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on the Establishment of an
International Criminal Court**

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DRAFT STATUTE FOR THE INTERNATIONAL CRIMINAL COURT

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PREAMBLE

[Pending]

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court

There is established an International Criminal Court ("the Court"), which shall have the power to bring persons to justice for the most serious crimes of international concern as referred to in this Statute, and which shall be complementary to national criminal jurisdictions. Its jurisdiction and functioning 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 by an agreement to be approved by the Assembly of States Parties to this Statute and concluded by the President on behalf of the Court.

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 President, with the approval of the Assembly of States Parties, may conclude an agreement with the host State, establishing the relationship between the State and the Court.
3. The Court may exercise its powers and functions as provided in this Statute on the territory of any State Party and, by special agreement, on the territory of any other State.

Article 4

Status and legal capacity

1. The Court is a permanent institution open to States Parties in accordance with this Statute. It shall act when required to consider a case submitted to it.
2. 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.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

...

Crime of genocide

For the purpose of the present Statute, the crime of 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;

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 21

Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes 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, it shall be interpreted in favour of the person being investigated or prosecuted.
3. Paragraph 1 shall not affect the character of such conduct as being criminal under international law apart from this Statute.

Article 21 bis

Nulla poena sine lege

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

Article 22

Non-retroactivity

1. A person shall not be criminally responsible under this Statute for conduct prior to its entry into force.
2. If the law as it appeared at the commission of the crime is changed prior to the final judgement in the case, the law more favourable to the accused shall be applied.

Article 23

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 is individually responsible and liable for punishment in accordance with this Statute.
3. Deleted
4. The fact that this Statute provides criminal responsibility for individuals does not affect the responsibility of States under international law.
5. Deleted
6. Deleted

7. In accordance with this Statute, a person is criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another, or through another person regardless of whether that person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) Deleted

(d) 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;

(e) 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 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;

(f) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(g) Attempts to commit that crime by taking action that commences its execution by means of a substantial step, but that 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 accomplishment of the crime is not punishable under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

Article 24

Irrelevance of official position

1. This Statute shall be applied to all persons without any discrimination whatsoever: official capacity, either as Head of State or Government, or as a member of a Government or parliament, or as an elected representative, or as a

government official, shall in no case exempt a person from his criminal responsibility under this Statute, nor shall it [per se] constitute a ground for reduction of the sentence.

2. Any immunities or special procedural rules attached to the official capacity of a person, whether under national or international law, may not be relied upon to prevent the Court from exercising its jurisdiction in relation to that person.

Article 25

Responsibility of commanders and superiors

In addition to the other forms of responsibility for crimes under this Statute:

(a) A military commander or person effectively acting as a military commander is criminally responsible for crimes under this Statute 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 properly control where:

- (i) That 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 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 subparagraph (a), a superior is criminally responsible for crimes under this Statute committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise properly control, 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 X (former article 26) ¹

Non-jurisdiction over minors (provisional title)

The Court shall have no jurisdiction over persons who were under the age of eighteen at the time of the alleged commission of a crime.

Article 27

Statute of limitations

There is no statute of limitations for the crimes within the jurisdiction of the Court.

[Article 28]

Actus reus (act and/or omission)

Deleted

Article 29

Mens rea (mental elements)

1. Unless otherwise provided, a person is only criminally responsible and liable for punishment for a crime under this Statute if the physical elements are committed with intent and knowledge.
2. For the purposes of this Statute and unless otherwise provided, 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 Statute and unless otherwise provided, "know", "knowingly" or "knowledge" means to be aware that a circumstance exists or a consequence will occur.
4. Deleted

¹Article X was transmitted to the Drafting Committee on the understanding that the article should be transferred to Part 2 and that the Drafting Committee should consider the question of its placement in that part as well as its title.

Article 30

Mistake of fact or of law

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

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility permitted by this Statute, a person is not 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 commit 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:

(i) A threat made by other persons; or

(ii) Other circumstances beyond that person's control that constitute 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.

2. The Court may determine the applicability of the grounds for exclusion of criminal responsibility permitted by 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 ground is derived from applicable law as set forth in article 20. The procedures relating to the consideration of such ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Superior orders and prescription of law

1. The fact that a crime referred to in article 5 has been committed pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve the perpetrator of criminal responsibility unless:

- (a) The person was under a legal obligation to obey orders of the Government or the superior in question; and
- (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.

[Article 33]

Possible grounds for excluding criminal responsibility
specifically referring to war crimes

Deleted

Article 34

Other grounds for excluding criminal responsibility

Deleted

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 35

Organs of the Court

The Court consists of the following organs:

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

Article 36

Judges serving on a full-time basis

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. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected. The Presidency may, in consultation with the members of the Court, decide from time to time, on the basis of the workload of the Court, to what extent the remaining judges shall be required to be available at the seat of the Court. Any such arrangement shall be without prejudice to the provisions of article 41. The financial arrangements for judges not required to be available full-time at the seat of the Court shall be made in accordance with article 50.

Article 37

Qualification, nomination and election of judges

1. Pending

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 proposals 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 [...]. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the States Parties and shall enter into force at such time as the Assembly may decide.

- (c) (i) Once a proposal for an increase in the number of judges is 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, 4, 5, 6 and 7 and article 38, 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 on the Court, provided that in no case may the proposal be to reduce the number of judges 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 on the Court shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges of the Court 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) Pending

(c) Every candidate for election to the Court shall possess an excellent knowledge of and be fluent in at least one of the working languages referred to in article 51.

4. Pending

4 bis. Pending

5. (a) The judges of the Court shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article [...]. The [17] [19] candidates receiving the highest number of votes shall be declared elected, subject to the proviso that no candidate shall be considered elected who has not received the votes of two thirds of the States Parties present and voting and subject also to paragraph 6.

(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.

6. No two judges may be nationals of the same State. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which that person ordinarily exercises civil and political rights.

