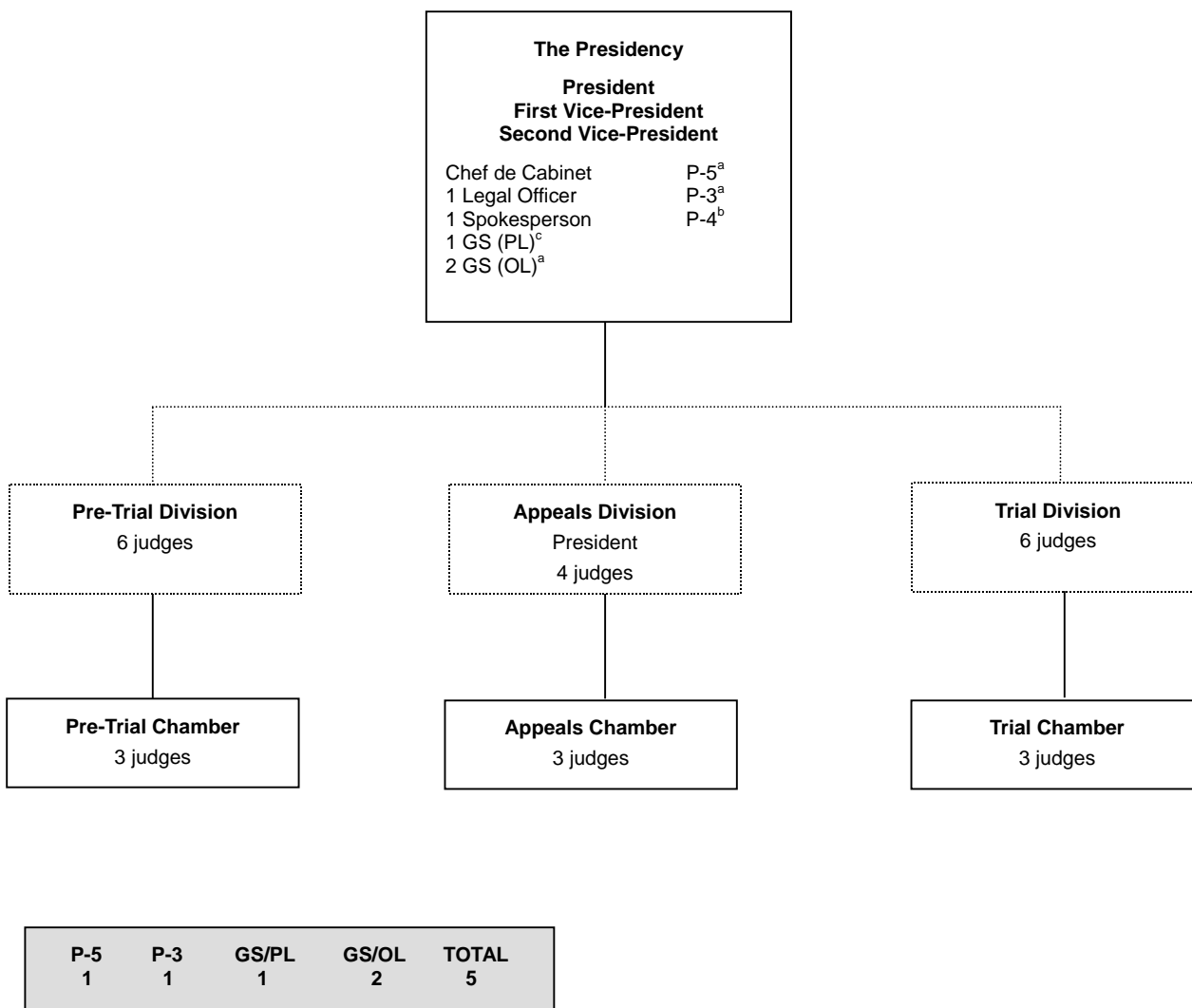
Summary of estimated costs

	<i>(Thousands of euros)</i>
A. Estimated costs (excluding the first meeting of the Assembly of States Parties and the Inaugural Meeting)	
Conference-servicing	2 935.2
Non-conference-servicing	487.1
Programme support (13%)	444.9
Contingency reserve (15%)	580.1
Total (A)	4 447.3
B. Inaugural Meeting of the Court	97.0
Total (A + B)	4 544.3
C. Estimated costs of the first meeting of the Assembly of States Parties	
Conference-servicing	1 766.8
Non-conference-servicing	220.3
Programme support (13%)	258.3
Contingency reserve (15%)	336.8
Total (C)	2 582.2
Total (A + B + C)	7 126.5
D. Meeting of the Board of Directors of the Victims Trust Fund	26.1
Total (A + B + C + D)	7 152.6
E. Contribution from host country	(300.0)
Grand total (A + B + C + D + E)	6 852.6

183. The cost of travel and partial daily subsistence allowance in respect of the judges and the Prosecutor to attend the Inaugural Meeting of the Court is estimated at €97,000. This cost, when added to the cost of the other meetings (excluding the first meeting of the Assembly), results in a total of €4,570,400.

184. The requirements for the first meeting of the Assembly of States Parties will be funded from the Trust Fund, but are shown here for illustrative purposes. With the inclusion of these costs, the grand total (all meetings) is estimated at €6,852,600.

Annex I.A The Presidency

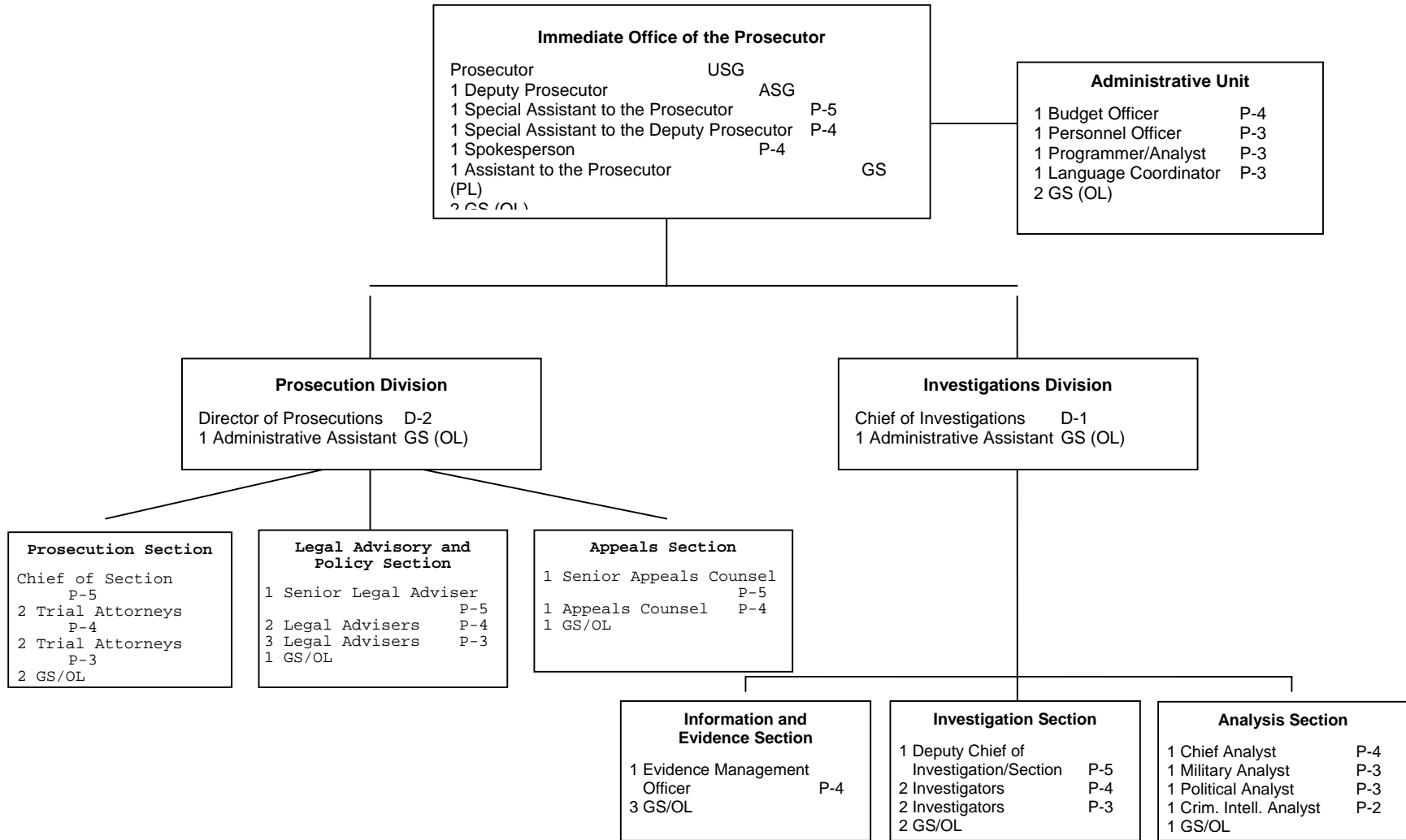


^a These posts are shown in this annex for illustration purposes. Although they are not included in the staffing table shown in the organizational structure of the Registry (annex I.C), they are reflected in table 9 of the main document and budgeted under the Registry.

^b The spokesperson of the Presidency serves also as the head of the Public Information and Documentation Section of the Registry. Accordingly, the post is included in the organizational structure of the Registry and the related staffing table. It is also reflected in table 9 of the main document and budgeted under the Registry.

^c This post is shown in this annex for illustration purposes. Although it is not included in the staffing table shown in the organizational structure of the Common Services Division (annex I.D), it is reflected in table 11 of the main document and budgeted under the Common Services Division (General Services Section).

