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**Preparatory Commission for the International
Criminal Court**

**Working Group on an Agreement on the Privileges
and Immunities of the International Criminal Court**

New York, 26 February-9 March 2001

24 September-5 October 2001

**Proposal submitted by Colombia in relation to document
PCNICC/2000/L.4/Rev.1/Add.3**

The delegation of Colombia reiterates, as a necessary premise for discussing the draft Agreement, strict observance of the Statute of Rome and of the delicate balance achieved in the Rules of Procedure and Evidence.

In relation to “Funds and freedom from currency restrictions” (art. 10), the delegation is in agreement with alternative 1, because of the necessity imposed by article 2 of the Agreement, namely the legal status and juridical personality of the Court.

The delegation stresses respect for and protection of the balance in terms of privileges and immunities among the persons appearing before the Court, and between those persons and the Court itself, in order to ensure proper guarantee of the right to a defence both of the accused and of the victims.

Accordingly, provisions such as those contained in articles 3, “General provisions on privileges and immunities of the Court”, 4, “Inviolability of the premises of the Court”, 7, “Inviolability of archives and all documents of the Court”,¹ 11, “Facilities in respect of communications”,² 13, “Privileges and immunities of the representatives of States Parties”,³ 14, “Judges, Prosecutor, Deputy Prosecutors and Registrar” and 15, “Officials of the Court” must in the view of the Colombian delegation be a starting point for balance among all participants in the International Criminal Court, that is to say, judges, prosecutors or officials, and

¹ Attention is drawn to the concept of the privileges found both in the Statute and in the Rules of Procedure and Evidence, thus establishing, among other principles, professional secrecy: the principle of inviolability.

² With reference to paragraphs 2 and 3, so that a balance is maintained between the defence and the victims with regard to means of communication, inviolability and non-censorship.

³ Especially with reference to subparagraphs (a), (c), (d) and (g).



likewise counsel for the defence both of the accused and of the victims. It must be noted that use of the term “Counsel” refers to the members of the defence.

For the purposes of ensuring this balance, the Colombian delegation considers it necessary to adjust the content of article 16 by incorporating the reference to location (“in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business”) provided for in article 15, so that it would read as follows:

“16. Counsel and persons assisting such Counsel in accordance with rule 22 of the Rules of Procedure and Evidence shall enjoy in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent performance of their functions, subject to production of the certificate referred to in paragraph 2 of this article. They shall be accorded ...”.

With respect to the immunities provided for in paragraph 1 of this article, we believe that a subparagraph should be inserted reading:

“(c) Inviolability of the office or premises in which they perform their work”.

Likewise, we propose amending the last sentence of article 16, paragraph 2. The word “reasonably” used in the draft involves a subjective component which might result in impairment of the right to a defence. Consequently, the Colombian delegation suggests the following wording:

“A certificate provided to a counsel shall be limited to the period for which the power or mandate conferred on the defence is in effect”.

With regard to “Waiver” (art. 19), we have the following comments:

(a) According to the provisions of article 48, paragraph 5, of the Statute, “privileges and immunities ... *may* be waived (italics added). Nevertheless, article 19, paragraph 1, of the draft under consideration provides in this respect that “*there is a duty to do so* in any particular case ...”. There is justified doubt as to whether this is obligatory, in that the Statute, as noted, does not provide for this possibility, and bearing in mind that the privileges and immunities are guaranteed “in the interests of the good administration of justice”, the waiver is an arrangement, not an order, in other words it is not obligatory;

(b) With regard to waiver of the privileges and immunities extended to counsel, experts, witnesses or any other person required to be present in the Court, we consider it appropriate to decide on the procedure to be followed in the Agreement, not to leave it to the Regulations. For the sake of the necessary balance that must exist between officials of the Court and the defence, as well as the participants referred to, we suggest that consideration should be given to a procedure similar to that provided for in the case of waiver by a judge or the Prosecutor; thus the subparagraph might read as follows:

“(e) In the case of counsels, experts, witnesses or any other person required to be present at the seat of the Court, **by an absolute majority of the judges.**”