7. Pending

8. (a) Judges shall hold office for a term of nine years and, subject to subparagraph (b) and to article 38, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges [on each of the lists referred to in paragraph 4 bis] 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.

9. Notwithstanding paragraph 8, a judge assigned to a Trial or Appeals Chamber as specified in article 40 shall continue in office to complete any trial or appeal the hearing of which has already begun before that Chamber.

Article 38

Judicial vacancies

1. In the event of a vacancy, a replacement judge shall be elected in accordance with article 37.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term, and, if that period is less than three years, is eligible for re-election for a further term.

Article 39

The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their term of office as judges, whichever is earlier. They shall be eligible for re-election only 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 and the First and Second Vice-Presidents shall constitute the Presidency, which shall be responsible for:

(a) The due administration of the Court, with the exception of the Office of the Prosecutor; and

(b) The other functions conferred on it by 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 40

Chambers

1. Pending

2. (a) The judicial business of the Court shall be carried out in each division by Chambers.

(b) (i) The Appeals Chamber shall be composed of all of 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 as set out in the Rules of Procedure and Evidence.

(iv) 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. Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter for the completion of any case the hearing of which has already commenced in the division concerned.

Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges of the Appeals Division shall serve in that division alone. 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 conduct of the Court's workload so requires, provided that in 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 41

Independence of the judges

1. In performing their functions, the judges shall be independent.
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 serving on a full-time basis shall not engage in any other occupation of a professional nature.
4. Any doubt on the points raised in paragraphs 2 and 3 shall be decided by an absolute majority of the judges of the Court. Where any question concerns an individual judge, that judge shall not take part in the decision.

Article 42

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. Judges shall not participate in any case in which their impartiality might reasonably be doubted on any ground. A judge shall be excluded from a case in accordance with this paragraph if, inter alia, he or she previously has been involved in any capacity in that case before the Court or in a related criminal case involving the accused at the national level. A judge may also be excluded on such other grounds for disqualification as provided in the Rules of Procedure and Evidence.
3. The Prosecutor or the accused may request the disqualification of a judge under paragraph 2.
4. Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges of the Court. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 43

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 [...], for examining them and for conducting investigations and prosecutions before the Court. A member of the Office of the Prosecutor shall not seek or act on instructions from any external source.
2. The Office of the Prosecutor shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office of the Prosecutor, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who are 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 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, furthermore, 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 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 Deputy Prosecutor position to be filled. Unless a shorter term is otherwise decided on at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and not be eligible for re-election.
5. The Prosecutor and the Deputy Prosecutor shall not engage in any activity which is likely to interfere with their prosecutorial functions or to affect confidence in their 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 the Deputy Prosecutors shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be excluded 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 involving the accused at the national level.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber. The accused may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this paragraph. 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.

10. Deleted

Article 44

The Registry

1. Subject to article 43, the Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court.

2. The judges shall by an absolute majority by secret ballot elect a Registrar, who, under the authority of the President of the Court, shall be the principal administrative officer of the Court. They shall take into account any recommendation by the Assembly of States Parties. They may in the same manner, upon the recommendation of the Registrar, elect a Deputy Registrar, if the need arises.

3. The Registrar shall hold office for a term of five years, is 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 is willing to serve as required. The Registrar and the Deputy Registrar shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. 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, counselling and other appropriate assistance for witnesses, victims who appear before the

Court, and for 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 45

Staff

1. The Registrar and the Prosecutor shall appoint such qualified staff of their respective offices, including investigators in case of the Prosecutor, as may be required.

2. In the employment of the staff, the Registrar and the Prosecutor shall ensure the highest standards of efficiency, competency and integrity and shall have regard to the criteria set forth in article 37, paragraph 8.

3. The Staff Regulations, including the terms and conditions upon which the staff of the Court shall be appointed, remunerated or dismissed shall be proposed by the Registrar with the agreement of the Presidency and Prosecutor. Such Staff Regulations and terms and conditions 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 for 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 46

Solemn undertaking

Before first exercising their functions under the present Statute, judges, the Prosecutor, Deputy Prosecutors, the Registrar and the Deputy Registrar shall make a public and solemn undertaking to do so impartially and conscientiously.

Article 47

Removal from office

1. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided in the Rules of Procedure and Evidence, or to be unable to exercise the functions required by this Statute, shall cease to hold office if a decision to this effect is made in accordance with paragraph 2.

2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot:

(a) In the case of a judge, by a two-thirds majority of the States Parties further to a recommendation adopted by a two-thirds majority of the other judges of the Court;

(b) In the case of a 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;

(d) In the case of the Registrar or Deputy Registrar, by an absolute majority of the judges.

3. The judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability otherwise to hold office 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, but shall not otherwise participate in the consideration of the matter.

Article 48

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 47, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 49

Privileges and immunities

1. Pending

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 term 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 Rules of Procedure and Evidence.

4. Counsel, experts, witnesses or any other person required 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 Rules of Procedure and Evidence.

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 50

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 may not be decreased during their term of office.

Article 51

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 intermediary decisions resolving fundamental issues before the Court shall be published in the official languages. The Presidency shall, in accordance with the criteria to be established by the Rules of Procedure and Evidence, determine which intermediary decisions may be considered fundamental 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. The Court shall, at the request of any party to a proceeding or a State allowed to intervene in a proceeding, authorize a language other than English or French to be used by such party or State, provided that the Court considers such authorization to be adequately justified.

Article 52

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall come into force upon adoption by two-thirds majority 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;
- (c) The Prosecutor.

They shall enter into force upon adoption by a two-thirds majority 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 two-thirds majority, draw up Rules to be applied provisionally until adopted, amended or rejected, at its next ordinary or special meeting of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto or any provisional rule, shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules adopted in accordance with paragraph 3 shall not be applied retroactively to the detriment of the person who is being investigated, prosecuted or who has been convicted.