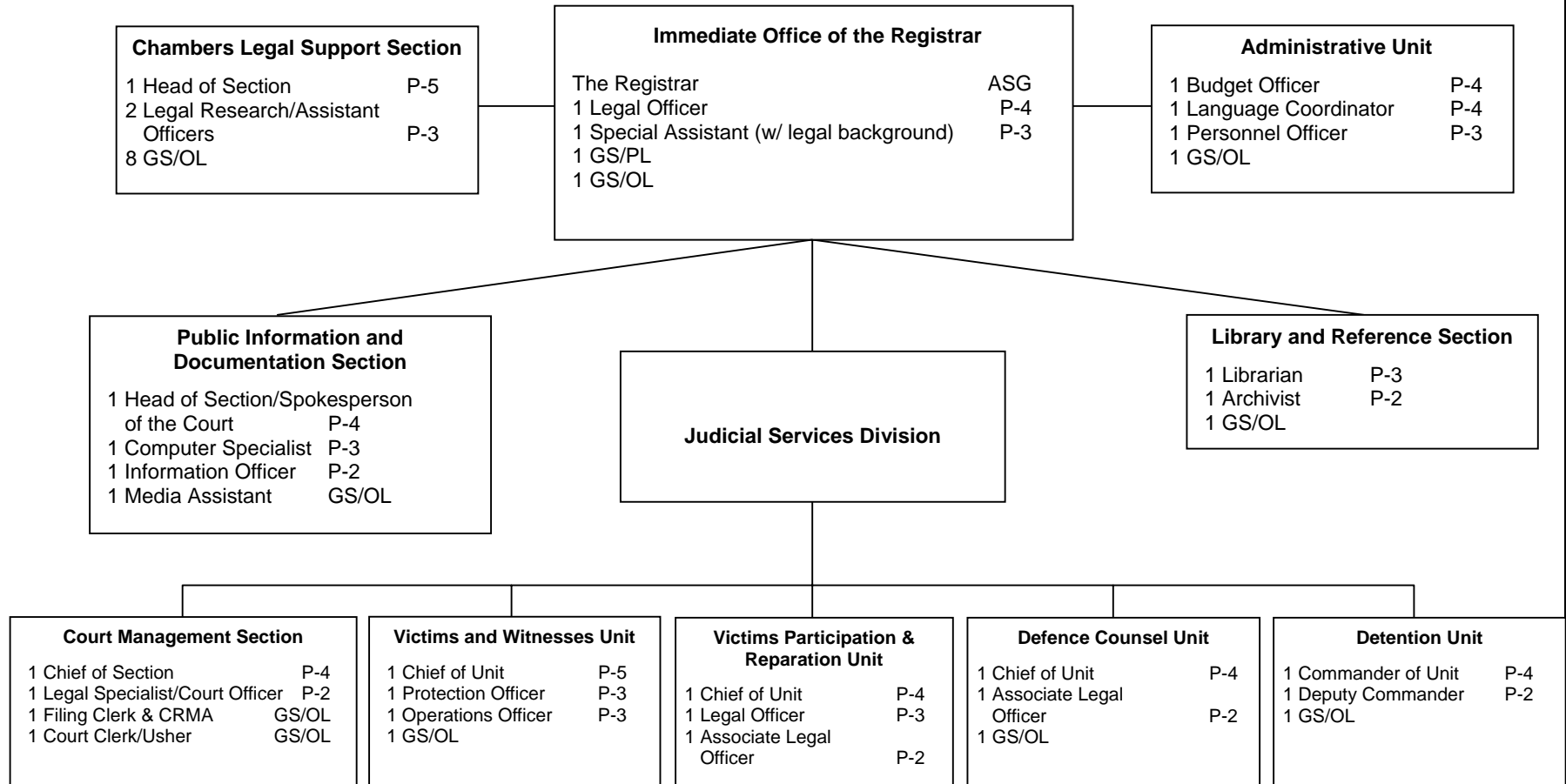
Annex I.B Office of the Prosecutor



USG	ASG	D-2	D-1	P-5	P-4	P-3	P-2	GS/PL	GS/OL	SS	TOTAL
1	1	1	1	5	12	12	1	1	16		51

**Annex I.C
The Registry**

Office of the Registrar

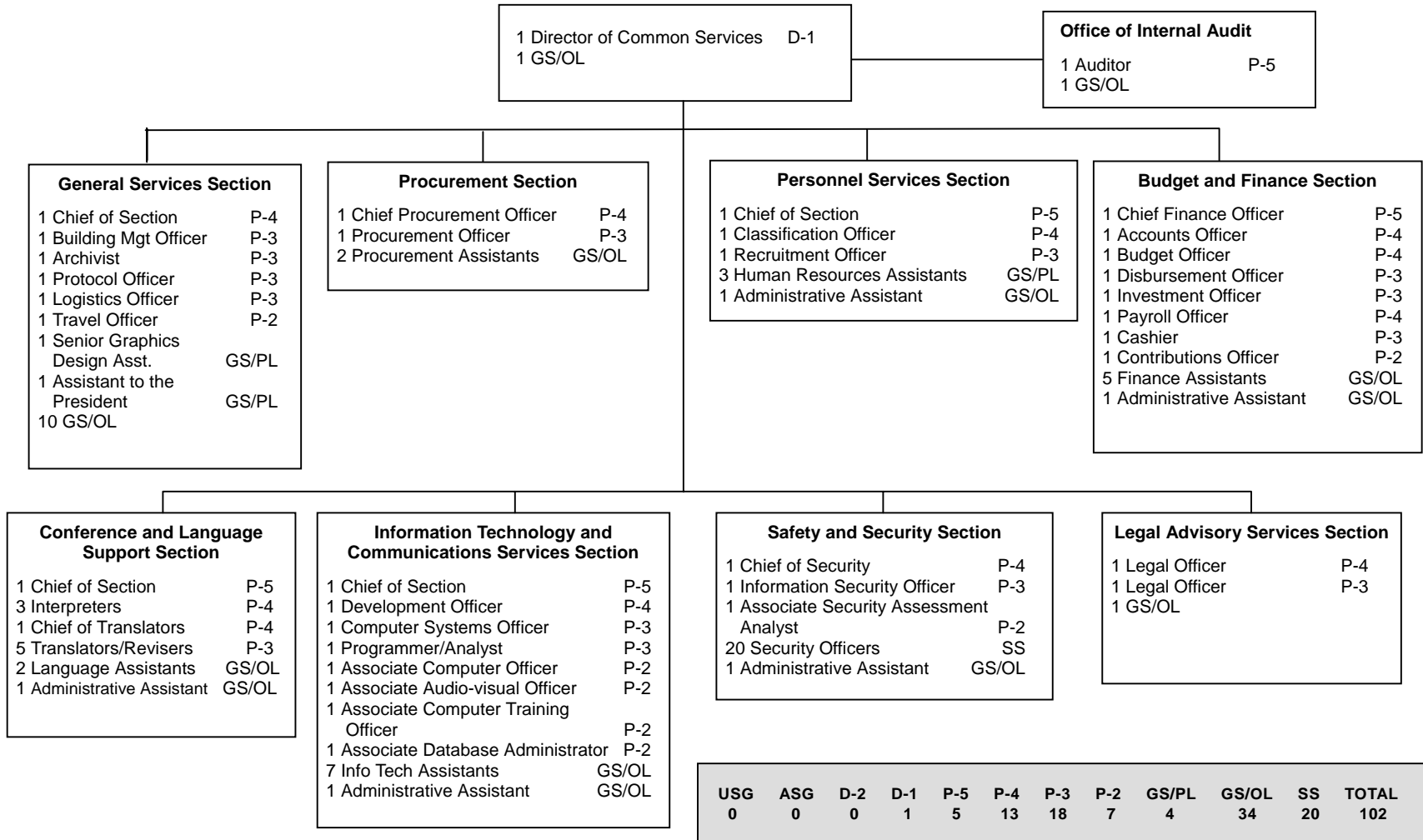


USG	ASG	D-2	D-1	P-5	P-4	P-3	P-2	GS/PL	GS/OL	SS	TOTAL ^a
0	1	0	0	2	8	9	6	1	17		44

^a 4 posts assigned to the Presidency are not reflected in this table.

Annex I.D Common Services Division

Office of the Director of Common Services



Annex II**Distribution of “core” posts for the period
September-December 2002****Office of the Director of Common Services**

1 Director of Common Services (D-1)
1 (GS (OL))

General Services Section

1 Chief of Section (P-4)
1 Building Management Officer (P-3)
1 Travel Officer (P-2)
3 (GS (OL))

Procurement Section

1 Chief Procurement Officer (P-4)
1 Procurement Officer (P-3)

Conference and Language Support Section

1 Chief of Section (P-5)
1 Chief of Translators (P-4)
1 Translator/Reviser (P-3)
1 Language Assistant (GS (OL))
1 Administrative Assistant (GS (OL))

*Information Technology and Communications
Services Section*

1 Chief of Section (P-5)
1 Computer Systems Officer (P-3)
1 Associate Computer Officer (P-2)
1 Associate Database Administrator (P-2)
1 Administrative Assistant (GS (OL))

Safety and Security Section

1 Chief of Security (P-4)
1 Information Security Officer (P-3)
10 Security Officers (SS)
1 Administrative Assistant (GS (OL))

Personnel Services Section

1 Chief of Section (P-5)
1 Recruitment Officer (P-3)
3 Human Resources Assistants (GS (PL))
1 Administrative Assistant (GS (OL))

Budget and Finance Section

1 Chief Finance Officer (P-5)
1 Accounts Officer (P-4)
1 Disbursement Officer (P-3)
1 Cashier (P-3)
1 Payroll Officer (P-3)
1 Investment Officer (P-3)
1 Contributions Officer (P-2)
1 Administrative Assistant (GS (OL))

Legal Advisory Services Section

1 Legal Officer (P-4)
1 (GS (OL))

Summary of post requirements

D-1	P-5	P-4	P-3	P-2	GS (PL)	GS (OL)	SS	Total
1	4	6	10	4	3	11	10	49

Office of the Registrar

Chambers Legal Support Section

1 Legal Research Officer (P-3)
1 (GS (OL))

Library and Reference Section

1 Librarian (P-3)

Administrative Unit

1 Budget Officer (P-4)
1 Personnel Officer (P-3)
1 (GS (OL))

Public Information and Documentation Section

1 Computer Specialist (P-3)
1 Information Officer (P-2)
1 Media Assistant (GS (OL))

Court Management Section

1 Chief of Section (P-4)
1 Legal Specialist/Court Officer (P-2)

Defence Council Unit

1 Chief of Unit (P-4)

Summary of post requirements

ASG	P-5	P-4	P-3	P-2	GS (PL)	GS (OL)	SS	Total
0	0	3	4	2	0	3	0	12

Annex III

Preliminary cost estimates for meetings

Table III.1

Cost estimates for meetings of the Assembly, Bureau meetings, the meeting of the Committee on Budget and Finance, the Inaugural Meeting of the Court and the Board of Directors of the Victims Trust Fund

Summary

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

<i>Meeting</i>	
First meeting of the Assembly of States Parties to the Rome Statute	2 582.2
Resumed/Special meeting of the Assembly of States Parties (January/February 2003)	1 571.8
Resumed/Special meeting of the Assembly of States Parties (April 2003)	746.2
Second meeting of the Assembly of States Parties to the Rome Statute	1 187.7
Meeting of the Bureau of the Assembly of States Parties to the Rome Statute	96.6
Meeting of the Committee on Budget and Finance	845.0
Inaugural Meeting of the Court (Includes only the cost of travel and partial DSA for the judges and the Prosecutor)	97.0
Meeting of the Board of Directors of the Victims Trust Fund	26.1
	7 152.6

Table III.2
First meeting of the Assembly of States Parties to the Rome Statute

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

A. Conference-servicing costs	
Meeting servicing	87.5
Pre-session documentation	798.3
In-session documentation	73.0
Post-session documentation	798.3
Other requirements (e.g., sound technicians)	9.5
Total (A)	1 766.8
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	131.1
Travel of United Nations substantive staff	0
Public information	40.9
Security	13.3
Common services costs	30.0
Communications	3.3
Miscellaneous supplies and materials	1.7
Total (B)	220.3
Total (A + B)	1 987.1
C. Programme support costs (13% of total of A + B)	258.3
Total (A + B + C)	2 245.4
D. Reserve for contingency (15% of total of A + B + C)	336.8
Grand total (A + B + C + D)	2 582.2

Table III.3
Resumed/Special meeting of the Assembly of States Parties (January/February 2003)

(Estimates of conference-servicing and non-conference-servicing costs)
(In thousands of euros)

<hr/>	
A. Conference-servicing costs	
Meeting servicing	74.8
Pre-session documentation	888.0
In-session documentation	58.6
Post-session documentation	59.7
Other requirements (e.g., sound technicians)	8.2
<hr/>	
Total (A)	1 089.3
<hr/>	
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	55.5
Travel of United Nations substantive staff	-
Public information	26.2
Security	8.5
Common services costs	25.0
Communications	3.3
Miscellaneous supplies and materials	1.7
<hr/>	
Total (B)	120.2
<hr/>	
Total (A + B)	1 209.5
<hr/>	
C. Programme support costs (13% of total of A + B)	157.2
<hr/>	
Total (A + B + C)	1 366.7
<hr/>	
D. Reserve for contingency (15% of total of A + B + C)	205.0
<hr/>	
Grand total (A + B + C + D)	1 571.8
<hr/>	

Table III.4
Resumed/Special meeting of the Assembly of States Parties (April 2003)

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

A. Conference-servicing costs	
Meeting servicing	45.0
Pre-session documentation	370.0
In-session documentation	58.6
Post-session documentation	15.3
Other requirements (e.g., sound technicians)	4.9
Total (A)	493.8
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	32.9
Travel and daily subsistence allowance of the President and the Prosecutor	13.0
Public information	13.1
Security	4.3
Common services costs	15.0
Communications	1.1
Miscellaneous supplies and materials	1.1
Total (B)	80.5
Total (A + B)	574.3
C. Programme support costs (13% of total of A + B)	74.7
Total (A + B + C)	648.9
D. Reserve for contingency (15% of total of A + B + C)	97.3
Grand total (A + B + C + D)	746.2

