



PHILJA



JANUARY–JUNE 2013 VOLUME 15, ISSUE NO. 39

JUDICIAL JOURNAL

INTERNATIONAL CRIMINAL COURT





PHILJA



JANUARY–JUNE 2013 VOLUME 15, ISSUE NO. 39

JUDICIAL JOURNAL

INTERNATIONAL CRIMINAL COURT



The PHILJA Judicial Journal

The *PHILJA Judicial Journal* is published twice a year by the Research, Publications and Linkages Office of the Philippine Judicial Academy (PHILJA). The Journal features articles, lectures, research outputs and other materials of interest to members of the Judiciary, particularly judges, as well as law students and practitioners. The views expressed by the authors do not necessarily reflect the views of either the Academy or its editorial board.

Editorial and general offices are located at PHILJA, 3rd Floor, Centennial Building, Supreme Court, Padre Faura St., Manila.

Tel. No.: 552-9524

Telefax No.: 552-9628

Email: research_philja@yahoo.com; philja@sc.judiciary.gov.ph

CONTRIBUTIONS. The PHILJA Judicial Journal invites contributions. Please include author's name and biographical information. The editorial board reserves the right to edit the materials submitted for publication.

Copyright © 2013 by The PHILJA Judicial Journal. All rights reserved.

For more information, please visit the PHILJA website at <http://philja.judiciary.gov.ph>.

ISSN 2244-5854

SUPREME COURT OF THE PHILIPPINES

CHIEF JUSTICE

Hon. **MARIA LOURDES P. A. SERENO**

ASSOCIATE JUSTICES

Hon. **ANTONIO T. CARPIO**

Hon. **PRESBITERO J. VELASCO, Jr.**

Hon. **TERESITA J. LEONARDO-DE CASTRO**

Hon. **ARTURO D. BRION**

Hon. **DIOSDADO M. PERALTA**

Hon. **LUCAS P. BERSAMIN**

Hon. **MARIANO C. DEL CASTILLO**

Hon. **ROBERTO A. ABAD**

Hon. **MARTIN S. VILLARAMA, Jr.**

Hon. **JOSE P. PEREZ**

Hon. **JOSE C. MENDOZA**

Hon. **BIENVENIDO L. REYES**

Hon. **ESTELA M. PERLAS-BERNABE**

Hon. **MARVIC MARIO VICTOR F. LEONEN**

COURT ADMINISTRATOR

Hon. **JOSE MIDAS P. MARQUEZ**

DEPUTY COURT ADMINISTRATORS

Hon. **RAUL B. VILLANUEVA**

Hon. **JENNY LIND A. DELORINO**

Hon. **THELMA C. BAHIA**

CLERK OF COURT

Hon. **ENRIQUETA ESGUERRA VIDAL**

ASSISTANT COURT ADMINISTRATOR

Hon. **THEODORE O. TE**

ASSISTANT CLERK OF COURT

Atty. **FELIPA B. ANAMA**

DIVISION CLERKS OF COURT

Atty. **EDGAR O. ARICHETA**

Atty. **MA. LOURDES C. PERFECTO**

Atty. **LUCITA A. SORIANO**

PHILIPPINE JUDICIAL ACADEMY

Board of Trustees

Hon. **MARIA LOURDES P. A. SERENO**
Chief Justice
Chair

Hon. **ANTONIO T. CARPIO**
Senior Associate Justice, Supreme Court
Vice Chair

Members

Hon. **ADOLFO S. AZCUNA**
Chancellor

Hon. **ANDRES B. REYES, Jr.**
Presiding Justice, Court of Appeals

Hon. **ROMAN G. DEL ROSARIO**
Presiding Justice, Court of Tax Appeals

Hon. **LUIS E. REYES**
Presiding Judge, MTC, Guiguinto, Bulacan

Hon. **JOSE MIDAS P. MARQUEZ**
Court Administrator

Hon. **FRANCISCO H. VILLARUZ, Jr.**
Presiding Justice, Sandiganbayan

Hon. **FRANKLIN J. DEMONTEVERDE**
President, Philippine Judges Association

Dean **ERNESTO P. MACEDA, Jr.**
President, Philippine Association of Law Schools

Hon. **AMEURFINA A. MELENCIO HERRERA**
Founding Chancellor Emeritus

Executive Officials

Hon. **ADOLFO S. AZCUNA**
Chancellor

Hon. **MARINA L. BUZON**
Executive Secretary

Hon. **JUSTO P. TORRES, Jr.**
Vice Chancellor

Chiefs of Office

Hon. **JUSTO P. TORRES, Jr.**
Finance Office

Hon. **DELILAH VIDALLON-MAGTOLIS**
Academic Affairs Office

Dean **SEDFREY M. CANDELARIA**
Research, Publications and Linkages Office

Hon. **MARINA L. BUZON**
Philippine Mediation Center Office

Hon. **THELMA A. PONFERRADA**
Administrative Office

Chairpersons, Curricular Departments

Dean **PACIFICO A. AGABIN**
Constitutional Law

Hon. **MAGDANGAL M. DE LEON**
Remedial Law

Hon. **JOSE MIDAS P. MARQUEZ**
Court Management

Hon. **JOSE C. VITUG**
Commercial Law

Fr. **RANHILIO C. AQUINO**
Jurisprudence and Legal Philosophy

Dean **SEDFREY M. CANDELARIA**
Special Areas of Concern

Prof. **ALFREDO F. TADIAR**
Alternative Dispute Resolution

Prof. **RUBEN F. BALANE**
Civil Law

Hon. **EDILBERTO G. SANDOVAL**
Criminal Law

Hon. **HILARION L. AQUINO**
Ethics and Judicial Conduct

Dean **MERLIN M. MAGALLONA**
International and Human Rights Law

Prof. **MYRNA S. FELICIANO**
Legal Method and Research

Atty. **EMMANUEL L. CAPARAS**
Court Technology

Hon. **HAKIM S. ABDULWAHID**
Shari'a and Islamic Jurisprudence

Justice Adolfo S. Azcuna
Chancellor

Dean Sedfrey M. Candelaria
Editor in Chief

Editorial and Research Staff

Atty. Ma. Melissa R. Dimson-Bautista
Atty. Ronald Paz Caraig
Ms. Armida M. Salazar

Ms. Jocelyn D. Bondoc
Mr. Joseph Arvin S. Cruz
Ms. Judith B. del Rosario
Ms. Christine A. Ferrer
Ms. Joanne Narciso-Medina
Ms. Charmaine S. Nicolas
Ms. Sarah Jane S. Salazar
Atty. Jeniffer P. Sison

Circulation and Support Staff
Mr. Romeo A. Arcullo
Mr. Michael Angelo P. Laude
Mr. Lope R. Palermo
Mr. Daniel S. Talusig

Printing Services
Mr. Ponciano M. Santiago and Printing Staff

Contents

OFFICIALS OF THE SUPREME COURT OF THE PHILIPPINES	iv
OFFICIALS OF THE PHILIPPINE JUDICIAL ACADEMY	v
I. DISCUSSIONS	
THE INTERNATIONAL CRIMINAL COURT: AN OVERVIEW <i>Franklin M. Ebdalin</i>	1
REPUBLIC ACT NO. 9851: BREAKTHROUGH LAW FOR IHL ENFORCEMENT IN THE PHILIPPINES <i>Judge Soliman M. Santos, Jr.</i>	15
II. REFERENCES	
RESOLUTION No. 57 <i>Resolution Concurring in the Ratification of the Rome Statute of the International Criminal Court</i>	32
ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT	34
RULES OF PROCEDURE AND EVIDENCE	117
ELEMENTS OF CRIMES	194
AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT	230
NEGOTIATED RELATIONSHIP AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE UNITED NATIONS	246
HEADQUARTERS AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE HOST STATE	253
REPUBLIC ACT NO. 9851 <i>An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes</i>	281

THE INTERNATIONAL CRIMINAL COURT: AN OVERVIEW*

*Franklin M. Ebdalin***

INTRODUCTION

July 17, 1998 marked an unprecedented event in diplomatic history and international law, as representatives of 120 States who had gathered in Rome voted to overwhelmingly adopt the Statute for the Establishment of the International Criminal Court.¹ The Statute provides for a Court like no other. Unlike the International Court of Justice,² the International Criminal Court (ICC) has jurisdiction to try individuals for the most serious crimes of international concern. And unlike the Yugoslavian and Rwandan War Crimes Tribunals, the Court is permanent in character and is not limited by geographical boundaries.³ It is, after all, a court that was intended to punish and deter the perpetrators of the most heinous and egregious crimes.

This essay will present a short historical background on the establishment of the ICC and an overview of the provisions of the Statute itself. It will then proceed to discuss the major issues that confronted the Rome Diplomatic Conference, and the Philippine positions and interventions on these issues.

* This article was published in the 46 *Ateneo Law Journal* 318 (2001).

** LL.B. '67 (Class Salutatorian), Ateneo de Manila University School of Law. The author is currently the Undersecretary for Administration, Department of Foreign Affairs. Among the many positions he has held in the Department were: Assistant Secretary for Legal Affairs (1996–2000); Philippine Ambassador to Hungary, the Czech Republic, Poland, and Slovakia (1993–1996); Deputy Chief of Mission, Philippine Embassy in Washington, D.C. (1989–1993). The author was the Alternate Head of the Philippine Delegation to the Diplomatic Conference on the International Criminal Court held in Rome, Italy, on June 15–17, 1998, which adopted the Statute of the International Criminal Court.

¹ Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998) [hereinafter ICC Statute].

² Only states may be a party to proceedings before the International Court of Justice. See Statute of the International Court of Justice, Art. 34(1).

³ Compare Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Art. VIII, U.N. Doc. S/25704, at 36 (1993) [hereinafter Yugoslavian Statute] and Statute of the International Tribunal of Rwanda, Art. VIII, U.N. Doc. S/RES/955, (1994) [hereinafter Rwandan Statute], with ICC Statute.

I. THE HISTORICAL IMPETUS

What came to be known as the Rome Diplomatic Conference officially took only five weeks of deliberations and negotiations to conclude, but it was the culmination of a long process that had begun in 1989. To a large extent, its origins extended even as far back as 1946.

The long road towards the genesis of the ICC began in 1946 with the realization that the important principles and precedents created by the Nuremberg Charter and Judgment of the International Military Tribunal at Nuremberg should serve as the basis for further codification of international law.⁴ Thus, when the United Nations General Assembly (UNGA) passed Resolution 260⁵ on December 9, 1948 adopting, the Convention on the Prevention and Punishment of Genocide, it invited the International Law Commission (ILC) “to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide x x x.”

For this purpose, the General Assembly established a Committee to draft proposals relating to the establishment of such a court. The Committee came out with a draft statute in 1951 and a revised draft statute in 1953, but consideration of the draft statute was postponed due to the failure of States to agree on the definition of “aggression.” States argued that it was useless to consider establishing an International Criminal Court and an International Criminal Code if the principal international crime, aggression, could not be defined.⁶ With the advent of the Cold War, discussions on the matter came to a standstill and the idea was conveniently shelved.

The proposal to codify rules on international criminal law and responsibility, and to establish an international judicial organ to deal with such cases, was periodically considered by the General Assembly, but was met with half-hearted enthusiasm. Aside from the contentious issue of aggression, States were nervous about a mechanism that would investigate and indict top leaders. Others worried that their soldiers on peacekeeping missions could be arrested for violations of international humanitarian law. Finally, in December 1989, H.E. Arthur N. Robinson, now President of Trinidad and Tobago, proposed the possibility of establishing an International Criminal Court to prosecute drug traffickers. The proposal did not immediately gain any support, but it contributed to the growing acceptance of the idea of an International Criminal Court, and that of a universal instrument and institution that would prevent impunity and bring to justice violators of international humanitarian law.

With the rising incidence of crimes that undermined international peace and stability, the idea began to receive strong support from the global community. Thus, in 1992, the UN

⁴ G.A. Res. 95. U.N. Doc. A/236, at 2–3 (1946).

⁵ 78 U.N.T.S. 277 (1951) cited in UN, Resolution 260, 1948 – On Genocide, available at <http://www.us-israel.org/jsource/UN/genocide_convention.html> (last visited October 29, 2001).

⁶ Benjamin B. Ferencz, *An International Criminal Code and Court: Where They Stand and Where They’re Going*, 30 Colum J. Transnat’l L. 375, 377 (1992).

General Assembly directed the ILC to prepare a draft statute for an ICC. A year later, the conflict in the former Yugoslavia erupted, and war crimes in the guise of “ethnic cleansing” once again commanded international attention. This led to the establishment by the UN Security Council of the ad hoc tribunal for the former Yugoslavia,⁷ followed in 1994 by the establishment of a similar tribunal for Rwanda.⁸ The constitution of these ad hoc tribunals was brought about by the realization that there was no mechanism to punish perpetrators of heinous crimes when national systems failed or were unwilling to take action against them.

By 1996, the ILC was able to come out with a final text of the Draft Code. A Preparatory Committee was constituted, which produced a consolidated text for the consideration of the Rome Diplomatic Conference. History was then about to take place.

II. THE STATUTE IN BRIEF

More than a historical document, the Statute represents a monument to the treaty-making process. It is comprised of 13 Parts and 129 Articles, covering, inter alia, jurisdiction; general principles of criminal law; the composition and administration of the court; investigation and prosecution; international cooperation and judicial assistance; and enforcement.

A. Establishment of the Court

The Court is established as a permanent institution that has the power to exercise jurisdiction over persons for the most serious crimes of international concern. It is emphasized that the Court shall be complementary to national criminal jurisdictions.⁹ The relationship of the Court with the United Nations is to be determined through an Agreement to be concluded by the Assembly of State Parties to the Statute and thereafter to be concluded by the President of the Court on its behalf.¹⁰

The seat of the Court is to be established at The Hague in Netherlands.¹¹

B. Jurisdiction, Admissibility, and Applicable Law

Article 5 of the Statute lays down the pivotal rule that the jurisdiction of the Court shall be limited “to the most serious crimes of concern to the international community as a whole,” these crimes being genocide, crimes against humanity, war crimes and the crime of aggression. Although the Statute elaborates on the first three crimes, it stipulates that the Court shall exercise jurisdiction over the crime of aggression once a provision defining

⁷ U.N.S.C. Resolution 827, 3217th mtg., U.N. Doc. S/RES/827 (1993).

⁸ U.N.S.C. Resolution 955, 3453rd mtg., U.N. Doc. S/RES/955 (1994).

⁹ ICC Statute, *supra* note 1, Art. 1.

¹⁰ *Id.* Art. 2.

¹¹ *Id.* Art. 3.

it and setting out the conditions under which the Court shall exercise jurisdiction over such crime is adopted by the State Parties to the Statute.¹²

The Court acquires jurisdiction only over crimes committed after the entry into force of the Statute.¹³ The Court's exercise of its jurisdiction is triggered by a referral to the Prosecutor by a State Party, a referral to the Prosecutor by the Security Council acting under Chapter VII (Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression) of the UN Charter, or an investigation initiated *motu proprio* by the Prosecutor.¹⁴

The Statute also adopts the principle of *ne bis in idem*, which holds that a person may not be tried and punished for the same crime twice.¹⁵

In the exercise of its jurisdiction, the Statute mandates the Court to apply:

- a. In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
- b. In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- c. Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime.¹⁶

The Court may also apply principles and rules of law as interpreted in its previous decisions.

C. General Principles of Criminal Law

The Statute adheres to the principles of *nullum crimen sine lege*¹⁷ (an action may be punished only if it had been made punishable prior to its commission); *nullum poena sine lege*¹⁸ (the crimes within the jurisdiction of the Court should be defined with clarity and precision); and non-retroactivity.¹⁹

¹² *Id.* Art. 5

¹³ *Id.* Art. 11.

¹⁴ *Id.* Art. 13.

¹⁵ *Id.* Art. 20.

¹⁶ *Id.* Art. 21.

¹⁷ *Id.* Art. 22.

¹⁸ *Id.* Art. 23.

¹⁹ *Id.* Art. 24.

Accordingly, under Article 23 of the Statute, a person convicted by the Court may be punished only in accordance with the Statute. More importantly, the Statute emphasizes that the Court shall have jurisdiction over natural persons, and holds that a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for such crime.²⁰ In relation to this, it may be noted that the Statute applies to all persons, without distinctions based on official capacity, i.e., the Head of State or Government, a member of Government or Parliament, or an elected representative or a government official.²¹ Likewise, emphasis is placed on the responsibility of military commanders and other superiors.²² Finally, the Statute adopts the principle of *mens rea* in determining liability for a crime, i.e., the person shall be criminally liable only if the material elements of the crime are committed with intent and knowledge.

D. Composition and Administration of the Court

The Court is to be composed of the Presidency; an Appeals Division, a Trial Division and a Pre-Trial Division; the Office of the Prosecutor; and the Registry.²³ The Presidency is to be responsible for the proper administration of the Court,²⁴ while the Registry is to be responsible for the non-judicial aspects of the administration and servicing of the Court.²⁵

The members of the Court who are nominated and elected by the State Parties shall have established competence in criminal law and procedure as well as in relevant areas of international law such as international humanitarian law and the law of human rights.²⁶

The Office of the Prosecutor, on the other hand, is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court for purposes of examination, and for conducting investigations and prosecutions before the Court. The Office of the Prosecutor is to act independently as a separate organ of the Court.²⁷

²⁰ *Id.* Art. 25(1) and (2)

²¹ *Id.* Art. 27(1)

²² *See id.* Art. 28 (On the Responsibility of Commanders and other Superiors).

²³ *Id.* Art. 34.

²⁴ *Id.* Art. 38(3).

²⁵ *Id.* Art. 43(1).

²⁶ *Id.* Art. 36(3)(b).

²⁷ *Id.* Art. 42(1).

E. Investigation and Prosecution

An investigation is initiated by the Prosecutor after prior evaluation of the information made available to him or her.²⁸ The Pre-Trial Chamber is to oversee prosecutorial investigations and ensure that the defendant's rights are protected.²⁹

After the investigation, the Pre-Trial Chamber issues a warrant of arrest of a person if there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.³⁰

F. Trial

The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.³¹ The onus is on the prosecutor to prove the guilt of the accused.

Trial in absentia is not allowed. It shall be in the presence of the accused.³² Victims may participate in or be represented at trials.³³ Reparation to victims, including restitution, compensation, and rehabilitation, is provided for.³⁴

G. Penalties

The applicable penalties include imprisonment (which may not exceed a maximum of 30 years), life imprisonment, and fines and forfeiture of the proceeds, property, and assets derived from a crime.³⁵ The death penalty is excluded.

This does not affect the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties so prescribed by the Statute.³⁶

H. Appeal and Revision

Both the Prosecutor and the convicted person may appeal a final decision on the grounds of procedural error, error of fact, or error of law.³⁷

²⁸ *Id.* Art. 53(1).

²⁹ For the functions and powers of the Pre-Trial Chamber, *see Id.* Art. 57.

³⁰ *Id.* Art. 58(1).

³¹ *Id.* Art. 64(2).

³² *Id.* Art. 67(1).

³³ *Id.* Art. 75(3).

³⁴ *Id.* Art. 75(2).

³⁵ *Id.* Art. 77.

³⁶ *Id.* Art. 80.

³⁷ *Id.* Art. 81(1).

I. International Cooperation and Judicial Assistance

The Court's viability depends largely on the cooperation of national jurisdictions. Accordingly, all State Parties have the general obligation to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.³⁸ In accordance with the rule of specialty, a person surrendered to the Court under the Statute may be tried or punished only for the conduct or course of conduct that forms the basis of the crimes for which that person has been surrendered.³⁹ Other forms of cooperation provided for include ensuring the availability of procedures under national law,⁴⁰ provisional arrests⁴¹ and surrender of persons to the Court.⁴² Pursuant to this, the Court may request the arrest and surrender of the accused by the State where he may be found.

J. Enforcement

State (i.e., Netherlands) Sentences of imprisonment shall be served in States which have indicated their willingness to accept sentenced persons.⁴³ If no State is designated by the Court, then the sentence shall be served in a prison facility made available by the Host (i.e., Netherlands).⁴⁴

K. Assembly of States Parties

The Assembly of States Parties shall consider and adopt, as appropriate, recommendations of the Preparatory Commission, provide management oversight, consider and decide the budget of the court and consider any question relating to non-cooperation by States Parties.⁴⁵

Each State is to have one representative in the Assembly,⁴⁶ and shall be entitled to one vote.⁴⁷

³⁸ *Id.* Art. 86.

³⁹ *Id.* Art. 101(1).

⁴⁰ *Id.* Art. 88.

⁴¹ *Id.* Art. 92.

⁴² *Id.* Art. 89.

⁴³ *Id.* Art. 103(1).

⁴⁴ *Id.* Art. 103(4).

⁴⁵ *Id.* Art. 112(2).

⁴⁶ *Id.* Art. 112(1).

⁴⁷ *Id.* Art. 112(7).

L. Financial Regulations

The funds of the Court and of the Assembly of States Parties are to be obtained from contributions made by State Parties and funds provided by the United Nations. The latter, in particular, shall be used in relation to the expenses incurred due to referrals by the Security Council.⁴⁸ Another source of funds are the voluntary contributions of Governments, international organizations, individuals, corporations and other entities.⁴⁹

M. Final Clauses

The Statute enters into force after ratification by 60 States.⁵⁰ Seven years thereafter, a Review Conference shall be convened to consider amendments to the Statute. Such review may include the list of crimes as specified in Article 5.⁵¹

Amendments to the Statute may be proposed only after the expiry of seven years from its entry into force.⁵² Notably, a State may declare that for a period of seven years after the entry into force of the Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to war crimes when a crime is alleged to have been committed by its national or on its own territory.⁵³

Reservations to the Statute are not permitted.⁵⁴

III. THE PHILIPPINE POSITION

The Philippine position during the Rome Conference was for the establishment of an effective and efficient International Criminal Court, one that was not to be established simply for the sake of being established:

[i]f it were set-up on the basis of the least common denominator which renders it ineffective in addressing the problem of impunity of the perpetrators of atrocious violations of the laws of humanity, then perhaps the world would be better off without it. For such a flawed institution will not serve justice and consequently, cannot help maintain international peace and security x x x.⁵⁵

⁴⁸ *Id.* Art. 115.

⁴⁹ *Id.* Art. 116.

⁵⁰ *Id.* Art. 126(1).

⁵¹ *Id.* Art. 123(1).

⁵² *Id.* Art. 121(1).

⁵³ *Id.* Art. 124.

⁵⁴ *Id.* Art. 120.

⁵⁵ Lauro L. Baja, Jr., *Towards an Effective International Criminal Court*, Address before the ICC Diplomatic Conference in Italy (June 16, 1998).

In order for the Court to be effective and efficient, the Philippines submitted that the ICC should be constituted as an independent judicial organ by means of a multilateral treaty (not through an amendment of the UN Charter), with its own international legal personality, and as a permanent institution that could act when required to consider a case submitted to it.

IV. SALIENT ISSUES

During its nascent stages, the drafting of the Statute was faced with several critical issues, which included the crimes covered by the Court, universal jurisdiction, the principle of complementarity, access, and the role of the Security Council vis-a-vis the Court.

A. Crimes Covered

In the initial discussions of the Preparatory Committee, there was no agreement as to which crimes should be brought within the jurisdiction of the Court. However, there was a broad consensus that the court's jurisdiction should at the very least include the "core" crimes that are of concern to the international community as a whole: genocide, crimes against humanity, and war crimes.⁵⁶

The Philippine delegation, while supporting this view, strongly advocated the inclusion of such crimes as drug trafficking, terrorism, and crimes committed against UN personnel. The debates over the inclusion of these crimes lasted until the last day of the Conference. In the end, the jurisdiction of the Court was limited to the "core" crimes and to aggression. Notably, the crime of aggression remains undefined and will not come within the jurisdiction of the Court until a definition is adopted. It may also be noted that Article 121 on amendments, and Article 123 on the provision for a Review Conference, opens the door to the possibility of eventually including these crimes within the jurisdiction of the Court.

Of the core crimes, the least contentious item was the crime of genocide. The States were virtually unanimous in agreement that this crime should be included within the Court's jurisdiction. The only issue in relation to this was whether the definition of "genocide" as provided for in the 1948 Genocide Convention⁵⁷ formulation should be adopted, or whether the concept should be broadened. In the end, the Statute adopted the 1948 formulation.

⁵⁶ See Agreement for the Establishment of An International Military Tribunal, Art. 6, 5 U.N.T.S. 251, reprinted in 39 Am. J. Intl. L. 257 (1945).

⁵⁷ Convention on the Prevention and the Punishment of the Crime of Genocide, January 12, 1951, 78 U.N.T.S. 277. Article 2 of the Convention defines genocide as "any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: killing members of the group causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group." Cf. ICC Statute, Art. 6.

In relation to crimes against humanity, the Statute adopted a definition with a high threshold, one more restrictive than the prevailing international law standards. The definition under Article 7 states that crimes against humanity are acts⁵⁸ committed: first, as part of a widespread or systematic attack; second, against any civilian population; and third, with knowledge of the attack. The second and third elements are not required under prevailing international law standards.