4 bis. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 53

Regulations of the Court

1. As far as provided in this Statute or the Rules of Procedure and Evidence or otherwise necessary for the routine functioning of the Court, the judges shall by an absolute majority adopt the Regulations of the Court. The Regulations of the Court shall be consistent with the Statute and the Rules of Procedure and Evidence.

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 immediately upon adoption by the judges unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments and 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 54

Initiation of an investigation

1. The Prosecutor shall initiate an investigation upon ..., unless he or she determines there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider if:

(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 15; and

(c) Pending

(d) Pending

2. Pending

3. 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 15; or

(c) Pending

Final part of paragraph 3: pending

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 bis

Duties and powers of the Prosecutor
with respect to investigations

1. The Prosecutor may:

(a) Request the presence of and question suspects, victims and witnesses;

(b) Collect and examine evidence;

(c) Pending

(d) Enter into such arrangements or agreements, not otherwise 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 or the protection of any person or the preservation of evidence.

Paragraph 1 bis: pending

2. 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 equally incriminating and exonerating circumstances;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, shall respect the interests and personal circumstances of victims and witnesses, including age, gender and health, and take into account the nature of the crime, in particular, but not limited to, where it involves sexual or gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute and the Rules of Procedure and Evidence.

Article 54 ter

Rights of suspects and other persons
during an investigation

1. A person in respect of whom there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court and who is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, shall have the rights set out in paragraph 2 and shall be informed of those rights prior to being questioned.

2. The rights referred to in paragraph 1 are:

(a) Prior to being questioned, to be informed 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;

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

3. 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 form of cruel, inhuman or degrading treatment or punishment; and

(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;

(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 the Statute and the Rules of Procedure and Evidence.

[Article 55]

Information on national investigations
or proceedings

[Pending]

[Article 56]

Deferral of an investigation by
the Prosecutor

[Pending]

Article 57

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 and 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.

(b) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall also inform the person who has been arrested or appeared in response to a summons in connection with the investigation, in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (a) may include the power to:

(a) Make recommendations or orders, in its discretion, regarding procedures to be followed;

(b) Direct that a record be made of the proceedings;

(c) Appoint an expert to assist;

(d) Authorize 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, appoint a lawyer to attend and represent the interests of the defence;

(e) Name one of its members or, if necessary, an available judge of the Court, to observe and make recommendations or orders, in its discretion, regarding the collection and preservation of evidence and the questioning of persons;

(f) Take such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures under paragraph 2, but the Pre-Trial Chamber is of the view that such measures are required to preserve evidence 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 act 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 bis

Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided for by this Statute, functions of the Pre-Trial Chamber shall be exercised in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles [13], [16], 17, [54 bis (1 bis)], 61 (6) [and 71] 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 under 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 57, paragraph 2), 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;

subparagraph (d): pending

subparagraph (e): pending

Article 58

Issuance by the Pre-Trial Chamber of an
arrest warrant or a summons to appear

1. At any time after an investigation has been initiated, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant for the arrest of a person if satisfied that:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) It appears that the arrest of the person is necessary to ensure the person's appearance at trial, to ensure that the person does not obstruct or endanger the investigation or the court proceedings, or where applicable to prevent the person from continuing with the commission of that crime or a related crime being committed which is within the jurisdiction of the Court and arises out of the same circumstances.

2. The application shall specify:

(a) The name of the person or persons, and any other relevant identifying information;

(b) The specific 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 form reasonable grounds to believe that the person committed those crimes; and

(e) The reason why the Prosecutor believes the arrest of the person is necessary.

3. The Pre-Trial Chamber shall examine the application and the evidence or other information submitted by the Prosecutor and, if satisfied that there are reasonable grounds to believe that the person named committed the crimes alleged and that the arrest of the person appears necessary, shall issue a warrant for the arrest of the person. The warrant of arrest shall identify the person to be arrested and the crimes for which the person's arrest is sought, and shall contain a concise statement of the facts which are alleged to constitute those crimes. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

4. Based on the arrest warrant, the Court may request the provisional arrest, or the arrest and [surrender] [extradition] of the person under Part 9.

5. Pending

6. 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 finds 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 on a specified date. The summons shall identify the person summoned and the crimes which the person is alleged to have committed, and shall contain 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] [extradition] shall immediately take steps to arrest the suspect in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before a competent judicial authority in the custodial State who shall determine, in accordance with the law of that State, that the warrant applies to that person, that the person has been arrested in accordance with the proper process, and that the person's rights have been respected.
3. The person arrested shall have the right to apply to the competent judicial authority in the custodial State for interim release pending surrender. In reaching a decision on any such application, the authorities 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. In determining an application for interim release, it shall not be open to the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b). The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the national authorities. The competent judicial 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. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
4. Deleted

5. Once ordered to be [surrendered] [extradited] 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] [extradition] 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 he or she is alleged to have committed, and of his or her rights under the 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 ... are present, the person shall be detained. Otherwise 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 accused. 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 unexcusable delay by the Prosecutor. If such delay has occurred, 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 an accused who has been released.

Article 61

Confirmation of the charges before trial

1. Pending

2. A reasonable time before the hearing, the person shall be provided with a copy of the charges on which the Prosecutor intends to seek trial, and be informed of the evidence on which the Prosecutor intends to rely at the hearing. The Pre-Trial Chamber may make orders regarding the disclosure of information for purposes of the hearing as may be appropriate under the Statute and the Rules.

3. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any proposed charges. The accused shall be given reasonable notice before the hearing of any amendment or withdrawal of proposed charges. In case of a withdrawal of proposed charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

4. At the hearing, the Prosecutor shall have the burden of presenting, for each charge on which he seeks trial, 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.

5. At the hearing, the accused person may object to the proposed charges, challenge the evidence presented by the Prosecutor and present evidence on his or her own behalf.