Table III.5
Second meeting of the Assembly of States Parties

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

A. Conference-servicing costs	
Meeting servicing	74.8
Pre-session documentation	296.3
In-session documentation	73.6
Post-session documentation	296.3
Other requirements (e.g., sound technicians)	8.2
Total (A)	749.2
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	77.8
Travel of United Nations substantive staff	-
Travel and daily subsistence allowance of the President, Prosecutor and Registrar	22.3
Public information	26.2
Security	8.5
Common services costs	25.0
Communications	3.3
Miscellaneous supplies and materials	1.7
Total (B)	164.8
Total (A + B)	914.0
C. Programme support costs (13% of total of A + B)	118.8
Total (A + B + C)	1 032.8
D. Reserve for contingency (15% of total of A + B + C)	154.8
Grand total (A + B + C + D)	1 187.7

Table III.6
Meeting of the Bureau of the Assembly of States Parties (June 2003)

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

A. Conference-servicing costs	
Meeting servicing	14.1
Pre-session documentation	15.7
In-session documentation	-
Post-session documentation	15.7
Other requirements (e.g., sound technicians)	1.7
Total (A)	47.1
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	4.8
Travel of United Nations substantive staff	-
Travel and daily subsistence allowance of the President, Prosecutor and Registrar	16.8
Common services costs	5.0
Communications	0.3
Miscellaneous supplies and materials	0.3
Total (B)	27.2
Total (A + B)	74.3
C. Programme support costs (13% of total of A + B)	9.7
Total (A + B + C)	84.0
D. Reserve for contingency (15% of total of A + B + C)	12.6
Grand total (A + B + C + D)	96.6

Table III.7
Meeting of the Committee on Budget and Finance

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

<hr/>	
A. Conference-servicing costs	
Meeting servicing	73.9
Pre-session documentation	222.2
In-session documentation	29.6
Post-session documentation	221.9
Other requirements (e.g., sound technicians)	8.2
Total (A)	555.9
<hr/>	
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	52.6
Travel and daily subsistence allowance of the Prosecutor and the Registrar	14.9
Common services costs	25.0
Communications	0.8
Miscellaneous supplies and materials	1.1
Total (B)	94.4
<hr/>	
Total (A + B)	650.3
<hr/>	
C. Programme support costs (13% of total of A + B)	84.5
Total (A + B + C)	734.7
<hr/>	
D. Reserve for contingency (15% of total of A + B + C)	110.2
Grand total (A + B + C + D)	845.0
<hr/>	

Table III.8
**Detailed summary for all meetings (except the first meeting of the
 Assembly of States Parties and the Inaugural Meeting)**

(Estimates of conference-servicing and non-conference-servicing costs)

(In thousands of euros)

<hr/>	
A. Conference-servicing costs	
Meeting servicing	282.6
Pre-session documentation	1 792.1
In-session documentation	220.4
Post-session documentation	608.8
Other requirements (e.g., sound technicians)	31.2
Total (A)	2 935.2
<hr/>	
B. Non-conference-servicing costs	
General temporary assistance (substantive and administrative)	223.6
Travel of the President, the Prosecutor and the Registrar	66.9
Public information	65.5
Security	21.4
Common services costs	94.9
Communications	8.9
Miscellaneous supplies and materials	5.9
Total (B)	487.1
<hr/>	
Total (A + B)	3 422.4
<hr/>	
C. Programme support costs (13% of total of A + B)	444.9
Total (A + B + C)	3 867.3
<hr/>	
D. Reserve for contingency (15% of total of A + B + C)	580.1
Grand total (A + B + C + D)	4 447.4
<hr/>	

Annex IV

Breakdown of provision for the reserve for unforeseen expenses

(In thousands of euros)

Office of the Prosecutor	
Travel	138.0
Subtotal	138.0
Registry	
Judicial Services Division's Fund	555.0
Public information activities	22.0
Subtotal	577.0
Common Services Division	
Language experts	44.0
Contractual translation (1,800 pages)	100.0
Equipment (IT)	84.0
Equipment (Communications)	20.0
Furniture	80.0
External printing	9.0
Subtotal	337.0
Total reserve for unforeseen expenses	1 052.0

Annex V

Host country contribution

Statement of the host Government^a

1. The Netherlands has every intention to be a gracious and generous host to the ICC, as it is to many other legal institutions, as stated by Mr. Edmond Wellenstein, Director-General, ICC Task Force, Ministry of Foreign Affairs on 18 April 2002 (PCNICC/2002/INF/5). The Netherlands is in the top-10 list of assessed contributors, but will also contribute a considerable extra amount of money on a voluntary basis over the coming years.
2. The Netherlands will provide premises to the Court free of rent for a period of 10 years, starting at the date of entry into force of the Statute. For some years, that is to say until 2007/2008, the Court will be housed in so-called interim premises. The Netherlands offer for spending on the interim premises amounts to €33 million, €10 million of which will be available for the interior design, including the courtroom. The Netherlands is committed to having the courtroom facilities available in time for possible pre-trial hearings.
3. A smooth start of the Court will be facilitated by the provision of up to 100 workstations free of charge. Workstations include furniture, telephones, desktop computers and printers compatible with the future network systems of the Court. This also includes a limited number of scanners and photocopiers. For details see the appendix. The total available budget is maximized at €900,000.
4. The Netherlands reserves the right to donate items for workstations in kind. If items are donated in kind, 25 per cent of the concerned budget line will remain available for the Court to spend.
5. Taking into account the above, the budget, as specified in the appendix, can be spent by the Court on its own authority. The proposed allocation to budget items, within the fixed grand total of 100 workstations, is of an indicative nature. However, it is understood that major changes within and/or between budget items to the allocation for those 100 workstations should be discussed with the host country.
6. To further expedite a smooth start, the Netherlands will also cover all costs for the provision of water, electricity and natural gas to the premises during the first financial period (estimated at €165,000).

^a This statement was received by the Secretariat on 31 May 2002 and it is included herein as submitted by the host country.

Appendix

List of furniture and equipment

<i>Item(s)</i>	<i>Number of units</i>	<i>Unit cost (€)</i>	<i>Total cost per item (€)</i>
Individual desks			
Bureau	100	2 000	200 000
Chairs	100	500	50 000
Roll box	100	500	50 000
Filing cabinet	50	500	25 000
Hall stand	50	100	5 000
Waste basket	100	40	4 000
Subtotal			334 000
Meeting rooms (5)			
Table	5	4 000	20 000
Chairs	50	500	25 000
Hall stand	5	150	750
Waste basket	5	50	250
Subtotal			46 000
Office automation			
Computers	100	2 000	200 000
Printer	100	700	70 000
Software (NT + Office)	100	500	50 000
Network server	4	20 000	80 000
Software network (NT + security)	4	10 000	40 000
Copiers	5	3 000	15 000
Scanners	5	2 000	10 000
Telephone system	1	50 000	50 000
Fax	5	1 000	5 000
Subtotal			520 000
Total			900 000

Annex VI

Conditions of service and compensation of the judges of the International Criminal Court

I. Full-time judges

A. Salaries

1. The annual remuneration of full-time judges will be €180,000 net.

B. Special allowance for the President

2. A special allowance will be paid at the rate of 10 per cent of the President's annual remuneration. Based on the salary above of €180,000, the special allowance will be €18,000.

C. Special allowance for the First or Second Vice-President if acting as President

3. A special allowance of €100 per day will be paid, subject to a cap of €10,000 per year, to the First or Second Vice-President if acting as President.

D. Non-salary benefits/allowances

Educational assistance

4. When the judges take up residence in the host country, they will be entitled to assistance for the education of dependants, in accordance with terms and conditions similar to those applicable to the United Nations (see administrative issuances ST/AI/2002/1; ST/AI/1999/4; ST/IC/2002/5).

Pension

5. The judges are entitled to a pension benefit similar to that applicable to Judges of the International Court of Justice. The following are the principal features:

(a) The pension scheme is non-contributory, i.e., pensions are a direct charge to the budget;

(b) A retirement pension equal to half the annual salary, at the time of retirement, is paid to a judge who has completed a full nine-year term;

(c) A proportional reduction is applied if the judge has not completed a nine-year term, provided the judge has served for at least three years, but no additional pension is paid if the judge has completed more than nine years of service;

(d) A surviving spouse receives 50 per cent of the late judge's pension. If he or she remarries, he or she will receive a final lump-sum benefit equal to twice the amount of the spouse's benefit;

(e) Pensions in payment are revised by the same percentage and at the same date as salary adjustments.

Health insurance

6. Judges will be responsible for their own health insurance.

Travel/relocation costs^a

7. When judges take up residence in the host country, they are entitled to:

(a) A trip from his or her declared home^b to the seat of the Court, in connection with the transfer of his or her residence;

(b) An assignment grant to cover relocation expenses, in accordance with terms and conditions identical to those applicable to the United Nations (see ST/AI/2000/17);

(c) A round trip every second calendar year after the year of appointment from the seat of the Court to his or her declared home;

(d) A trip upon termination of appointment from the seat of the Court to his or her declared home, or to any other place, provided that the cost of the trip is not greater than the cost of the trip to his or her declared home, which was established at the time of appointment;

(e) Reimbursement by the Court for the travel expenses of the spouse and/or dependent children of the judge for trips undertaken in conjunction with the above where the spouse and/or dependent children reside with the judge at the seat of the Court.

8. All travel shall be by business-class travel between the declared home and the seat of the Court by the most direct route.

II. Non-full-time judges**A. Allowances****Annual allowance**

9. An annual allowance, payable monthly, of 20,000 euros.

10. In addition to an annual allowance, a judge who declares, on an annual basis to the President of the Court, that his or her net income, including the annual allowance referred to in paragraph 9 above, is less than the equivalent of 60,000 euros per annum will receive an allowance, payable monthly, to supplement his or her declared net income up to 60,000 euros.

^a The Rome Statute does not specifically address the issue of the residence of judges. Article 35 of the Rome Statute provides that full-time judges of the Court “shall be available to serve on that basis from the commencement of their terms of office”. Moreover, article 40 provides that judges “required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature”. The question of the residence of full-time judges and their availability to serve on that basis at the seat of the Court is a matter which the Rome Statute has entrusted to the judges. Article 52 sets out the manner in which the Regulations of the Court are to be elaborated and adopted. In considering the issue of the residence of full-time judges, the judges themselves will take a decision as to whether or not residence at the seat of the Court is required for full-time service, bearing in mind the permanent character of the Court.

^b “Home” is defined as the residence declared by the judge at the time of appointment or as modified subsequently.

Special allowance when engaged on the business of the Court

11. A special allowance of 270 euros for each day that a judge is engaged on the business of the Court, as certified by the Presidency.

Subsistence allowance

12. A subsistence allowance, at the United Nations rate in euros, applicable to judges of the International Court of Justice, for each day that a judge attends meetings of the Court.

B. Benefits

Pension

13. The judges on non-full-time status are not entitled to a pension benefit. Once they are called to serve as a full-time judge, the pension benefit provisions of a full-time judge will be applicable.

Health insurance

14. Judges will be responsible for their own health insurance.

Travel costs

15. Travel to official meetings of the Court. All travel shall be by business-class travel between the declared home and the seat of the Court by the most direct route.