The Court has jurisdiction over war crimes when they are committed “as part of a plan or policy or as part of a large-scale commission of such crimes.”⁵⁹ War crimes include grave breaches of the 1949 Geneva Conventions,⁶⁰ other serious violations of the laws and customs applicable in international armed conflict and armed conflicts not of an international character. It is generally accepted in international law that breaches of the laws of war may be punished by any State which acquires custody of persons suspected of responsibility.⁶¹

What is notable about the definition is the inclusion of crimes committed in non-international armed conflict. However, “non-international armed conflict” does not cover situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.⁶² In addition, only acts which take place in a State where a protracted armed conflict between governmental authorities and organized armed groups exists, or between such groups, are considered war crimes. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities, has also been included as a war crime.

⁵⁸ These acts are: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law: torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court: enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Cf. ICC Statute, Art. 7.

⁵⁹ *Id.* Art. 8.

⁶⁰ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 U.N.T.S. 31; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, August 12, 1949, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949, 75 U.N.T.S. 135; and Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 U.N.T.S. 287.

⁶¹ Ian Brownlie, *Principles of Public International Law* 305 (4th ed. 1990).

⁶² Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 1(2), 16 I.L.M. 1442 (1977).

Aggression, long considered as the main obstacle to the creation of an international criminal court because of the inability to define it with specificity, still remains undefined under the Statute.⁶³ As a writer once said, “[t]he most important thing about defining aggression is to define it.”⁶⁴ Attempts have been made over the years to do exactly that.

The 29th UNGA approved Resolution 3314 on December 14, 1974,⁶⁵ which sought to define aggression. Aggression was defined as “the use of force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations x x x.”⁶⁶ This definition, however, did not receive broad support in view of its lack of clarity. It did not categorically ascertain the need for the use of armed force. Neither did it address acts of indirect aggression such as the fomenting of civil unrest in another country.

For its part, the Philippines pushed for the inclusion of aggression under the jurisdiction of the Court. The Philippines submitted that aggression exists as a crime under customary international law which must necessarily be addressed because it is in fact the root cause for the commission of other serious crimes, as it clearly triggers wars and conflicts. Accordingly, those who wrongfully waged war should be held personally responsible for the aggression.

Considering the lack of material time and the divergent views of the State Parties,⁶⁷ it was decided that aggression be included under the jurisdiction of the Court, but only after the Parties define the crime.

B. The Principle of Complementarity

The concept of “complementarity” underpins the entire structure of the ICC.⁶⁸ Complementarity essentially means that the Court will “complement,” not replace, national courts.⁶⁹ This principle is encapsulated in the 10th preambulatory paragraph of the Statute (“Emphasizing that the International Criminal Court established under this

⁶³ See Preparatory Commission for International Criminal Court is Told Definition of “Crime of Aggression” Still Under Review, U.N. Press Release, L/2967 (2000).

⁶⁴ Ferencz, *supra* note 6, at 375.

⁶⁵ G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 2I, reprinted in 69 Am. J. Int’l L. 480 (1975).

⁶⁶ *Id.* Art. 1.

⁶⁷ See Delegates Differ on Whether Statute of Proposed International Criminal Court should Cover Crime of Aggression. U.N. Press Release, GA/L/3047 (1997).

⁶⁸ Lawyers Committee for Human Rights, Establishing an International Criminal Court: Major Unresolved Issues in the Draft Statute, 1 International Criminal Court Briefing Series 13 (No. 1, 1998).

⁶⁹ This is contrary to the identical provision of the Rwandan and Yugoslavian International Tribunal Statutes, which state that “The International Tribunal [for the former Yugoslavia/Rwanda] shall have primacy over national courts.” Yugoslavian Statute, Art. IX(2); Rwandan Statute, Art. IX(2).

Statute shall be complementary to national criminal jurisdictions⁷⁰) and is reiterated in Article I, on the establishment of the Court, and in Article 17 on the admissibility of a case. Accordingly, the ICC is not intended to operate as a supranational body that will supplant national judicial systems. Rather, it is aimed at strengthening such systems, and it can only step in when national authorities are unwilling or unable to act. It is thus, a default Court that will act only in the absence of any action by national judicial systems.

The Statute provides for standards to determine whether a State is unwilling or unable to genuinely carry out the investigation or prosecution of a case. Under Article 17:

2. In order to determine unwillingness in a particular case, the Court shall consider whether one or more of the following exists, as applicable:
 - (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in Article 5;
 - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, under the circumstances, is inconsistent with an intent to bring the person concerned to justice.
3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

It is precisely this principle of complementarity which ensures that the Court will not be in derogation of the sovereignty of States. Although it is traditionally accepted that sovereignty is absolute in the domestic level, it is also agreed that this sovereignty is subject to limitations voluntarily agreed upon by States as members of the family of nations. In the leading case of *Tañada v. Angara*,⁷¹ the Supreme Court had the occasion to expound on this theory of “auto-limitation”:

By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by, or derived from a convention or pact. After all, states, like individuals, live with co-equals, and in pursuit of mutually covenanted objectives and benefits, thus they also commonly agree to limit the exercise of their otherwise absolute rights.⁷²

⁷⁰ ICC Statute, *supra* note 1, at Preamble.

⁷¹ 272 SCRA 18 (1997).

⁷² *Id.* at 66.

C. The Role of the Security Council

The role of the UN Security Council as against the jurisdiction of the ICC was another contentious issue that the Rome Conference had to face. Too great a role for the Council could result in the Court being seen as dominated by the major powers, thus lacking the attributes of independence, universality, and fairness. On the other hand, it was feared that the ICC may usurp the Council's role in matters relating to international peace and security, and the exercise of its Chapter VII powers under the UN Charter. This view was espoused by the United States, which lobbied for a provision stating that the Prosecutor would not be able to initiate investigations without the prior approval of the Council.⁷³ Other States however opined that such a provision would politicize the Court and protect the Council's Member States from the reaches of the Court.

The Statute, as finalized, incorporated the attempt of the State Parties to reconcile and maintain a balance between these views. As such, the Security Council is afforded a special role within the ICC. On one hand, it is given the power to refer situations to the Prosecutor for investigation.⁷⁴ This power, however, is not reserved exclusively for the Council—as was preferred by the States who were also members of the Council—but is shared by States. In addition, the Prosecutor may, on his own, investigate a situation. The Council is also given the power to delay an investigation or prosecution by the Court.⁷⁵ It can do so by requesting the ICC, through a resolution adopted under its Chapter VII powers, that an investigation be deferred. The deferment is for a maximum period of 12 months, which may be extended.

Although the Statute was overwhelmingly passed, with only seven states voting against it and 21 countries abstaining, those who voted against its adoption were countries such as the United States,⁷⁶ China, India, and Israel whose non-participation cast serious doubts on the viability of the ICC. To date, the United States and Israel have signed the Statute, but it is uncertain that they will ratify the same. As of October 12, 2001, 139 countries have signed the Statute, and 43 countries have ratified it.⁷⁷ The international community is still anticipating the Court's final birth, which will come only after 60 States ratify the Treaty.

⁷³ See United States Declares at Conference that United Nations Security Council Must Play Important Role in the Proposed International Criminal Court, UN Press Release, L/2879 (1998).

⁷⁴ ICC Statute, *supra* note 1, Art. 13.

⁷⁵ *Id.* Art. 16.

⁷⁶ See David Schiffer, Ambassador-At-Large for War Crimes Issues, United States Department of State Statement on Creating an International Criminal Court (Washington, August 31, 1998), at <<http://www.mtholyoke.edu/acad/intrel/scheffer.htm>> (last visited October 27, 2001).

⁷⁷ NGO Coalition for an International Criminal Court, Rome Statute Signature and Ratification Chart, at <<http://www.igc.apc/icc/rome/html/ratify.html>> (last visited October 27, 2001).

In the meantime, the Preparatory Commission continues to thresh out still unresolved issues such as the definition of aggression and the relationship of the Court with the UN. What the final outcome will be, and when the Court will finally come into being, remains an uncertainty. What is certain is that the advent of the ICC has already profoundly shaped international humanitarian and criminal law.

REPUBLIC ACT NO. 9851: BREAKTHROUGH LAW FOR IHL ENFORCEMENT IN THE PHILIPPINES

*Judge Soliman M. Santos, Jr.**

Republic Act No. 9851, the new “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity” signed into law on December 11, 2009, is a breakthrough law for the enforcement of international humanitarian law (IHL) as well as human rights in the Philippines. For the first time here, a national statute defines and penalizes “the most serious crimes of concern to the international community as a whole”—namely, war crimes, genocide, and crimes against humanity. This could be *even more significant than RA No. 9745, the “Anti-Torture Act of 2009”* signed into law about a month earlier on November 10, 2009. To the credit of the 14th Congress and of the Arroyo administration, they have delivered this significant one-two punch for human rights and IHL, and possibly a few more good Pacquiao-like punch combinations, during the “last round” of this Congress and administration before bowing out in mid-2010. But credit is also due to the various human rights and IHL advocates in civil society and in government who have worked long and hard for these and related legislation as well as administrative measures.

This new law will enable the Philippines to prosecute the international crimes itself, contribute to an effective international criminal justice regime, strengthen its national criminal justice system, and generally bring its national law into conformity with international standards as well as up-to-date with important developments in international law. It can no longer be said that the Philippines is “unable” to prosecute war crimes, genocide, and crimes against humanity for the simple reason that there is no Philippine law defining and penalizing these serious international crimes as such. Such inability could even justify the “complementary” (i.e., secondary) jurisdiction of the International Criminal Court (ICC) over such crimes. It has been said that “Criminal legislation is the most appropriate and effective means of dealing with all serious violations of IHL.” But, as we shall explain further below, RA No. 9851 is a **special law, not an amendment to the Revised Penal Code**, because this law is **not simply criminal law but also international criminal law, international humanitarian law and international human rights law.** *In*

* Judge Soliman M. Santos, Jr., a member of the Integrated Bar of the Philippines (IBP) Camarines Sur Chapter, has been a long-time Bicolano/Filipino human rights and IHL lawyer, legislative consultant and legal scholar who prepared all three drafts (2002, 2003 and 2006) of the “IHL Bill” which became RA No. 9851. He was a co-founder/convenor of the Civil Society Initiatives for International Humanitarian Law (CSI-IHL); and long-time Coordinator, now Chairperson, of the Philippine Campaign to Ban Landmines (PCBL). He is presently a Judge of the 9th Municipal Circuit Trial Court (MCTC) of Nabua-Bato, Camarines Sur.

practical terms, something like the “Maguindanao Massacre” can now be prosecuted as a crime against humanity rather than as a common crime of multiple murder.

Republic Act No. 9851 also comes at a time when it can provide some teeth to a new effort for a *civilian protection component* in the context of the peace process, particularly between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF). As a law which enforces both human rights and IHL, it can also co-relate on a parallel basis with the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) between the GRP and the National Democratic Front of the Philippines (NDFP), with more reason as there has been no standing ceasefire between them and as their Joint Monitoring Committee (JMC) mechanism has been perennially stalemated. The fact that RA No. 9851 is heavily informed by human rights and IHL, even if it is still a national law, could make those major rebel groups look at or treat it somewhat differently from the usual repressive laws and decrees of the state that they rail against. On another level, RA No. 9851 might also contribute to the proper balance between peace and justice, which should not be an either-or proposition.

I. BRIEF HISTORICAL BACKGROUND AND ISSUES**

Republic Act No. 9851 is a legislative initiative of the Philippine National Red Cross (PNRC) IHL National Committee in the year 2002. After a broad survey of the national legal landscape on IHL, the Committee assessed that while a good number of significant post-World War II IHL treaties had been ratified by the Philippines, not much national implementing legislation had been passed. The ratified IHL treaties included, among others, the 1949 Geneva Conventions, its 1977 Additional Protocol II, and the 1980 Weapons Convention. On the other hand, the national implementing legislation consisted basically of just RA No. 95 (the PNRC Charter) and RA No. 7610 (Special Child Protection Act), specifically Article X on Children in Situations of Armed Conflict.

The PNRC IHL National Committee, backed by the ICRC, created a task force to draft a major legislative measure to implement IHL. It eventually produced a draft bill entitled “Philippine Statute on Crimes Against International Humanitarian Law” on the occasion of IHL Day (August 12) 2002. This is what has since been popularly referred to as the “IHL Bill.” It was then heavily modeled on the 1998 Rome Statute of the International Criminal Court, which was at that point and still is considered the highest development of international criminal law. The Rome Statute conveniently embodied the latest international legal definition of war crimes, the proper concern of IHL, as well as the definitions of genocide and crimes against humanity, which were all treated as “the most serious crimes of concern to the international community as a whole.” So, the “IHL Bill” had “buy one, take

** Taken from *Backgrounder on Republic Act No. 9851: The “IHL Law”* delivered at the Public Briefing on Republic Act No. 9851: *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* held on March 3, 2010, at the Benito Soliven Room, First Floor, Malcolm Hall, University of the Philippines College of Law, Diliman, Quezon City.

two,” feature. Strictly speaking, genocide and crimes against humanity are seen mainly in the prism of human rights rather than IHL in international law. These two crimes have no nexus with armed conflict, unlike war crimes which have that context. Crimes against humanity and genocide, as with terrorism, can be committed during peace time, as well as during war time.

The “IHL Bill” was actually first filed as House Bill No. 6298 by Representative J. Apolinario L. Lozada, Jr. on IHL Day (August 12) 2003 during the 12th Congress. The subsequent authors of several draft versions were Representatives Roseller L. Barinaga, Jr., Antonio V. Cuenco, Mario “Mayong” Joyo Aguja, Loretta Ann P. Rosales, Ana Theresia Hontiveros-Baraquel, and Senator Miriam Defensor Santiago in the 13th Congress; and finally Representatives Roilo S. Golez, Simeon A. Datumanong, Rufus B. Rodriguez, and Senators Jinggoy Ejercito-Estrada, Richard J. Gordon, Juan Miguel F. Zubiri, and Santiago in the 14th Congress. The fact that Senator Gordon and Representative Golez are both PNRC stalwarts definitely helped in the passage of the “IHL Bill” during the 14th Congress. Senator Francis “Chiz” G. Escudero and Representative Matias V. Defensor, Jr., the key Congressional Committee chairs, deserve credit for shepherding the bill all the way up to the Bicameral Conference Committee in October 2009. It had become a priority bill of the Legislative–Executive Development and Advisory Council (LEDAC) early in the term of the 14th Congress in 2007. Credit must also be given to the various human rights and IHL advocates in civil society and in government who worked long and hard for the “IHL Bill.”

To make a long story short, the “IHL Bill” went through both the legislative and executive wringer. The substantive critical issues against the “IHL Bill” revolve around these **certain concerns of the military/defense/security establishment**:

- Whether *military and police operations against insurgents and terrorists will be hampered* by all these new and complicated rules;
- Whether military and police commanders and personnel would be subjected to multiple *harassment suits* (including double jeopardy) in both military and civil fora;
- Whether the *rebel groups* might be unwittingly granted *belligerency status* or take advantage of certain provisions to acquire the same (specifically the status of a “national liberation movement” under Protocol I, entitling them among others to “prisoner of war” status).

In fact, these kinds of concerns, more than whatever **constitutional and criminal law issues**, were the real stumbling blocks to the “IHL Bill.”

As for these legal issues, these three were the critical ones:

- relationship with the *issue of Rome Statute ratification* by the Philippines, including whether this is a “backdoor” circumvention of non-ratification;
- *conflict with certain constitutional provisions* like presidential immunity from suit, equal protection (e.g., double standards vis-a-vis other crimes), double jeopardy, Supreme Court rule-making prerogative;

- *possible duplication, overlap, confusion and complication of Philippine criminal law, including the Anti-Terrorism Law, the Juvenile Justice Law and the pending bills on torture and enforced disappearances.*

By 2007, if not earlier, ICRC embarked on a *purposive effort to engage or lobby the executive and the security sector for a high policy and decision-making level* and which ultimately bore fruit. Year 2007 was a watershed year not only in this purposive lobbying effort but also in the *unprecedented attention to the issue of extrajudicial killings* which was, to use current pop terms, the “hot issue” that year. Of course, for an issue to become a “hot issue,” there is the indispensable role of media. All in that same year of 2007, we had the Melo Commission Report, the Alston Mission and Reports, and the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances convened by the Supreme Court. Relevant to all these is the wisdom articulated by Peter Herby, long-time Coordinator of the Mines-Arms Unit of the ICRC, when he said, in the context of the Ottawa Treaty’s total ban on victim-activated anti-personnel landmines, that:

x x x In most case[s], it has been *the role of ‘public conscience,’* the mobilization of public conscience, which has in fact been the driving force behind these prohibitions—whether of chemical weapons, biological weapons, blinding laser weapons or others.

In 2008, particularly after the aborted signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) in August, we had the major outbreak of armed hostilities between the Moro Islamic Liberation Front (MILF) and the Armed Forces of the Philippines (AFP) in Central Mindanao, resulting in the biggest new internal displacement globally for that year. And then towards the end of that year, the Communist Party of the Philippines (CPP), on the occasion of its 40th anniversary, set into motion a plan for a “qualitative leap” of the armed revolution that involves the New People’s Army (NPA) advancing “from the stage of strategic defensive to that of strategic stalemate” in its protracted people’s war of four decades. That we have been in this for that long on two major fronts of armed conflict—most intensely in Mindanao—may be said to be the ultimate rationale for RA No. 9851, which in fact is long overdue.

II. KEY FEATURES AND WAR CRIMES

The most important features of RA No. 9851 might be outlined as follows:

- Defining and penalizing war crimes, genocide, and other crimes against humanity;
- Applicability to all individual perpetrators, whether state agents or non-state actors (unlike the Anti-Torture Act which is limited to state-agent perpetrators);
- Applying certain international criminal law principles of irrelevance of official capacity (for immunities), responsibility of superiors (i.e., command responsibility), unlawful superior orders, and non-prescription, among others;
- Instituting a form of universal jurisdiction, albeit qualified;
- Providing for international standards for protection of victims and witnesses, as well as reparations to the former;

- Express applicability of international law, including of specific international treaties;
- Providing for the designation of special courts, prosecutors and investigators, and their effective training in human rights, IHL and international criminal law;
- No requirement of implementing rules and regulations (unlike the Anti-Torture Act).

War crimes [Section 4] are serious violations of IHL or the laws and customs applicable *in armed conflicts*. These conflicts include armed hostilities between government military and police forces, on one hand, and rebel groups, on the other hand, as well as those between rebel groups, *as has been experienced in the Philippines during the past four decades*. In RA No. 9851, war crimes or “crimes against IHL” are clustered into three categories, as follows:

- a. In case of an *international* armed conflict (i.e., between or among states), grave breaches of the four Geneva Conventions of August 12, 1949, listing nine acts committed against protected persons or property, as defined.
- b. In case of a *non-international* armed conflict, serious violations of common Article 3 of the same Geneva Conventions, listing four acts committed against persons taking no active part in hostilities.
- c. Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law (but may be said to be applicable to *both international and non-international* armed conflicts, unless otherwise specified), listing 25 acts, including two specific to international armed conflict.

The *minimum standard* is that provided by the second category of war crimes, i.e., any of the following acts committed against persons taking no active part in hostilities:

1. Violence to life and person, in particular, willful killings of all kinds, mutilation, cruel treatment and torture;
2. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
3. Taking of hostages;
4. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Some of these same or similar acts—like willful killing (which is consistently used in RA No. 9851 rather than murder), physical mutilation, inhuman treatment, torture, committing outrages upon personal dignity, in particular humiliating and degrading treatment, taking of hostages, and deprivation of the rights of fair and regular trial—are also listed under the first and/or third categories of war crimes. But the latter categories also list a greater number of distinct acts which constitute war crimes. Both the latter categories list forcible

transfer of population, and ordering the displacement of the civilian population (which is relevant to *internal displacement*) as war crimes. The third category has an *expanded list of sexual offenses*, namely rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, as war crimes. Incidentally, acts of willful killing, forcible transfer of population, torture, and the same sexual offenses also appear later in RA No. 9851 as part of “other crimes against humanity.”

Going back to the third category of war crimes in RA No. 9851, we find that *using children* (persons under 18 years of age) *to participate actively in hostilities* is a war crime. But when it comes to *recruiting children into armed forces or groups*, there is a *discrepancy between the cut-off ages for government and dissident armed forces*—15 versus 18 years of age, respectively. In other words, government armed forces cannot recruit children under 15 years of age (thus, 15–17 year-olds, legally still children, can be recruited), while dissident armed forces cannot recruit children under 18 years of age (thus, legally no children can be recruited); otherwise, such respective recruitment is a war crime. This appears to be a violation of the convention or tradition of reciprocity, as well as the customary IHL rule that children (not qualified as to whether under 15 or 18 years of age) must not be recruited into armed forces or armed groups (these must refer to state and non-state armed forces/groups, respectively). It also makes for a strange legal situation where rebel groups are held to a *higher* standard than government armed forces—by a national law that will be definitely harder to enforce with rebel groups outside the fold of the law than with government armed forces who are official agents of the law. There may be also a constitutional issue here of *equal protection of the law* for children, whether recruited by government or dissident armed forces.

Basically, war crimes are serious violations of the protection that should be accorded to civilians or non-combatants during armed conflict, as well as serious violations of the established limitations on the methods and means of warfare, for the benefit also of the combatants. Thus, under the third category of war crimes in RA No. 9851, we find these listed, among others:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives. (For example, houses, schools, churches, mosques, farms, cell sites, power transmission towers, public transport, and other civilian infrastructure.)
- Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct military advantage anticipated.

In terms of serious violations of the limitations of the *methods* (i.e., tactics) of warfare, the third category of war crimes in RA No. 9851 lists the following, among others:

- Killing, wounding or capturing an adversary by resort to perfidy (i.e., treachery or betrayal of confidence).
- Declaring that no quarter will be given (e.g., taking no survivors).
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols.

In terms of serious violations of the limitations of the *means* (i.e., weapons) of warfare, the third category of war crimes in RA No. 9851 has this *indicative and non-exhaustive* short list of prohibited means of warfare:

- i. Poison or poisoned weapons;
- ii. Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- iii. Bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which do not entirely cover the core or are pierced with incisions; and
- iv. Weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Unlike the first three items in this short list, the fourth and last item does not mention specific weapons *and for that matter, methods* of warfare, but instead provides certain criteria about the weapons and methods the employment of which would constitute a war crime. For example, the criterion of “inherently indiscriminate” could be applied, among others, to **victim-activated anti-personnel landmines**, which are themselves totally banned under the 1997 Ottawa Treaty.

III. GENOCIDE AND “OTHER CRIMES AGAINST HUMANITY”

Genocide [Section 5] under RA No. 9851 means any of the following acts committed *with intent to destroy*, in whole or in part, a national, ethnic, racial, religious, social or *any similar stable and permanent group* as such:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.

In the Philippine historical context of recent decades, genocide was an issue raised by the Moro National Liberation Front (MNLF) against the Marcos dictatorship. There is now in RA No. 9851 a national *legal* basis to prosecute this issue as a crime. What remains to be established then is the *factual* basis, if any, for a case of genocide committed against the *Bangsamoro*.

“Other crimes against humanity” [Section 6] under RA No. 9851 means any of the following acts when committed *as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*:

- a. Willful killing;
- b. Extermination;
- c. Enslavement;
- d. Arbitrary deportation or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- i. Enforced or involuntary disappearance of persons;
- j. Apartheid;
- k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Actually, this is more or less the established international legal definition of crimes against humanity, but RA No. 9851 uses the terminology “other crimes against humanity.” We can only surmise for now that Congress must have considered the preceding war crimes and genocide as also being “crimes against humanity” *in a loose or generic sense*. But crimes against humanity constitute a specific concept developed in *customary* international law, unlike war crimes and genocide that were largely developed through *treaty* international law (e.g., the 1907 Hague and 1949 Geneva Conventions, and the 1948 Genocide Convention). The key concept in crimes against humanity is the qualification “as part of a widespread or systematic attack directed against any civilian population.” In other words, it is not just the above-enumerated acts but such acts “*as part of a widespread or systematic attack directed against any civilian population.*”

An “attack directed against any civilian population” is defined [in Section 3(e)] under RA No. 9851 as “a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” Note “*multiple commission of acts referred to*” and “pursuant to or in furtherance of a State *or organizational policy.*” The latter clearly indicates that this *could be perpetrated by a non-state armed group.* And the attack must be “widespread or [NOT and] systematic” to make this a crime against humanity. As already indicated early on above, something like the “Maguindanao Massacre”—involving multiple willful killing as part of a systematic pre-planned attack directed by Ampatuan clan leaders (who were also public officials) against a group of civilians led by rival Mangudadatu clan members—can be characterized as a crime against humanity.

Crimes against humanity, the legal definition of which is well-established and generally accepted, would actually also be *a good fallback (repeat, just fallback) in the absence of a well-established and generally accepted legal definition of terrorism.* The Philippines now has its first anti-terrorism law in RA No. 9372, the so-called “Human Security Act of 2007,” but its definition of terrorism is questionable, as it is in fact being currently questioned in a constitutionality suit before the Supreme Court. One senator asked that this anti-terrorism law be applied to the “Maguindanao Massacre.” However, Republic Act No. 9851 itself, which defines and penalizes “other crimes against humanity,” *cannot* be applied to the “Maguindanao Massacre” which occurred *before* this new law took effect.