6. The Pre-Trial Chamber shall determine whether, considering the presentations by both the Prosecutor and the accused, there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determinations, the Pre-Trial Chamber may:

(a) Confirm those proposed charges as to which it has determined there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;

(b) Refuse to confirm those proposed charges as to which it has determined there is insufficient evidence;

(c) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conduct further investigation with respect to a particular charge; or

(ii) Amending a proposed charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

6 bis. The refusal of the Pre-Trial Chamber to confirm a proposed charge shall not preclude the Prosecutor from subsequently asking again for its confirmation, if it is supported by additional evidence.

7. After the charges are confirmed and before the trial has begun, the Prosecutor may amend the charges, but only with the permission of the Pre-Trial Chamber and after notice to the accused. 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 withdraw the charges only with the permission of the Trial Chamber. In case of a withdrawal of proposed charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

8. A previously issued warrant 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.

9. Once the charges have been confirmed in accordance with this article, the presidency shall constitute a Trial Chamber which, subject to paragraph 7 of this article and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any functions of the Pre-Trial Chamber that are relevant and capable of application in those proceedings.

PART 6. TRIAL

Article 62

Place of trial

1. Unless otherwise decided, the place of the trial will be the seat of the Court.
2. Deleted
3. Deleted
4. Deleted
5. Deleted

Article 63

Trial in presence of the accused

[Pending]

Article 64

Functions and powers of the Trial Chamber

1. The functions and powers set out in this article are to be exercised in accordance with the 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 a 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;
 - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of 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 Chamber.
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 9;
- (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 further evidence 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;
- (f) Rule on any other relevant matters.

7. The Trial shall be held in public. However, the Trial Chamber may 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 in an objective 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 of its own motion to:

- (a) Rule on the admissibility or relevance of evidence;
- (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 under article 64, paragraph 1 (d), the Trial Chamber shall determine whether:

(a) The accused understands the nature and consequences of the admission of guilt and whether the admission is voluntarily made after sufficient consultation with defence counsel; and

(b) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges and in any supplementary materials presented by the Prosecutor, and which the accused admits; and

(ii) Any other evidence, including 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, the Trial Chamber shall consider the admission of guilt, together with any additional evidence presented and admitted, as an admission of 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, the Trial Chamber shall order that the trial be continued under the ordinary trial procedures provided by this Statute, and shall consider the admission of guilt not to have been made 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 otherwise required in the interests of justice, in particular the interests of the victims, the Trial Chamber may request that the Prosecutor present additional evidence, including the testimony of witnesses, or may order that the trial be continued under the ordinary trial procedures provided by this Statute and, in the latter situation, shall consider the admission of guilt not to have 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, acceptance of the admission of guilt by the accused 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 law applicable to it.
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 is entitled to a public hearing, having regard to the provisions of this Statute, and to a fair hearing conducted impartially, and to the following minimum guarantees in full equality:

(a) Pending

(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 such assistance;

(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) Pending

(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;

(i) Not to have imposed on him or her any reverse onus of duty of rebuttal.

2. Pending

Article 68

Protection of the [accused], victims and witnesses [and their participation in the proceedings]

[Pending]

Article 69

Evidence

1. Pending

2. The testimony of a witness of 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 call evidence relevant to the case, in accordance with article 64, paragraphs 3 and 6. However, the Court has the authority to call 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 in accordance with the Statute and the Rules of Procedure and Evidence.

4 bis. The Court shall address and observe privileges on confidentiality as set forth in the Rules of Procedure and Evidence.

5. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

6. Evidence obtained by means of a violation of this Statute or internationally recognized human rights and which either casts substantial doubt on its reliability or the admission of which is antithetical to and would seriously damage the integrity of the proceedings, shall not be admissible.

7. Pending

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 or acts against the integrity of the Court

[Pending]

[Article 71]

Sensitive national security information

[Pending]

Article 72

Quorum and judgement

[Pending]

[Article 73]

Reparations to victims

[Pending]

Article 74

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 sentence.
2. Except where article 65 applies, the Trial Chamber may on its own motion, and shall at the request of the Prosecutor or the accused, made before the completion of the trial, hold a further hearing to hear any additional evidence or submissions relevant to sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 73 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 in the presence of the accused].

PART 7. PENALTIES

Article 75

Applicable penalties

Paragraph 1:

chapeau: pending

[subparagraph (a)]: pending

Last two subparagraphs of paragraph 1 (a): deleted

[subparagraph (b)]: deleted

[subparagraph (c)]:

[subparagraph (i)]: deleted

[subparagraph (ii)]: deleted

[subparagraph (d)]: deleted

[subparagraph (e)]: pending

New paragraph:

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for by 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 76

Penalties applicable to legal persons]

Deleted

Article 77

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.

Paragraph 3. pending

[Article 78

Applicable national legal standards]

Deleted

Article 79

Fines and assets collected

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 their families.
2. Money and other property collected through fines or forfeiture may 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.

PART 8. APPEAL AND REVIEW

Article 80

Appeal against decision or sentence

1. A decision under article 72 may be appealed, in accordance with the Rules of Procedure and Evidence, as provided for below:

(a) The Prosecutor may make such an appeal on 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 such an appeal on 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.

[(c)] Deleted

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 80, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 82.

The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under article 80, paragraph 2 (a).

[3.] pending

4. (1) Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

When his time in custody exceeds the sentence of imprisonment imposed, he shall be released, but if the Prosecutor is also appealing, his release may be subject to the conditions under (2) below.

(2) In case of an acquittal, the accused shall be released immediately, subject to the following:

(a) 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;

(b) A decision by the Trial Chamber under (a) above may be appealed in accordance with the Rules of Procedure and Evidence.

5. Subject to the provisions of paragraph 4 (1), execution of the judgement shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 81

Appeal against 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 defendant;

[(c)] Pending

[(d)] Pending

(d bis) Pending

[(e)] Pending

2. 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.

Article 82

Proceedings on Appeal

1. For the purposes of proceedings under article 80 and this article, the Appeals Chamber also has 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 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 accused, 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 decision of the Chamber shall be taken by a majority of the judges and shall be delivered in open court.