Annex VII

Non-recurrent requirements for furniture and equipment for the first financial period of the Court^a

	(1) <i>Proposed number of units</i>	(2) <i>Unit cost^b (€)</i>	(3)=(1)x(2) <i>Total cost (€)</i>
1. Office furniture			
Storage cabinets, lockable, steel	31	800	24 800
Filing cabinets	19	400	7 600
Tables and conference sets	3	7 000	21 000
Heavy-duty, fire-resistant safes	14	1 200	16 800
Workstations	100	3 100	310 000
Furniture sets (offices of judges, Prosecutor, Deputy Prosecutor, Registrar)	12	5 500	66 000
Bookcases	20	150	3 000
Waste baskets	150	40	6 000
Subtotal			455 200
2. Office equipment			
Scanners	3	6 700	20 100
Shredders (small)	7	250	1 800
Shredders (medium-size)	2	5 700	11 400
Subtotal			33 300
3. EDP equipment			
Desktop computers	102	1 700	173 400
Desktop printers	102	500	51 000
Facsimile machines	9	600	5 400
Laptops	11	2 600	28 600
Storage area network equipment	1	540 000	540 000
Printers (OTP high-speed)	1	33 000	33 000
Printers (heavy-duty)	7	1 900	13 300
Network active equipment	1	111 000	111 000
Servers	6	17 000	102 000
Subtotal			1 057 700

	(1) <i>Proposed number of units</i>	(2) <i>Unit cost^b (€)</i>	(3)=(1)x(2) <i>Total cost (€)</i>
4. Software			
Anti-virus software	102	100	10 200
MS SQL server software	4	11 000	44 000
MS-Client	50	200	10 000
MS Office	102	400	40 800
Translation software	1	111 000	111 000
Geo information software	1	11 000	11 000
Network management	4	6 000	24 000
Network security (encryption and detection)	1	167 000	167 000
Firewall software	1	5 000	5 000
Document management (e.g., TRIM Document Management System, Zylab Imaging Software)	1	666 000	666 000
Administration management software (facilities and asset management, budget, procurement, travel, accounting, human resources, etc.)	1	833 000	833 000
Miscellaneous software (e.g., auto CAD, project management, etc.)		87 000	87 000
Subtotal			2 009 000
5. Transportation equipment			
Vehicles, passenger (heavy)	2	55 500	111 000
Vehicles, passenger (light)	2	28 000	56 000
Vehicle, bus (12-passenger)	1	22 000	22 000
Transport vans	2	22 000	44 000
Miscellaneous transport equipment		22 000	22 000
Subtotal			255 000
6. Communications equipment			
Crypto telephones	4	8 900	35 600
Encryption modules	10	5 600	56 000
Portable fax machines	6	300	1 800
INMARSAT M	2	5 600	11 200
Mobile telephones (including local subscription)	50	200	10 000
PABX systems (including 250 telephones)	1	527 300	527 300
Radio (UHF base station)	2	2 800	5 600
Radio (UHF handsets)	25	300	7 500
Miscellaneous equipment		8 000	8 000
Subtotal			663 000

	(1) <i>Proposed number of units</i>	(2) <i>Unit cost^b (€)</i>	(3)=(1)x(2) <i>Total cost (€)</i>
7. Security equipment			
Firearms	23	1 200	27 600
Ammunition	50 000		18 900
Network security software	1	38 700	38 700
Metal detectors and X-ray machines	2	55 500	111 000
Training equipment	1	27 800	27 800
Other security equipment			25 000
Subtotal			249 000
8. Other equipment			
Building maintenance (heavy-duty lot)			25 000
Building maintenance (technician's kit)			25 000
Subtotal			50 000
Total			4 772 200

^a Furniture and equipment offered by the host country were not included in this annex.

^b These standard costs must be considered as maximum costs referred to for budgeting purposes. The Court is expected to make savings in the purchase of furniture and equipment, and to report thereon to the Assembly of States Parties, through the Committee on Budget and Finance. The standard costs will be reviewed accordingly by the Committee.

Part IV
Resolutions and decisions adopted by the Assembly
of States Parties

Resolutions

Resolution ICC-ASP/1/Res.1

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.1

Continuity of work in respect of the crime of aggression

The Assembly of States Parties,

Recalling paragraph 2 of article 5 of the Rome Statute,

Recalling also paragraph 7 of resolution F, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998,

Desirous of continuing and completing the work on the crime of aggression,

1. *Takes note with appreciation* of the report of the Preparatory Commission for the International Criminal Court on the crime of aggression;¹

2. *Decides* to establish a special working group on the crime of aggression, open on an equal footing to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of elaborating proposals for a provision on aggression in accordance with paragraph 2 of article 5 of the Statute and paragraph 7 of resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998;

3. *Decides also* that the special working group shall submit such proposals to the Assembly for its consideration at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the Statute in accordance with the relevant provisions of the Statute;

4. *Decides further* that the special working group shall meet during the regular sessions of the Assembly or at any other time that the Assembly deems appropriate and feasible;

5. *Requests* the Bureau of the Assembly to prepare a proposal for the meetings of the special working group and to submit the proposal, with its budgetary implications, at the earliest possible session with a view to holding the first meeting of the special working group in 2003.

¹ PCNICC/2002/2/Add.2.

Resolution ICC-ASP/1/Res.2

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.2

Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court, in particular articles 36, 37, 42 and 43,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Approves the following procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court:

A

Nomination of candidates for judges

1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court.
2. The invitations for nominations of judges will include the text of paragraphs 3 and 8 of article 36 of the Statute and the resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court.
3. States Parties shall nominate their candidates during the nomination period, which shall be fixed by the Bureau of the Assembly of States Parties.
4. Nominations submitted before or after the nomination period shall not be considered.
5. If at the end of the nomination period the number of candidates remains less than the number of seats, the President of the Assembly of States Parties shall extend the nomination period.
6. States Parties to the Statute shall communicate nominations for the election of the judges of the International Criminal Court through the diplomatic channel to the Secretariat of the Assembly of States Parties.
7. Every nomination should be accompanied by a statement:
 - (a) Specifying in the necessary detail how the candidate fulfils each of the requirements in subparagraphs (a), (b) and (c) of paragraph 3 of article 36 of the Statute, in accordance with subparagraph 4 (a) of article 36 of the Statute;
 - (b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of paragraph 5 of article 36 of the Statute;
 - (c) Containing information relating to subparagraphs (i) to (iii) of paragraph 8 (a) of article 36 of the Statute;

(d) Indicating whether the candidate has any expertise under paragraph 8 (b) of article 36 of the Statute;

(e) Indicating under which nationality the candidate is being nominated, for the purposes of paragraph 7 of article 36 of the Statute, where a candidate is a national of two or more States.

8. States that have started the process of ratification, accession or acceptance of the Statute may nominate candidates for the elections of judges to the International Criminal Court. Such nominations shall remain provisional and shall not be included in the list of candidates unless the State concerned has deposited its instrument of ratification, accession or acceptance with the Secretary-General of the United Nations before the end of the nomination period and provided that that State is a party to the Statute in accordance with paragraph 2 of article 126 of the Statute on the date of the election.

9. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for judges, the accompanying statements referred to in article 36 of the Statute and other supporting documentation on the Internet web site of the International Criminal Court in any of the official languages of the Court, as soon as possible after receiving them.

10. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

11. For the purposes of the first election of the judges of the International Criminal Court, the nominations shall open, by a decision of the Bureau, during the first meeting of the Assembly of States Parties and shall close on 30 November 2002.

12. For the purposes of the first election of judges of the International Criminal Court, the President of the Assembly of States Parties shall inform all States Parties through diplomatic channels and through specific information on the web site of the International Criminal Court, if on 1 November 2002:

(a) There are less than 13 candidates appearing on list A, or less than 9 candidates appearing on list B; or

(b) The number of candidates from a regional group is less than one fourth the number of States Parties in that group, with a minimum of 6 candidates from each regional group; if on 1 November 2002 the number of States Parties of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, this minimum shall be 4; or

(c) If the number of candidates from one gender is less than one fourth the total number of candidates, with a minimum of 10 candidates from each gender.

13. For the purposes of the first election of judges of the International Criminal Court, the President of the Assembly of States Parties shall extend the nomination period once until 8 December 2002, if at the end of the nomination period:

(a) There are less than 9 candidates appearing on list A, or less than 5 candidates appearing on list B; or

(b) The number of candidates presented by States Parties members of one regional group is less than 6; if on 30 November 2002 the number of States Parties

of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, this number shall be 4; or

- (c) There are less than 10 candidates from each gender.

B

Election of judges

14. The Bureau of the Assembly of States Parties shall fix the date of the election.

15. The Secretariat of the Assembly of States Parties shall prepare, in accordance with paragraph 5 of article 36 of the Statute, two lists of candidates in English alphabetical order.

16. The election of judges shall be a matter of substance, and subject to the requirements of paragraph 7 (a) of article 112 of the Statute.

17. The persons elected to the Court shall be those candidates who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

18. In the event of a tie for a remaining seat, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes.

19. When two or more candidates of the same nationality obtain the required majority, the candidate who receives the higher number of votes shall be considered elected.

20. The election of judges shall be conducted on the basis of the procedure contained in the resolution on the procedure for the election of the judges for the International Criminal Court, adopted by the Assembly of States Parties on 9 September 2002, as contained in resolution ICC-ASP/1/Res.3.

21. For the purpose of the first election, the President of the Assembly of States Parties shall draw lots, in accordance with paragraph 9 (b) of article 36 of the Statute.

C

Judicial vacancies

22. In the event of a judicial vacancy, the same procedures for the election of judges shall apply *mutatis mutandis*.

23. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel invitations for nominations within one month of the occurrence of a judicial vacancy.

D

Nomination of candidates for the Prosecutor

24. The procedures for the nomination of candidates for judges shall apply *mutatis mutandis* to the nomination of the Prosecutor.

25. Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.

26. Each nomination should be accompanied by a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

E

Election of the Prosecutor

27. The Bureau of the Assembly of States Parties shall fix the date of the election.

28. The Secretariat of the Assembly of States Parties shall prepare a list of candidates in English alphabetical order.

29. Every effort shall be made to elect the Prosecutor by consensus.

30. In the absence of consensus, the Prosecutor shall be elected, in accordance with paragraph 4 of article 42 of the Statute, by secret ballot by an absolute majority of the members of the Assembly of States Parties.

31. In the interest of a timely conclusion of the election, if after three ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume. Upon resumption of balloting, if no candidate obtains in the first ballot the majority required, further ballots shall be taken, which shall be restricted to the candidates obtaining the two largest number of votes.

F

Nomination of the Deputy Prosecutors

32. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled, in accordance with paragraph 4 of article 42 of the Statute.

33. For each nomination, the Prosecutor should include a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

34. In proposing the list of candidates, the Prosecutor should bear in mind, in accordance with paragraph 2 of article 42, that the Prosecutor and the Deputy Prosecutors shall all be of different nationalities. A candidate who could be regarded as a national of more than one State shall be deemed to be a national of the State in which that candidate ordinarily exercises civil and political rights.

35. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for the position of Deputy Prosecutor, the accompanying statements of qualification and other supporting documentation on the Internet web site of the International Criminal Court in any of the official languages of the Court as soon as possible after receiving them.

36. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

G
Election of the Deputy Prosecutors

37. The procedures for the election of the Prosecutor in section E shall apply mutatis mutandis to the election of any Deputy Prosecutor.

38. In case of an election for more than one position for the post of Deputy Prosecutor:

(a) The persons elected to the post of Deputy Prosecutor shall be those candidates who obtain the highest number of votes and an absolute majority of the members of the Assembly of States Parties;

(b) If the number of eligible candidates obtaining the required majority for the elections exceeds the number of positions for Deputy Prosecutor so allocated thereunder, the candidates obtaining the highest number of votes to fill the number of seats so allocated shall be considered elected.

Resolution ICC-ASP/1/Res.3

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.3

Procedure for the election of the judges for the International Criminal Court

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Convinced of the need to fully implement the provisions of article 36 of the Rome Statute,

Approves the following procedure for the election of the judges of the International Criminal Court:

1. The persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. However, no more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected.

2. States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges. They shall take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

3. Each State Party shall vote for a maximum number of 18 candidates, whereby it shall observe the following minimum voting requirements:

(a) Each State Party shall vote for at least 9 candidates from list A and at least 5 candidates from list B;

(b) Each State Party shall vote for at least:

- 3 candidates from the Group of African States,
- 3 candidates from the Group of Asian States,
- 3 candidates from the Group of Eastern European States,
- 3 candidates from the Group of Latin American and Caribbean States, and
- 3 candidates from the Group of Western European and other States.