It is also clear that crimes against humanity and genocide have ***no nexus (connection) with armed conflict***, unlike war crimes which have that context. Crimes against humanity and genocide, as with terrorism, can be committed during peace time, as well as during war time. When committed during war time, those three crimes can to some extent be framed and addressed by IHL; and when committed during peace time, by international human rights law. In fine, therefore, RA No. 9851 is a law ***for enforcement not only of IHL but also of human rights*** (even though, during its bill stage, it was popularly referred to as the “IHL Bill”).

IV. TORTURE AND ENFORCED DISAPPEARANCE, PERPETRATORS, AND PENALTIES

It will be noted that the specific act of torture is mentioned under war crimes and “other crimes against humanity” in RA No. 9851, while the specific act of enforced or involuntary disappearance of persons is mentioned under “other crimes against humanity” therein. Both acts are defined in this new law. Here, “**torture**” is defined [in Section 3(s)] as “the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused.” Quite significantly, unlike the definition of torture in the likewise new but slightly older RA No. 9745 (“Anti-Torture Act of 2009”), there are *no qualifications as to perpetrator* (“inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a

person in authority”) and *as to purpose* (“for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind”). Clearly, the definition of “torture” in RA No. 9851 is of much wider application (including to non-state actors) than that in RA No. 9745.

Surely, this is a *less than ideal* situation of two Philippine statutes having two different definitions of torture, even if these are applied to two different situations: torture *per se* (apply RA No. 9745 and its definition) and torture *as part of war crimes* or “other crimes against humanity” (apply RA No. 9851 and its definition). Eventually, those definitions will have to be harmonized one way or the other. The “root cause” of this discrepancy lies in the definition models used by RA No. 9745 and by RA No. 9851, respectively, namely the different definitions of torture in the 1984 Convention Against Torture and in the 1998 Rome Statute of the ICC.

There is also this kind of discrepancy in another new human rights and IHL-related law, that on **enforced disappearance**. In RA No. 9851, “enforced or involuntary disappearance of persons” is defined [in Section 3(g)] as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” Note “State or a political organization,” with the latter clearly indicating that this *could be perpetrated by a non-state armed group*. This was modeled on the definition of “enforced disappearance of persons” in the aforesaid Rome Statute.

The pending bills in Congress for an “Anti-Enforced or Involuntary Disappearance Act,” however, invariably carry the qualification “committed by government authorities or by persons or groups of persons acting with the authorization, support or acquiescence of such person in authority”—in short, state agents. This is modeled on the definition of “enforced disappearance” in the 2006 International Convention for the Protection of all Persons from Enforced Disappearance. It remains to be seen how an “Anti-Enforced or Involuntary Disappearance Act” will take final shape in its definition of the crime, given the already existing definition in RA No. 9851.

It is clear that, for war crimes, genocide and “other crimes against humanity” under RA No. 9851, ***the perpetrators who may be held accountable for these serious international crimes are not limited to state agents and may include non-state actors***—which is in accordance with the factual reality. Of course, liability is based on *individual* criminal responsibility [Section 8] of natural, not juridical, persons. But, as will be discussed later, there is also a form of command responsibility [Section 10]. We had also noted above the role of “State or organizational policy” when it comes to “other crimes against humanity” and of “a State or a political organization” when it comes to enforced or involuntary disappearance of persons as part of “other crimes against humanity.” In other words,

there are also individual leaders or commanders, whether state or non-state, who would be responsible for certain policies or decisions that result in these crimes.

As for **penalties** [Section 7] for war crimes, genocide and “other crimes against humanity,” RA No. 9851 provides the main penalty of imprisonment of *reclusion temporal* in its medium to maximum period (i.e., 14 years, 8 months to 20 years) and a fine ranging from P100,000 to P500,000. A Bicolano human rights lawyer, however, wryly commented that the main imprisonment penalty imposed is the same as that for the felony of *estafa* (swindling), which is certainly of a much lower level of criminal depravity than war crimes, genocide, and crimes against humanity. He added, from the wisdom of private law practice, that such a penalty would make itailable, and that if he were the prosecutor, he would just file “good ol’ murder” and recommend no bail—which has already been a prevalent prosecutorial practice of “reframing” cases of political offenses like rebellion into cases of common crimes like murder or illegal possession of firearms.

Under Section 7 of RA No. 9851, the court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer. In this way, *a slightly heavier burden is imposed on state agents*, which is justifiable by their bounden duty to uphold, if not enforce, the law. *In this sense, official capacity is still relevant* notwithstanding a subsequent provision on “irrelevance of official capacity.” While international law like the Geneva Conventions and the Genocide Convention may already define those serious international crimes, it is *generally* still the national criminal law and jurisdiction which provides for and imposes the penalties (one exception is the Rome Statute precisely because it sets up its own court, the ICC). The imposition of penal sanctions is among the few non-self-executing clauses of the main IHL and human rights treaties, thus necessitating domestic penal legislation.

V. OFFICIAL CAPACITY, COMMAND RESPONSIBILITY, UNLAWFUL ORDERS, AND NON-PRESCRIPTION

On the **irrelevance of official capacity** [Section 9] as far as war crimes, genocide, and “other crimes against humanity” are concerned, RA No. 9851 provides, among others, that “official capacity as a head of state or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act.” Also, “immunities or special procedural rules that may attach to the official capacity of a person under Philippine law *other than the established constitutional immunity from suit of the Philippine President during his/her tenure*, shall not bar the court from exercising its jurisdiction over such a person.” This is one particular matter where a Philippine constitutional standard was made an *exception to the higher international criminal law standard* of non-immunity of heads of state or government for these serious international crimes.

Republic Act No. 9851 quite significantly provides for **command responsibility** as an operative principle of criminal liability *for the first time on the level of a national statute*

through a provision on **responsibility of superiors** [Section 10], thus: “a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

- a. The superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes; and
- b. The superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”

While the context of this provision refers to war crimes, genocide, and “other crimes against humanity” under RA No. 9851, this *sets a statutory precedent for its extension to the cases of other serious crimes* like torture, enforced disappearances, and extrajudicial killings in the corresponding special laws, if any, on such crimes. This Philippine statutory codification of the doctrine of command responsibility, we might say, is only fitting because the roots of the doctrine are usually traced to the 1946 ruling in the *Yamashita* case for atrocities committed by the Japanese armed forces in the Philippines during the Second World War, albeit the relevant ruling is the one by the US, not the Philippine, Supreme Court.

The historical development or evolution of the doctrine was extensively discussed in the 2007 Melo Commission Report on extrajudicial killings, which recommended a special law for strict chain-of-command responsibility for police and military forces and other government officials with respect to such killings and other offenses committed by personnel under their command, control or authority. The 2007 National Consultative Summit on Extrajudicial Killings and Enforced Disappearances convened by the Supreme Court recommended the enactment of a law to address the lack of understanding of the doctrine of command responsibility. The 2007 Alston Mission Report on extrajudicial killings in the Philippines specifically recommended that “the necessary measures should be taken to ensure that the principle of command responsibility, as it is understood in international law, is a basis for criminal liability within the domestic legal order.” Republic Act No. 9851 is thus a major step forward in acting on these several related recommendations.

The provision on **orders from a superior** [Section 12], under RA No. 9851 clarifies that “orders to commit genocide or other crimes against humanity are **manifestly unlawful**.” In customary IHL, every combatant has in fact a *duty to disobey* a manifestly unlawful order. So, this could also extend to war crimes, and not just the aforesaid two serious international crimes. In RA No. 9851’s provision on **non-prescription** [Section 11], “the crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.” This is already well-established for war crimes in customary IHL.

VI. UNIVERSAL JURISDICTION, PROTECTION OF VICTIMS AND WITNESSES

Also significant in RA No. 9851, though of a lesser degree than the statutory codification of the command responsibility doctrine, is the provision on **jurisdiction** [Section 17] which might be characterized as a **qualified universal jurisdiction**. On one hand, the State shall exercise jurisdiction over war crimes, genocide, and “other crimes against humanity” *regardless where the crime is committed*. On the other hand, *there has to be a nexus to the Philippines*, whereby the accused is a Filipino citizen, or is present in the Philippines, or has committed the crime against a Filipino citizen. But the second condition, *whereby the accused is present in the Philippines*, brings this quite close to full universal jurisdiction. Such an accused could be a foreigner who has committed the crime against another foreigner and has done so outside the Philippines, but who has come to be present in the Philippines—the State can then exercise jurisdiction over him.

Universal jurisdiction is actually explained in RA No. 9851’s Declaration of Principles and State Policies [Section 2(e)]:

The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

The idea is to allow for “**justice without borders**” so that there are “**no safe havens**” for war criminals and the like.

Also in RA No. 9851’s Declaration of Principles and State Policies [Section 2(f)], we find this adherence to **universal human rights**:

The State shall guarantee persons suspected or accused of grave crimes under international law all rights necessary to ensure that their trials will be fair and prompt in strict accordance with national and international law and standards for fair trials. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families. It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict.

This policy declaration most clearly indicates that RA No. 9851 is definitely informed by human rights and not just by IHL. Here, we deal with the human rights of the accused, the victims and the witnesses. Noteworthy is the policy of *gender-sensitive* avenues of redress.

We see these human rights principles operationalized in the provisions on **protection of victims and witnesses** [Section 13] and on reparations to victims [Section 14]. For example, take these provisions:

- As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the

court, having regard to all the circumstances, particularly the views of the victim or witness.

- Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the courts considers it appropriate in accordance with the established rules of procedure and evidence.

VII. APPLICABILITY OF INTERNATIONAL LAW

Republic Act No. 9851 provides that *in its application and interpretation*, Philippine courts shall be guided by the following **international law sources** [Section 15]:

- a. The 1948 Genocide Convention;
- b. The 1949 Geneva Conventions I–IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- c. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
- d. The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
- e. The rules and principles of customary international law;
- f. The judicial decisions of international courts and tribunals;
- g. Relevant and applicable international human rights instruments;
- h. Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
- i. Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

No other Philippine statute has shown this much adherence to international law. Certainly not the Philippine anti-terrorism law RA No. 9372 which, instead of making reference to the 12 international anti-terrorism conventions as it should have, makes reference to 12 Revised Penal Code provisions and special laws. Unlike RA No. 9851 having a section on Applicability of International Law, what RA No. 9372 has is a section on Applicability of the Revised Penal Code—a **1932** domestic law which is basically an extension of the Spanish Penal Code of **1870**, being applied to post-9/11 **2001** terrorism!

Aside from the above-said treaties mentioned as “sources” for RA No. 9851, its provisions actually have sources from these other treaties not mentioned: the *Hague Conventions and Regulations* of 1899 and 1907, the *1968 Convention on the Non-*

Applicability of Statutory Limitations to War Crimes, the 1994 *Convention on the Safety of United Nations and Associated Personnel*, the 1899 *Hague Declaration (IV, 3) concerning Expanding Bullets*, the 1925 *Geneva Gas Protocol*, the 1976 *Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques*, the 1993 *Chemical Weapons Convention*, the 1945 *Nuremberg Charter*, the 1945 *Tokyo Tribunal Charter*, the 1993 *Statute of the International Criminal Tribunal for the former Yugoslavia*, the 1994 *Statute of the International Criminal Tribunal for Rwanda*, and the 1998 *Rome Statute of the ICC*.

And among the various major treaty sources of RA No. 9851, several have actually *not yet been ratified by the Philippines*: the 1954 Hague Convention for the Protection of Cultural Property, the 1977 Additional Protocol I of the 1949 Geneva Conventions, and the 1998 Rome Statute. Their not yet being ratified rightly did not bar the sovereign Philippine Congress, in the exercise of its plenary legislative power, from adopting some of their provisions into the national criminal law. Indeed, it has been said, “when these offenses are separately defined in national criminal law, the independence of this definition of international law can permit the repression of a breach of one of the treaties (e.g. Additional Protocol I), even if the treaty has not been ratified by the prosecuting State.” Ratification has another function, which is to bind the Philippines with a particular international treaty regime, in terms of both obligations and benefits. And so, because the Philippines has not yet ratified the Rome Statute, it is not yet part of the ICC system.

But the above-indicated sources are not only treaty international law but also “the rules and principles of customary international law.” Republic Act No. 9851’s Declaration of Principles and State Policies [Section 2(a) and (d)] lays the basis for this in two particular semi-repetitive paragraphs:

- The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to a policy of peace, equality, justice, freedom, cooperation, and amity with all nations.
- The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation.

The first paragraph is actually Article II, Section 2, including the incorporation clause, of the Philippine Constitution. The second paragraph is actually a restatement of the 1949 Philippine Supreme Court ruling in the *Kuroda* case of another Japanese war criminal in the Philippines that:

the rules and regulations of the Hague and Geneva conventions form part of and are wholly based on the generally accepted principles of international law x x x. Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them.

In other words, as far as the primary IHL treaties like the Hague and Geneva Conventions are concerned, the rules and regulations therein are already deemed incorporated into

Philippine law. Therefore, *in a sense, RA No. 9851 merely “re-legislated” these rules and regulations for clarity and updating, and also because the treaties themselves require domestic penal legislation. It consolidated those principles, rules and regulations in one comprehensive law in so far as the domestic penal aspect of serious international crimes is concerned.*

In fine, RA No. 9851 is a marriage of national criminal law and aspects of international law. The result is a *different framework from pure or ordinary criminal law*. This different framework is justified by the difference between common crimes and serious international crimes—just as different diseases require different medical treatment.

VIII. SPECIAL COURTS, PROSECUTORS, INVESTIGATORS, AND TRAINING

Under RA No. 9851 [Section 18], the Regional Trial Courts shall have original and exclusive jurisdiction over the international crimes punishable under this Act. The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors and investigators as the case may be. Just as significant, the State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive **effective training in human rights, international humanitarian law, and international criminal law**.

Thus, this new law can and should be *a catalyst for the infusion of more international law (and thus more cosmopolitan and less parochial) consciousness among Filipino lawyers and law students* through the law curriculum and continuing legal education. This can be considered part of a broader educational and consciousness-building effort on IHL and human rights which is crucial for their implementation and enforcement, in conjunction with criminal prosecution.

Though penal sanctions are indispensable to ensure respect for IHL and human rights, such sanctions are insufficient in themselves to put an end to acts contrary to IHL and human rights. These norms need to be placed within a suitable regulatory framework which will lay down the behavior complying with or prohibited by IHL and human rights. In sum, the Philippines through RA No. 9851 may be said to be *availing of the best that has been created by humanity in terms of international law to prevent and punish the worst acts of inhumanity*.

IX. SOME FINAL REMARKS

Two paragraphs in RA No. 9851’s Declaration of Principles and State Policies must be commented on, as we round out this preliminary discussion of this new breakthrough law. The first one [Section 2(c)] is a rather strange formulation:

It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of ‘Children as Zones of Peace’.

First of all, the mention of a policy to “**resolve armed conflict**” and “**Children as Zones of Peace**” is good because this indicates a peace orientation. However, the resolution of armed conflict is for much more than “in order to promote the goal of *Children as Zones of Peace*.” The concept of peace zones in the Philippines was in fact devised *in the context of, and as a buffer against*, ongoing or continuing armed conflict. The resolution of this conflict itself, and the subsequent building of peace, would then in fact presumably obviate the need for peace zones, including the concept of *Children as Zones of Peace*. At the same time, while resolving the armed conflict and achieving a peace settlement would remove the context or occasion for war crimes, peace time could still witness genocide and crimes against humanity.

The second paragraph [Section 2(g)] provides that:

The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

There is no issue with the first concept of non-effect on the **legal status** of the parties to a conflict, as this is well-established in IHL. The issue is with the second concept of **status of belligerency** (SOB) which is an obsolete or outmoded concept in modern international law, a concept that has in fact been superseded by IHL. Lingering notions of SOB on both sides of the GRP-NDFP armed conflict have in fact continued to be a major problem that has bedeviled their more-off-than-on peace process. By mentioning the term SOB in a national statute, this could only reinforce the NDFP’s obsession with, and the GRP’s corresponding paranoia about, this concept. What is already obsolete internationally is instead somehow being renewed nationally. This perhaps shows that, notwithstanding the international law application breakthroughs with RA No. 9851, the Philippines still has more updating to do in international law consciousness.

The true test of RA No. 9851 is of course in the practice of adherence, implementation, and enforcement. This starts with an appreciation of its breakthrough nature and features for the enforcement of IHL and human rights. And for effective implementation, unlike the Anti-Torture Act (RA No. 9745), the newer RA No. 9851 need not wait for implementing rules and regulations. It also leads the way now for the easier passage of other more specific IHL-related legislation like the still pending bills on landmines and on internal displacement. Let the practice begin **now**.

REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
SENATE
PASAY CITY
FIFTEENTH CONGRESS
SECOND REGULAR SESSION

RESOLUTION NO. 57

**RESOLUTION CONCURRING IN THE RATIFICATION OF THE
ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

WHEREAS, the Constitution, Article 7, Section 21, states that, “No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate”;

WHEREAS, the Rome Statute, consisting of 128 articles, provides for the establishment of an International Criminal Court (“the Court”), a permanent institution that has the power to exercise its jurisdiction over persons for the most serious crimes of international concern, and is complementary to national criminal jurisdiction;

WHEREAS, the Court is the first permanent institution that has the power to exercise its jurisdiction over persons with respect to the following most serious crimes of international concern: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; and (d) the crime of aggression;

WHEREAS, the Rome Statute adopts the principle of complementarity, which recognizes a State’s right to exercise jurisdiction over these crimes; the Court will only act if such State is unable or unwilling to carry out the investigation and prosecution of the crime;

WHEREAS, the Rome Statute adheres to the general principles of criminal law, such as *nullum crimen sine lege*; *nulla poena sine lege*; non-retroactivity *rationae personae*; and exclusion of jurisdiction over persons under 18;

WHEREAS, ratification of the Rome Statute signifies Philippine commitment to human rights and is our contribution to an effective international criminal justice system; it likewise complements Republic Act No. 9851, or the “Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity,” which enables the Philippines, on its own, to prosecute international crimes and strengthen human rights enforcement in the Philippines;

WHEREAS, the President of the Philippines has submitted the Rome Statute of the International Criminal Court to the Senate for concurrence in its ratification, in accordance with the Philippine Constitution;

WHEREAS, in the hearing conducted by the Senate Subcommittee on the International Criminal Court of the Committee on Foreign Relations on July 28, 2011, the following agencies and organizations endorsed Senate concurrence in the ratification of the Rome Statute of the International Criminal Court:

1. Department of Foreign Affairs
2. Department of Justice
3. Department of National Defense
4. Commission on Human Rights
5. Armed Forces of the Philippines
6. Philippine National Police
7. National Security Council
8. Philippine Coalition for the International Criminal Court
9. Coalition for the International Criminal Court Asia Pacific
10. Philippine Alliance of Human Rights Advocates
11. Amnesty International Philippines;

Now, therefore, be it *Resolved*, That the Senate of the Philippines concur, as it hereby concurs, in the ratification of the Rome Statute of the International Criminal Court.

Adopted,

(*Sgd.*) **JUAN PONCE ENRILE**
President of the Senate

This Resolution was adopted by the Senate on August 23, 2011.

(*Sgd.*) **EMMA LIRIO-REYES**
Secretary of the Senate

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT*

PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the

* The text of the Rome Statute reproduced herein was originally circulated as document A/CONF.183/9 of July 17, 1998 and corrected by *procès-verbaux* of November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001 and January 16, 2002. The amendments of Article 8 reproduce the text contained in depositary notification C.N.651.2010 Treaties-6 while the amendments regarding Articles 8 *bis*, 15 *bis* and 15 *ter* replicate the text contained in depositary notification C.N.651.2010 Treaties-8; both depositary communications are dated November 29, 2010. x x x

United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:

PART 1. ESTABLISHMENT OF THE COURT

ARTICLE 1 THE COURT

An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

ARTICLE 2 RELATIONSHIP OF THE COURT WITH THE UNITED NATIONS

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

ARTICLE 3 SEAT OF THE COURT

1. The seat of the Court shall be established at The Hague in the Netherlands (“the host State”).
2. 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.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

ARTICLE 4 LEGAL STATUS AND POWERS OF THE COURT

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

ARTICLE 5¹

CRIMES WITHIN THE JURISDICTION OF THE COURT

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

ARTICLE 6

GENOCIDE

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

¹ Paragraph 2 of Article 5 (“The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.”) was deleted in accordance with RC/Res. 6, annex I, of June 11, 2010.

ARTICLE 7
CRIMES AGAINST HUMANITY

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

ARTICLE 8²

WAR CRIMES

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
 - (a) Grave breaches of the Geneva Conventions of August 12, 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

² Paragraph 2(3)(xiii) to 2(e)(xv) were amended by resolution RC/Res. 5 of June 11, 2010 (adding paragraphs 2(e)(xiii) to 2(e)(xv)).

- (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

- (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;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of August 12, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (xiii) Employing poison or poisoned weapons;
- (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

- (f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2(c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

ARTICLE 8 BIS³
CRIME OF AGGRESSION

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of December 14, 1974, qualify as an act of aggression:
- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
 - (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
 - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
 - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
 - (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

³ Inserted by resolution RC/Res. 6 of June 11, 2010.

- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

ARTICLE 9⁴
ELEMENTS OF CRIMES

1. Elements of Crimes shall assist the Court in the interpretation and application of Articles 6, 7, 8 and 8 *bis*. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority;
 - (b) The Prosecutor.Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

ARTICLE 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

ARTICLE 11
JURISDICTION *RATIONE TEMPORIS*

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under Article 12, paragraph 3.

⁴ As amended by resolution RC/Res. 6 of June 11, 2010 (inserting the reference to Article 8 *bis*).

ARTICLE 12
PRECONDITIONS TO THE EXERCISE OF JURISDICTION

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in Article 5.
2. In the case of Article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

ARTICLE 13
EXERCISE OF JURISDICTION

The Court may exercise its jurisdiction with respect to a crime referred to in Article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with Article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15.

ARTICLE 14
REFERRAL OF A SITUATION BY A STATE PARTY

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

ARTICLE 15
PROSECUTOR

1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or 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.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

ARTICLE 15 BIS⁵
EXERCISE OF JURISDICTION OVER THE CRIME OF AGGRESSION
(STATE REFERRAL, *PROPRIO MOTU*)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with Article 13, paragraphs (a) and (c), subject to the provisions of this Article.
2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by 30 States Parties.

⁵ Inserted by resolution RC/Res. 6 of June 11, 2010.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this Article, subject to a decision to be taken after January 1, 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.
4. The Court may, in accordance with Article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.
5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.
6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.
7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.
8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in Article 15, and the Security Council has not decided otherwise in accordance with Article 16.
9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under the Statute.
10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in Article 5.

ARTICLE 15 TER⁶
EXERCISE OF JURISDICTION OVER THE CRIME OF AGGRESSION
(SECURITY COUNCIL REFERRAL)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with Article 13, paragraphs (b), subject to the provisions of this Article.

⁶ Inserted by resolution RC/Res. 6 of June 11, 2010.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by 30 States Parties.
3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this Article, subject to a decision to be taken after January 1, 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.
4. A determination of an act of aggression by an organ outside the Court shall be without prejudice of the Court's own findings under this Statute.
5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in Article 5.

ARTICLE 16

DEFERRAL OF INVESTIGATION OR PROSECUTION

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

ARTICLE 17

ISSUES OF ADMISSIBILITY

1. Having regard to paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in Article 5;
 - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

ARTICLE 18
PRELIMINARY RULINGS REGARDING ADMISSIBILITY

1. When a situation has been referred to the Court pursuant to Article 13(a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to Articles 13(c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.
2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in Article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.
3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.
4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with Article 82. The appeal may be heard on an expedited basis.
5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor

of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this Article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.
7. A State which has challenged a ruling of the Pre-Trial Chamber under this Article may challenge the admissibility of a case under Article 19 on the grounds of additional significant facts or significant change of circumstances.

ARTICLE 19

CHALLENGES TO THE JURISDICTION OF THE COURT OR THE ADMISSIBILITY OF A CASE

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with Article 17.
2. Challenges to the admissibility of a case on the grounds referred to in Article 17 or challenges to the jurisdiction of the Court may be made by:
 - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under Article 58;
 - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
 - (c) A State from which acceptance of jurisdiction is required under Article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under Article 13, as well as victims, may also submit observations to the Court.
4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on Article 17, paragraph 1(c).
5. A State referred to in paragraph 2(b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with Article 82.
7. If a challenge is made by a State referred to in paragraph 2(b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with Article 17.
8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:
 - (a) To pursue necessary investigative steps of the kind referred to in Article 18, paragraph 6;
 - (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
 - (c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under Article 58.
9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.
10. If the Court has decided that a case is inadmissible under Article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under Article 17.
11. If the Prosecutor, having regard to the matters referred to in Article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

ARTICLE 20⁷
NE BIS IN IDEM

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

⁷ As amended by resolution RC/Res. 6 of June 11, 2010 (inserting the reference to Article 8 *bis*).