Final subparagraph on dissenting opinions: pending

5. The Appeals Chamber may deliver its judgement in the absence of the accused.

Article 83

Revision of conviction or sentence

1. The convicted person or, after death, ..., 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 likely would 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 has committed in that case an act of serious misconduct or serious breach of duty of sufficient gravity to justify their removal from office under article 47.

subparagraph [(d)]: deleted

subparagraph [(e)]: deleted

paragraph [2.]: deleted

3. 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.

paragraph [4]: deleted

proposed paragraph 5: pending

[Article 84]

Compensation to a suspect/convicted person

[Pending]

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 85

General obligation to cooperate

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

Article 86

Requests for cooperation: general provisions

1. Authorities competent to take and receive requests/Channels for communication of requests

(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, accession or approval. Subsequent changes in the designation shall be done in accordance with the Rules of Procedure and Evidence.

(b) When appropriate, without prejudice to the provisions of paragraph 1 (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Language of requests

Requests for cooperation and supporting documents shall either be in or accompanied by a translation into an official language of the requested State or in one of the working languages reflected in article 51, in accordance with the choice made by that State upon ratification, accession or approval.

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

3. Confidentiality of requests from the Court

The requested State shall keep confidential a request and any supporting documents, except to the extent that the disclosure is necessary for execution of the request.

4. Victims and witnesses

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 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. Pending

6. Cooperation of intergovernmental organizations

The Court may ask any intergovernmental organizations to provide information or documents. The Court may also ask for other forms of cooperation and assistance as may be agreed upon with such organizations and in accordance with their respective competencies and/or mandates.

7. States Parties' failure to cooperate

Where a State Party fails to comply with a request by the Court contrary to the provisions of the Statute, thereby preventing the Court from performing its duties 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 87

[Surrender] [Transfer] [Extradition] of persons to the Court

1. The Court may transmit a request for the arrest and [surrender] [transfer] [extradition] of a person, along with the supporting material outlined in article 88, 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] [transfer] [extradition] of such 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] [transfer] [extradition].

2. Deleted

3. Pending

4. Pending

5. Deleted

6. Pending

7. Deleted

8. Pending

9. Pending

10. Deleted

11. Transit of [surrendered] [transferred] [extradited] person

(a) A State Party shall, except where transit through that State would impede or delay the surrender, authorize transportation under its national procedural law through its territory of a person being [surrendered] [transferred] [extradited] to the Court by another State. A request by the Court for transit shall be transmitted in accordance with article 86. The request for transit shall contain a description of the person being transported, a brief statement of the facts of the case and the legal characterization and the warrant for arrest and [transfer] [surrender] [extradition]. A person in transit shall be detained in custody during the period of transit.

(b) No authorization is required where air transportation is used and no landing is scheduled on the territory of the State of transit.

(c) If an unscheduled landing occurs on the territory of the State of transit, it may require a request for transit as provided for in subparagraph (a). The State of transit shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 88

Contents of request for [surrender] [transfer] [extradition]

1. A request for arrest and [surrender; transfer; extradition] shall be made in writing. In urgent cases a request may be made by any medium capable of delivering a written record, provided that a request shall be confirmed through the channel provided for in article 86, paragraph 1 (a). The request shall contain or be supported by:

(a) In the case of a request for the arrest and [surrender; transfer; extradition] of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, paragraph 3:

- (i) Information describing the person sought, sufficient to identify the person and information as to that person's probable location;
- (ii) A copy of the warrant of arrest;
- (iii) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, but those requirements should not be

more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements with other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court;

(b) In the case of a request for the arrest and [surrender; transfer; extradition] of a person already convicted:

- (i) A copy of any warrant of arrest for that person;
- (ii) A copy of the judgement of conviction;
- (iii) Information to demonstrate that the person sought is the one referred to in the judgement of conviction;
- (iv) If the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and that remaining.

2. Upon the request of the Court, States Parties shall consult with the Court whether generally or with respect to a specific matter, regarding any requirements under their national law that may apply under paragraph 1 (a) (iii) of this article. In the consultations, the States Parties shall advise the Court of the specific requirements of their law.

Article 89

Provisional arrest

1. In case of urgency, the Court may request the provisional arrest of the person sought pending presentation of the request for [surrender] [transfer] [extradition] and supporting documents under article 88.

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, 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] [transfer] [extradition] of the person sought will follow.

3. A person who is provisionally arrested may be discharged from custody if the requested State has not received the request for [surrender] [transfer] [extradition] and the supporting documents specified under article 88 within the time limits specified in the Rules of Procedure. However, the person may consent to [surrender] [transfer] [extradition] before the expiration of this period if the legislation of the requested State allows, in which case that State shall proceed to [surrender] [transfer] [extradite] the person to the Court as soon as possible.

4. The fact that the person sought has been discharged from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and [surrender] [transfer] [extradition] of that person if the request for [surrender] [transfer] [extradition] and supporting documents are delivered at a later date.

Article 90

Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part [and their national [procedural] law], comply with requests by the Court to provide assistance in relation to investigations or prosecutions as follows:

(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 or reports necessary to the Court;

(c) The questioning of any suspect or accused;

(d) The service of documents, including judicial documents;

(e) Facilitating the appearance of persons as witnesses or experts before the Court, which shall be voluntary;

(f) The temporary transfer of persons as provided in paragraph 1 ter of article 90;

(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 types of assistance with a view to facilitating the investigation and prosecution of crimes under the Statute which are not prohibited by the law of the requested State.

1 bis. The Court shall have the authority to provide an assurance to a witness or expert appearing before the Court that he or she will not be prosecuted, detained or submitted to any restriction of personal freedom by the Court in respect of any acts or omissions that preceded the departure of that person from the requested State.

1 ter. (a) The Court may request the temporary transfer of a person in custody for purposes of testimony, identification or other assistance. The person may be transferred if the following conditions are fulfilled:

- (i) The person freely gives his or her informed consent; and
- (ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(b) The person transferred shall remain in custody, and when the purposes of the transfer have been fulfilled the Court shall return the person without delay to the requested State.