For the purposes of the first election and on an exceptional basis, if the number of States Parties of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, the minimum voting requirement for that group shall be adjusted by subtracting 1.

If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that region (rounded up to the nearest whole

number, where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that region.

(c) Each State Party shall vote for at least six candidates from each gender. However, if the number of candidates from one gender is 10 or less, the minimum voting requirement for that gender shall be in accordance with the following formula:

<i>Number of candidates</i>	<i>Minimum voting requirement</i>
10	6
9	6
8	5
7	5
6	4
5	3
4	2
3	1
2	1
1	0

4. If, after the first ballot, fewer than 18 candidates are elected, the maximum number of votes by a State Party, which is 18 for the first ballot, shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates.

5. The minimum voting requirements as reflected in paragraph 3 shall apply, *mutatis mutandis*, for subsequent elections.

6. If, after the first ballot, fewer than 18 candidates are elected, the following adjustments shall apply to subsequent ballots:

(a) The minimum voting requirement referred to in lists A and B shall be adjusted, list by list, by subtracting the number of elected candidates;

(b) The minimum regional voting requirement shall be adjusted, group by group, by subtracting the number of elected candidates;

(c) The minimum gender voting requirement shall be adjusted, gender by gender, by subtracting the number of elected candidates.

7. Each minimum voting requirement shall be adjusted until that requirement can no longer be met, whereupon the use of that requirement shall be discontinued. If an adjusted voting requirement can be met individually, but not jointly, the use of all regional and gender voting requirements shall be discontinued. If, following four ballots, 18 judges still have not yet been elected, these minimum voting requirements shall be discontinued.

8. Only ballot papers observing the minimum voting requirements shall be valid. If a State Party fulfils the minimum requirements using less than the maximum number of votes allowed for that ballot, it may abstain in voting for the remaining candidates.

9. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination, adjustment or discontinuation of the minimum voting requirements.

10. Ballot papers shall be organized in a manner facilitating such an election process. The minimum voting requirements, adjusted requirements and the discontinuation of any requirements shall be clearly indicated on the ballot papers. Before the day of the election, the President shall distribute to all States Parties copies of the instructions and samples of the ballot papers. On the day of the election, clear instructions and sufficient time shall be given for each ballot. In each ballot, before the voting process is concluded, the President shall repeat the instructions and the minimum requirements to allow each delegation to verify that its vote meets those requirements.

11. The Assembly of States Parties shall review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary.

Resolution ICC-ASP/1/Res.4

Adopted at the 1st plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.4

Establishment of the Committee on Budget and Finance

The Assembly of States Parties,

Bearing in mind article 112, paragraphs 2 (b) and (d) and 4, of the Rome Statute,

Desiring to provide an appropriate mechanism for the budgetary and financial review and monitoring of the resources of the International Criminal Court, including those of the Assembly,

Decides to establish a Committee on Budget and Finance in accordance with the terms of reference set out in the annex to the present resolution.

Annex

1. The Assembly of States Parties establishes, in accordance with the present resolution, a Committee on Budget and Finance composed of 12 members.

2. The Assembly shall elect the members of the Committee on Budget and Finance, who should not be of the same nationality, on the basis of equitable geographical distribution. The members of the Committee shall be experts of recognized standing and experience in financial matters at the international level from States Parties. They shall carry out their duties for three calendar years and may be re-elected. Of the 12 members who are initially elected, 4 shall be elected for a period of one year, 4 for a period of two years and the remaining 4 for a period of three years.

3. The Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties. In particular, it shall review the proposed programme budget of the Court, prepared by the Registrar, in consultation with the other organs referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall make the relevant recommendations to the Assembly concerning the proposed programme budget. It shall also consider reports of the Auditor concerning the financial operations of the Court and shall transmit them to the Assembly together with any comments which it may deem appropriate.

4. The Committee on Budget and Finance shall meet when required and at least once per year.

5. The Assembly of States Parties shall keep under review the number of members of the Committee on Budget and Finance.

Resolution ICC-ASP/1/Res.5

Adopted at the 1st plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.5

Procedure for the nomination and election of members of the Committee on Budget and Finance

The Assembly of States Parties,

Bearing in mind its draft resolution establishing the Committee on Budget and Finance,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Approves the following procedure for the election of members of the Committee on Budget and Finance:

A

Nomination of candidates

1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of members of the Committee on Budget and Finance. The invitations will include the requirement that the candidates be experts of recognized standing and experience in financial matters at the international level.
2. States Parties shall nominate their candidates during the nomination period, which shall be fixed by the Bureau of the Assembly of States Parties.
3. Nominations submitted before or after the nomination period shall not be considered.
4. If at the end of the nomination period the number of candidates remains less than the number of seats, the President of the Assembly of States Parties shall extend the nomination period.
5. States Parties to the Statute shall communicate nominations for the election of the members of the Committee on Budget and Finance through the diplomatic channel to the Secretariat of the Assembly of States Parties.
6. Each nomination shall specify how the candidate fulfils the requirements of paragraph 2 of the annex to the draft resolution establishing the Committee on Budget and Finance.
7. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

B

Distribution of seats

8. Bearing in mind the requirements of paragraph 2 of the annex to the draft resolution establishing the Committee on Budget and Finance, the distribution of seats for the first election is as follows:

- African States, two seats;
- Asian States, two seats;
- Eastern European States, two seats;
- Group of Latin American and Caribbean States, two seats;
- Western European and Other States, four seats.

C

Election of members of the Committee on Budget and Finance

9. Every effort shall be made to elect the members of the Committee by consensus, on the basis of a recommendation by the Bureau. In making its recommendation, the Bureau shall consult the regional groups. In the absence of agreement within the concerned regional group, the Bureau shall abstain from making a recommendation regarding that group.

10. In the absence of a consensus, the election of members of the Committee on Budget and Finance shall be a matter of substance, and subject to the requirements of article 112, paragraph 7 (a), of the Statute.

11. The election shall be by secret ballot. The requirement may be dispensed with if the number of candidates corresponds to the number of seats to be filled or in respect of candidates endorsed by the respective regional groups, unless a delegation specifically requests a vote on a given election.

12. The persons elected shall be those candidates from each group who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

13. For the purpose of the first election, the President of the Assembly of States Parties shall draw lots to determine, pursuant to paragraph 2 of the annex to the draft resolution on the establishment of the Committee on Budget and Finance, the cadence of term of office for the members elected.

14. The present procedure is without prejudice to the overall composition of the Committee on Budget and Finance, the procedures for future elections or the future distribution of seats.

15. The State Party which submitted the nomination of a member of the Committee on Budget and Finance shall defray the expenses of that member while in performance of Committee duties.

Resolution ICC-ASP/1/Res.6

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.6

Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims

The Assembly of States Parties,

Bearing in mind the provisions of article 79, paragraph 1, of the Rome Statute,

1. *Decides* to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims;

2. *Decides also* that the Trust Fund shall be funded by:

(a) Voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties;

(b) Money and other property collected through fines or forfeiture transferred to the Trust Fund if ordered by the Court pursuant to article 79, paragraph 2, of the Statute;

(c) Resources collected through awards for reparations if ordered by the Court pursuant to rule 98 of the Rules of Procedure and Evidence;

(d) Such resources, other than assessed contributions, as the Assembly of States Parties may decide to allocate to the Trust Fund;

3. *Decides further* to request the Board of Directors established pursuant to the annex to the present resolution to develop suggestions for further criteria for the management of the Trust Fund for consideration and adoption by the Assembly of States Parties as soon as possible;

4. *Adopts* the annex to the present resolution relating to the management of the Trust Fund.

Annex to the resolution

1. The Assembly of States Parties hereby establishes a Board of Directors of the Trust Fund for the benefit of victims provided for in article 79 of the Rome Statute.

2. The Board shall have five members who shall be elected for a term of three years and may be re-elected once. They shall serve in an individual capacity on a pro bono basis.

3. The Assembly shall elect the members of the Board, all of whom shall be of a different nationality, on the basis of equitable geographical distribution and taking into account the need to ensure equitable gender distribution and equitable representation of the principal legal systems of the world. The members of the Board shall be of high moral character, impartiality and integrity and shall have competence in the assistance to victims of serious crimes.

4. The Board shall meet at the seat of the Court at least once a year.

5. The Registrar of the Court shall be responsible for providing such assistance as is necessary for the proper functioning of the Board in carrying out its tasks and shall also participate in meetings of the Board in an advisory capacity.
6. The Assembly of States Parties may, as and when the workload of the Trust Fund increases, consider, on the recommendation of the Board and after consulting with the Registrar as required, the creation of an expanded capacity, including the appointment of an Executive Director, either within or outside the Registry as appropriate, to provide further assistance with the proper and effective functioning of the Trust Fund. The Assembly of States Parties shall, as part of such consideration, after consulting with the Board and the Registrar, consider the payment of expenses of the Trust Fund from the voluntary contributions accruing to it.
7. The Board shall, in accordance with the provisions of the Rome Statute, the Rules of Procedure and Evidence, and the criteria to be determined by the Assembly of States Parties, establish and direct the activities and projects of the Trust Fund and the allocation of the property and money available to it, bearing in mind available resources and subject to the decisions taken by the Court. Before establishing and directing the activities and projects of the Trust Fund, the Board shall consult, as far as possible, victims and their families or their legal representatives and may consult any competent expert or organization.
8. Voluntary contributions from Governments, international organizations, individuals, corporations and other entities shall be submitted to the Board for approval, in accordance with the criteria laid down in paragraphs 9 and 10.
9. The Board shall refuse such voluntary contributions envisaged in paragraph 8 that are not consistent with the goals and activities of the Trust Fund.
10. The Board shall also refuse voluntary contributions whose allocation, as requested by the donor, would result in a manifestly inequitable distribution of available funds and property among the different groups of victims.
11. The Board shall report annually to the Assembly of States Parties on the activities and projects of the Trust Fund and on all offered voluntary contributions, regardless of whether they were accepted or refused.
12. The Committee on Budget and Finance shall examine the budget of the Trust Fund annually and submit to the Assembly of States Parties a report and recommendations for the best possible financial management of the Trust Fund.
13. The Financial Regulations and Rules shall apply *mutatis mutandis* to the administration of the Trust Fund, except as otherwise provided in the present resolution.

Resolution ICC-ASP/1/Res.7

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.7

Procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims

The Assembly of States Parties,

Bearing in mind its resolution establishing a Board of Directors of the Trust Fund for the benefit of victims,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Approves the following procedure for the election of members of the Board of Directors:

A

Nomination of candidates

1. The Secretariat of the Assembly of States Parties shall circulate through diplomatic channels the invitations for nominations of members of the Board of Directors. The invitations shall specify that the candidates be of high moral character, impartiality and integrity and have competence in the assistance to victims of serious crimes.
2. States Parties shall nominate candidates during the nomination period, which shall be fixed by the Bureau of the Assembly of States Parties.
3. Nominations submitted before or after the nomination period shall not be considered.
4. If at the end of the nomination period the number of candidates remains less than the number of seats, the President of the Assembly of States Parties shall extend the nomination period.
5. States Parties to the Statute shall communicate nominations for the election of the members of the Board of Directors through diplomatic channels to the Secretariat of the Assembly of States Parties.
6. Each nomination shall specify how the candidate fulfils the requirements of paragraph 1 above.
7. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it to States Parties through diplomatic channels.

B

Distribution of seats

8. Bearing in mind the requirements of paragraph 3 of the annex to the resolution establishing the Board of Directors, the distribution of seats on the Board shall be as follows:

- African States, one seat;
- Asian States, one seat;
- Eastern European States, one seat;
- Group of Latin American and Caribbean States, one seat;
- Western European and Other States, one seat.

C

Election of members of the Board of Directors

9. The election of members of the Board of Directors shall be a matter of substance, and subject to the provisions of article 112, paragraph 7 (a), of the Statute.