2. No person shall be tried by another court for a crime referred to in Article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under Articles 6, 7, 8 or 8 *bis* shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
 - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
 - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

ARTICLE 21
APPLICABLE LAW

1. The Court shall apply:
 - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this Article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in Article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW**ARTICLE 22*****NULLUM CRIMEN SINE LEGE***

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This Article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

ARTICLE 23***NULLA POENA SINE LEGE***

A person convicted by the Court may be punished only in accordance with this Statute.

ARTICLE 24***NON-RETROACTIVITY RATIONE PERSONAE***

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

ARTICLE 25⁸***INDIVIDUAL CRIMINAL RESPONSIBILITY***

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

⁸ As amended by resolution RC/Res. 6 of June 11, 2010 (adding paragraph 3 *bis*).

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
- 3 *bis.* In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

ARTICLE 26

EXCLUSION OF JURISDICTION OVER PERSONS UNDER EIGHTEEN

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

ARTICLE 27
IRRELEVANCE OF OFFICIAL CAPACITY

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

ARTICLE 28
RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

ARTICLE 29
NON-APPLICABILITY OF STATUTE OF LIMITATIONS

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

ARTICLE 30
MENTAL ELEMENT

1. 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.
2. For the purposes of this Article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this Article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

ARTICLE 31
GROUND FOR EXCLUDING CRIMINAL RESPONSIBILITY

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:
 - (a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
 - (b) The person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

- (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
 - (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - (i) Made by other persons; or
 - (ii) Constituted by other circumstances beyond that person's control.
2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
 3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in Article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

ARTICLE 32

MISTAKE OF FACT OR MISTAKE OF LAW

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in Article 33.

ARTICLE 33

SUPERIOR ORDERS AND PRESCRIPTION OF LAW

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The person did not know that the order was unlawful; and
 - (c) The order was not manifestly unlawful.
2. For the purposes of this Article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

ARTICLE 34 ORGANS OF THE COURT

The Court shall be composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor;
- (d) The Registry.

ARTICLE 35 SERVICE OF JUDGES

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.
3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of Article 40.
4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with Article 49.

ARTICLE 36 QUALIFICATIONS, NOMINATION AND ELECTION OF JUDGES

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.
2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is

- considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.
- (b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with Article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two-thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.
- (c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and Article 37, paragraph 2;
- (ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c)(i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.
3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
- (b) Every candidate for election to the Court shall:
- (i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or
- (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;
- (c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:
- (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or
- (ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

- (b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.
 - (c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.
5. For the purposes of the election, there shall be two lists of candidates:
- List A containing the names of candidates with the qualifications specified in paragraph 3(b)(i); and
 - List B containing the names of candidates with the qualifications specified in paragraph 3(b)(ii).
- A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.
6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under Article 112. Subject to paragraph 7, 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.
- (b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.
7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.
8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:
- (i) The representation of the principal legal systems of the world;
 - (ii) Equitable geographical representation; and
 - (iii) A fair representation of female and male judges.
- (b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to Article 37, paragraph 2, shall not be eligible for re-election.
 - (b) At the first election, one-third of the judges elected shall be selected by lot to serve for a term of three years; one-third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.
 - (c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.
10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with Article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

ARTICLE 37
JUDICIAL VACANCIES

1. In the event of a vacancy, an election shall be held in accordance with Article 36 to fill the vacancy.
2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under Article 36.

ARTICLE 38
THE PRESIDENCY

1. The President and the First and Second Vice Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.
2. The First Vice President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice President shall act in place of the President in the event that both the President and the First Vice President are unavailable or disqualified.
3. The President, together with the First and Second Vice Presidents, shall constitute the Presidency, which shall be responsible for:
 - (a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and
 - (b) The other functions conferred upon it in accordance with this Statute.
4. In discharging its responsibility under paragraph 3(a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

ARTICLE 39
CHAMBERS

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in Article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.
2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.
 - (b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
 - (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;
 - (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;
 - (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.
3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
 - (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.
4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this Article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

ARTICLE 40
INDEPENDENCE OF THE JUDGES

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. 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.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

ARTICLE 41

EXCUSING AND DISQUALIFICATION OF JUDGES

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.
 - (b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.
 - (c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

ARTICLE 42

THE OFFICE OF THE PROSECUTOR

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.
5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.
7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.
8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.
 - (a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this Article;
 - (b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;
9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

ARTICLE 43 **THE REGISTRY**

1. 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.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.
3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.
6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

ARTICLE 44

STAFF

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.
2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in Article 36, paragraph 8.
3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.
4. The Court may, in exceptional circumstances, employ the expertise 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. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

ARTICLE 45
SOLEMN UNDERTAKING

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

ARTICLE 46
REMOVAL FROM OFFICE

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:
 - (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or
 - (b) Is unable to exercise the functions required by this Statute.
2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:
 - (a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
 - (b) In the case of the Prosecutor, by an absolute majority of the States Parties;
 - (c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.
3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.
4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this Article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

ARTICLE 47
DISCIPLINARY MEASURES

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in Article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

ARTICLE 48
PRIVILEGES AND IMMUNITIES

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. 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 spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.
5. The privileges and immunities of:
 - (a) a judge or the Prosecutor may be waived by an absolute majority of the judges;
 - (b) the Registrar may be waived by the Presidency;
 - (c) the Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
 - (d) the Deputy Registrar and staff of the Registry may be waived by the Registrar.

ARTICLE 49
SALARIES, ALLOWANCES AND EXPENSES

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

ARTICLE 50
OFFICIAL AND WORKING LANGUAGES

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

Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.
3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

ARTICLE 51

RULES OF PROCEDURE AND EVIDENCE

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Rules of Procedure and Evidence may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority; or
 - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

ARTICLE 52

REGULATIONS OF THE COURT

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.
3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

ARTICLE 53

INITIATION OF AN INVESTIGATION

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
 - (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
 - (b) The case is or would be admissible under Article 17; and
 - (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
 - (a) There is not a sufficient legal or factual basis to seek a warrant or summons under Article 58;
 - (b) The case is inadmissible under Article 17; or
 - (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under Article 14 or the Security Council in a case under Article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under Article 14 or the Security Council under Article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
(b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1(c) or 2(c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.
4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

ARTICLE 54
DUTIES AND POWERS OF THE PROSECUTOR
WITH RESPECT TO INVESTIGATIONS

1. The Prosecutor shall:
 - (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
 - (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in Article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
 - (c) Fully respect the rights of persons arising under this Statute.
2. The Prosecutor may conduct investigations on the territory of a State:
 - (a) In accordance with the provisions of Part 9; or
 - (b) As authorized by the Pre-Trial Chamber under Article 57, paragraph 3(d).
3. The Prosecutor may:
 - (a) Collect and examine evidence;
 - (b) Request the presence of and question persons being investigated, victims and witnesses;
 - (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

- (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;
- (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
- (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

ARTICLE 55

RIGHTS OF PERSONS DURING AN INVESTIGATION

1. In respect of an investigation under this Statute, a person:
 - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
 - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
 - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
 - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
 - (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
 - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

- (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

ARTICLE 56

ROLE OF THE PRE-TRIAL CHAMBER IN RELATION TO A UNIQUE INVESTIGATIVE OPPORTUNITY

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.
(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.
(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.
2. The measures referred to in paragraph 1(b) may include:
 - (a) Making recommendations or orders regarding procedures to be followed;
 - (b) Directing that a record be made of the proceedings;
 - (c) Appointing an expert to assist;
 - (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;
 - (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
 - (f) Taking such other action as may be necessary to collect or preserve evidence.
3. (a) Where the Prosecutor has not sought measures pursuant to this Article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

- (b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.
4. The admissibility of evidence preserved or collected for trial pursuant to this Article, or the record thereof, shall be governed at trial by Article 69, and given such weight as determined by the Trial Chamber.

ARTICLE 57
FUNCTIONS AND POWERS OF THE PRE-TRIAL CHAMBER

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this Article.
2. (a) Orders or rulings of the Pre-Trial Chamber issued under Articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.
 - (b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.
3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:
 - (a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
 - (b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under Article 58, issue such orders, including measures such as those described in Article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;
 - (c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;
 - (d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.
 - (e) Where a warrant of arrest or a summons has been issued under Article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to Article 93, paragraph 1(k),

to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

ARTICLE 58
ISSUANCE BY THE PRE-TRIAL CHAMBER OF A
WARRANT OF ARREST OR A SUMMONS TO APPEAR

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:
 - (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
 - (b) The arrest of the person appears necessary:
 - (i) To ensure the person's appearance at trial,
 - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
 - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.
2. The application of the Prosecutor shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
 - (c) A concise statement of the facts which are alleged to constitute those crimes;
 - (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
 - (e) The reason why the Prosecutor believes that the arrest of the person is necessary.
3. The warrant of arrest shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
 - (c) A concise statement of the facts which are alleged to constitute those crimes.
4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.
5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.
7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:
 - (a) The name of the person and any other relevant identifying information;
 - (b) The specified date on which the person is to appear;
 - (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
 - (d) A concise statement of the facts which are alleged to constitute the crime.The summons shall be served on the person.

ARTICLE 59

ARREST PROCEEDINGS IN THE CUSTODIAL STATE

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
 - (a) The warrant applies to that person;
 - (b) The person has been arrested in accordance with the proper process; and
 - (c) The person's rights have been respected.
3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.
4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with Article 58, paragraph 1(a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.
6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

ARTICLE 60

INITIAL PROCEEDINGS BEFORE THE COURT

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.
2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in Article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.
3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.
5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

ARTICLE 61

CONFIRMATION OF THE CHARGES BEFORE TRIAL

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
 - (a) Waived his or her right to be present; or
 - (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:
 - (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
 - (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
 - (a) Object to the charges;
 - (b) Challenge the evidence presented by the Prosecutor; and
 - (c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
 - (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
 - (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;

- (c) Adjourn the hearing and request the Prosecutor to consider:
- (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.
8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.
9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this Article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.
10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.
11. Once the charges have been confirmed in accordance with this Article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to Article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

ARTICLE 62 PLACE OF TRIAL

Unless otherwise decided, the place of the trial shall be the seat of the Court.

ARTICLE 63 TRIAL IN THE PRESENCE OF THE ACCUSED

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

ARTICLE 64
FUNCTIONS AND POWERS OF THE TRIAL CHAMBER

1. The functions and powers of the Trial Chamber set out in this Article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
 - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
 - (b) Determine the language or languages to be used at trial; and
 - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
 - (a) Exercise any functions of the Pre-Trial Chamber referred to in Article 61, paragraph 11;
 - (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
 - (c) Provide for the protection of confidential information;
 - (d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
 - (e) Provide for the protection of the accused, witnesses and victims; and
 - (f) Rule on any other relevant matters.
7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in Article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with Article 65 or to plead not guilty.
 - (b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.
9. The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:
 - (a) Rule on the admissibility or relevance of evidence; and
 - (b) Take all necessary steps to maintain order in the course of a hearing.
10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

ARTICLE 65
PROCEEDINGS ON AN ADMISSION OF GUILT

1. Where the accused makes an admission of guilt pursuant to Article 64, paragraph 8(a), the Trial Chamber shall determine whether:
 - (a) The accused understands the nature and consequences of the admission of guilt;
 - (b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
 - (c) The admission of guilt is supported by the facts of the case that are contained in:
 - (i) The charges brought by the Prosecutor and admitted by the accused;
 - (ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
 - (iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.
3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in

which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
 - (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
 - (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.
5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

ARTICLE 66 PRESUMPTION OF INNOCENCE

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

ARTICLE 67 RIGHTS OF THE ACCUSED

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
 - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
 - (c) To be tried without undue delay;
 - (d) Subject to Article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
 - (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
 - (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
 - (h) To make an unsworn oral or written statement in his or her defence; and
 - (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.
2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

ARTICLE 68

PROTECTION OF THE VICTIMS AND WITNESSES AND THEIR PARTICIPATION IN THE PROCEEDINGS

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in Article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in Article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings

determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

ARTICLE 69 **EVIDENCE**

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in Article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with Article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
 - (a) The violation casts substantial doubt on the reliability of the evidence; or
 - (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

ARTICLE 70

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
 - (a) Giving false testimony when under an obligation pursuant to Article 69, paragraph 1, to tell the truth;
 - (b) Presenting evidence that the party knows is false or forged;
 - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
 - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
 - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
 - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this Article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this Article shall be governed by the domestic laws of the requested State.
3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.
4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the

administration of justice referred to in this Article, committed on its territory, or by one of its nationals;

- (b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

ARTICLE 71

SANCTIONS FOR MISCONDUCT BEFORE THE COURT

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

ARTICLE 72

PROTECTION OF NATIONAL SECURITY INFORMATION

1. This Article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of Article 56, paragraphs 2 and 3, Article 61, paragraph 3, Article 64, paragraph 3, Article 67, paragraph 2, Article 68, paragraph 6, Article 87, paragraph 6 and Article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.
2. This Article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.
3. Nothing in this Article shall prejudice the requirements of confidentiality applicable under Article 54, paragraph 3(e) and (f), or the application of Article 73.
4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this Article.
5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the

case may be, to seek to resolve the matter by cooperative means. Such steps may include:

- (a) Modification or clarification of the request;
 - (b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;
 - (c) Obtaining the information or evidence from a different source or in a different form; or
 - (d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of *in camera* or *ex parte* proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.
6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.
7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:
- (a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in Article 93, paragraph 4:
 - (i) The Court may, before making any conclusion referred to in subparagraph 7 (a)(ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings *in camera* and *ex parte*;
 - (ii) If the Court concludes that, by invoking the ground for refusal under Article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with Article 87, paragraph 7, specifying the reasons for its conclusion; and
 - (iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or
 - (b) In all other circumstances:
 - (i) Order disclosure; or

- (ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

ARTICLE 73
THIRD-PARTY INFORMATION OR DOCUMENTS

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of Article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

ARTICLE 74
REQUIREMENTS FOR THE DECISION

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.
3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

ARTICLE 75
REPARATIONS TO VICTIMS

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79.

3. Before making an order under this Article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this Article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this Article, it is necessary to seek measures under Article 93, paragraph 1.
5. A State Party shall give effect to a decision under this Article as if the provisions of Article 109 were applicable to this Article.
6. Nothing in this Article shall be interpreted as prejudicing the rights of victims under national or international law.

ARTICLE 76
SENTENCING

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where Article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under Article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

ARTICLE 77 APPLICABLE PENALTIES

1. Subject to Article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in Article 5 of this Statute:
 - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
 - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Court may order:
 - (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
 - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

ARTICLE 78 DETERMINATION OF THE SENTENCE

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with Article 77, paragraph 1(b).

ARTICLE 79 TRUST FUND

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

ARTICLE 80
NON-PREJUDICE TO NATIONAL APPLICATION OF
PENALTIES AND NATIONAL LAWS

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

ARTICLE 81
APPEAL AGAINST DECISION OF ACQUITTAL OR
CONVICTION OR AGAINST SENTENCE

1. A decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
 - (a) The Prosecutor may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact, or
 - (iii) Error of law;
 - (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
 - (i) Procedural error,
 - (ii) Error of fact,
 - (iii) Error of law, or
 - (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.
2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
 - (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under Article 81, paragraph 1(a) or (b), and may render a decision on conviction in accordance with Article 83;

- (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2(a).
3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;
 - (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;
 - (c) In case of an acquittal, the accused shall be released immediately, subject to the following:
 - (i) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
 - (ii) A decision by the Trial Chamber under subparagraph (c)(i) may be appealed in accordance with the Rules of Procedure and Evidence.
4. Subject to the provisions of paragraph 3(a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

ARTICLE 82

APPEAL AGAINST OTHER DECISIONS

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
 - (a) A decision with respect to jurisdiction or admissibility;
 - (b) A decision granting or denying release of the person being investigated or prosecuted;
 - (c) A decision of the Pre-Trial Chamber to act on its own initiative under Article 56, paragraph 3;
 - (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
2. A decision of the Pre-Trial Chamber under Article 57, paragraph 3(d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.
3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under Article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

ARTICLE 83 PROCEEDINGS ON APPEAL

1. For the purposes of proceedings under Article 81 and this Article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
 - (a) Reverse or amend the decision or sentence; or
 - (b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgment shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.
5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

ARTICLE 84 REVISION OF CONVICTION OR SENTENCE

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

- (a) New evidence has been discovered that:
 - (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
 - (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
 - (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
 - (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under Article 46.
2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:
- (a) Reconvene the original Trial Chamber;
 - (b) Constitute a new Trial Chamber; or
 - (c) Retain jurisdiction over the matter,
- with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

ARTICLE 85

COMPENSATION TO AN ARRESTED OR CONVICTED PERSON

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9.
INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

ARTICLE 86
GENERAL OBLIGATION TO COOPERATE

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

ARTICLE 87
REQUESTS FOR COOPERATION: GENERAL PROVISIONS

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

- (b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.
2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.
4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.
5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

- (b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.
6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.
7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

ARTICLE 88

AVAILABILITY OF PROCEDURES UNDER NATIONAL LAW

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

ARTICLE 89

SURRENDER OF PERSONS TO THE COURT

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in Article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.
2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *ne bis in idem* as provided in Article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.
3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

- (b) A request by the Court for transit shall be transmitted in accordance with Article 87. The request for transit shall contain:
 - (i) A description of the person being transported;
 - (ii) A brief statement of the facts of the case and their legal characterization; and
 - (iii) The warrant for arrest and surrender;
 - (c) A person being transported shall be detained in custody during the period of transit;
 - (d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;
 - (e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.
4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

ARTICLE 90 COMPETING REQUESTS

1. A State Party which receives a request from the Court for the surrender of a person under Article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.
2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:
 - (a) The Court has, pursuant to Article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or
 - (b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.
3. Where a determination under paragraph 2(a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2(b), proceed to deal with the request for extradition from the requesting State but shall

not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.
5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.
6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:
 - (a) The respective dates of the requests;
 - (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
 - (c) The possibility of subsequent surrender between the Court and the requesting State.
7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
 - (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
 - (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.
8. Where pursuant to a notification under this Article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

ARTICLE 91

CONTENTS OF REQUEST FOR ARREST AND SURRENDER

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in Article 87, paragraph 1(a).
2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under Article 58, the request shall contain or be supported by:
 - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
 - (b) A copy of the warrant of arrest; and
 - (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:
 - (a) A copy of any warrant of arrest for that person;
 - (b) A copy of the judgement of conviction;
 - (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and
 - (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.
4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2(c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

ARTICLE 92

PROVISIONAL ARREST

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in Article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
 - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
 - (b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
 - (c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
 - (d) A statement that a request for surrender of the person sought will follow.
3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in Article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.
4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

ARTICLE 93

OTHER FORMS OF COOPERATION

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
 - (a) The identification and whereabouts of persons or the location of items;
 - (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
 - (c) The questioning of any person being investigated or prosecuted;
 - (d) The service of documents, including judicial documents;
 - (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
 - (f) The temporary transfer of persons as provided in paragraph 7;
 - (g) The examination of places or sites, including the exhumation and examination of grave sites;
 - (h) The execution of searches and seizures;

- (i) The provision of records and documents, including official records and documents;
 - (j) The protection of victims and witnesses and the preservation of evidence;
 - (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
 - (l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.
2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.
 3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.
 4. In accordance with Article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.
 5. Before denying a request for assistance under paragraph 1(l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.
 6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.
 7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:
 - (i) The person freely gives his or her informed consent to the transfer; and
 - (ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.
 - (b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.
 - (b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.
 - (c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.
9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.
 - (ii) Failing that, competing requests shall be resolved in accordance with the principles established in Article 90.
- (b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.
10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.
 - (b) (i) The assistance provided under subparagraph (a) shall include, *inter alia*:
 - a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
 - b. The questioning of any person detained by order of the Court;
 - (ii) In the case of assistance under subparagraph (b)(i)a:
 - a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;
 - b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of Article 68.

- (c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

ARTICLE 94

POSTPONEMENT OF EXECUTION OF A REQUEST IN RESPECT OF ONGOING INVESTIGATION OR PROSECUTION

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.
2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to Article 93, paragraph 1(j).

ARTICLE 95

POSTPONEMENT OF EXECUTION OF A REQUEST IN RESPECT OF AN ADMISSIBILITY CHALLENGE

Where there is an admissibility challenge under consideration by the Court pursuant to Article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to Article 18 or 19.

ARTICLE 96

CONTENTS OF REQUEST FOR OTHER FORMS OF ASSISTANCE UNDER ARTICLE 93

1. A request for other forms of assistance referred to in Article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in Article 87, paragraph 1(a).
2. The request shall, as applicable, contain or be supported by the following:
 - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;
 - (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

- (c) A concise statement of the essential facts underlying the request;
 - (d) The reasons for and details of any procedure or requirement to be followed;
 - (e) Such information as may be required under the law of the requested State in order to execute the request; and
 - (f) Any other information relevant in order for the assistance sought to be provided.
3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2(e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.
 4. The provisions of this Article shall, where applicable, also apply in respect of a request for assistance made to the Court.

ARTICLE 97 CONSULTATIONS

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, *inter alia*:

- (a) Insufficient information to execute the request;
- (b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
- (c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

ARTICLE 98 COOPERATION WITH RESPECT TO WAIVER OF IMMUNITY AND CONSENT TO SURRENDER

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international

agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

ARTICLE 99
EXECUTION OF REQUESTS UNDER ARTICLES 93 AND 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.
2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.
3. Replies from the requested State shall be transmitted in their original language and form.
4. Without prejudice to other Articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:
 - (a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to Article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;
 - (b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.
5. Provisions allowing a person heard or examined by the Court under Article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this Article.

ARTICLE 100
COSTS

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:
 - (a) Costs associated with the travel and security of witnesses and experts or the transfer under Article 93 of persons in custody;
 - (b) Costs of translation, interpretation and transcription;
 - (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
 - (d) Costs of any expert opinion or report requested by the Court;
 - (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
 - (f) Following consultations, any extraordinary costs that may result from the execution of a request.
2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

ARTICLE 101
RULE OF SPECIALITY

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with Article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

ARTICLE 102
USE OF TERMS

For the purposes of this Statute:

- (a) “surrender” means the delivering up of a person by a State to the Court, pursuant to this Statute.
- (b) “extradition” means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

ARTICLE 103

ROLE OF STATES IN ENFORCEMENT OF SENTENCES OF IMPRISONMENT

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.
(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.
(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under Article 110.
(b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with Article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:
 - (a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
 - (b) The application of widely accepted international treaty standards governing the treatment of prisoners;
 - (c) The views of the sentenced person;
 - (d) The nationality of the sentenced person;
 - (e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in Article 3, paragraph 2.

In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

ARTICLE 104
CHANGE IN DESIGNATION OF STATE OF ENFORCEMENT

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

ARTICLE 105
ENFORCEMENT OF THE SENTENCE

1. Subject to conditions which a State may have specified in accordance with Article 103, paragraph 1(b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.
2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

ARTICLE 106
**SUPERVISION OF ENFORCEMENT OF
SENTENCES AND CONDITIONS OF IMPRISONMENT**

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.
2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

ARTICLE 107
TRANSFER OF THE PERSON UPON COMPLETION OF SENTENCE

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State

which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.

2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of Article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

ARTICLE 108
LIMITATION ON THE PROSECUTION OR
PUNISHMENT OF OTHER OFFENCES

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

ARTICLE 109
ENFORCEMENT OF FINES AND FORFEITURE MEASURES

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

ARTICLE 110
REVIEW BY THE COURT CONCERNING REDUCTION OF SENTENCE

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.
2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two-thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.
4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
 - (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
 - (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
 - (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.
5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

ARTICLE 111
ESCAPE

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

ARTICLE 112 ASSEMBLY OF STATES PARTIES

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.
2. The Assembly shall:
 - (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
 - (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
 - (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
 - (d) Consider and decide the budget for the Court;
 - (e) Decide whether to alter, in accordance with Article 36, the number of judges;
 - (f) Consider pursuant to Article 87, paragraphs 5 and 7, any question relating to non-cooperation;
 - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.
3.
 - (a) The Assembly shall have a Bureau consisting of a President, two Vice Presidents and 18 members elected by the Assembly for three-year terms.
 - (b) 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.
 - (c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.
4. 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.
5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.
6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one-third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:
 - (a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;
 - (b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.
8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.
9. The Assembly shall adopt its own rules of procedure.
10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

ARTICLE 113 FINANCIAL REGULATIONS

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

ARTICLE 114 PAYMENT OF EXPENSES

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

ARTICLE 115 FUNDS OF THE COURT AND OF THE ASSEMBLY OF STATES PARTIES

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

- (a) Assessed contributions made by States Parties;
- (b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

ARTICLE 116
VOLUNTARY CONTRIBUTIONS

Without prejudice to Article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

ARTICLE 117
ASSESSMENT OF CONTRIBUTIONS

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, 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.

ARTICLE 118
ANNUAL AUDIT

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13.
FINAL CLAUSES

ARTICLE 119
SETTLEMENT OF DISPUTES

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

ARTICLE 120
RESERVATIONS

No reservations may be made to this Statute.