2. Pending

3. Pending

4. Pending

5. Pending

6. Confidentiality

(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 of the Statute and related Rules of Procedure and Evidence.

7. Assistance by the Court

(a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of acts which constitute a crime under this Statute or which constitute a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, among others:

- (1) 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
- (2) The questioning of any person detained by the Court;

(ii) In the case of assistance under subparagraph (b) (i) (1):

- (1) 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;
- (2) 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 non-State Party.

8. Deleted

Article 90 bis [90, paragraph 8]

Contents of request for other forms of
assistance under article 90

1. A request for other forms of assistance referred to in article 90 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that a request shall be confirmed through the channel provided for in article 86, 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 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;

(f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, States Parties shall consult with the Court, whether generally or with respect to a specific matter, regarding any requirements under their national law that may apply under paragraph 2 (e) of this article. In the consultations, the States Parties shall advise the Court of the specific requirements of their law.

4. The provisions of this article shall, where applicable, also apply in respect of a request made to the Court.

Article 90 ter

Consultations

Where a State Party receives a request under this Part and identifies problems with the request, which may impede or prevent its execution, including but not limited to:

(a) Insufficient information to execute the request; or

(b) In the case of a request for surrender, despite best efforts, that the person sought cannot be located or that investigation conducted has determined that the person in the custodial State is clearly not the person named in the warrant; or

(c) That execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken to another State, the requested State shall, without delay, consult with the Court to resolve the matter.

Article 90 quater

Waiver of immunity

The Court may not proceed with a request for surrender/cooperation 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.

Article 91

Execution of requests under articles 90 and 90 bis

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. Pending
5. Provisions allowing a person heard or examined by the Court under article 71 to invoke restrictions designed to prevent disclosure of confidential information connected with national defence or security also apply to the execution of requests for assistance under this article.

Article 91 bis

Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by the requested State, except for the following, which should be borne by the Court:
 - (a) Costs associated with the travel and security of witnesses and experts or the transfer of persons in custody;
 - (b) Costs of translation, interpretation and transcription;
 - (c) The travel and subsistence costs of the Prosecutor, members of his office or any other member of the Court;
 - (d) The costs of any expert opinion or report requested by the Court;
 - (e) The 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. The Court shall bear the ordinary costs of execution.

[Article 92]

Rule of speciality

[Pending]

PART 10. ENFORCEMENT

Article 93

General obligation regarding recognition [and enforcement]
of judgements

[Pending]

Article 94

Role of States in enforcement of
sentences of imprisonment

1. Pending
2. Pending
3. 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 conformity with and under the conditions as set out in the Host State Agreement as referred to in article 3, paragraph 2. In such a case, the costs involved in enforcement of a sentence of imprisonment shall be borne by the Court.

Article 94 bis

Change in designation of State of enforcement

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

Article 95

Enforcement of the sentence

1. Subject to conditions it may have specified in paragraph 1 (b) of article 94, the sentence of imprisonment shall be binding on the States Parties, which may in no case modify it.
2. The Court alone shall have the right to decide any application for review of the judgement or sentence. The State of enforcement shall not impede the sentenced person from making any such application.

Article 96

Supervision and administration of sentence

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 conventional standards governing treatment of prisoners.

2. The conditions of detention shall be governed by the law of the State of enforcement and consistent with widely accepted international conventional standards governing treatment of prisoners, and shall in any case be not more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a person sentenced and the Court shall be unimpeded and confidential.

Article 97

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 shall, in accordance with the law of the State of enforcement, be transferred to another State which agrees or is obligated to receive him or her, unless the State of enforcement authorizes the person to remain in its territory.

2. The costs involved in transferring the person to another State pursuant to paragraph 1 shall be borne by the Court, if no State bears those costs.

3. Subject to the provisions of article 98, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to the State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 98

Limitation of prosecution or punishment for other offences

1. A sentenced person in the custody of the State of enforcement shall not be subjected to prosecution or punishment or to extradition to a third State for any conduct committed prior to 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 rule on the matter after having heard the person.

3. Paragraph 1 of this article shall cease to apply if the sentenced person remains 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 99

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 in accordance with the procedure of their national law.

1 bis. When the State Party is unable to give effect to the 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.

2. Pending

3. Pending

Article 100

Pardon, parole and commutation of sentences [early release]

[Pending]

[Article 101]

Escape

[Pending]

PART 11. ASSEMBLY OF STATES PARTIES

Article 102

Assembly of States Parties

1. There is hereby established an Assembly of States Parties to this Statute. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed the Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

- (a) Consider and adopt 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 and take appropriate action in regard thereto;
- (d) Consider and decide the budget for the Court;
- (e) Determine whether to alter, as appropriate, the number of judges;
- (f) Pending
- (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.

The Bureau shall meet as often as necessary, but at least once a year, and shall assist the Assembly in the discharge of its responsibilities.

(c) The Assembly may also establish other subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection evaluation and investigation in order to enhance the efficiency and economy of the Court.

3 bis. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly of States Parties or of the Bureau.

4. 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 the Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

5. 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.

6. A State Party that is in arrears in the payment of its financial contributions to 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.

7. The Assembly shall adopt its own rules of procedure.

8. The official and working languages of the Assembly of States Parties shall be those of the General Assembly of the United Nations.