10. Every effort shall be made to elect the members of the Board by consensus. In the absence of consensus, the election shall be by secret ballot. This requirement may be dispensed with if the number of candidates corresponds to the number of seats to be filled, or in respect of candidates endorsed by the respective regional groups, unless a delegation specifically requests a vote on a given election.

11. In the event of a tie for a remaining seat, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes.

12. The persons elected shall be the candidate from each group who obtains the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

Resolution ICC-ASP/1/Res.8

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.8

Provisional arrangements for the secretariat of the Assembly of States Parties

The Assembly of States Parties,

Bearing in mind article 112 of the Rome Statute of the International Criminal Court, regarding the Assembly of States Parties,

Taking note of rules 6, 9, 10, 11, 14, 24, 28, 37, 41, 42, 48, 56, 62 and 95 of its Rules of Procedure, providing also specific functions for the secretariat of the Assembly of States Parties,

Desiring to provide adequate secretariat services for the Assembly of States Parties,

Noting that it is difficult to anticipate at this early stage all the functions of its Secretariat,

Convinced of the need to maintain continuity in the work of the Assembly of States Parties,

1. *Decides* that arrangements shall be made for the Secretariat of the United Nations to continue to carry out the secretariat functions of the Assembly of States Parties on a provisional basis;

2. *Decides also* that such arrangements shall be made on the basis of full reimbursement to the United Nations of such expenses that might accrue to the United Nations;

3. *Decides further* to request the Secretary-General of the United Nations to continue carrying out the secretariat functions of the Assembly of States Parties on a provisional basis and to inform the Assembly of States Parties of the detailed arrangements thereon at its next session.

Resolution ICC-ASP/1/Res.9

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.9

Permanent secretariat of the Assembly of States Parties

The Assembly of States Parties,

Bearing in mind article 112 of the Rome Statute of the International Criminal Court,

Taking note of rule 37 and other relevant provisions of its Rules of Procedure in which specific functions are assigned to its secretariat,

Noting that the necessary arrangements are being made to ensure the provision of secretariat services to the Assembly on a provisional basis,

Desiring to ensure that adequate secretariat services are provided to the Assembly on a permanent basis upon the conclusion of a provisional period,

1. *Requests* the Bureau, with the required assistance, to study the question of the permanent secretariat of the Assembly and to submit related proposals, including an assessment of the budgetary implications for the 2004 budget, to the Assembly so that it may take a decision thereon at its regular session in the second half of 2003;

2. *Also requests* the Bureau to examine in that regard the modalities for the progressive replacement of the provisional secretariat by the permanent secretariat in an efficient and expeditious manner, in consultation with the Secretariat of the United Nations.

Resolution ICC-ASP/1/Res.10

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Res.10

Selection of the staff of the International Criminal Court

The Assembly of States Parties,

Bearing in mind articles 44, paragraph 2, and 36, paragraph 8, of the Rome Statute of the International Criminal Court, whereby in the employment of the staff of the International Criminal Court the highest standards of efficiency, competency and integrity shall be ensured and account shall be taken of the need for the representation of the principal legal systems of the world, equitable geographic representation and a fair representation of men and women,

Bearing in mind also article 50 of the Statute, according to which the official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish and the working languages shall be English and French,

Noting that the Staff Regulations provided for in article 44, paragraph 3, of the Statute, embodying these principles cannot be enacted by the Assembly of States Parties before the second half of 2003,

Desiring to set interim guidelines for the application of these principles during the transitional period of the establishment of the Court,

Decides that the guidelines contained in the annex to the present resolution shall be applied in the selection and appointment of the staff of the Court until the Staff Regulations are adopted in accordance with the Statute.

Annex to the resolution

1. **General principle.** The requirements of article 36, paragraph 8, article 44, paragraph 2, and article 50, paragraphs 1 and 2, of the Statute shall apply to the recruitment of the entire staff of the Court, without any distinction as to category. However, with regard to geographical representation, the system described in paragraph 4 below shall apply only to staff in the Professional category (level P-1 and above).

2. **Notifications.** All vacancies to be filled, and requirements to be met by candidates to such vacancies, shall be notified to all States Parties and to those States which, having engaged in the process of ratification of or accession to the Statute, have expressed an interest in receiving such notifications. All such vacancies shall also be posted on the web site of the Court.

Where appropriate in order to achieve a better balance in gender or geographical representation, such notifications may include preferential consideration of candidates of given nationalities or gender.

3. **Competency.** As a general rule, the competency of candidates shall be determined through an initial evaluation of their background and experience. This should, wherever possible and appropriate, include examples of the candidate's capacity of analysis and drafting ability in one or both of the working languages of the Court. This evaluation may, where appropriate, be of a competitive nature. The

second stage of the evaluation shall consist of an oral interview in one or both of the working languages.

In the case of candidates from similar institutions, the initial evaluation may consist of an assessment of the candidate's experience and record in the releasing organization. This would be followed by an oral interview in one or both of the working languages.

In both cases, knowledge of at least another official language shall be considered as an additional asset.

4. **Geographical representation.** For established (i.e., budgeted) posts, and in the case of appointments of at least 12 months' duration, the selection of staff in the Professional category shall be guided in principle by a system of desirable ranges based on that of the United Nations.² Nationals from States Parties and from those States having engaged in the process of ratification of or accession to the Statute should have adequate representation on the staff of the Court; however, applications from nationals from non-States Parties may also be considered.

5. **Selection Committee.** The Director of Common Services shall establish a Selection Committee of not more than three individuals to provide advice on the selection of staff in accordance with these guidelines. The officer in charge of human resources shall be the convenor of the Committee.

² See A/56/512 and General Assembly resolution 55/258.

Resolution ICC-ASP/1/Res.11

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.11

Relevant criteria for voluntary contributions to the International Criminal Court

The Assembly of States Parties,

Bearing in mind the seventh preambular paragraph and article 116 of the Rome Statute, and taking note of regulation 7.2 of the Financial Regulations of the International Criminal Court,

1. *Requests* Governments, international organizations, individuals, corporations and other entities making voluntary contributions to declare that such contributions are not intended to affect the independence of the Court;

2. *Decides* that the Registrar shall assure himself/herself that any offered contributions:

- (a) Will not affect the independence of the Court;
- (b) Will fulfil any criteria the Assembly of States Parties may establish;

3. *Decides also* that the Registrar shall report to the Assembly of States Parties all offered voluntary contributions, regardless of whether they were accepted or refused.

Resolution ICC-ASP/1/Res.12

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.12

Budget appropriations for the first financial period and financing of appropriations for the first financial period

A

Budget appropriations for the first financial period

The Assembly of States Parties

1. *Resolves* that, as an exception to regulation 2.1 of the Financial Regulations of the Court, the first financial period shall extend from 1 September 2002 to 31 December 2003;

2. *Hereby approves* appropriations totalling 30,893,500 euros for the following purposes:

<i>Section</i>	<i>Euros</i>
1. The Presidency, the Divisions and the Chambers	2 718 400
2. The Prosecutor	3 961 200
3. The Registry	2 901 900
4. Common Services Division	13 407 300
5. Unforeseen and extraordinary expenses	1 052 000
6. Meetings of the Assembly of States Parties, of the Bureau, of the Committee on Budget and Finance, the Inaugural Meeting and the Board of Directors of the Victims Trust Fund	6 852 700
Total, expenditure sections	30 893 500

B

Financing of appropriations for the first financial period

The Assembly of States Parties

Resolves that for the first financial period,

1. Budget appropriations consisting of 30,893,500 euros, approved for the first financial period by the Assembly under paragraph 1 of resolution A above, shall be financed in accordance with regulations 5.1 and 5.2 of the Financial Regulations of the Court, as follows:

(a) 7,723,375 euros, being one quarter of the assessment on States, to be assessed in accordance with its resolution ICC-ASP/1/Res.14 of 3 September 2002 on the scale of assessments for the year 2002;

(b) 23,170,125 euros, being three quarters of the assessment on States, to be assessed in accordance with its resolution ICC-ASP/1/Res.14 of 3 September 2002 on the scale of assessments for the year 2003;

2. In accordance with financial regulation 5.6, the assessment for the year 2002 is due thirty days after receipt of the assessment letter, and the assessment for 2003 is due on 1 January 2003. States may elect to pay their entire assessed contribution for 2003 or a portion thereof earlier than 1 January 2003;

3. In accordance with the provisions of resolution ICC-ASP/1/Res.14 of 3 September 2002, States Parties may set off against their assessment their contribution to the Trust Fund;

4. Notwithstanding the provisions of financial regulation 4.8, and as a temporary measure, the Registrar is authorized to make transfers between appropriation sections 1 to 4 and section 6 of the budget up to an amount not exceeding 10 per cent of the amount appropriated for the section from which the transfer is made, in consultation with the Prosecutor, as appropriate. All such transfers shall be reported to the next session of the Assembly of States Parties, through the Committee on Budget and Finance.

Resolution ICC-ASP/1/Res.13

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.13

Working Capital Fund for the first financial period

The Assembly of States Parties

Resolves that:

(a) The Working Capital Fund shall be established for the first financial period of the Court in the amount of 1,915,700 euros;

(b) States shall make advances to the Working Capital Fund, in accordance with the scale adopted by the Assembly of States Parties in its resolution ICC-ASP/1/Res.14 of 3 September 2002 on the scale of assessments for the apportionment of the expenses of the International Criminal Court, and as an exception to regulation 6.2 of the Financial Regulations of the Court, as applicable to the year 2002;

(c) In accordance with financial regulation 5.8, payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.

Resolution ICC-ASP/1/Res.14

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.14

Scales of assessments for the apportionment of the expenses of the International Criminal Court

The Assembly of States Parties

Decides that, for the first financial period of the International Criminal Court, it will adopt the respective scales of assessments of the United Nations applicable for the period 2002-2003, with adjustments to take into account the difference in membership between the United Nations and the Assembly of States Parties to the Rome Statute, in accordance with the principles upon which the scale of the United Nations is based.

Resolution ICC-ASP/1/Res.15

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Res.15

Crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court

The Assembly of States Parties,

Bearing in mind article 112, paragraph 2 (a) and (d), and article 115 (a) of the Rome Statute,

Noting that a United Nations trust fund was established to cover the expenses which would accrue to the United Nations as a result of convening the first meeting of the Assembly of States Parties,

Decides to request the Secretary-General of the United Nations to provide information to the Assembly of States Parties concerning all contributions made to the Trust Fund,

Decides also that contributions made by States to the Trust Fund should serve as a credit against future assessments against the budget of the Court.

Decisions

Decision ICC-ASP/1/Decision 1

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Decision 1 Provision of funds for the Court

The Assembly of States Parties

Recalling paragraph 4 of the document entitled “Establishment of the International Criminal Court: note by the Secretariat concerning the responsibilities entrusted to the Secretary-General under draft resolution A/C.6/56/L.21”, in particular, the reference to assistance in determining the scale of assessments of the first-year budget of the Court,

Recognizing the necessity to transmit to States their assessments as soon as possible following the adoption of the budget by the Assembly of States Parties,

Requests the Secretary-General of the United Nations, as an exception to regulation 5.5 of the Financial Regulations of the Court, to inform States Parties of their commitments in respect of their assessed contributions for the first financial period of the Court and advances to the Working Capital Fund.

Decision ICC-ASP/1/Decision 2

Adopted at the 2nd plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Decision 2

Interim arrangements for the exercise of authority pending the assumption of office by the Registrar

The Assembly of States Parties,

Bearing in mind that the Registrar of the Court will not assume his or her functions and responsibilities until mid-2003,

Decides that the Director of Common Services shall, on an interim basis, perform the functions and responsibilities of the Registrar as set out in the Financial Regulations and Rules, except for the authority to make transfers between appropriation sections as set out in the applicable resolution, and those derived from articles 44, paragraph 1, 44, paragraph 2, and 112, paragraph 5, of the Statute, until such time as the Registrar assumes his or her functions and responsibilities.