ARTICLE 121
AMENDMENTS

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.
5. Any amendment to Articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.
6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding Article 127, paragraph 1, but subject to Article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.
7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

ARTICLE 122
AMENDMENTS TO PROVISIONS OF AN INSTITUTIONAL NATURE

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, Article 35, Article 36, paragraphs 8 and 9, Article 37, Article 38, Article 39, paragraphs 1 (first two sentences), 2 and 4, Article 42, paragraphs 4 to 9, Article 43, paragraphs 2 and 3, and Articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding Article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.
2. Amendments under this Article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

ARTICLE 123
REVIEW OF THE STATUTE

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in Article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.
2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.
3. The provisions of Article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

ARTICLE 124
TRANSITIONAL PROVISION

Notwithstanding Article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in Article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this Article may be withdrawn at any time. The provisions of this Article shall be reviewed at the Review Conference convened in accordance with Article 123, paragraph 1.

ARTICLE 125
SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on July 17, 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until October 17, 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until December 31, 2000.
2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 126
ENTRY INTO FORCE

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 127
WITHDRAWAL

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

ARTICLE 128
AUTHENTIC TEXTS

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

RULES OF PROCEDURE AND EVIDENCE* ** ***

TABLE OF CONTENTS

CHAPTER 1.	GENERAL PROVISIONS	127
Rule 1	Use of terms	127
Rule 2	Authentic texts	127
Rule 3	Amendments	127
CHAPTER 2.	COMPOSITION AND ADMINISTRATION OF THE COURT	127
SECTION I.	GENERAL PROVISIONS RELATING TO THE COMPOSITION AND ADMINISTRATION OF THE COURT	127
Rule 4	Plenary sessions	127
Rule 4 <i>bis</i>	The Presidency	127
Rule 5	Solemn undertaking under Article 45	128
Rule 6	Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators	128
Rule 7	Single judge under Article 39, paragraph 2(b)(iii)	128
Rule 8	Code of Professional Conduct	129
SECTION II.	THE OFFICE OF THE PROSECUTOR	129
Rule 9	Operation of the Office of the Prosecutor	129
Rule 10	Retention of information and evidence	129
Rule 11	Delegation of the Prosecutor's functions	129
SECTION III.	THE REGISTRY	129
Subsection 1.	General provisions relating to the Registry	129
Rule 12	Qualifications and election of the Registrar and the Deputy Registrar	129

* 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.

** The Rules of Procedure and Evidence are reproduced from the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, September 3–10, 2002* (ICC-ASP/1/3 and Corr.1), part II.A. The amendments are reflected via footnotes.

*** Published by the International Criminal Court, ISBN No. 92-9227-278-0, ICC-PIDS-LT-02-002/13_Eng, Copyright © International Criminal Court 2013, First Edition 2005, Second Edition 2013, Printed by PrintPartners Ipskamp, Enschede.

Rule 13	Functions of the Registrar	130
Rule 14	Operation of the Registry	130
Rule 15	Records	130
Subsection 2. Victims and Witnesses Unit		130
Rule 16	Responsibilities of the Registrar relating to victims and witnesses	130
Rule 17	Functions of the Unit	131
Rule 18	Responsibilities of the Unit	132
Rule 19	Expertise in the Unit	132
Subsection 3. Counsel for the defence		132
Rule 20	Responsibilities of the Registrar relating to the rights of the defence	132
Rule 21	Assignment of legal assistance	133
Rule 22	Appointment and qualifications of Counsel for the defence	133
SECTION IV. SITUATIONS THAT MAY AFFECT THE FUNCTIONING OF THE COURT		134
Subsection 1. Removal from office and disciplinary measures		134
Rule 23	General principle	134
Rule 24	Definition of serious misconduct and serious breach of duty	134
Rule 25	Definition of misconduct of a less serious nature	135
Rule 26	Receipt of complaints	135
Rule 27	Common provisions on the rights of the defence	135
Rule 28	Suspension from duty	135
Rule 29	Procedure in the event of a request for removal from office	135
Rule 30	Procedure in the event of a request for disciplinary measures	136
Rule 31	Removal from office	136
Rule 32	Disciplinary measures	136
Subsection 2. Excusing, disqualification, death and resignation		136
Rule 33	Excusing of a judge, the Prosecutor or a Deputy Prosecutor	136
Rule 34	Disqualification of a judge, the Prosecutor or a Deputy Prosecutor	136
Rule 35	Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused	137
Rule 36	Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar	137
Rule 37	Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar	137
Subsection 3. Replacements and alternate judges		137
Rule 38	Replacements	137
Rule 39	Alternate judges	138

SECTION V. PUBLICATION, LANGUAGES AND TRANSLATION	138
Rule 40 Publication of decisions in official languages of the Court	138
Rule 41 Working languages of the Court	138
Rule 42 Translation and interpretation services	138
Rule 43 Procedure applicable to the publication of documents of the Court	138
CHAPTER 3. JURISDICTION AND ADMISSIBILITY	139
SECTION I. DECLARATIONS AND REFERRALS RELATING TO ARTICLES 11, 12, 13 AND 14	139
Rule 44 Declaration provided for in Article 12, paragraph 3	139
Rule 45 Referral of a situation to the Prosecutor	139
SECTION II. INITIATION OF INVESTIGATIONS UNDER ARTICLE 15	139
Rule 46 Information provided to the Prosecutor under Article 15, paragraphs 1 and 2	139
Rule 47 Testimony under Article 15, paragraph 2	139
Rule 48 Determination of reasonable basis to proceed with an investigation under Article 15, paragraph 3	139
Rule 49 Decision and notice under Article 15, paragraph 6	139
Rule 50 Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation	140
SECTION III. CHALLENGES AND PRELIMINARY RULINGS UNDER ARTICLES 17, 18 AND 19	140
Rule 51 Information provided under Article 17	140
Rule 52 Notification provided for in Article 18, paragraph 1	140
Rule 53 Deferral provided for in Article 18, paragraph 2	141
Rule 54 Application by the Prosecutor under Article 18, paragraph 2	141
Rule 55 Proceedings concerning Article 18, paragraph 2	141
Rule 56 Application by the Prosecutor following review under Article 18, paragraph 3	141
Rule 57 Provisional measures under Article 18, paragraph 6	141
Rule 58 Proceedings under Article 19	141
Rule 59 Participation in proceedings under Article 19, paragraph 3	142
Rule 60 Competent organ to receive challenges	142
Rule 61 Provisional measures under Article 19, paragraph 8	142
Rule 62 Proceedings under Article 19, paragraph 10	142
CHAPTER 4. PROVISIONS RELATING TO VARIOUS STAGES OF THE PROCEEDINGS	143
SECTION I. EVIDENCE	143
Rule 63 General provisions relating to evidence	143
Rule 64 Procedure relating to the relevance or admissibility of evidence	143
Rule 65 Compellability of witnesses	143

Rule 66	Solemn undertaking	143
Rule 67	Live testimony by means of audio or video-link technology	144
Rule 68	Prior recorded testimony	144
Rule 69	Agreements as to evidence	146
Rule 70	Principles of evidence in cases of sexual violence	146
Rule 71	Evidence of other sexual conduct	146
Rule 72	<i>In camera</i> procedure to consider relevance or admissibility of evidence	146
Rule 73	Privileged communications and information	147
Rule 74	Self-incrimination by a witness	148
Rule 75	Incrimination by family members	149
SECTION II. DISCLOSURE		149
Rule 76	Pre-trial disclosure relating to prosecution witnesses	149
Rule 77	Inspection of material in possession or control of the Prosecutor	150
Rule 78	Inspection of material in possession or control of the defence	150
Rule 79	Disclosure by the defence	150
Rule 80	Procedures for raising a ground for excluding criminal responsibility under Article 31, paragraph 3	150
Rule 81	Restrictions on disclosure	150
Rule 82	Restrictions on disclosure of material and information protected under Article 54, paragraph 3(e)	151
Rule 83	Ruling on exculpatory evidence under Article 67, paragraph 2	152
Rule 84	Disclosure and additional evidence for trial	152
SECTION III. VICTIMS AND WITNESSES		152
Subsection 1. Definition and general principle relating to victims		152
Rule 85	Definition of victims	152
Rule 86	General principle	152
Subsection 2. Protection of victims and witnesses		152
Rule 87	Protective measures	152
Rule 88	Special measures	153
Subsection 3. Participation of victims in the proceedings		154
Rule 89	Application for participation of victims in the proceedings	154
Rule 90	Legal representatives of victims	154
Rule 91	Participation of legal representatives in the proceedings	155
Rule 92	Notification to victims and their legal representatives	156
Rule 93	Views of victims or their legal representatives	156
Subsection 4. Reparations to victims		157
Rule 94	Procedure upon request	157
Rule 95	Procedure on the motion of the Court	157
Rule 96	Publication of reparation proceedings	157
Rule 97	Assessment of reparations	157

Rule 98	Trust Fund	158
Rule 99	Cooperation and protective measures for the purpose of forfeiture under Articles 57, paragraph 3(e), and 75, paragraph 4	158
SECTION IV. MISCELLANEOUS PROVISIONS		159
Rule 100	Place of the proceedings	159
Rule 101	Time limits	159
Rule 102	Communications other than in writing	159
Rule 103	<i>Amicus curiae</i> and other forms of submission	159
CHAPTER 5. INVESTIGATION AND PROSECUTION		160
SECTION I. DECISION OF THE PROSECUTOR REGARDING THE INITIATION OF AN INVESTIGATION UNDER ARTICLE 53, PARAGRAPHS 1 AND 2		160
Rule 104	Evaluation of information by the Prosecutor	160
Rule 105	Notification of a decision by the Prosecutor not to initiate an investigation	160
Rule 106	Notification of a decision by the Prosecutor not to prosecute	160
SECTION II. PROCEDURE UNDER ARTICLE 53, PARAGRAPH 3		160
Rule 107	Request for review under Article 53, paragraph 3(a)	160
Rule 108	Decision of the Pre-Trial Chamber under Article 53, paragraph 3(a)	161
Rule 109	Review by the Pre-Trial Chamber under Article 53, paragraph 3(b)	161
Rule 110	Decision by the Pre-Trial Chamber under Article 53, paragraph 3(b)	161
SECTION III. COLLECTION OF EVIDENCE		161
Rule 111	Record of questioning in general	161
Rule 112	Recording of questioning in particular cases	162
Rule 113	Collection of information regarding the state of health of the person concerned	163
Rule 114	Unique investigative opportunity under Article 56	163
Rule 115	Collection of evidence in the territory of a State Party under Article 57, paragraph 3(d)	163
Rule 116	Collection of evidence at the request of the defence under Article 57, paragraph 3(b)	164
SECTION IV. PROCEDURES IN RESPECT OF RESTRICTION AND DEPRIVATION OF LIBERTY		164
Rule 117	Detention in the custodial State	164
Rule 118	Pre-trial detention at the seat of the Court	164
Rule 119	Conditional release	165
Rule 120	Instruments of restraint	165

SECTION V.	PROCEEDINGS WITH REGARD TO THE CONFIRMATION OF CHARGES UNDER ARTICLE 61	165
Rule 121	Proceedings before the confirmation hearing	165
Rule 122	Proceedings at the confirmation hearing in the presence of the person charged	167
Rule 123	Measures to ensure the presence of the person concerned at the confirmation hearing	167
Rule 124	Waiver of the right to be present at the confirmation hearing	168
Rule 125	Decision to hold the confirmation hearing in the absence of the person concerned	168
Rule 126	Confirmation hearing in the absence of the person concerned	168
SECTION VI.	CLOSURE OF THE PRE-TRIAL PHASE	169
Rule 127	Procedure in the event of different decisions on multiple charges	169
Rule 128	Amendment of the charges	169
Rule 129	Notification of the decision on the confirmation of charges	169
Rule 130	Constitution of the Trial Chamber	169
CHAPTER 6.	TRIAL PROCEDURE	169
Rule 131	Record of the proceedings transmitted by the Pre-Trial Chamber	169
Rule 132	Status conferences	170
Rule 132 <i>bis</i>	Designation of a judge for the preparation of the trial	170
Rule 133	Motions challenging admissibility or jurisdiction	170
Rule 134	Motions relating to the trial proceedings	171
Rule 134 <i>bis</i>	Presence through the use of video technology	171
Rule 134 <i>ter</i>	Excusal from presence at trial	171
Rule 134 <i>quater</i>	Excusal from presence at trial due to extraordinary public duties	171
Rule 135	Medical examination of the accused	172
Rule 136	Joint and separate trials	172
Rule 137	Record of the trial proceedings	172
Rule 138	Custody of evidence	172
Rule 139	Decision on admission of guilt	172
Rule 140	Directions for the conduct of the proceedings and testimony	173
Rule 141	Closure of evidence and closing statements	173
Rule 142	Deliberations	173
Rule 143	Additional hearings on matters related to sentence or reparations	173
Rule 144	Delivery of the decisions of the Trial Chamber	174

CHAPTER 7. PENALTIES	174
Rule 145 Determination of sentence	174
Rule 146 Imposition of fines under Article 77	175
Rule 147 Orders of forfeiture	176
Rule 148 Orders to transfer fines or forfeitures to the Trust Fund	176
CHAPTER 8. APPEAL AND REVISION	176
SECTION I. GENERAL PROVISIONS	176
Rule 149 Rules governing proceedings in the Appeals Chamber	176
SECTION II. APPEALS AGAINST CONVICTIONS, ACQUITTALS, SENTENCES AND REPARATION ORDERS	176
Rule 150 Appeal	176
Rule 151 Procedure for the appeal	176
Rule 152 Discontinuance of the appeal	176
Rule 153 Judgement on appeals against reparation orders	177
SECTION III. APPEALS AGAINST OTHER DECISIONS	177
Rule 154 Appeals that do not require the leave of the Court	177
Rule 155 Appeals that require leave of the Court	177
Rule 156 Procedure for the appeal	177
Rule 157 Discontinuance of the appeal	177
Rule 158 Judgement on the appeal	178
SECTION IV. REVISION OF CONVICTION OR SENTENCE	178
Rule 159 Application for revision	178
Rule 160 Transfer for the purpose of revision	178
Rule 161 Determination on revision	178
CHAPTER 9. OFFENCES AND MISCONDUCT AGAINST THE COURT	178
SECTION I. OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE UNDER ARTICLE 70	178
Rule 162 Exercise of jurisdiction	178
Rule 163 Application of the Statute and the Rules	179
Rule 164 Periods of limitation	179
Rule 165 Investigation, prosecution and trial	179
Rule 166 Sanctions under Article 70	179
Rule 167 International cooperation and judicial assistance	180
Rule 168 <i>Ne bis in idem</i>	180
Rule 169 Immediate arrest	180
SECTION II. MISCONDUCT BEFORE THE COURT UNDER ARTICLE 71	180
Rule 170 Disruption of proceedings	180

Rule 171	Refusal to comply with a direction by the Court	180
Rule 172	Conduct covered by both Articles 70 and 71	181
CHAPTER 10. COMPENSATION TO AN ARRESTED OR CONVICTED PERSON		181
Rule 173	Request for compensation	181
Rule 174	Procedure for seeking compensation	181
Rule 175	Amount of compensation	182
CHAPTER 11. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE		182
SECTION I. REQUESTS FOR COOPERATION UNDER ARTICLE 87		182
Rule 176	Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance	182
Rule 177	Channels of communication	182
Rule 178	Language chosen by States Parties under Article 87, paragraph 2	183
Rule 179	Language of requests directed to States not party to the Statute	183
Rule 180	Changes in the channels of communication or the languages of requests for cooperation	183
SECTION II. SURRENDER, TRANSIT AND COMPETING REQUESTS UNDER ARTICLES 89 AND 90		183
Rule 181	Challenge to admissibility of a case before a national court	183
Rule 182	Request for transit under Article 89, paragraph 3(e)	183
Rule 183	Possible temporary surrender	183
Rule 184	Arrangements for surrender	184
Rule 185	Release of a person from the custody of the Court other than upon completion of sentence	184
Rule 186	Competing requests in the context of a challenge to the admissibility of the case	184
SECTION III. DOCUMENTS FOR ARREST AND SURRENDER UNDER ARTICLES 91 AND 92		184
Rule 187	Translation of documents accompanying request for surrender	184
Rule 188	Time limit for submission of documents after provisional arrest	184
Rule 189	Transmission of documents supporting the request	185
SECTION IV. COOPERATION UNDER ARTICLE 93		185
Rule 190	Instruction on self-incrimination accompanying request for witness	185
Rule 191	Assurance provided by the Court under Article 93, paragraph 2	185
Rule 192	Transfer of a person in custody	185
Rule 193	Temporary transfer of the person from the State of enforcement	185
Rule 194	Cooperation requested from the Court	185

SECTION V. COOPERATION UNDER ARTICLE 98	186
Rule 195 Provision of information	186
SECTION VI. RULE OF SPECIALITY UNDER ARTICLE 101	186
Rule 196 Provision of views on Article 101, paragraph 1	186
Rule 197 Extension of the surrender	186
CHAPTER 12. ENFORCEMENT	186
SECTION I. ROLE OF STATES IN ENFORCEMENT OF SENTENCES OF IMPRISONMENT AND CHANGE IN DESIGNATION OF STATE OF ENFORCEMENT UNDER ARTICLES 103 AND 104	186
Rule 198 Communications between the Court and States	186
Rule 199 Organ responsible under Part 10	186
Rule 200 List of States of enforcement	187
Rule 201 Principles of equitable distribution	187
Rule 202 Timing of delivery of the sentenced person to the State of enforcement	187
Rule 203 Views of the sentenced person	187
Rule 204 Information relating to designation	187
Rule 205 Rejection of designation in a particular case	188
Rule 206 Delivery of the sentenced person to the State of enforcement	188
Rule 207 Transit	188
Rule 208 Costs	188
Rule 209 Change in designation of State of enforcement	188
Rule 210 Procedure for change in the designation of a State of enforcement	188
SECTION II. ENFORCEMENT, SUPERVISION AND TRANSFER UNDER ARTICLES 105, 106 AND 107	189
Rule 211 Supervision of enforcement of sentences and conditions of imprisonment	189
Rule 212 Information on location of the person for enforcement of fines, forfeitures or reparation measures	189
Rule 213 Procedure for Article 107, paragraph 3	189
SECTION III. LIMITATION ON THE PROSECUTION OR PUNISHMENT OF OTHER OFFENCES UNDER ARTICLE 108	189
Rule 214 Request to prosecute or enforce a sentence for prior conduct	189
Rule 215 Decision on request to prosecute or enforce a sentence	190
Rule 216 Information on enforcement	190

SECTION IV. ENFORCEMENT OF FINES, FORFEITURE MEASURES AND REPARATION ORDERS	190
Rule 217 Cooperation and measures for enforcement of fines, forfeiture or reparation orders	190
Rule 218 Orders for forfeiture and reparations	191
Rule 219 Non-modification of orders for reparation	191
Rule 220 Non-modification of judgements in which fines were imposed	191
Rule 221 Decision on disposition or allocation of property or assets	191
Rule 222 Assistance for service or any other measure	192
SECTION V. REVIEW CONCERNING REDUCTION OF SENTENCE UNDER ARTICLE 110	192
Rule 223 Criteria for review concerning reduction of sentence	192
Rule 224 Procedure for review concerning reduction of sentence	192
SECTION VI. ESCAPE	193
Rule 225 Measures under Article 111 in the event of escape	193

CHAPTER 1 GENERAL PROVISIONS

RULE 1 USE OF TERMS

In the present document:

- (a) “Article” refers to Articles of the Rome Statute;
- (b) “Chamber” refers to a Chamber of the Court;
- (c) “Part” refers to the Parts of the Rome Statute;
- (d) “Presiding Judge” refers to the Presiding Judge of a Chamber;
- (e) “the President” refers to the President of the Court;
- (f) “the Regulations” refers to the Regulations of the Court;
- (g) “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 4¹ PLENARY SESSIONS

1. The judges shall meet in plenary session after having made their solemn undertaking, in conformity with Rule 5. At that session the judges shall elect the President and Vice Presidents.
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 4 *bis*² THE PRESIDENCY

1. Pursuant to Article 38, paragraph 3, the Presidency is established upon election by the plenary session of the judges.

¹ As amended by Resolution ICC-ASP/10/Res. 1.

² As amended by Resolution ICC-ASP/10/Res. 1.

2. As soon as possible following its establishment, the Presidency shall, after consultation with the judges, decide on the assignment of judges to divisions in accordance with Article 39, paragraph 1.

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 3.3
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 68³

PRIOR RECORDED TESTIMONY

1. When the Pre-Trial Chamber has not taken measures under Article 56, the Trial Chamber may, in accordance with Article 69, paragraphs 2 and 4, and after hearing the parties, 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 this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.
2. If the witness who gave the previously recorded testimony is not present before

the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:

- (a) Both the Prosecutor and the defence had the opportunity to examine the witness during the recording.
- (b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:
 - (i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:
 - relates to issues that are not materially in dispute;
 - is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
 - relates to background information;
 - is such that the interests of justice are best served by its introduction; and
 - has sufficient indicia of reliability.
 - (ii) Prior recorded testimony falling under sub-rule (b) may only be introduced if it is accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief. Accompanying declarations may not contain any new information and must be made reasonably

³ As amended by Resolution ICC-ASP/12/Res. 7.

close in time to when the prior recorded testimony is being submitted.

- (iii) Accompanying declarations must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the declaration:
- is the person identified in the prior recorded testimony;
 - assures that he or she is making the declaration voluntarily and without undue influence;
 - states that the contents of the prior recorded testimony are, to the best of that person’s knowledge and belief, true and correct; and
 - was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.
- (c) The prior recorded testimony comes from a person who has subsequently died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case:
- (i) Prior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied that the person is unavailable as set out above, that the necessity of measures under Article 56 could not be anticipated, and that the prior recorded testimony has sufficient indicia of reliability.
- (ii) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.
- (d) The prior recorded testimony comes from a person who has been subjected to interference. In such a case:
- (i) Prior recorded testimony falling under sub-rule (d) may only be introduced if the Chamber is satisfied that:
- the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in his or her prior recorded testimony;
 - the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion;
 - reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness;
 - the interests of justice are best served by the prior recorded testimony being introduced; and
 - the prior recorded testimony has sufficient indicia of reliability.

- (ii) For the purposes of sub-rule (d) (i), an improper interference may relate, *inter alia*, to the physical, psychological, economic or other interests of the person.
 - (iii) When prior recorded testimony submitted under sub-rule (d)(i) relates to completed proceedings for offences defined in Article 70, the Chamber may consider adjudicated facts from these proceedings in its assessment.
 - (iv) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.
3. If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if 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.
- after assuring the witness that the evidence provided in response to the questions:
- (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.

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,
4. 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 conducts 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 100⁴**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, for such period or periods as may be required, to hear the case in whole or in part.
2. The Chamber, at any time after the initiation of an investigation, may *proprio motu* or at the request of the Prosecutor or the defence, decide to make a recommendation changing the place where the Chamber sits. The judges of the Chamber shall attempt to achieve unanimity in their recommendation, failing which the recommendation shall be made by a majority of the judges. Such a recommendation shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency. It shall be made in writing and specify in which State the Chamber would sit. The assessment prepared by the Registry shall be annexed to the recommendation.
3. The Presidency shall consult the State where the Chamber intends to sit. If that State agrees that the Chamber can sit in that State, then the decision to sit in a State other than the host State shall be taken by the Presidency in consultation with the Chamber. Thereafter, the Chamber or any designated Judge shall sit at the location decided upon.

**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

⁴ As amended by Resolution ICC-ASP/12/Res. 7.

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 132 bis⁵**DESIGNATION OF A JUDGE FOR THE PREPARATION OF THE TRIAL**

1. In exercising its authority under Article 64, paragraph 3(a), a Trial Chamber may designate one or more of its members for the purposes of ensuring the preparation of the trial.
2. The judge shall take all necessary preparatory measures in order to facilitate the fair and expeditious conduct of the trial proceedings, in consultation with the Trial Chamber.
3. The judge may at any time, *proprio motu* or, if appropriate, at the request of a party, refer specific issues to the Trial Chamber for its decision. A majority of the Trial Chamber may also decide *proprio motu* or, if appropriate, at the request of a party, to deal with issues that could otherwise be dealt with by the judge.
4. In order to fulfil his or her responsibilities for the preparation of the trial, the judge may hold status conferences and render orders and decisions. The judge may

also establish a work plan indicating the obligations the parties are required to meet pursuant to this rule and the dates by which these obligations must be fulfilled.

5. The functions of the judge may be performed in relation to preparatory issues, whether or not they arise before or after the commencement of the trial. These issues may include:
 - (a) Ensuring proper disclosure between the parties;
 - (b) Ordering protective measures where necessary;
 - (c) Dealing with applications by victims for participation in the trial, as referred to in Article 68, paragraph 3;
 - (d) Conferring with the parties regarding issues referred to in Regulation 54 of the Regulations of the Court, decisions thereon being taken by the Trial Chamber;
 - (e) Scheduling matters, with the exception of setting the date of the trial, as referred to in Rule 132, sub-rule 1;
 - (f) Dealing with the conditions of detention and related matters; and
 - (g) Dealing with any other preparatory matters that must be resolved which do not otherwise fall within the exclusive competence of the Trial Chamber.
6. The judge shall not render decisions which significantly affect the rights of the accused or which touch upon the central legal and factual issues in the case, nor shall he or she, subject to sub-rule 5, make decisions that affect the substantive rights of victims.