PART 12. FINANCING OF THE COURT

Article 103

Payment of expenses of the Court

[Pending]

Article 104

Funds of the Court

[Pending]

Article 105

Voluntary contributions

[Pending]

Article 106

Assessment of contributions

[Pending]

Article 107

Annual audit

[Pending]

PART 13. FINAL CLAUSES

Article 108

Settlement of disputes

[Pending]

Article 109

Reservations

[Pending]

Article 110

Amendments

[Pending]

Article 111

Review of the Statute

[Pending]

Article 112

Signature, ratification, acceptance, approval or accession

[Pending]

[Article 113]

Early activation of principles and rules of the Statute

[Pending]

Article 114

Entry into force

[Pending]

Article 115

Withdrawal

[Pending]

Article 116

Authentic texts

[Pending]

FINAL ACT OF THE UNITED NATIONS DIPLOMATIC CONFERENCE
OF PLENIPOTENTIARIES ON THE ESTABLISHMENT OF AN
INTERNATIONAL CRIMINAL COURT

1. The General Assembly, in its resolution 51/207 of 17 December 1996, decided to hold a diplomatic conference of plenipotentiaries in 1998 with a view to finalizing and adopting a convention on the establishment of an international criminal court.
2. The General Assembly, in its resolution 52/160 of 15 December 1997, accepted with deep appreciation the generous offer of the Government of Italy to act as host to the conference and decided to hold the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome from 15 June to 17 July 1998.
3. Previously, the General Assembly, in its resolution 44/39 of 4 December 1989, had requested the International Law Commission to address the question of establishing an international criminal court; in resolutions 45/41 of 28 November 1990 and 46/54 of 9 December 1991, invited the Commission to consider further and analyse the issues concerning the question of an international criminal jurisdiction, including the question of establishing an international criminal court; and in resolutions 47/33 of 25 November 1992 and 48/31 of 9 December 1993, requested the Commission to elaborate the draft statute for such a court as a matter of priority.
4. The International Law Commission considered the question of establishing an international criminal court from its forty-second session, in 1990, to its forty-sixth session, in 1994. At that session, the Commission completed a draft statute for an international criminal court, which was submitted to the General Assembly.
5. The General Assembly, in its resolution 49/53 of 9 December 1994, decided to establish an ad hoc committee to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries.
6. The Ad Hoc Committee on the Establishment of an International Criminal Court met from 3 to 13 April and from 14 to 25 August 1995, during which time

the Committee reviewed the issues arising out of the draft statute prepared by the International Law Commission and considered arrangements for the convening of an international conference.

7. The General Assembly, in its resolution 50/46 of 11 December 1995, decided to establish a preparatory committee to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.

8. The Preparatory Committee on the Establishment of an International Criminal Court met from 25 March to 12 April and from 12 to 30 August 1996, during which time the Committee discussed further the issues arising out of the draft statute and began preparing a widely acceptable consolidated text of a convention for an international criminal court.

9. By its resolution 51/207 of 17 December 1996, the General Assembly decided that the Preparatory Committee would meet in 1997 and 1998 in order to complete the drafting of the text for submission to the Conference.

10. The Preparatory Committee met from 11 to 21 February, from 4 to 15 August and from 1 to 12 December 1997, during which time the Committee continued to prepare a widely acceptable consolidated text of a convention for an international criminal court.

11. In its resolution 52/160 of 15 December 1997, the General Assembly requested the Preparatory Committee to continue its work in accordance with General Assembly resolution 51/207 and, at the end of its sessions, to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate.

12. The Preparatory Committee met from 16 March to 3 April 1998, during which time the Committee completed the preparation of the draft Convention on the Establishment of an International Criminal Court, which was transmitted to the Conference.

13. The Conference met at the headquarters of the Food and Agriculture Organization of the United Nations in Rome from 15 June to 17 July 1998.

14. The General Assembly, in its resolution 52/160, requested the Secretary-General to invite all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency to participate in the Conference. The delegations of ... States participated in the Conference, as follows:

...

15. In the same resolution, the General Assembly requested the Secretary-General to invite representatives of organizations and other entities that had received a standing invitation from the Assembly pursuant to its relevant resolutions to participate as observers in its sessions and work on the understanding that such representatives would participate in that capacity, and to invite, as observers to the Conference, representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunals for the Former Yugoslavia and for Rwanda. The following organizations were represented at the Conference by an observer: ...

16. Pursuant to the same resolution, the Secretary-General invited non-governmental organizations accredited by the Preparatory Committee with due regard to the provisions of section VII of Economic and Social Council resolution 1996/31 of 25 July 1996, and in particular to the relevance of their activities to the work of the Conference, to participate in the Conference, along the lines followed in the Preparatory Committee and in accordance with the resolution as well as the rules of procedure to be adopted by the Conference. The following non-governmental organizations were represented at the Conference by an observer: ...

17. The Conference elected Mr. Giovanni Conso (Italy) as President.

18. The Conference elected as Vice-Presidents the representatives of the following States: Algeria, Austria, Bangladesh, Burkina Faso, China, Chile, Colombia, Costa Rica, Egypt, France, Gabon, Germany, India, Iran (Islamic Republic of), Japan, Kenya, Latvia, Malawi, Nepal, Nigeria, Pakistan, Russian Federation, Samoa, Slovakia, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

19. The following committees were set up by the Conference:

General Committee

Chairman: The President of the Conference
Members: The President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee

Committee of the Whole

Chairman: Mr. Philippe Kirsch (Canada)
Vice-Chairmen: Ms. Silvia Fernandez de Gurmendi (Argentina), Mr. Constantin Virgil Ivan (Romania) and Phakiso Mochochoko (Lesotho)
Rapporteur: Mr. Yasumasa Nagamine (Japan)

Drafting Committee

Chairman: Mr. Cherif Bassiouni (Egypt)
Members: Cameroon, China, Dominican Republic, France, Germany, Ghana, India, Jamaica, Lebanon, Mexico, Morocco, Philippines, Poland, Republic of Korea, Russian Federation, Slovenia, South Africa, Spain, Sudan, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

The Rapporteur of the Committee of the Whole participated ex officio in the work of the Drafting Committee in accordance with rule 49 of the rules of procedure of the Conference.

Credentials Committee

Chairman: ...
Members: The representatives of Argentina, China, Côte d'Ivoire, Dominica, Nepal, Norway, Russian Federation, United States of America and Zambia.

