

Fourth session

The Hague

28 November to 3 December 2005

**Report on draft guidelines for the selection and engagement of gratis
personnel at the International Criminal Court**

Note by the Secretariat

The Secretariat of the Assembly of States Parties has received the following report, which is submitted by the Registrar, with the agreement of the Presidency and the Prosecutor, to the Assembly of States Parties for its consideration.

Report on draft guidelines for the selection and engagement of gratis personnel at the International Criminal Court

1. The draft guidelines for the selection and engagement of gratis personnel at the International Criminal Court are hereby submitted to the Assembly of States Parties (“the Assembly”) for consideration and adoption. Article 44, paragraph 4, of the Rome Statute envisages the possibility of engagement of gratis personnel in exceptional circumstances, leaving responsibility for establishing guidelines governing the selection and engagement of gratis personnel to the Assembly.

2. As investigative and other activities intensify, the Court may soon require specific expertise that is not readily available. The Court’s unique mandate and its need to meet the highest standards of due process and the rule of law mean that it will on occasion be faced with situations in which highly qualified personnel have to be obtained quickly on a temporary basis. The Court may have to request States Parties, intergovernmental organizations and non-governmental organizations to assist in securing this expertise. Such assistance can only be rendered in accordance with guidelines established by the Assembly.

3. The guidelines were elaborated by an Inter-Organ Working Group and have been endorsed by all the Court’s organs. In formulating the guidelines, the Working Group took into account United Nations experience in respect of gratis personnel provided by governments and other entities.

4. The following are some of the principles that guided the Working Group in formulating the guidelines:

- The principles set forth in the Statute, such as ensuring the highest standards of efficiency, competency and integrity as well as having due regard, *mutatis mutandis*, to criteria laid down in article 36, paragraph 8, of the Statute;
- The need to limit the categories of persons whom the Court can employ gratis;
- The need to limit recourse to gratis personnel to the special and exceptional circumstances envisaged in article 44, paragraph 4, of the Statute;
- The need for gratis personnel to uphold the highest standards of confidentiality and to respect the impartiality and independence of the Court in the discharge of their duties;
- The need to ensure that resort to gratis personnel is not a result of poor planning and that such personnel are not a substitute for staff to be recruited against budgeted posts for the implementation of the mandate of the Court.

5. The respective obligations of the Court and the donor will be spelt out in detail in an agreement signed by both parties prior to the engagement of gratis personnel.

6. Gratis personnel may be attached to any organ of the Court and the recruiting organ will have to justify each instance of a requirement for such personnel.

7. Periodic reporting to the Assembly on the use of gratis personnel will ensure close monitoring and compliance with these guidelines.

8. The engagement of gratis personnel may have budgetary implications for the Court, in particular as the draft guidelines envisage that programme support costs may be waived in exceptional cases. As the Court cannot foresee in advance either the number of gratis personnel that will have to be employed or in which of those cases programme support costs will have to be waived, the consequent costs cannot be quantified at this point of time. In any event, the Court is of the view that such costs will be limited and can therefore be covered through redeployment of funds within each organ.

Annex

Draft guidelines for the selection and engagement of gratis personnel at the International Criminal Court

Table of Contents

| | | <i>Page</i> |
|------------|---|-------------|
| Section 1 | Scope of application..... | 5 |
| Section 2 | Conditions under which gratis personnel may be accepted | 5 |
| Section 3 | Information to States Parties to the Rome Statute of the International Criminal Court, intergovernmental organizations and non-governmental organizations | 5 |
| Section 4 | Selection..... | 6 |
| Section 5 | Functions..... | 6 |
| Section 6 | Duration of functions | 6 |
| Section 7 | Status..... | 6 |
| Section 8 | Remuneration, medical and life insurance, pension and other social security benefits..... | 7 |
| Section 9 | Annual leave | 7 |
| Section 10 | Performance of functions..... | 7 |
| Section 11 | Standards of conduct..... | 7 |
| Section 12 | Accountability..... | 8 |
| Section 13 | Third-party claims..... | 8 |
| Section 14 | Agreement with the Court..... | 9 |
| Section 15 | Implementation of the present guidelines | 9 |
| Section 16 | Final provisions..... | 9 |

Draft guidelines for the selection and engagement of gratis personnel at the International Criminal Court

Section 1 Scope of application

The present guidelines apply to gratis personnel who are employed in accordance with article 44, paragraph 4, of the Rome Statute of the International Criminal Court (hereinafter: “the Statute”) and who do not serve under any other established regime such as that applicable to interns and visiting professionals.

Section 2 Conditions under which gratis personnel may be accepted

2.1. Each organ of the International Criminal Court (hereinafter: “the Court”) may accept gratis personnel only on an exceptional basis to provide expertise not available within the organ, for very specialized functions for which such expertise is not required on a continuing basis (hereinafter: “specialized functions”), as identified by the respective organ and for a limited and specified period of time.

2.2. Gratis personnel may not be sought or accepted as a substitute for staff to be recruited against posts authorized for the Court’s regular and normal functions.