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

⁵ As amended by Resolution ICC-ASP/11/Res. 2.

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 134 bis⁶

PRESENCE THROUGH THE USE OF VIDEO TECHNOLOGY

1. An accused subject to a summons to appear may submit a written request to the Trial Chamber to be allowed to be present through the use of video technology during part or parts of his or her trial.
2. The Trial Chamber shall rule on the request on a case-by-case basis, with due regard to

⁶ As amended by Resolution ICC-ASP/12/Res. 7.

the subject matter of the specific hearings in question.

RULE 134 ter⁷

EXCUSAL FROM PRESENCE AT TRIAL

1. An accused subject to a summons to appear may submit a written request to the Trial Chamber to be excused and to be represented by counsel only during part or parts of his or her trial.
2. The Trial Chamber shall only grant the request if it is satisfied that:
 - (a) exceptional circumstances exist to justify such an absence;
 - (b) alternative measures, including changes to the trial schedule or a short adjournment of the trial, would be inadequate;
 - (c) the accused has explicitly waived his or her right to be present at the trial; and
 - (d) the rights of the accused will be fully ensured in his or her absence.
3. The Trial Chamber shall rule on the request on a case-by-case basis, with due regard to the subject matter of the specific hearings in question. Any absence must be limited to what is strictly necessary and must not become the rule.

RULE 134 quater⁸

EXCUSAL FROM PRESENCE AT TRIAL DUE TO EXTRAORDINARY PUBLIC DUTIES

1. An accused subject to a summons to appear who is mandated to fulfill extraordinary public duties at the highest national level may submit a written request to the Trial Chamber to be excused and to be represented by counsel only; the request must specify that the accused explicitly waives the right to be present at the trial.

⁷ As amended by Resolution ICC-ASP/12/Res. 7.

⁸ As amended by Resolution ICC-ASP/12/Res. 7.

2. The Trial Chamber shall consider the request expeditiously and, if alternative measures are inadequate, shall grant the request where it determines that it is in the interests of justice and provided that the rights of the accused are fully ensured. The decision shall be taken with due regard to the subject matter of the specific hearings in question and is subject to review at any time.

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 percent 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.

ELEMENTS OF CRIMES* ** ***

TABLE OF CONTENTS

GENERAL INTRODUCTION	198
ARTICLE 6 GENOCIDE	198
Introduction	198
6 (a) Genocide by killing	199
6 (b) Genocide by causing serious bodily or mental harm	199
6 (c) Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction	199
6 (d) Genocide by imposing measures intended to prevent births	199
6 (e) Genocide by forcibly transferring children	200
ARTICLE 7 CRIMES AGAINST HUMANITY	200
Introduction	200
7 (1) (a) Crime against humanity of murder	201
7 (1) (b) Crime against humanity of extermination	201
7 (1) (c) Crime against humanity of enslavement	201
7 (1) (d) Crime against humanity of deportation or forcible transfer of population	202
7 (1) (e) Crime against humanity of imprisonment or other severe deprivation of physical liberty	202
7 (1) (f) Crime against humanity of torture	202
7 (1) (g)-1 Crime against humanity of rape	202
7 (1) (g)-2 Crime against humanity of sexual slavery	203
7 (1) (g)-3 Crime against humanity of enforced prostitution	203
7 (1) (g)-4 Crime against humanity of forced pregnancy	204
7 (1) (g)-5 Crime against humanity of enforced sterilization	204
7 (1) (g)-6 Crime against humanity of sexual violence	204
7 (1) (h) Crime against humanity of persecution	204
7 (1) (i) Crime against humanity of enforced disappearance of persons	205

* 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.

** The Elements of Crimes are reproduced from the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, September 3–10, 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31–June 11, 2010* (International Criminal Court publication, RC/11).

*** Published by the International Criminal Court, ISBN No. 92-9227-232-2, ICC-PIDS-LT-03-002/11_Eng, Copyright © International Criminal Court 2011, Printed by PrintPartners Ipskamp, Enschede.

7 (1) (j)	Crime against humanity of apartheid	206
7 (1) (k)	Crime against humanity of other inhumane acts	206
ARTICLE 8 WAR CRIMES		206
Introduction		206
ARTICLE 8 (2) (A)		207
8 (2) (a) (i)	War crime of wilful killing	207
8 (2) (a) (ii)-1	War crime of torture	207
8 (2) (a) (ii)-2	War crime of inhuman treatment	208
8 (2) (a) (ii)-3	War crime of biological experiments	208
8 (2) (a) (iii)	War crime of wilfully causing great suffering	208
8 (2) (a) (iv)	War crime of destruction and appropriation of property	208
8 (2) (a) (v)	War crime of compelling service in hostile forces	209
8 (2) (a) (vi)	War crime of denying a fair trial	209
8 (2) (a) (vii)-1	War crime of unlawful deportation and transfer	209
8 (2) (a) (vii)-2	War crime of unlawful confinement	209
8 (2) (a) (viii)	War crime of taking hostages	210
ARTICLE 8 (2) (B)		210
8 (2) (b) (i)	War crime of attacking civilians	210
8 (2) (b) (ii)	War crime of attacking civilian objects	210
8 (2) (b) (iii)	War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission	210
8 (2) (b) (iv)	War crime of excessive incidental death, injury, or damage	211
8 (2) (b) (v)	War crime of attacking undefended places	211
8 (2) (b) (vi)	War crime of killing or wounding a person <i>hors de combat</i>	212
8 (2) (b) (vii)-1	War crime of improper use of a flag of truce	212
8 (2) (b) (vii)-2	War crime of improper use of a flag, insignia or uniform of the hostile party	212
8 (2) (b) (vii)-3	War crime of improper use of a flag, insignia or uniform of the United Nations	212
8 (2) (b) (vii)-4	War crime of improper use of the distinctive emblems of the Geneva Conventions	213
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	213
8 (2) (b) (ix)	War crime of attacking protected objects	214
8 (2) (b) (x)-1	War crime of mutilation	214
8 (2) (b) (x)-2	War crime of medical or scientific experiments	214
8 (2) (b) (xi)	War crime of treacherously killing or wounding	215
8 (2) (b) (xii)	War crime of denying quarter	215
8 (2) (b) (xiii)	War crime of destroying or seizing the enemy's property	215
8 (2) (b) (xiv)	War crime of depriving the nationals of the hostile power of rights or actions	215

8 (2) (b) (xv)	War crime of compelling participation in military operations	216
8 (2) (b) (xvi)	War crime of pillaging	216
8 (2) (b) (xvii)	War crime of employing poison or poisoned weapons	216
8 (2) (b) (xviii)	War crime of employing prohibited gases, liquids, materials or devices	216
8 (2) (b) (xix)	War crime of employing prohibited bullets	217
8 (2) (b) (xx)	War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute	217
8 (2) (b) (xxi)	War crime of outrages upon personal dignity	217
8 (2) (b) (xxii)-1	War crime of rape	217
8 (2) (b) (xxii)-2	War crime of sexual slavery	218
8 (2) (b) (xxii)-3	War crime of enforced prostitution	218
8 (2) (b) (xxii)-4	War crime of forced pregnancy	218
8 (2) (b) (xxii)-5	War crime of enforced sterilization	219
8 (2) (b) (xxii)-6	War crime of sexual violence	219
8 (2) (b) (xxiii)	War crime of using protected persons as shields	219
8 (2) (b) (xxiv)	War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions	219
8 (2) (b) (xxv)	War crime of starvation as a method of warfare	220
8 (2) (b) (xxvi)	War crime of using, conscripting or enlisting children	220
ARTICLE 8 (2) (C)		220
8 (2) (c) (i)-1	War crime of murder	220
8 (2) (c) (i)-2	War crime of mutilation	220
8 (2) (c) (i)-3	War crime of cruel treatment	221
8 (2) (c) (i)-4	War crime of torture	221
8 (2) (c) (ii)	War crime of outrages upon personal dignity	221
8 (2) (c) (iii)	War crime of taking hostages	222
8 (2) (c) (iv)	War crime of sentencing or execution without due process	222
ARTICLE 8 (2) (E)		222
8 (2) (e) (i)	War crime of attacking civilians	222
8 (2) (e) (ii)	War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions	223
8 (2) (e) (iii)	War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission	223
8 (2) (e) (iv)	War crime of attacking protected objects	223
8 (2) (e) (v)	War crime of pillaging	224
8 (2) (e) (vi)-1	War crime of rape	224
8 (2) (e) (vi)-2	War crime of sexual slavery	224
8 (2) (e) (vi)-3	War crime of enforced prostitution	224
8 (2) (e) (vi)-4	War crime of forced pregnancy	225
8 (2) (e) (vi)-5	War crime of enforced sterilization	225
8 (2) (e) (vi)-6	War crime of sexual violence	225

8 (2) (e) (vii)	War crime of using, conscripting and enlisting children	226
8 (2) (e) (viii)	War crime of displacing civilians	226
8 (2) (e) (ix)	War crime of treacherously killing or wounding	226
8 (2) (e) (x)	War crime of denying quarter	226
8 (2) (e) (xi)-1	War crime of mutilation	227
8 (2) (e) (xi)-2	War crime of medical or scientific experiments	227
8 (2) (e) (xii)	War crime of destroying or seizing the enemy's property	227
8 (2) (e) (xiii)	War crime of employing poison or poisoned weapons	228
8 (2) (e) (xiv)	War crime of employing prohibited gases, liquids, materials or devices	228
8 (2) (e) (xv)	War crime of employing prohibited bullets	228
ARTICLE 8 BIS	CRIME OF AGGRESSION	228

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

ARTICLE 6 GENOCIDE

Introduction

With respect to the last element listed for each crime:

- (a) The term “in the context of” would include the initial acts in an emerging pattern;
- (b) The term “manifest” is an objective qualification;
- (c) 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

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

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

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.

directed against that group or was conduct that could itself effect such destruction.

ARTICLE 6 (c)
GENOCIDE BY DELIBERATELY INFLECTING 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 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.

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.
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.

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.

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.

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

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.

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.

2. The conduct constituted, or took place as part of¹⁰ 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.

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.

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.”

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.

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

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.

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.

**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

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.

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

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.

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.

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.

**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.
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.

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

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.
- (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
 - (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.

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

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.

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.

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.
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.

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

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.

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.

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

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

- (a) 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;
- (b) 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;
- (c) 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.

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)-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.

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.

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) (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.

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.

³⁹ This mental element recognizes the interplay between Article 30 and Article 32. The term "prohibited nature" denotes illegality.

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.

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.

⁴⁰ This mental element recognizes the interplay between Article 30 and Article 32. The term "prohibited nature" denotes illegality.

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.
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.

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.

⁴⁴ The term “transfer” needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

**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.

**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.

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.

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.

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.

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) (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

⁴⁷ As indicated by the use of the term "private or personal use," appropriations justified by military necessity cannot constitute the crime of pillaging.

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

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.

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) (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.

**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.

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.

⁵⁰ The concept of “invasion” is intended to be broad enough to be gender-neutral.

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

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.

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.

**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.
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

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.

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.

⁵⁶ The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

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.
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.

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.

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.
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)⁶⁰

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.

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.

⁶⁰ As amended by Resolution RC/Res.5.

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 OBJECTS⁶¹

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.

⁶¹ 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.⁶²
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 invaded⁶³ 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.⁶⁴

⁶² As indicated by the use of the term “private or personal use,” appropriations justified by military necessity cannot constitute the crime of pillaging.

⁶³ The concept of “invasion” is intended to be broad enough to be gender-neutral.

⁶⁴ It is understood that a person may be incapable of giving genuine consent if affected by natural,

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)-2
WAR CRIME OF SEXUAL SLAVERY⁶⁵

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.⁶⁶
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

induced or age-related incapacity. This footnote also applies to the corresponding elements in Article 8(2)(e)(vi)-3, 5 and 6.

⁶⁵ 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.

⁶⁶ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to

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.
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.

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) (e) (vi)-5
WAR CRIME OF ENFORCED STERILIZATION**

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.⁶⁷
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.⁶⁸
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.

⁶⁷ The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

⁶⁸ It is understood that "genuine consent" does not include consent obtained through deception.

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.

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.⁶⁹
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.

⁶⁹ 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.

ARTICLE 8 (2) (e) (xiii)⁷⁰
**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 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) (xiv)⁷¹
**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.⁷²

⁷⁰ As amended by Resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31 – June 11, 2010* (International Criminal Court publication, RC/11), part II.

⁷¹ *Ibid.*

⁷² Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect

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) (xv)⁷³
**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 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 bis⁷⁴
CRIME OF AGGRESSION

Introduction

1. It is understood that any of the acts referred to in Article 8 bis, paragraph 2, qualify as an act of aggression.

to the development, production, stockpiling and use of chemical weapons.

⁷³ As amended by Resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31 – June 11, 2010* (International Criminal Court publication, RC/11), part II.

⁷⁴ As amended by Resolution RC/Res.6; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, May 31 – June 11, 2010* (International Criminal Court publication, RC/11), part II.

2. There is no requirement to prove that the perpetrator has made a legal evaluation as to whether the use of armed force was inconsistent with the Charter of the United Nations.
3. The term “manifest” is an objective qualification.
4. There is no requirement to prove that the perpetrator has made a legal evaluation as to the “manifest” nature of the violation of the Charter of the United Nations.
3. The act of aggression—the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations—was committed.
4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.

Elements

1. The perpetrator planned, prepared, initiated or executed an act of aggression.
2. The perpetrator was a person⁷⁵ in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.
5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.
6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.

⁷⁵ With respect to an act of aggression, more than one person may be in a position that meets these criteria.

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT*

Adopted by the Assembly of States Parties

**First Session
New York, September 3–10, 2002**

Official Records ICC-ASP/1/3

CONTENTS

Article 1.	Use of terms	232
Article 2.	Legal status and juridical personality of the Court	232
Article 3.	General provisions on privileges and immunities of the Court	233
Article 4.	Inviolability of the premises of the Court	233
Article 5.	Flag, emblem and markings	233
Article 6.	Immunity of the Court, its property, funds and assets	233
Article 7.	Inviolability of archives and documents	233
Article 8.	Exemption from taxes, customs duties and import or export restrictions	233
Article 9.	Reimbursement of duties and/or taxes	234
Article 10.	Funds and freedom from currency restrictions	234
Article 11.	Facilities in respect of communications	234
Article 12.	Exercise of the functions of the Court outside its headquarters	235
Article 13.	Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations	235
Article 14.	Representatives of States participating in the proceedings of the Court	236
Article 15.	Judges, Prosecutor, Deputy Prosecutors and Registrar	236
Article 16.	Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry	237
Article 17.	Personnel recruited locally and not otherwise covered by the present Agreement	238
Article 18.	Counsel and persons assisting defence counsel	238
Article 19.	Witnesses	239
Article 20.	Victims	239
Article 21.	Experts	240
Article 22.	Other persons required to be present at the seat of the Court	240
Article 23.	Nationals and permanent residents	241

* Produced by the Public Information and Documentation Section of the ICC, Maanweg 174, 2516 AB The Hague, The Netherlands, <<http://www.icc-cpi.int>>.

Article 24.	Cooperation with the authorities of States Parties	241
Article 25.	Waiver of privileges and immunities provided for in Articles 13 and 14	242
Article 26.	Waiver of privileges and immunities provided for in Articles 15 to 22	242
Article 27.	Social security	242
Article 28.	Notification	242
Article 29.	Laissez-passer	243
Article 30.	Visas	243
Article 31.	Settlement of disputes with third parties	243
Article 32.	Settlement of differences on the interpretation or application of the present Agreement	243
Article 33.	Applicability of the present Agreement	244
Article 34.	Signature, ratification, acceptance, approval or accession	244
Article 35.	Entry into force	244
Article 36.	Amendments	244
Article 37.	Denunciation	245
Article 38.	Depositary	245
Article 39.	Authentic texts	245

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 July 17, 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 July 17, 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 April 18, 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
INVIOABILITY 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
INVIOABILITY 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.
- (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;

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;
- (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 September 10, 2002 until June 30, 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 30 days after the date of deposit with the Secretary-General of the 10th 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 10th instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the 30th 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 60 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 60th 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.

NEGOTIATED RELATIONSHIP AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE UNITED NATIONS

PREAMBLE

The International Criminal Court and the United Nations,

Bearing in mind the Purposes and Principles 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 58/79 of December 9, 2003 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

1. 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.
2. For the purposes of this Agreement, “the Court” shall also include the Secretariat of the Assembly of States Parties.

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. Subject to the applicable provisions of the Rules of Procedure and Evidence of the Court ("the Rules of Procedure and Evidence"), the Secretary-General of the United Nations ("the Secretary-General") or his/her representative 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 and any public meetings of the Court.
2. 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.
3. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court ("the President") or the Prosecutor of the

Court ("the Prosecutor") may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

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 of the Court (“the Registrar”) shall:

(i) In accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders of the Court in cases which may be of interest to the United Nations generally, and particularly in those cases which 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 as well as any cases involving the circumstances referred to under Article 16, 17, or 18, paragraph 1 or 2, of the present Agreement;

(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;

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, in accordance with his/her authority, bring such item or items to the attention of the General Assembly or the Security Council, and also to any other United Nations organ concerned, including organs of United Nations programmes and funds.

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 temporary interchange of personnel, where appropriate, making due provision for the retention of seniority and pension rights;

(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 shall also consult to explore the possibility of establishing common facilities or services in specific areas, with due regard for cost savings.

ARTICLE 10 SERVICES AND FACILITIES

1. The United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis, or as otherwise agreed, for the purposes of the Court such facilities and services as may be required, including for the meetings of the Assembly of States Parties (“the Assembly”), its Bureau or subsidiary bodies, 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, subject to their respective rules, to facilitate access by the representatives of all States Parties to the Statute, representatives of the Court 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. This shall also apply, as appropriate, to meetings of the Bureau or subsidiary bodies.

ARTICLE 12 LAISSEZ-PASSER

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the staff/officials 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 in agreements defining the privileges and immunities of the Court. Staff of “the Registry” includes staff of the Presidency and of the Chambers, pursuant to Article 44 of the Statute, and staff of the Secretariat of the Assembly of States Parties, pursuant to paragraph 3 of the Annex of Resolution ICC-ASP/2/Res.3.

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 or filing and recording 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 as defined under the applicable international law, 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. In the absence of such measures, the United Nations shall endeavour to disclose the information or

documents or to provide the requested cooperation, while reserving the right to take its own measures of protection, which may include withholding of some information or documents or their submission in an appropriate form, including the introduction of redactions.

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 offices, 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 the Convention on the Privileges and Immunities of the United Nations and subject to its rules, shall waive that person's obligation of confidentiality.
2. The Secretary-General shall 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 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 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. The Court undertakes to keep the Security Council informed in this regard

in accordance with the Statute and the Rules of Procedure and Evidence. Such information 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. The Court shall inform the Security Council through the Secretary-General of its receipt of the above request and, as appropriate, inform the Security Council through the Secretary-General of actions, if any, taken by the Court in this regard.
3. Where a matter has been referred to the Court by the Security Council and the Court makes a finding, pursuant to Article 87, paragraph 5(b) or paragraph 7, of the Statute, of a failure by a State to cooperate with the Court, the Court shall inform the Security Council or refer the matter to it, as the case may be, and 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 Convention on the Privileges and Immunities of the United Nations and 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 in accordance with the Convention on the Privileges and Immunities of the United Nations and the relevant rules of international law.

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, international or non-governmental organization or an individual, the United Nations shall seek the consent of the originator to disclose that information or documentation or, where appropriate, will inform the Court that it may seek the consent of the originator for the United Nations 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
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 each 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 23
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 each other in writing of the date of such approval. The Agreement shall thereafter enter into force upon signature.

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, of which the
English and French texts shall be authentic.

HEADQUARTERS AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE HOST STATE

ICC-BD/04-01-08

Date of entry into force: March 1, 2008

Official Journal Publication

The International Criminal Court and the Kingdom of the Netherlands,

Whereas the Rome Statute of the International Criminal Court adopted on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas Article 3, paragraphs 1 and 2, of the Rome Statute respectively provide that the seat of the Court shall be established at The Hague in the Netherlands and that 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;

Whereas Article 4 of the Rome Statute provides that the 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 Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes;

Whereas Article 103, paragraph 4, of the Rome Statute provides that, if no State is designated under paragraph 1 of that article, sentences of imprisonment shall be served in a prison facility made available by the host State in accordance with the conditions set out in the headquarters agreement;

Whereas the Assembly of States Parties, at the third meeting of its first session held

from September 3 to 10, 2002, adopted Basic principles governing a headquarters agreement to be negotiated between the Court and the host country, and adopted the Agreement on Privileges and Immunities of the International Criminal Court;

Whereas the Court and the host State wish to conclude an agreement to facilitate the smooth and efficient functioning of the Court in the host State;

Have agreed as follows:

CHAPTER I GENERAL PROVISIONS

ARTICLE 1 USE OF TERMS

For the purpose of this Agreement:

- (a) "the Statute" means the Rome Statute of the International Criminal Court adopted on July 17, 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; for the purpose of this Agreement, the Secretariat shall be an integral part of the Court;
- (c) "the host State" means the Kingdom of the Netherlands;
- (d) "the parties" means the Court and the host State;

- (e) “States Parties” means States Parties to the Statute;
- (f) “representatives of States” means all delegates, deputy delegates, advisers, technical experts, secretaries, and any other accredited members of delegations;
- (g) “the Assembly” means the Assembly of States Parties;
- (h) “the Bureau” means the Bureau of the Assembly;
- (i) “subsidiary bodies” means the bodies established by the Assembly or the Bureau;
- (j) “the officials of the Court” means the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of the Court;
- (k) “the judges” means the judges of the Court elected by the Assembly in accordance with Article 36, paragraph 6, of the Statute;
- (l) “the Presidency” means the organ composed of the President and the First and Second Vice Presidents of the Court in accordance with Article 38, paragraph 3, of the Statute;
- (m) “the President” means the President of the Court elected by the judges in accordance with Article 38, paragraph 1, of the Statute;
- (n) “the Prosecutor” means the Prosecutor elected by the Assembly in accordance with Article 42, paragraph 4, of the Statute;
- (o) “the Deputy Prosecutors” means the Deputy Prosecutors elected by the Assembly in accordance with Article 42, paragraph 4, of the Statute;
- (p) “the Registrar” means the Registrar elected by the judges in accordance with Article 43, paragraph 4, of the Statute;
- (q) “the Deputy Registrar” means the Deputy Registrar elected by the judges in accordance with Article 43, paragraph 4, of the Statute;
- (r) “staff of the Court” means the staff of the Registry and the Office of the Prosecutor as referred to in Article 44 of the Statute. Staff of the Registry includes staff of the Presidency and of Chambers, and staff of the Secretariat;
- (s) “the Secretariat” means the Secretariat of the Assembly established by Resolution ICC-ASP/2/Res.3 of September 12, 2003;
- (t) “interns” means graduates or postgraduates who, not being members of staff of the Court, have been accepted by the Court into the internship programme of the Court for the purpose of performing certain tasks for the Court without receiving a salary from the Court;
- (u) “visiting professionals” means persons who, not being members of staff of the Court, have been accepted by the Court into the visiting professional programme of the Court for the purpose of providing expertise and performing certain tasks for the Court without receiving a salary from the Court;
- (v) “counsel” means defence counsel and the legal representatives of victims;
- (w) “witnesses,” “victims” and “experts” means persons designated as such by the Court;
- (x) “the premises of the Court” means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Court in the host State in connection with its functions and purposes, including detention of a person, or in connection with meetings of the Assembly, including its Bureau and subsidiary bodies;
- (y) “the Ministry of Foreign Affairs” means the Ministry of Foreign Affairs of the host State;

- (z) “the competent authorities” means national, provincial, municipal and other competent authorities under the laws, regulations and customs of the host State;
- (aa) “the Agreement on Privileges and Immunities of the Court” means the Agreement on Privileges and Immunities of the International Criminal Court referred to in Article 48 of the Statute and adopted at the third meeting of the first session of the Assembly held from September 3 to 10, 2002 at the United Nations Headquarters in New York;
- (bb) “the Vienna Convention” means the Vienna Convention on Diplomatic Relations of April 18, 1961;
- (cc) “the Rules of Procedure and Evidence” means the Rules of Procedure and Evidence adopted in accordance with Article 51 of the Statute.

ARTICLE 2
PURPOSE AND SCOPE OF THIS AGREEMENT

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Court in the host State. It shall, *inter alia*, provide for the long-term stability and independence of the Court and facilitate its smooth and efficient functioning, 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 information, potential evidence and evidence into and out of the host State. This Agreement shall also regulate matters relating to or arising out of the establishment and proper functioning of the Secretariat in the host State, and its provisions shall apply, *mutatis mutandis*, to the Secretariat.