20. The Secretary-General was represented by Mr. Hans Corell, Under-Secretary-General, the Legal Counsel. Mr. Roy S. Lee, Director of the Codification Division of the Office of Legal Affairs, acted as Executive Secretary. The secretariat was further composed as follows: ...

21. The Conference had before it a draft Statute on the Establishment of an International Criminal Court transmitted by the Preparatory Committee in accordance with its mandate (A/CONF.183/2/Add.1).

22. The Conference assigned to the Committee of the Whole the consideration of the draft Convention on the Establishment of an International Criminal Court adopted by the Preparatory Committee. The Conference entrusted the Drafting Committee, without reopening substantive discussion on any matter, with coordinating and refining the drafting of all texts referred to it without altering their substance, formulating drafts and giving advice on drafting as requested by the Conference or by the Committee of the Whole and reporting to the Conference or to the Committee of the Whole as appropriate.

23. On the basis of the deliberations recorded in the records of the Conference (A/CONF.183/SR.1 to SR. ...) and of the Committee of the Whole (A/CONF.183/C.1/SR.1 to SR. ...) and the reports of the Committee of the Whole (A/CONF.183/...) and of the Drafting Committee (A/CONF.183/...), the Conference drew up the Rome Statute of the International Criminal Court.

24. The foregoing Statute, which is subject to ratification, acceptance or approval, was adopted by the Conference on .. July 1998 and opened for signature on .. July 1998, in accordance with its provisions, until 17 October 1998 at the Ministry of Foreign Affairs of Italy and, subsequently, until 31 December 2000, at United Nations Headquarters in New York. The same instrument was also opened for accession in accordance with its provisions.

25. After 17 October 1998, the closing date for signature at the Ministry of Foreign Affairs of Italy, the Statute will be deposited with the Secretary-General of the United Nations.

26. The Conference also adopted the following resolutions, which are annexed to the present Final Act:

Tribute to the International Law Commission

Tribute to the participants at the Preparatory Committee on the Establishment of an International Criminal Court and its Chairman

Tribute to the President of the Conference, to the Chairman of the
Committee of the Whole and to the Chairman of the Drafting Committee

Tribute to the People and the Government of Italy

Resolution on the Establishment of the Preparatory Commission for the
International Criminal Court

...

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at Rome this ..th day of July, one thousand nine hundred and
ninety-eight, in a single copy in the Arabic, Chinese, English, French,
Russian and Spanish languages, each text being equally authentic.

By unanimous decision of the Conference, the original of this Final Act
shall be deposited in the archives of the Ministry of Foreign Affairs of
Italy.

ANNEX

Resolutions adopted by the United Nations Diplomatic
Conference of Plenipotentiaries on the Establishment
of an International Criminal Court

The United Nations Diplomatic Conference of Plenipotentiaries on the
Establishment of an International Criminal Court

Resolves to express its deep gratitude to the International Law Commission for its outstanding contribution in the preparation of the original draft of the Statute, which constituted the basis for the work of the Preparatory Committee.

The United Nations Diplomatic Conference of Plenipotentiaries on the
Establishment of an International Criminal Court

Pays tribute to the participants of the Preparatory Committee on the Establishment of an International Criminal Court and its Chairman, Mr. Adrian Bos, for their outstanding and hard work, commitment and dedication.

The United Nations Diplomatic Conference of Plenipotentiaries on the
Establishment of an International Criminal Court

Expresses its deep appreciation and gratitude to the People and the Government of Italy for making the necessary arrangements for the holding of the Conference in Rome, for their generous hospitality and for their contribution to the successful completion of the work of the Conference.

The United Nations Diplomatic Conference of Plenipotentiaries on the
Establishment of an International Criminal Court

Expresses its appreciation and thanks to Mr. Giovanni Conso, President of the Conference, Mr. Philippe Kirsch, Chairman of the Committee of the Whole, and Mr. Cherif Bassiouni, Chairman of the Drafting Committee, who, through their experience, skilful efforts and wisdom in steering the work of the Conference, contributed greatly to the success of the Conference.

The United Nations Conference of Plenipotentiaries on the Establishment
of an International Criminal Court,

Having adopted the Statute of the International Criminal Court,

Having decided to take all possible measures to ensure the coming into operation of the International Criminal Court without undue delay and to make the necessary arrangements for the commencement of its functions,

Having decided that a preparatory commission should be established for the fulfilment of these purposes,

Decides as follows:

1. There is hereby established the Preparatory Commission for the International Criminal Court. The Secretary-General of the United Nations shall convene the Commission as early as possible at a date to be decided by the General Assembly of the United Nations.
2. The Commission shall consist of representatives of States which have signed the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and other States which have been invited to participate in the Conference.
3. The Commission shall elect its Chairman and other officers, adopt its rules of procedure and decide on its programme of work. These elections shall take place at the first meeting of the Commission.
- 3 bis. The official and working languages of the Preparatory Commission shall be those of the General Assembly of the United Nations.
4. The Commission shall prepare proposals for practical arrangements for the establishment and coming into operation of the Court, including the draft texts of:
 - (a) Rules of Procedure and Evidence [including elements of offences] on a priority basis;
 - (b) A relationship agreement between the Court and the United Nations;
 - (c) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;
 - (d) Deleted
 - (e) Financial regulations and rules;
 - (f) Pending
 - (g) A budget for the first financial year;
 - (h) The rules of procedure of the Assembly of States Parties.
5. The Commission shall remain in existence until the conclusion of the first meeting of the Assembly of States Parties.
6. The Commission shall prepare a report on all matters within its mandate and submit it to the first meeting of the Assembly of States Parties.

7. The Commission shall meet at the Headquarters of the United Nations. The Secretary-General of the United Nations is requested to provide to the Commission such secretariat services as it may require, subject to the approval of the General Assembly of the United Nations.

8. The Secretary-General of the United Nations shall bring the present resolution to the attention of the General Assembly for any necessary action.