Decision ICC-ASP/1/Decision 3

Adopted at the 3rd plenary meeting, on 9 September 2002, by consensus

ICC-ASP/1/Decision 3 Participation of the International Criminal Court in the United Nations Joint Staff Pension Fund

The Assembly of States Parties,

Recalling paragraphs 25 and 39 of the outcome of the intersessional meeting of experts held at The Hague from 11 to 15 March 2002³ and the discussions in the Working Group on the first-year budget during the ninth session of the Preparatory Commission for the International Criminal Court concerning the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund,

Noting that article 3, paragraph (b), of the Regulations of the United Nations Joint Staff Pension Fund provides that membership in the Fund shall be open to the specialized agencies referred to in Article 57, paragraph 2, of the Charter of the United Nations and to any other international, intergovernmental organization which participates in the common system of salaries, allowances and other conditions of service of the United Nations and the specialized agencies,

Bearing in mind article 4 of the Rome Statute of the International Criminal Court,

Also bearing in mind that admission to membership of the United Nations Joint Staff Pension Fund is by decision of the General Assembly of the United Nations and requires the acceptance by the organization concerned of the Regulations of the Fund and the conclusion of an agreement with the United Nations Joint Staff Pension Board (the supervisory organ for the Fund) as to the conditions which shall govern its admission,

Recognizing the importance of enabling the Court to recruit and retain the best-qualified personnel,

1. *Recommends* that the International Criminal Court participate in the United Nations Joint Staff Pension Fund in accordance with the Regulations of the Fund and accept, as appropriate, the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of such regulations;

2. *Requests* the Registrar⁴ to take the necessary steps in order for the International Criminal Court to apply for membership in the United Nations Joint Staff Pension Fund and to conclude with the United Nations Joint Staff Pension Board an agreement as referred to in article 3, paragraph (c), of the Regulations of the Fund.

³ PCNICC/2002/INF/2.

⁴ If necessary, prior to the Registrar taking up post, the Director of Common Services.

Decision ICC-ASP/1/Decision 4

Adopted at the 1st plenary meeting, on 3 September 2002, by consensus

ICC-ASP/1/Decision 4 Seating arrangements for States Parties

The Assembly of States Parties recommends that the President of the Assembly of States Parties draw lots for the purpose of choosing the State Party to occupy the first desk on the Assembly floor from which the alphabetical seating order will begin. After a given State Party's name is drawn, the delegation of that State Party will sit at the first desk to the right of the President and the other States Parties will follow in English alphabetical order. For the purposes of the first meeting of the Assembly, the Secretary-General of the United Nations will draw the lots.

Annex I

Report of the Working Group of the Whole

Introduction

1. The Working Group of the Whole of the Assembly of States Parties to the Rome Statute of the International Criminal Court, established at the 1st meeting of the Assembly, on 3 September 2002, held six meetings, from 3 to 6 September. The President of the Assembly, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), served as Chairman of the Working Group of the Whole.
2. The Deputy Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Ms. Mahnoush H. Arsanjani, acted as Secretary of the Working Group of the Whole. The Codification Division provided the substantive servicing for the Working Group.
3. At the 1st meeting of the Assembly, on 3 September 2002, the following items were assigned for consideration of the Working Group of the Whole: Rules of Procedure and Evidence, Elements of Crimes, an agreement on the privileges and immunities of the Court, a relationship agreement between the Court and the United Nations, financial regulations and rules, basic principles governing a headquarters agreement to be negotiated between the Court and the host country, consideration of remaining draft resolutions or decisions in the report of the Preparatory Commission, decisions concerning the next meeting, including the dates and venue, as well as other matters. At its 2nd meeting, on 3 September 2002, the Assembly also assigned to the Working Group the consideration of the procedure for the nomination and election of judges to the Court.
4. The Working Group held formal meetings and informal consultations. At its 1st meeting, on 3 September 2002, it established informal consultations on the procedure for the nomination and election of judges, under the chairmanship of Mr. Don MacKay (New Zealand).

Consideration of the report of the Preparatory Commission

5. At its 2nd meeting, on 4 September 2002, the Working Group of the Whole adopted by consensus the finalized draft text of the Rules of Procedure and Evidence (PCNICC/2000/1/Add.1).
6. At the same meeting, the delegation of Spain made a statement after the adoption of the Rules of Procedure and Evidence, drawing the attention of the Assembly to the last paragraph of the explanatory note to the Rules of Procedure and Evidence and in that connection expressing the hope that the Assembly would take up the matter raised therein in due course.
7. Also at its 2nd meeting, the Working Group of the Whole adopted by consensus the finalized draft text of the Elements of Crimes (PCNICC/2000/1/Add.2).
8. At the same meeting, the Working Group of the Whole adopted by consensus the Agreement on the Privileges and Immunities of the Court (PCNICC/2001/1/Add.3 and PCNICC/2002/2, para. 10), amended as follows:

The title of the Agreement shall read:

“Agreement on the Privileges and Immunities of the International Criminal Court”

A new article 23 shall be inserted, reading:

“Article 23

“Nationals and permanent residents

“At the time of signature, ratification, acceptance, approval or accession, any State may declare that:

(a) Without prejudice to paragraph 6 of article 15 and paragraph 1 (d) of article 16, a person referred to in articles 15, 16, 18, 19 and 21 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court:

- (i) Immunity from personal arrest and detention;
- (ii) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by that person in the performance of his or her functions for the Court or in the course of his or her appearance or testimony, which immunity shall continue to be accorded even after the person has ceased to exercise his or her functions for the Court or his or her appearance or testimony before it;
- (iii) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions for the Court or his or her appearance or testimony before it;
- (iv) For the purposes of their communications with the Court and for a person referred to in article 19, with his or her counsel in connection with his or her testimony, the right to receive and send papers in whatever form;

(b) A person referred to in articles 20 and 22 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for his or her appearance before the Court:

- (i) Immunity from personal arrest and detention;
- (ii) Immunity from legal process in respect of words spoken or written and all acts performed by that person in the course of his or her appearance before the Court, which immunity shall continue to be accorded even after his or her appearance before the Court.”

Paragraph 1 of article 33 shall read:

“The present Agreement shall be open for signature by all States, from 10 September 2002 until 30 June 2004, at United Nations Headquarters in New York.”

Articles 23 to 38 shall be renumbered accordingly.

9. At its 2nd meeting, the Working Group of the Whole also adopted by consensus a Relationship Agreement between the Court and the United Nations (PCNICC/2001/1/Add.1).

10. At the same meeting, the delegation of Spain made a statement after the adoption of the Relationship Agreement between the Court and the United Nations. It expressed its understanding that the Assembly of States Parties would consider in due time the possibility to request an advisory opinion from the International Court of Justice within the context of the dispute settlement provision of article 119, paragraph 2, of the Rome Statute. The delegation of Canada made a statement recalling the need for considering the question of registration of frequencies by the Court with the International Telecommunication Union.

11. At its 3rd meeting, on 4 September 2002, the Working Group of the Whole adopted by consensus the Financial Regulations and Rules (PCNICC/2001/1/Add.2 and Corr.1 and PCNICC/2002/1/Add.2).

12. At the same meeting, the Working Group of the Whole adopted by consensus the basic principles governing a headquarters agreement to be negotiated between the Court and the host country (PCNICC/2002/1/Add.1).

13. At its 4th meeting, on 5 September 2002, the Working Group of the Whole adopted by consensus the draft resolution on the continuity of work in respect of the crime of aggression, contained in PCNICC/2002/2/Add.2.

14. At the same meeting, the Working Group of the Whole adopted by consensus the following resolutions and decisions:

(a) Draft resolution concerning the provisional arrangements for the secretariat of the Assembly of States Parties (PCNICC/2002/1, annex I);

(b) Draft resolution relating to the permanent secretariat of the Assembly of States Parties (PCNICC/2002/2, annex X);

(c) Draft resolution relating to the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims (PCNICC/2002/2, annex XIII);

(d) Draft resolution relating to the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims (PCNICC/2002/2, annex XIV);

(e) Draft decision relating to the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund (PCNICC/2002/2, annex VIII);

(f) Draft resolution relating to selection of the staff of the International Criminal Court (PCNICC/2002/2, annex IX).

15. At the same meeting, the Working Group decided to transmit to the International Criminal Court the report of the intersessional meeting of experts held at The Hague from 11 to 15 March 2002 (PCNICC/2002/INF/2), containing summaries of staff regulations and rules relevant for provisional application by the Court at the initial stages of its establishment. The Working Group also decided to await further developments on the question of the establishment of an international criminal bar (PCNICC/2002/2, para. 14) before taking further action and to consider this issue at a future session of the Assembly.

16. At its 5th meeting, on 5 September 2002, the Working Group of the Whole adopted by consensus the draft resolution relating to the procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court (PCNICC/2002/2, annex XII), amended as follows:

Paragraph 12, subparagraphs (b) and (c), should read:

“(b) ... with a minimum of 6 candidates from each regional group; if on 1 November 2002 the number of States Parties of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, this minimum shall be 4; or

“(c) ... with a minimum of 10 candidates from each gender.”

Paragraph 13, subparagraphs (b) and (c), should read:

“(b) The number of candidates presented by States Parties members of one regional group is less than 6; if on 30 November 2002 the number of States Parties of any given regional group is less than three eighteenths of the total number of States Parties to the Rome Statute at that moment, this number shall be 4; or

“(c) There are less than 10 candidates from each gender.”

Insert the following as new paragraph 19 bis:

“19 bis. The election of judges shall be conducted on the basis of the procedure contained in the resolution on the procedure for the election of the judges of the International Criminal Court, adopted by the Assembly of States Parties on 9 September 2002, as contained in resolution ICC-ASP/1/Res.3.”

17. At the same meeting, the Working Group of the Whole adopted the following draft resolution:

“Draft resolution on the procedure for the election of the judges for the International Criminal Court

“The Assembly of States Parties,

“Bearing in mind the provisions of the Rome Statute of the International Criminal Court,

“Mindful of the Rules of Procedure of the Assembly of States Parties,

“Convinced of the need to fully implement the provisions of article 36 of the Rome Statute,

“Approves the following procedure for the election of the judges of the International Criminal Court:

“1. The persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. However, no more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected.

“2. States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world, equitable geographical representation and a fair representation of female and

male judges. They shall take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

“3. Each State Party shall vote for a maximum number of 18 candidates, whereby it shall observe the following minimum voting requirements:

(a) Each State Party shall vote for at least 9 candidates from list A and at least 5 candidates from list B;

(b) Each State Party shall vote for at least:

- 3 candidates from the Group of African States,
- 3 candidates from the Group of Asian States,
- 3 candidates from the Group of Eastern European States,
- 3 candidates from the Group of Latin American and Caribbean States, and
- 3 candidates from the Group of Western European and other States.

“For the purposes of the first election and on an exceptional basis, if the number of States Parties of any given regional group is less than three eightieths of the total number of States Parties to the Rome Statute at that moment, the minimum voting requirement for that group shall be adjusted by subtracting 1.

“If the number of candidates from a regional group is not at least double the respective minimum voting requirement, the minimum voting requirement shall be half the number of candidates from that region (rounded up to the nearest whole number, where applicable). If there is only one candidate from a regional group, there shall be no minimum voting requirement for that region.

(c) Each State Party shall vote for at least six candidates from each gender. However, if the number of candidates from one gender is 10 or less, the minimum voting requirement for that gender shall be in accordance with the following formula:

<i>Number of candidates</i>	<i>Minimum voting requirement</i>
10	6
9	6
8	5
7	5
6	4
5	3
4	2
3	1
2	1
1	0

“4. If, after the first ballot, fewer than 18 candidates are elected, the maximum number of votes by a State Party, which is 18 for the first ballot, shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates.

“5. The minimum voting requirements as reflected in paragraph 3 shall apply, *mutatis mutandis*, for subsequent elections.