This Agreement shall, as appropriate, regulate matters relating to the Assembly, including its Bureau and subsidiary bodies.

CHAPTER II
STATUS OF THE COURT

ARTICLE 3
LEGAL STATUS AND
JURIDICAL PERSONALITY OF THE COURT

The Court shall have international legal personality. In accordance with Article 4, paragraph 1, of the Statute, 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 4
FREEDOM OF ASSEMBLY

1. The host State guarantees to the Assembly, including its Bureau and subsidiary bodies, full freedom of assembly, including freedom of discussion, decision and publication.
2. The host State shall take all necessary measures to ensure that no impediment is placed in the way of conducting meetings convened by the Assembly, including its Bureau and subsidiary bodies.

ARTICLE 5
PRIVILEGES, IMMUNITIES AND
FACILITIES OF THE COURT

The Court shall enjoy, in the territory of the host State, such privileges, immunities and facilities as are necessary for the fulfilment of its purposes.

ARTICLE 6
INVIOABILITY OF THE PREMISES
OF THE COURT

1. The premises of the Court shall be inviolable. The competent authorities shall ensure

that the Court is not dispossessed and/or deprived of all or any part of its premises without its express consent.

2. The competent authorities shall not enter the premises of the Court to perform any official duty, except with the express consent, or at the request of the Registrar, or a member of staff of the Court designated by him or her. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Court except with the consent of and in accordance with conditions approved by the Registrar.
3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Court, the consent of the Registrar, or a member of staff of the Court designated by him or her, to any necessary entry into the premises of the Court shall be presumed if neither of them can be contacted in time.
4. Subject to paragraphs 1, 2 and 3 of this Article, the competent authorities shall take the necessary action to protect the premises of the Court against fire or other emergency.
5. The Court shall prevent its premises from being used as a refuge by persons who are avoiding arrest or the proper administration of justice under any law of the host State.

ARTICLE 7
PROTECTION OF THE PREMISES
OF THE COURT AND THEIR VICINITY

1. The competent authorities shall take all effective and adequate measures to ensure the security and protection of the Court and to ensure that the tranquility of the Court is not disturbed by the intrusion of persons or groups from outside the premises of the

Court or by disturbances in their immediate vicinity, and shall provide to the premises of the Court the appropriate protection as may be required.

2. If so requested by the Registrar, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Court or in the immediate vicinity thereof, and for the removal of persons therefrom.
3. The competent authorities shall take all reasonable steps to ensure that the amenities of the premises of the Court are not prejudiced and that the purposes for which the premises are required are not obstructed by any use made of the land or buildings in the vicinity of the premises. The Court shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the premises are not prejudiced by any use made of the land or buildings in the premises.

ARTICLE 8
LAW AND AUTHORITY ON THE
PREMISES OF THE COURT

1. The premises of the Court shall be under the control and authority of the Court, as provided under this Agreement.
2. Except as otherwise provided in this Agreement, the laws and regulations of the host State shall apply on the premises of the Court.
3. The Court shall have the power to make rules, operative within its premises, as are necessary for the carrying out of its functions. The Court shall promptly inform the competent authorities upon the adoption of such rules. No laws or regulations of the host State which are inconsistent with rules of the Court under this paragraph shall, to the extent of such inconsistency, be enforceable within the premises of the Court.

4. The Court may expel or exclude persons from the premises of the Court for violation of its rules and shall inform in advance the competent authorities of such measures.
 5. Subject to the rules referred to in paragraph 3 of this Article, and consistent with the laws and regulations of the host State, only staff of the Court shall be allowed to carry arms on the premises of the Court.
 6. The Registrar shall notify the host State of the name and identity of each staff member of the Court who is entitled to carry arms on the premises of the Court, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.
 7. Any dispute between the Court and the host State as to whether rules of the Court come within the ambit of this provision or as to whether laws or regulations of the host State are inconsistent with rules of the Court under this provision shall promptly be settled by the procedure set out in Article 55 of this Agreement. Pending such settlement, the rule of the Court shall apply and the law and/or regulation of the host State shall be inapplicable on the premises of the Court to the extent that the Court claims it to be inconsistent with its rules.
2. In cases where the services referred to in paragraph 1 of this article 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 host State.
 3. In case of any interruption or threatened interruption of any such services, the Court shall be accorded the priority given to essential agencies and organs of the host State, and the host State shall take steps accordingly to ensure that the work of the Court is not prejudiced.
 4. Upon request of the competent authorities, the Registrar, or a member of staff of the Court designated by him or her, 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 which shall not unreasonably disturb the carrying out of the functions of the Court.
 5. Underground constructions may be undertaken by the competent authorities on the premises of the Court only after consultation with the Registrar, or a member of staff of the Court designated by him or her, and under conditions which shall not disturb the carrying out of the functions of the Court.

ARTICLE 9 PUBLIC SERVICES FOR THE PREMISES OF THE COURT

1. The competent authorities shall secure, upon the request of the Registrar or a member of staff of the Court designated by him or her, on fair and equitable conditions, the public services needed by the Court such as, but not limited to, postal, telephone, telegraphic services, any means of communication, electricity, water, gas, sewage, collection of waste, fire protection and cleaning of public streets including snow removal.

ARTICLE 10 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 11**FUNDS, ASSETS AND OTHER PROPERTY**

1. The Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.
2. Funds, assets and other property 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, funds, assets and other property of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, control or moratoria of any nature.

ARTICLE 12**INVIOABILITY OF ARCHIVES, DOCUMENTS AND MATERIALS**

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 13**FACILITIES IN RESPECT OF COMMUNICATIONS**

1. The Court shall enjoy in the territory of the host State for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the host State 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 enjoy the same privileges, immunities and facilities as diplomatic couriers and bags.
5. The Court shall have the right to operate radio and receive correspondence and other telecommunication equipment on any frequencies allocated to it by the host State in accordance with its national procedures. The host State shall endeavour to allocate to the Court, to the extent possible, frequencies for which it has applied.
6. For the fulfilment of its purposes and efficient discharge of its responsibilities, the Court shall have the right to publish freely and without restrictions within the host State in conformity with this Agreement.

ARTICLE 14
FREEDOM OF FINANCIAL ASSETS
FROM RESTRICTIONS

1. Without being subject to any financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Court may freely:
 - (a) purchase any currencies through authorized channels and hold and dispose of them;
 - (b) operate accounts in any currency;
 - (c) purchase through authorized channels, hold and dispose of funds, securities and gold;
 - (d) transfer its funds, securities, gold and currencies to or from the host State, to or from any other country, or within the host State and convert any currency held by it in any other currency; and
 - (e) raise funds in any manner which it deems desirable, except that with respect to the raising of funds within the host State, the Court shall obtain the concurrence of the competent authorities.
2. The Court shall enjoy treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

ARTICLE 15
EXEMPTION FROM TAXES AND DUTIES FOR
THE COURT AND ITS PROPERTY

1. Within the scope of its official activities, the Court, its assets, income and other property shall be exempt from all direct taxes, whether levied by national, provincial or local authorities.
2. Within the scope of its official activities, the Court shall be exempt from:
 - (a) import and export taxes and duties (*belastingen bij invoer en uitvoer*);
 - (b) motor vehicle tax (*motorrijtuigenbelasting, MRB*);
 - (c) tax on passenger motor vehicles and motorcycles (*belasting van personenauto's en motorrijwielen, BPM*);
 - (d) value added tax (*omzetbelasting, BTW*) paid on goods and services supplied on a recurring basis or involving considerable expenditure;
 - (e) excise duties (*accijnzen*) included in the price of alcoholic beverages and hydrocarbons such as fuel oils and motor fuels;
 - (f) real property transfer tax (*overdrachtsbelasting*);
 - (g) insurance tax (*assurantiebelasting*);
 - (h) energy tax (*regulerende energiebelasting, REB*);
 - (i) tax on mains water (*belasting op leidingwater, BOL*);
 - (j) any other taxes and duties of a substantially similar character as the taxes provided for in this paragraph, imposed by the host State subsequent to the date of signature of this Agreement.
3. The exemptions provided for in paragraph 2, subparagraphs (d), (e), (f), (g), (h), (i) and (j) of this Article may be granted by way of a refund.
4. Goods acquired or imported under the terms set out in paragraph 2 of this article shall not be sold, let out, given away or otherwise disposed of, except in accordance with conditions agreed upon with the host State.

5. 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.

ARTICLE 16
EXEMPTION FROM IMPORT AND
EXPORT RESTRICTIONS

The Court shall be exempted from all 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.

CHAPTER III
PRIVILEGES, IMMUNITIES AND
FACILITIES ACCORDED TO
PERSONS UNDER THIS AGREEMENT

ARTICLE 17
PRIVILEGES, IMMUNITIES AND FACILITIES
OF JUDGES, THE PROSECUTOR, THE DEPUTY
PROSECUTORS AND THE REGISTRAR

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy privileges, immunities and facilities in the host State when engaged on or with respect to the business of the Court. They shall, *inter alia*, enjoy:
 - (a) personal inviolability, including immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from criminal, civil and administrative jurisdiction;
 - (c) inviolability of all papers, documents in whatever form and materials;
 - (d) exemption from national service obligations;

- (e) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;
 - (f) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Court;
 - (g) the same facilities in respect of currency and exchange facilities as are accorded to diplomatic agents;
 - (h) together with members of their family forming part of their household, the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
 - (i) together with members of their family 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) together with members of their family forming part of their household, the right of unimpeded entry into, exit from or movement within the host State, as appropriate and for purposes of the Court.
2. In addition to the privileges, immunities and facilities listed in paragraph 1 of this Article and the privileges and immunities that apply in accordance with Article 48, paragraph 2, of the Statute, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, together with members of their family forming part of their household who do not have Netherlands nationality or permanent residence status in the host State, shall enjoy the same privileges, immunities and facilities as are accorded by the host State to heads of diplomatic missions in conformity with the Vienna Convention.

3. 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 the host State for the discharge of their functions shall not be considered as periods of residence.
4. Paragraphs 1, 2 and 3 of this Article shall also apply to judges of the Court who continue to be in office in accordance with Article 36, paragraph 10, of the Statute.
5. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar 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.
6. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants.
7. Without prejudice to paragraphs 1(f) and 3 of this Article, persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Court, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Court;

- (c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;
- (d) for the purpose of their communications with the Court the right to receive and send papers in whatever form;
- (e) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

Persons referred to in this paragraph shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.

ARTICLE 18
PRIVILEGES, IMMUNITIES AND FACILITIES OF
THE DEPUTY REGISTRAR AND
STAFF OF THE COURT

1. The Deputy Registrar and staff of the Court 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 or any other restriction of their liberty, 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 of all official papers, documents in whatever form and materials;

- (d) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Court;
 - (e) exemption from national service obligations;
 - (f) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;
 - (g) exemption from inspection 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 the law or controlled by the quarantine regulations of the host State; 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 host State;
 - (i) together with members of their family 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 their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.
2. Staff of the Court of P-5 level and above, and such additional categories of staff of the Court as may be designated, in agreement with the host State, by the Registrar, in consultation with the President and the Prosecutor, together with members of their family forming part of their household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic agents of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.
 3. Staff of the Court of P-4 level and below shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.
 4. Where the incidence of any form of taxation depends upon residence, periods during which the Deputy Registrar and staff of the Court are present in the host State for the discharge of their functions shall not be considered as periods of residence.
 5. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of staff of the Court and their dependants.
 6. Without prejudice to paragraphs 1(d) and 4 of this Article, persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Court, which immunity shall continue to be accorded even after they

- have ceased to perform their functions for the Court;
- (c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;
 - (d) for the purposes of their communications with the Court the right to receive and send papers in whatever form;
 - (e) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

Persons referred to in this paragraph shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.

ARTICLE 19

PERSONNEL RECRUITED LOCALLY AND NOT OTHERWISE COVERED BY THIS AGREEMENT

Personnel recruited locally by the Court and not otherwise covered by this 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 even after termination of their employment with the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent performance of their functions for the Court.

ARTICLE 20

EMPLOYMENT OF FAMILY MEMBERS OF OFFICIALS OF THE COURT

- 2. The following persons shall be authorized to engage in gainful employment in the host State:
 - (a) the spouses or registered partners of officials of the Court,
 - (b) children of officials of the Court who are under the age of 18;
 - (c) children of the officials of the Court aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this household, and that they are unmarried, financially dependent on the official of the Court concerned and are attending an educational institution in the host State;
 - (d) any other persons who, in exceptional cases or for humanitarian reasons, the Court and the host State agree to treat as members of the family forming part of the household.
- 3. Persons mentioned in paragraph 2 of this Article who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.
- 4. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the immunity of officials of the Court of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of Article 30 of this Agreement.
- 5. The employment referred to in paragraph 1 of this Article shall be in accordance with the legislation of the host State, including fiscal and social security legislation.

ARTICLE 21

REPRESENTATIVES OF STATES PARTICIPATING IN THE PROCEEDINGS OF THE COURT

1. Representatives of States participating in the proceedings of the Court shall, while performing their official functions in the host State, enjoy the following privileges, immunities and facilities:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (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 even after they have ceased to perform their functions as representatives;
 - (c) inviolability of all papers, documents in whatever form and materials;
 - (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;
 - (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 agents under the Vienna Convention;
 - (h) the same protection and repatriation facilities in time of international crisis as are accorded to diplomatic agents 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 referred to in paragraph 1 of this Article are present in the host State for the discharge of their functions 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 host State if he or she is a national or permanent resident of the host State or if he or she is or has been a representative of the host State.
4. Representatives of States referred to in paragraph 1 of this Article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.

ARTICLE 22

REPRESENTATIVES OF STATES PARTICIPATING IN THE ASSEMBLY AND ITS SUBSIDIARY BODIES AND REPRESENTATIVES OF INTERGOVERNMENTAL ORGANIZATIONS

Representatives of States Parties attending meetings of the Assembly, of the Bureau and of subsidiary bodies, representatives of other States that may be attending such meetings as observers in accordance with Article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to such meetings shall, while performing their official functions and during their journey to and from the place of meeting, enjoy the

privileges, immunities and facilities referred to in Article 21 of this Agreement.

ARTICLE 23

MEMBERS OF THE BUREAU AND OF SUBSIDIARY BODIES

The provisions of Article 21 of this Agreement shall be applicable, *mutatis mutandis*, to members of the Bureau and members of subsidiary bodies of the Assembly whose presence is required in the host State, in connection with the work of the Assembly, including its Bureau and subsidiary bodies.

ARTICLE 24

INTERNS AND VISITING PROFESSIONALS

1. Within eight days after the first arrival of interns or visiting professionals in the host State the Court shall request the Ministry of Foreign Affairs to register them in accordance with paragraph 2 of this Article.
2. The Ministry of Foreign Affairs shall register interns or visiting professionals for a maximum period of one year, provided that the Court supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:
 - (a) the intern or visiting professional entered the host State in accordance with the applicable immigration procedures;
 - (b) the intern or visiting professional has sufficient financial means for living expenses and for repatriation, as well as sufficient medical insurance (including coverage of costs of hospitalization for at least the duration of the internship or visiting professional programme plus one month) and third party liability insurance, and will not be a charge on the public purse in the host State;
3. Upon registration of the intern or visiting professional in accordance with paragraph 2 of this Article, the Ministry of Foreign Affairs shall issue an identity card to the intern or visiting professional.
4. The Court shall not incur liability for damage resulting from non-fulfilment of the conditions of the declaration referred to in paragraph 2 of this Article by interns or visiting professionals registered in accordance with that paragraph.
5. Interns and visiting professionals shall not enjoy privileges, immunities and facilities, except:
 - (a) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Court, which immunity shall continue to be accorded even after termination of the internship or visiting professional programme with the Court for activities carried out on its behalf;
 - (b) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court.
6. The Court shall notify the Ministry of Foreign Affairs of the final departure of the intern or visiting professional from the host State
 - (c) the intern or visiting professional will not work in the host State during his or her internship or visiting professional programme other than as an intern or a visiting professional for the Court;
 - (d) the intern or visiting professional will not bring any family members to reside with him or her in the host State other than in accordance with the applicable immigration procedures;
 - (e) the intern or visiting professional will leave the host State within 15 days after the end of the internship or visiting professional programme.

within eight days after such departure, and shall at the same time return the intern's or visiting professional's identity card.

In exceptional circumstances the maximum period of one year mentioned in paragraph 2 of this Article may be extended once by a maximum period of one year.

ARTICLE 25

COUNSEL AND PERSONS ASSISTING COUNSEL

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the certificate referred to in paragraph 2 of this article:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
 - (b) immunity from seizure of their personal baggage;
 - (c) 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 they have ceased to perform their functions;
 - (d) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;
 - (e) for the purposes of communications in pursuance of their functions as counsel, the right to receive and send papers and documents in whatever form;
 - (f) together with members of their family 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 law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the counsel concerned;
 - (h) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign governments on temporary official missions;
 - (i) 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 performance of their functions. This certificate shall be withdrawn if the power or mandate is terminated prior to the expiry of the certificate.
3. Where the incidence of any form of taxation depends upon residence, periods during which counsel are present in the host State for the discharge of their functions shall not be considered as periods of residence.
4. Counsel who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions before the Court:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or

- written and all acts performed by them in the performance of their functions, which immunity shall continue to be accorded even after they have ceased to perform their functions;
- (c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;
 - (d) for the purpose of their communications with the Court the right to receive and send papers in whatever form.
5. Counsel shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.
6. The provisions of this Article shall apply, *mutatis mutandis*, to persons assisting counsel in accordance with Rule 22 of the Rules of Procedure and Evidence.

ARTICLE 26
WITNESSES

- (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 all papers, 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.
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, subject to the production of the document referred to in paragraph 2 of this Article:
- (a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
 - (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 host State;
2. Witnesses 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. This document shall be withdrawn prior to its expiry if the witness's appearance before the Court, or his or her presence at the seat of the Court is no longer required.
3. The privileges, immunities and facilities referred to in paragraph 1 of this Article shall cease to apply after 15 consecutive days following the date on which the presence of the witness concerned is no longer required by the Court, provided such witness had an opportunity to leave the host State during that period.
4. Witnesses who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and

facilities to the extent necessary for their appearance or testimony before the Court:

- (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (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 their appearance or testimony, which immunity shall continue to be accorded even after their appearance or testimony;
 - (c) inviolability of all papers, documents in whatever form and materials relating to their appearance or testimony;
 - (d) for the purpose of their communications with the Court and with their counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form.
5. Witnesses shall not be subjected by the host State to any measure which may affect their appearance or testimony before the Court.

ARTICLE 27

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, subject to the production of the document referred to in paragraph 2 of this Article:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
 - (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 host State;
 - (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) inviolability of all papers, documents in whatever form and materials relating to their participation in proceedings before the Court;
 - (e) exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.
2. Victims 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. Such document shall be withdrawn prior to its expiry if the Victim is no longer participating in the proceedings of the Court, or if the victim's presence at the seat of the Court is no longer required.
3. The privileges, immunities and facilities referred to in paragraph 1 of this Article shall cease to apply after 15 consecutive days following the date on which the presence of the victim concerned is no longer required by the Court, provided such victim had an opportunity to leave the host State during that period.
4. Victims who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their appearance before the Court, immunity from legal process 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.

5. Victims shall not be subjected by the host State to any measure which may affect their appearance before the Court.

ARTICLE 28

EXPERTS

1. Experts, including *gratis* personnel, performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the document referred to in paragraph 2 of this Article:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
 - (b) immunity from seizure of their personal baggage;
 - (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 the performance of their functions for the Court, which immunity shall continue to be accorded even after the termination of their functions;
 - (d) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;
 - (e) 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 the performance of their functions for the Court by courier or in sealed bags;
 - (f) exemption from inspection 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 host State; an inspection in such a case shall be conducted in the presence of the expert 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;
 - (i) 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 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. Such document shall be withdrawn prior to its expiry if the expert is no longer performing functions for the Court, or if the expert's presence at the seat of the Court is no longer required.
3. The privileges, immunities and facilities referred to in paragraph 1 of this Article shall cease to apply after 15 consecutive days following the date on which the presence of the expert concerned is no longer required by the Court, provided such expert had an opportunity to leave the host State during that period.
4. Experts who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities

and facilities to the extent necessary for the independent performance of their functions or their appearance or testimony for the Court:

- (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions or in the course of their appearance or testimony, which immunity shall continue to be accorded even after they have ceased to perform their functions or their appearance or testimony;
 - (c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions or their appearance or testimony;
 - (d) for the purpose of their communications with the Court the right to receive and send papers in whatever form.
5. Experts shall not be subjected by the host State to any measure which may affect the independent performance of their functions for the Court.
 6. This Article shall apply, *mutatis mutandis*, to experts of the Assembly, including its Bureau and subsidiary bodies, whose presence is required in the host State, in connection with the work of the Assembly, including its Bureau and subsidiary bodies.

ARTICLE 29

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, be accorded the privileges, immunities and facilities provided for in Article 27 of this Agreement, subject to production of the document referred to in paragraph 2 of this Article.
2. Persons referred to in this Article 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. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Court is no longer required.
3. The privileges, immunities and facilities referred to in paragraph 1 of this Article shall cease to apply after 15 consecutive days following the date on which the presence of such other person concerned is no longer required by the Court, provided that such other person had an opportunity to leave the host State during that period.
4. Persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their presence at the seat of the Court, immunity from legal process in

respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Court. Such immunity shall continue to be accorded even after their presence at the seat of the Court is no longer required.

5. Persons referred to in this Article shall not be subjected by the host State to any measures which may affect their presence before the Court.

CHAPTER IV

WAIVER OF PRIVILEGES AND IMMUNITIES

ARTICLE 30

WAIVER OF PRIVILEGES, IMMUNITIES AND FACILITIES PROVIDED FOR IN ARTICLES 17, 18, 19, 24, 25, 26, 27, 28 AND 29

1. The privileges, immunities and facilities provided for in Articles 17, 18, 19, 24, 25, 26, 27, 28 and 29 of this 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, immunities and facilities may be waived:
 - (a) by an absolute majority of the judges:
 - (i) in the case of a judge or the Prosecutor;
 - (b) by the Presidency:
 - (i) in the case of the Registrar;
 - (ii) in the case of counsel and persons assisting counsel;

- (iii) in the case of witnesses and victims; or
- (iv) in the case of other persons required to be present at the seat of the Court;

- (c) by the Prosecutor:

- (i) in the case of the Deputy Prosecutors and staff of the Office of the Prosecutor; or
- (ii) in the case of interns and visiting professionals of the Office of the Prosecutor;

- (d) by the Registrar:

- (i) in the case of the Deputy Registrar and staff of the Registry;
- (ii) in the case of interns and visiting professionals not covered by paragraph 2(c)(ii) and (g) of this Article;

- (e) by the head of the organ of the Court with which they are employed, in the case of personnel referred to in Article 19 of this Agreement;

- (f) by the President of the Assembly, in the case of the Director of the Secretariat;

- (g) by the Director of the Secretariat, in the case of staff, experts, interns and visiting professionals of the Secretariat;

- (h) by the head of the organ of the Court appointing the expert, in the case of experts.

ARTICLE 31

WAIVER OF PRIVILEGES, IMMUNITIES AND FACILITIES OF REPRESENTATIVES OF STATES AND MEMBERS OF THE BUREAU PROVIDED FOR IN ARTICLES 21, 22 AND 23

Privileges, immunities and facilities provided for in Articles 21, 22 and 23 of this Agreement

are accorded to the representatives of States, members of the Bureau and intergovernmental organizations not for the personal benefit of the individuals themselves, but in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, States Parties to the Agreement on Privileges and Immunities of the Court not only have the right but are under a duty to waive the privileges, immunities and facilities 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, immunities and facilities are accorded. States not party to the Agreement on Privileges and Immunities of the Court and intergovernmental organizations are granted the privileges, immunities and facilities provided for in Articles 21, 22 and 23 of this Agreement on the understanding that they undertake the same duty regarding waiver.

ARTICLE 32
WAIVER OF PRIVILEGES, IMMUNITIES AND FACILITIES OF MEMBERS OF SUBSIDIARY BODIES AND OF EXPERTS FOR THE ASSEMBLY, INCLUDING ITS BUREAU AND SUBSIDIARY BODIES, PROVIDED FOR IN ARTICLES 23 AND 28, PARAGRAPH 6

Privileges, immunities and facilities provided for in Articles 23 and 28, paragraph 6 of this Agreement are accorded to the members of subsidiary bodies and to experts, respectively, not for the personal benefit of the individuals themselves, but in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, the President of the Assembly not only has the right but is under a duty to waive the privileges, immunities and facilities of the members of subsidiary bodies

or of experts in any case where, in the opinion of the President of the Assembly, they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

CHAPTER V
COOPERATION BETWEEN THE COURT AND THE HOST STATE

SECTION 1: GENERAL

ARTICLE 33
GENERAL COOPERATION BETWEEN THE COURT AND THE HOST STATE

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.
2. The host State shall promptly inform the Court of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.
3. Without prejudice to the powers of the Prosecutor under Article 42, paragraph 2, of the Statute, the Registrar, or a member of staff of the Court designated by him or her, shall serve as the official contact point for the host State, and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.
4. The Court will use its best efforts, without prejudice to the functions and powers of the Assembly, including its Bureau and subsidiary bodies, to facilitate the observance of Articles 21, 22, 23, 31 and 32 of this Agreement.

5. Communications relating to the Assembly and the host State regarding the waiver of privileges, immunities and facilities referred to in Article 32 of this Agreement shall be conveyed through the Secretariat.

ARTICLE 34
COOPERATION WITH THE
COMPETENT AUTHORITIES

1. The Court shall cooperate with the competent authorities to facilitate the enforcement of the laws of the host State, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.
2. The Court and the host State shall cooperate on security matters, taking into account the public order and national security of the host State.
3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State. They also have the duty not to interfere in the internal affairs of the host State.
4. The Court shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.
5. The Court shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.
6. The host State will use its best efforts to notify the Court of any proposed or enacted national laws and regulations having a direct impact on the privileges,

immunities, facilities, rights and obligations of the Court and its officials. The Court shall have the right to provide observations as to proposed national laws and regulations.

ARTICLE 35
NOTIFICATION

1. The Court shall promptly notify the host State of:
 - (a) the appointment of its officials, their arrival and their final departure or the termination of their functions with the Court;
 - (b) the arrival and final departure of members of the family forming part of the household of the persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that a person has ceased to form part of the household;
 - (c) the arrival and final departure of private or domestic servants of persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that they are leaving the employ of such persons.
2. The host State shall issue to the officials of the Court and to members of their family forming part of their household and to private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.
3. At the final departure of the persons referred to in paragraph 2 of this Article or when these persons have ceased to perform their functions, the identity card referred to in paragraph 2 of this Article shall be promptly returned by the Court to the Ministry of Foreign Affairs.

ARTICLE 36
SOCIAL SECURITY REGIME

1. The social security system of the Court offers coverage comparable to the coverage under the legislation of the host State. Accordingly, the Court and its officials to whom the aforementioned scheme applies shall be exempt from social security provisions of the host State. Consequently, such officials shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to such officials, unless they take up gainful activity in the host State.
2. Paragraph 1 of this Article shall apply, *mutatis mutandis*, to members of the family forming part of the household of the persons referred to in paragraph 1, unless they are engaged in gainful employment in the host State, or are self-employed, or receive social security benefits from the host State.

**SECTION 2: VISAS, PERMITS AND
OTHER DOCUMENTS**

ARTICLE 37
**VISAS FOR THE OFFICIALS OF THE COURT,
VISAS FOR REPRESENTATIVES OF STATES
PARTICIPATING IN THE PROCEEDINGS OF
THE COURT, AND VISAS FOR COUNSEL AND
PERSONS ASSISTING COUNSEL**

1. The officials of the Court, representatives of States participating in the proceedings of the Court, and counsel and persons assisting counsel, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State including unimpeded access to the premises of the Court.
2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas where required from members of the family forming part of the household of the persons referred to in paragraph 1 of this Article shall be processed by the host State as promptly as possible and granted free of charge.

ARTICLE 38
**VISAS FOR WITNESSES, VICTIMS, EXPERTS,
INTERNS, VISITING PROFESSIONALS AND
OTHER PERSONS REQUIRED TO BE PRESENT
AT THE SEAT OF THE COURT**

1. All persons referred to in Articles 24, 26, 27, 28 and 29 of this Agreement, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this Article, movement within the host State, as appropriate and for the purposes of the Court.
2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses and victims, who have been notified as such by the Registrar to the host State.
3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.
4. Before applying paragraph 3 of this Article, the host State will seek observations from the Court.

ARTICLE 39
**VISAS FOR VISITORS OF PERSONS DETAINED
BY THE COURT**

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Court are processed promptly. Visas for visitors who are family

members of a person detained by the Court shall be processed promptly and, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph 1 of this Article may be subjected to territorial limitations. Visas may be refused in the event that:
 - (a) the visitors referred to in paragraph 1 of this Article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence, both for the period of the intended stay and for the return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;
 - (b) an alert has been issued against them for the purpose of refusing entry; or
 - (c) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of June 14, 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.
3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.
4. Before applying paragraph 2 or 3 of this Article, the host State will seek observations from the Court.

ARTICLE 40
INDEPENDENT BODIES OF COUNSEL OR LEGAL ASSOCIATIONS, JOURNALISTS AND NON-GOVERNMENTAL ORGANIZATIONS

1. The parties recognize the role of:
 - (a) independent representative bodies of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties in accordance with Rule 20, sub-rule 3, of the Rules of Procedure and Evidence;
 - (b) press, radio, film, television or other information media reporting on the Court; and
 - (c) non-governmental organizations that support the fulfilment of the mandate of the Court.
2. The host State shall take all necessary measures to facilitate the entry into, stay and employment in the host State of representatives of bodies or organizations referred to in paragraph 1 of this Article, deployed in, or visiting the host State in connection with activities relating to the Court. The host State shall also take all necessary measures to facilitate the entry into and stay of members of the family forming part of the household of such representatives who are deployed in the host State.
3. For the purpose of facilitating the procedure of entry into, stay and employment in the host State of the representatives of bodies or organizations referred to in paragraph 1 of this Article, the host State and the Court shall consult, as appropriate, with each other, and with any independent representative bodies of counsel or legal

associations, media, or nongovernmental organizations. Each of the groups referred to in paragraph 1 of this Article shall promptly inform the host State and the Court of the office designated to serve as the official contact point of that group for such consultations, and of any subsequent changes in this regard.

4. Following the consultations referred to in paragraph 3 of this Article, the Court shall, on the basis of verifiable information available to it, indicate whether the representative concerned may be regarded as representing a body or organization referred to in paragraph 1 of this Article.
5. The host State may attach such conditions or restrictions to the visas as are necessary to prevent violations of its public order or to protect the safety of the person concerned.
6. Visas and residence permits shall be granted to persons referred to in this Article in accordance with the relevant laws and regulations of the host State, taking into account the obligations of the host State referred to in paragraph 2 of this Article.
7. Visas and residence permits granted in accordance with this Article shall be issued as promptly as possible.

ARTICLE 41 LAISSEZ-PASSER

The host State shall recognize and accept the United Nations laissez-passer or a travel document issued by the Court to its officials as valid travel documents.

ARTICLE 42 DRIVING LICENCE

During their period of employment, officials of the Court, members of their family forming part of their household and their private or domestic servants shall be allowed to obtain from the

host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided the holder is in possession of an identity card issued by the host State in accordance with Article 35 of this Agreement.

SECTION 3: SECURITY, OPERATIONAL ASSISTANCE

ARTICLE 43 SECURITY, SAFETY AND PROTECTION OF PERSONS REFERRED TO IN THIS AGREEMENT

1. The competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Court, free from interference of any kind.
2. The Court shall cooperate with the competent authorities to ensure that all persons referred to in this Agreement observe the directives necessary for their security and safety, as given to them by the competent authorities.
3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

ARTICLE 44 TRANSPORT OF PERSONS IN CUSTODY

1. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the point of arrival in the host State to the premises of the Court shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.

2. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the premises of the Court to the Point of departure from the host State shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.
3. Any transport of persons in custody in the host State outside the premises of the Court shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.
4. The Court shall give reasonable notice to the competent authorities of the arrival of persons referred to in this article. Whenever possible, 72 hours advance notice will be given.
5. Where the host State receives a request under this Article and identifies problems in relation to the execution of the request, it shall consult with the Court, without delay, in order to resolve the matter. Such problems may include, inter alia,
 - (a) insufficient time and/or information to execute the request;
 - (b) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the persons;
 - (c) the existence of a threat to public order and security in the host State.
6. A person in custody shall be transported directly and without impediment to the destination specified in paragraphs 1 and 2 of this Article or to any other destination as requested by the Court under paragraph 3 of this article.
7. The Court and the host State shall, as appropriate, make practical arrangements for the transport of persons in custody in accordance with this Article.

ARTICLE 45
TRANSPORT OF PERSONS APPEARING
BEFORE THE COURT VOLUNTARILY OR
PURSUANT TO A SUMMONS

The provisions of Article 44 of this Agreement shall apply, mutatis mutandis, to the transport of persons appearing before the Court voluntarily or pursuant to a summons.

ARTICLE 46
COOPERATION IN DETENTION MATTERS

1. The host State shall cooperate with the Court to facilitate the detention of persons and to allow the Court to perform its functions within its detention centre.
2. Where the presence of a person in custody is required for the purpose of giving testimony or other assistance to the Court and where, for security reasons, such a person cannot be maintained in custody in the detention centre of the Court, the Court and the host State shall consult and, where necessary, make arrangements to transport the person to a prison facility or other place made available by the host State.

ARTICLE 47
INTERIM RELEASE

1. The host State shall facilitate the transfer of persons granted interim release into a State other than the host State.
2. The host State shall facilitate the re-entry into the host State of persons granted interim release and their short-term stay in the host State for any purpose related to proceedings before the Court.
3. The Court and the host State shall make practical arrangements as to the implementation of this article.

ARTICLE 48
RELEASE WITHOUT CONVICTION

1. Subject to paragraph 2 of this Article, 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), of the Statute, the charges have not been confirmed under Article 61 of the Statute, 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.
2. Where the Court has determined that the case is inadmissible under Article 17, paragraph 1(a), of the Statute, 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.
3. The provisions of Article 44 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons referred to in this article within the host State.
2. If no State is designated under Article 103, paragraph 1, of the Statute, the Court shall inform the host State about the necessity to enforce a sentence in a prison facility made available by the host State in accordance with Article 103, paragraph 4, of the Statute.
3. After the commencement of the enforcement of a sentence under Article 103, paragraph 4, of the Statute the Court shall continue its endeavours to designate a State of enforcement under Article 103, paragraph 1, of the Statute. The Court will communicate to the host State developments that it considers relevant, which relate to the list referred to in Article 103, paragraph 1, of the Statute. The Court shall inform the host State as soon as a State of enforcement has accepted the Court's designation under Article 103, paragraph 1, of the Statute.
4. The enforcement of a sentence shall be governed by the Statute, in particular the provisions of Part 10, and the Rules of Procedure and Evidence, in particular the relevant provisions of Chapter 12. The conditions of imprisonment shall be governed by the law of the host State, as provided in Article 106, paragraph 2, of the Statute.
5. The host State may communicate to the Court for its consideration humanitarian concerns or other concerns related to the conditions or modalities of enforcement for the purposes of supervision of enforcement of sentences and conditions of imprisonment.

ARTICLE 49
ENFORCEMENT OF
SENTENCES IN THE HOST STATE

1. The Court shall endeavour to designate a State of enforcement in accordance with Article 103, paragraph 1, of the Statute.
6. Further conditions of enforcement, as well as other arrangements, shall be laid down in a separate agreement between the Court and the host State. The Court and the host State shall make practical arrangements as to the implementation of enforcement in each case referred to in paragraph 2 of this Article.

ARTICLE 50

SHORT-TERM DETENTION ARRANGEMENTS

1. If, after conviction and final sentence, or after reduction of a sentence in accordance with Article 110 of the Statute, the time remaining to be served under the sentence of the Court is less than six months, the Court shall consider whether the sentence may be enforced in the detention centre of the Court.
2. Where there is a need for a change in designation of the State of enforcement and where the period pending transfer to another State of enforcement does not exceed six months, the Court and the host State shall consult as to whether the sentenced person may be transferred to a prison facility made available by the host State under Article 103, paragraph 4, of the Statute. Where the period pending transfer exceeds six months, the sentenced person shall be transferred from the detention centre of the Court to a prison facility made available by the host State under Article 103, paragraph 4, of the Statute upon a request by the Court to that effect.

ARTICLE 51

LIMITATION TO THE EXERCISE OF JURISDICTION BY THE HOST STATE

1. The host State shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State with regard to persons surrendered to the Court in accordance with Part 9 of the Statute, persons granted interim release or persons who appear before the Court voluntarily or pursuant to a summons, 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.

2. Where a person referred to in paragraph 1 of this Article is, for any reason, released from the custody of the Court without conviction, that paragraph shall continue to apply for a period of 15 consecutive days from the date of his or her release.

CHAPTER VI

FINAL PROVISIONS

ARTICLE 52

SUPPLEMENTARY ARRANGEMENTS AND AGREEMENTS

1. The provisions of this Agreement shall be supplemented at the time of signature by an exchange of letters which confirms the joint interpretation of the Agreement by the parties.
2. The Court and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make other supplementary agreements and arrangements as appropriate.

ARTICLE 53

NO LESS FAVOURABLE TREATMENT PROVISION

If and to the extent that the host State, at any time in the future, accords privileges, immunities and treatment more favourable to any international organization or tribunal than comparable privileges, immunities and treatment in this Agreement, the Court or any person entitled to privileges and immunities under this Agreement shall enjoy these more favourable privileges, immunities and treatment.

ARTICLE 54

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 this 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 55
SETTLEMENT OF DIFFERENCES ON THE
INTERPRETATION OR APPLICATION OF
THIS AGREEMENT OR SUPPLEMENTARY
ARRANGEMENTS OR AGREEMENTS

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Court and the host State 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 5 of this Article.
3. The arbitral tribunal shall be composed of three members: one to be chosen by each party 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 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 this Agreement and subsequent arrangements or agreements and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties.

ARTICLE 56
APPLICATION

With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

ARTICLE 57
AMENDMENTS AND TERMINATION

1. This Agreement may be amended or terminated by mutual consent of the parties.
2. This Agreement shall cease to be in force by mutual consent of the parties.

ARTICLE 58
ENTRY INTO FORCE

This Agreement shall enter into force on the first day of the second month after both parties have notified each other in writing that the legal requirements for entry into force have been complied with.

DONE at The Hague on 7th June 2007, in duplicate, in the English language.

(Signed)

For the

International Criminal Court

(Signed)

For the

Kingdom of Netherlands

REPUBLIC ACT NO. 9851

AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I INTRODUCTORY PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.*”

SEC. 2. *Declaration of Principles and State Policies.*

- (a) The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to a policy of peace, equality, justice, freedom, cooperation and amity with all nations;
- (b) The State values the dignity of every human person and guarantees full respect for human rights, including the rights of indigenous cultural communities and other vulnerable groups, such as women and children;
- (c) It shall be the responsibility of the State and all other sectors concerned to resolve armed conflict in order to promote the goal of “Children as Zones of Peace”;
- (d) The State adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation;
- (e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes;
- (f) The State shall guarantee persons suspected or accused of having committed grave crimes under international law all rights necessary to ensure that their trial will be

fair and prompt in strict accordance with national and international law and standards for fair trial. It shall also protect victims, witnesses and their families, and provide appropriate redress to victims and their families. It shall ensure that the legal systems in place provide accessible and gender-sensitive avenues of redress for victims of armed conflict; and

- (g) The State recognizes that the application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

CHAPTER II DEFINITION OF TERMS

SECTION 3. For purposes of this Act, the term:

- (a) "Apartheid" means inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group or groups and committed with the intention of maintaining that regime.
- (b) "Arbitrary deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law.
- (c) "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of August 12, 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (d) "Armed forces" means all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates. Such armed forces shall be subject to an internal disciplinary system which enforces compliance with International Humanitarian Law.
- (e) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in Section 6 of this Act against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.
- (f) "Effective command and control or effective authority and control" means having the material ability to prevent and punish the commission of offences by subordinates.

- (g) “Enforced or involuntary disappearance of persons” means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
- (h) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.
- (i) “Extermination” means the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population.
- (j) “Forced pregnancy” means the unlawful confinement of a woman to be forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
- (k) “Hors de Combat” means a person who:
 - (1) is in the power of an adverse party;
 - (2) has clearly expressed an intention to surrender; or
 - (3) has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself: Provided, that in any of these cases, the person abstains from any hostile act and does not attempt to escape.
- (l) “Military necessity” means the necessity of employing measures which are indispensable to achieve a legitimate aim of the conflict and are not otherwise prohibited by International Humanitarian Law.
- (m) “Non-defended locality” means a locality that fulfills the following conditions:
 - (1) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
 - (2) no hostile use of fixed military installations or establishments must have been made;
 - (3) no acts of hostility must have been committed by the authorities or by the population; and
 - (4) no activities in support of military operations must have been undertaken.
- (n) “No quarter will be given” means refusing to spare the life of anybody, even of persons manifestly unable to defend themselves or who clearly express their intention to surrender.
- (o) “Perfidy” means acts which invite the confidence of an adversary to lead him/her to believe he/she is entitled to, or is obliged to accord, protection under the rules of

International Humanitarian Law, with the intent to betray that confidence, including but not limited to:

- (1) feigning an intent to negotiate under a flag of truce;
 - (2) feigning surrender;
 - (3) feigning incapacitation by wounds or sickness;
 - (4) feigning civilian or noncombatant status; and
 - (5) feigning protective status by use of signs, emblems or uniforms of the United Nations or of a neutral or other State not party to the conflict.
- (p) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectivity.
- (q) "Protected person" in an armed conflict means:
- (1) a person wounded, sick or shipwrecked, whether civilian or military;
 - (2) a prisoner of war or any person deprived of liberty for reasons related to an armed conflict;
 - (3) a civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party;
 - (4) a person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instruments accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence;
 - (5) a member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of or administration of medical transports; or
 - (6) a member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports, or non-denominational, noncombatant military personnel carrying out functions similar to religious personnel.
- (r) "Superior" means:
- (1) a military commander or a person effectively acting as a military commander; or
 - (2) any other superior, in as much as the crimes arose from activities within the effective authority and control of that superior.
- (s) "Torture" means the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

- (t) “Works and installations containing dangerous forces” means works and installations the attack of which may cause the release of dangerous forces and consequent severe losses among the civilian population, namely: dams, dikes, and nuclear, electrical generation stations.

CHAPTER III

CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

SECTION 4. War Crimes. – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means:

- (a) In case of an international armed conflict, grave breaches of the Geneva Conventions of August 12, 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:
- (1) Willful killing;
 - (2) Torture or inhuman treatment, including biological experiments;
 - (3) Willfully causing great suffering, or serious injury to body or health;
 - (4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
 - (5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (6) Arbitrary deportation or forcible transfer of population or unlawful confinement;
 - (7) Taking of hostages;
 - (8) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; and
 - (9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.
- (b) In case of a non-international armed conflict, serious violations of common Article 3 to the four Geneva Conventions of August 12, 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause;
- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
 - (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (3) Taking of hostages; and

- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:
- (1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (2) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with international law;
 - (4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health;
 - (7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
 - (8) Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;
 - (9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;
 - (10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to

make an effective contribution to military action, it shall be presumed not to be so used;

- (11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
- (12) Killing, wounding or capturing an adversary by resort to perfidy;
- (13) Declaring that no quarter will be given;
- (14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
- (15) Pillaging a town or place, even when taken by assault;
- (16) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (17) Transferring, 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;
- (18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
- (20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
- (22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

- (24) Committing any of the following acts:
- (i) Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces;
 - (ii) Conscripting, enlisting or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and
 - (iii) Using children under the age of 18 years to participate actively in hostilities; and
- (25) Employing means of warfare which are prohibited under international law, such as:
- (i) Poison or poisoned weapons;
 - (ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
 - (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

SEC. 5. *Genocide.*

- (a) For the purpose of this Act, “genocide” means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:
- (1) Killing members of the group;
 - (2) Causing serious bodily or mental harm to members of the group;
 - (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (4) Imposing measures intended to prevent births within the group; and
 - (5) Forcibly transferring children of the group to another group.
- (b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

SEC. 6. Other Crimes Against Humanity. – For the purpose of this Act, “other crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Willful killing;
- (b) Extermination;
- (c) Enslavement;
- (d) Arbitrary deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
- (i) Enforced or involuntary disappearance of persons;
- (j) Apartheid; and
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

CHAPTER IV PENAL PROVISIONS

SECTION 7. Penalties. – Any person found guilty of committing any of the acts provided under Sections 4, 5 and 6 of this Act shall suffer the penalty of *reclusion temporal* in its medium to maximum period and a fine ranging from One Hundred Thousand Pesos (P100,000) to Five Hundred Thousand Pesos (P500,000).

When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of *reclusion perpetua* and a fine ranging from Five Hundred Thousand Pesos (P500,000) to One Million Pesos (P1 million) shall be imposed.

Any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine ranging from Ten Thousand Pesos (P10,000) to Twenty Thousand Pesos (P20,000).

In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of *bona fide* third parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.

CHAPTER V SOME PRINCIPLES OF CRIMINAL LIABILITY

SECTION 8. *Individual Criminal Responsibility.*

- (a) In addition to existing provisions in Philippine law on principles of criminal responsibility, a person shall be criminally liable as principal for a crime defined and penalized in this Act if he/she:
- (1) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (2) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (3) In any other way contributes to the commission or attempted commission of such a crime by a group of person acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime defined in this Act; or
 - (ii) be made in the knowledge of the intention of the group to commit the crime.
- (b) A person shall be criminally liable as accomplice for facilitating the commission of a crime defined and penalized in this Act if he/she aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission.
- (c) A person shall be criminally liable for a crime defined and penalized in this Act if he/she attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intention. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose.

SEC. 9. *Irrelevance of Official Capacity.* – This Act shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a head of state

or government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Act, nor shall it, in and of itself, constitute a ground for reduction of sentence. However:

- (a) Immunities or special procedural rules that may be attached to the official capacity of a person under Philippine law other than the established constitutional immunity from suit of the Philippine President during his/her tenure, shall not bar the court from exercising jurisdiction over such a person; and
- (b) Immunities that may be attached to the official capacity of a person under international law may limit the application of this Act, but only within the bounds established under international law.

SEC. 10. *Responsibility of Superiors.* – In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:

- (a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;
- (b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

SEC. 11. *Nonprescription.* – The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

SEC. 12. *Orders from a Superior.* – The fact that a crime defined and penalized under this Act has been committed by a person pursuant to an order of a government or a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless all of the following elements occur:

- (a) The person was under a legal obligation to obey orders of the government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

For the purposes of this section, orders to commit genocide or other crimes against humanity are manifestly unlawful.

CHAPTER VI

PROTECTION OF VICTIMS AND WITNESSES

SECTION 13. *Protection of Victims and Witnesses.* – In addition to existing provisions in Philippine law for the protection of victims and witnesses, the following measures shall be undertaken:

- (a) The Philippine court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the court shall have regard of all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial;
- (b) As an exception to the general principle of public hearings, the court may, to protect the victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or is a witness, unless otherwise ordered by the court, having regard to all the circumstances, particularly the views of the victim or witness;
- (c) Where the personal interests of the victims are affected, the court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the court considers it appropriate in accordance with the established rules of procedure and evidence; and
- (d) Where the disclosure of evidence or information pursuant to this Act may lead to the grave endangerment of the security of a witness for his/her family, the prosecution may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and to a fair and impartial trial.

SEC. 14. *Reparations to Victims.* – In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

- (a) The court shall follow the principles relating to the reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the court may, either upon request or on its own motion in exceptional

circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and state the principles on which it is acting;

- (b) The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation; and
- (c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.

Nothing in this section shall be interpreted as prejudicing the rights of victims under national or international law.

CHAPTER VII

APPLICABILITY OF INTERNATIONAL LAW AND OTHER LAWS

SECTION 15. *Applicability of International Law.* – In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

- (a) The 1948 Genocide Convention;
- (b) The 1949 Geneva Conventions I– IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;
- (c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
- (d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
- (e) The rules and principles of customary international law;
- (f) The judicial decisions of international courts and tribunals;
- (g) Relevant and applicable international human rights instruments;
- (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
- (i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

SEC. 16. *Supplementary Application of the Revised Penal Code and Other General or Special Laws.* – The provisions of the Revised Penal Code and other general or special laws shall have a supplementary application to the provisions of this Act.

CHAPTER VIII JURISDICTION

SECTION 17. *Jurisdiction.* – The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

- (a) The accused is a Filipino citizen;
- (b) The accused, regardless of citizenship or residence, is present in the Philippines;
or
- (c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.

SEC. 18. *Philippine Court, Prosecutors and Investigators.* – The Regional Trial Court of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

CHAPTER IX FINAL PROVISIONS

SECTION 19. *Separability Clause.* – If, for any reason or reasons, any part or provision of this Statute shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 20. *Repealing Clause.* – All laws, presidential decrees and issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Statute are hereby repealed or modified accordingly.

SEC. 21. *Effectivity.* – This Act shall take effect 15 days after its complete publication in the *Official Gazette* or in two newspapers of general circulation.

Approved, December 11, 2009.



MAIN OFFICE

3rd Floor Centennial Building
Supreme Court of the Philippines
Padre Faura Street
Ermita, Manila 1000

☎ +63 02 552-9621

✉ philja@sc.judiciary.gov.ph

PHILJA TRAINING CENTER

Barangay Silang, Crossing East
Tagaytay City

☎ +63 46 413-1471

☎ +63 02 552-5043

✉ philjatrainingcenter@mail.com

<http://philja.judiciary.gov.ph>



follow us on twitter
[@SCPh_PHILJA](https://twitter.com/SCPh_PHILJA)