“6. If, after the first ballot, fewer than 18 candidates are elected, the following adjustments shall apply to subsequent ballots:

(a) The minimum voting requirement referred to in lists A and B shall be adjusted, list by list, by subtracting the number of elected candidates;

(b) The minimum regional voting requirement shall be adjusted, group by group, by subtracting the number of elected candidates;

(c) The minimum gender voting requirement shall be adjusted, gender by gender, by subtracting the number of elected candidates.

“7. Each minimum voting requirement shall be adjusted until that requirement can no longer be met, whereupon the use of that requirement shall be discontinued. If an adjusted voting requirement can be met individually, but not jointly, the use of all regional and gender voting requirements shall be discontinued. If, following four ballots, 18 judges still have not yet been elected, these minimum voting requirements shall be discontinued.

“8. Only ballot papers observing the minimum voting requirements shall be valid. If a State Party fulfils the minimum requirements using less than the maximum number of votes allowed for that ballot, it may abstain in voting for the remaining candidates.

“9. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination, adjustment or discontinuation of the minimum voting requirements.

“10. Ballot papers shall be organized in a manner facilitating such an election process. The minimum voting requirements, adjusted requirements and the discontinuation of any requirements shall be clearly indicated on the ballot papers. Before the day of the election, the President shall distribute to all States Parties copies of the instructions and samples of the ballot papers. On the day of the election, clear instructions and sufficient time shall be given for each ballot. In each ballot, before the voting process is concluded, the President shall repeat the instructions and the minimum requirements to allow each delegation to verify that its vote meets those requirements.

“11. The Assembly of States Parties shall review the procedure for the election of judges on the occasion of future elections with a view to making any improvements as may be necessary.”

18. Before the adoption of the resolution, the delegation of Nigeria made a statement expressing the concern that the complicated nature of the voting mechanism might not guarantee the election of a minimum of three judges in the Court for the Group of African States. The delegation of France observed that the future application of the provisions of paragraph 5 of the resolution would have to be reconsidered, particularly taking into consideration the fact that at the first

subsequent election only six judges would be elected by the Assembly. The delegation of Spain noted that the draft resolution only contained a very general reference to the criterion relating to the representation of the principal legal systems of the world, which was the first criterion under the provisions of paragraph 8 (a) of article 36 of the Statute. Accordingly, it was suggested that the instructions referred to in paragraph 10 of the draft resolution should highlight that criterion.

Annex II

Report of the Credentials Committee

Chairman: Mr. Dejan Šahović (Yugoslavia)

1. At its 1st plenary meeting, on 3 September 2002, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties appointed a Credentials Committee for its first session, consisting of the following States Parties: Benin, Fiji, France, Honduras, Ireland, Paraguay, Slovenia, Uganda and Yugoslavia.
2. The Credentials Committee held its meeting on 6 September 2002.
3. Mr. Dejan Šahović (Yugoslavia) was unanimously elected Chairman.
4. The Committee had before it a memorandum by the Secretary-General, dated 4 September 2002 concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the first session of the Assembly of States Parties. The Under-Secretary-General for Legal Affairs, the Legal Counsel, made a statement updating the information contained therein.
5. As noted in paragraph 1 of the memorandum and the statement relating thereto, formal credentials of representatives to the first session of the Assembly of States Parties, in the form required by rule 24 of the Rules of Procedure, had been received as of the time of the meeting of the Credentials Committee from the following 42 States Parties: Antigua and Barbuda, Australia, Austria, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Costa Rica, Croatia, Cyprus, Denmark, Ecuador, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Jordan, Liechtenstein, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Panama, Portugal, Romania, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela and Yugoslavia.
6. As noted in paragraph 2 of the memorandum and the statement relating thereto, information concerning the appointment of the representatives of States Parties to the first session of the Assembly of States Parties had been communicated to the Secretary-General, as of the time of the meeting of the Credentials Committee, by means of a cable or a telefax from the head of State or Government or the Minister for Foreign Affairs, or by means of a letter or note verbale from the permanent mission concerned, by the following 33 States Parties: Andorra, Argentina, Belize, Benin, Bosnia and Herzegovina, Cambodia, Canada, Central African Republic, Democratic Republic of the Congo, Fiji, Gabon, Gambia, Ghana, Greece, Honduras, Italy, Latvia, Lesotho, Luxembourg, Mali, Marshall Islands, Mauritius, Namibia, Nauru, Niger, Paraguay, Peru, Poland, San Marino, Sierra Leone, Switzerland, Tajikistan and the former Yugoslav Republic of Macedonia.
7. As noted in paragraph 3 of the memorandum and the statement relating thereto, only Dominica had not, as of the time of the meeting of the Credentials Committee, communicated to the Secretary-General any information regarding its representatives to the first session of the Assembly of States Parties.
8. The Chairman recommended that the Committee accept the credentials of the representatives of all States Parties mentioned in the Secretary-General's

memorandum and the statement relating thereto, on the understanding that formal credentials for representatives of the States Parties referred to in paragraphs 6 and 7 of the present report would be communicated to the Secretary-General as soon as possible.

9. On the proposal of the Chairman, the Committee adopted the following draft resolution:

“The Credentials Committee,

“Having examined the credentials of the representatives to the first session of the Assembly of States Parties to the Rome Statute of the International Criminal Court referred to in paragraphs 5, 6 and 7 of the present report;

“Accepts the credentials of the representatives of the States Parties concerned.”

10. The draft resolution proposed by the Chairman was adopted without a vote.

11. The Chairman then proposed that the Committee should recommend to the Assembly of States Parties the adoption of a draft resolution (see para. 13 below). The proposal was adopted without a vote.

12. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

Recommendation of the Credentials Committee

13. The Credentials Committee recommends to the Assembly of States Parties the adoption of the following draft resolution:

“Credentials of representatives to the First Session of the Assembly of States Parties

“The Assembly of States Parties,

“Having considered the report of the Credentials Committee and the recommendation contained therein,

“Approves the report of the Credentials Committee.”

Annex III

List of speakers during general statements

- H.E. Ms. Lene Espersen, Minister of Justice of Denmark
- H.E. J. G. de Hoop Scheffer, Minister for Foreign Affairs of the Netherlands
- H.E. Mr. Enrico La Loggia, Minister for Regional Affairs of Italy
- H.E. Mr. Bill Graham, Minister for Foreign Affairs of Canada
- H.E. Mr. Juergen Chrobog, State Secretary of the Federal Foreign Office of Germany
- H.E. Ms. Ingrid Anticevicmarinovic, Minister of Justice, Administration and Local Self-Government of Croatia
- H.E. Mr. Ngarikutuke Tjiriange, Minister of Justice of Namibia
- H.E. Mr. Fausto Alvarado Doderó, Minister of Justice of Peru
- H.E. Mr. Sevdalin Bozhikov, Deputy Minister of Justice of Bulgaria
- H.E. Mr. Vida Helgesen, State Secretary of Norway
- H.E. Mr. Atoki Ileka, Permanent Representative of the Democratic Republic of the Congo to the United Nations
- H.E. Ms. Glenda Morean, Attorney-General of Trinidad and Tobago
- H.E. Mr. Arthur C. I. Mbanefo, Permanent Representative of Nigeria to the United Nations
- H.E. Mr. Felipe Paolillo, Permanent Representative of Uruguay to the United Nations
- H.E. Mr. Antonio Cascais, Ambassador, Ministry of Foreign Affairs of Portugal
- H.E. Mr. Victor Rodríguez-Cedeño, Permanent Representative of Venezuela to the United Nations, Geneva
- H.E. Mr. Lazaros Savvides, Permanent Secretary, Ministry of Justice and Public Order of Cyprus
- H.E. Mr. Jargalsaikhany Enkhsaikhan, Permanent Representative of Mongolia to the United Nations
- H.E. Mr. Denis Dangué Rewaka, Permanent Representative of Gabon to the United Nations
- H.E. Mr. Amraiya Naidu, Permanent Representative of Fiji to the United Nations
- H.E. Mr. Jan Devadder, Representative of Belgium
- Ms. Juliet Semambo Kalema, Representative of Uganda
- Mr. Sivu Maqungo, Representative of South Africa
- H.E. Mr. Arnoldo M. Listre, Permanent Representative of Argentina to the United Nations

H.E. Mr. Gelson Fonseca, Jr., Permanent Representative of Brazil to the United Nations

H.E. Mr. Lebohang K. Moleko, Permanent Representative of Lesotho to the United Nations

H.E. Mr. Richard Ryan, Permanent Representative of Ireland to the United Nations

Mrs. Martha López de Mitre, Representative of Bolivia

H.E. Mr. Luis Gallegos Chiriboga, Permanent Representative of Ecuador to the United Nations

H.E. Mr. Don MacKay, Permanent Representative of New Zealand to the United Nations

H.E. Mr. Papa Louis Fall, Permanent Representative of Senegal to the United Nations

H.E. Mr. Mirza Kusljagic, Permanent Representative of Bosnia and Herzegovina to the United Nations

H.E. Mr. Srgjan Kerim, Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations

H.E. Mr. Christian Wenaweser, Deputy Permanent Representative of Liechtenstein to the United Nations

H.E. Mr. Bruno Stagno, Permanent Representative of Costa Rica to the United Nations

H.E. Mr. Juan Antonio Yáñez-Barnuevo, Ambassador, Ministry of Foreign Affairs of Spain

H.E. Mr. Erkki Kourula, Ambassador, Director General of Legal Affairs, Ministry of Foreign Affairs of Finland

H.E. Mr. Sun Suon, Deputy Permanent Representative of Cambodia to the United Nations

H.E. Mr. Eke Ahmed Halloway, Attorney General and Minister of Justice of Sierra Leone

H.E. Mr. Renaud Muselier, Minister of State for Foreign Affairs of France

H.E. Ms. Lena Hjelm-Wallén, Deputy Prime Minister of Sweden

H.E. Mr. Joseph Deiss, Foreign Minister of Switzerland

H.E. Mr. Adolfo Aguilar Zinser, Permanent Representative of Mexico to the United Nations

H.E. Mr. K. G. Gevorgian, Head of delegation of the Russian Federation

Mr. Tomoaki Ishigaki, Representative of Japan

Mr. Volodymyr G. Krokhmal, Deputy Director-General for Legal Affairs, Ministry of Foreign Affairs of Ukraine

Ms. Brenda Heather-Latu, Attorney-General of Samoa

Mr. Joao Camara, Representative of Timor-Leste

Ms. Somaia S. Barghouti, Representative of the Permanent Observer Mission of Palestine to the United Nations

Mr. Michael Bothe, International Humanitarian Fact-Finding Commission

Mr. William Pace, Coalition for the International Criminal Court

Mr. Sidiki Kaba, Fédération Internationale des Ligues des Droits de l'Homme (FIDH)

Mr. Irwin Cotler, Parliamentarians for Global Action

Ms. Emma Bonino, No Peace Without Justice

Mr. Kenneth Roth, Human Rights Watch

Mr. Christopher Hall, Amnesty International

Ms. Lucy Webster, World Federalist Movement

Ms. Nainav, Women's Caucus for Gender Justice

Annex IV

List of documents

Plenary

ICC-ASP/1/1	Provisional agenda
ICC-ASP/1/2	Report of the Credentials Committee
ICC-ASP/1/L.1	Election of judges Proposal submitted by France
ICC-ASP/1/L.2	Election of judges Proposal submitted by Brazil, Chile, Costa Rica, Ecuador, Mexico, Nauru, Nigeria, Mongolia, Paraguay, Peru, Republic of Korea, Trinidad and Tobago and Uruguay
ICC-ASP/1/L.3	Draft report of the Assembly of States Parties to the Rome Statute of the International Criminal Court
ICC-ASP/1/INF/1	List of delegations

Working Group of the Whole

ICC-ASP/1/C.1/L.1	Proposal submitted by Mexico in relation to a draft agreement on the privileges and immunities of the International Criminal Court
ICC-ASP/1/C.1/L.2	Report of the Working Group of the Whole