Section 3 Information to States Parties to the Rome Statute of the International Criminal Court, intergovernmental organizations and non-governmental organizations

3.1. When, at the time of preparation of a budget, it is foreseen that, under that budget, there will be needs which fulfill the conditions of section 2.1. of these guidelines, the organ of the Court where the services are to be rendered shall approach the States Parties of to the Rome Statute of the International Criminal Court (hereinafter: “States Parties”), intergovernmental organizations and non-governmental organizations (hereinafter: “other entities”) through the Registrar to inform them of the specific needs to be met by gratis personnel, and shall request States Parties and other entities to identify within three months one or more individuals who could provide the required expertise.

3.2. In the case of unforeseen needs arising after approval of the budget, the organ of the Court to which the services are to be rendered shall request States Parties and other entities through the Registrar to identify one or more individuals who could provide the required assistance within a period consistent with the urgency of the need in question.

3.3. Effective mechanisms shall be developed by the Court to create a roster of potential gratis personnel, having due regard mutatis mutandis to criteria set forth in article 36, paragraph 8, of the Statute. In order to obtain data for this purpose, a questionnaire may be sent to all State Parties and other entities inviting them to express an interest in providing personnel who possess the types of expertise likely to be required by the Court. States Parties and other entities may also be required to inform the Court of any changes that arise in their initial response.

Section 4 Selection

4.1. All nominees shall be evaluated by the requesting organ of the Court to ensure that the best qualified nominee is selected on the basis of the recruitment standards established by the Court within the scope defined by article 44 of the Statute in terms of qualifications, experience and other relevant factors, taking into account the date of availability of the nominees.

4.2. When selecting a nominee, the requesting organ of the Court shall have due regard mutatis mutandis to criteria set forth in article 36, paragraph 8, of the Statute.

Section 5 Functions

5.1. Gratis personnel may only be assigned functions consistent with the conditions set out in section 2.1 above.

5.2. Gratis personnel may not supervise staff members in the exercise of their official duties or be involved in decisions affecting the status, rights, and entitlements of staff members. Exceptionally, however, gratis personnel may exercise technical supervision over staff members who support them directly.

Section 6 Duration of functions

6.1. Gratis personnel may be accepted for an initial period of up to one year. The needs of the organ of the Court concerned shall be reviewed closely at the time of preparation of each subsequent budget to determine whether the functions remain so specialized that it is still not appropriate for the Court to build up the necessary expertise and recruit staff members accordingly.

6.2. Gratis personnel may not apply for or be appointed to posts in the Court for a period of six months commencing on the date of the end of their service.

6.3. Services rendered by gratis personnel may be terminated prior to the date stipulated in the agreement between the Court and the State Party or other entity providing gratis personnel to the Court (hereinafter: “donor”) upon a minimum of one month’s written notice from either party.

Section 7 Status

Gratis personnel, while performing functions for the Court, shall have the status of experts and shall enjoy the privileges, immunities and facilities envisaged in article 21 of the Agreement on Privileges and Immunities of the International Criminal Court, in the headquarters agreement between the Court and the Kingdom of the Netherlands and in any other agreement granting privileges and immunities to experts of the Court.

Section 8

Remuneration, medical and life insurance, pension and other social security benefits

8.1. All expenses in connection with the services of gratis personnel, including salaries, allowances and benefits to which the individuals involved are entitled and travel costs to and from the locations where the gratis personnel are based, shall be paid by the donor. During the entire period of service under the agreement, the donor shall also ensure that gratis personnel are covered by adequate medical and life insurance, as well as insurance coverage for illness, disability or death incurred in the service of the Court.

8.2. Costs incurred by gratis personnel undertaking official travel in the discharge of their functions shall be paid by the Court on the same basis as costs incurred by staff members, including payment of daily or mission subsistence allowance, as applicable.

8.3. The donor shall be liable to reimburse the Court for programme support costs related to gratis personnel. The programme support costs are calculated as an average of costs of maintenance of premises, utilities, supplies, maintenance of equipment and software, telecommunications, security services and administrative services. The annual average cost of these services is approximately 13 per cent of the average cost of a P-3/P-4 staff member. The Registrar or the Prosecutor, as appropriate, may make exceptions to this provision if the activities of the gratis personnel do not warrant the levy of full support costs or if the donor is unable to reimburse such costs owing to financial constraints.

Section 9

Annual leave

9.1. Annual leave may be taken by gratis personnel in accordance with their terms of service with the donor but may not exceed leave entitlements of staff members. Accordingly, gratis personnel may be granted leave up to a maximum of two and one half days for each full month of continuous service.

9.2. Leave plans shall be approved in advance by the head of section or division of the Court, as appropriate.

Section 10

Performance of functions

10.1. Gratis personnel shall perform their functions under the authority and in full compliance with the instructions of the appropriate Court official and/or any person acting on his or her behalf. They shall be required to observe all applicable regulations, rules, instructions, procedures and administrative issuances of the Court.

10.2. The performance of functions assigned to gratis personnel shall be evaluated in accordance with the principles of the Court's Performance Appraisal System.

Section 11

Standards of conduct

11.1. Gratis personnel shall maintain the highest standards of confidentiality in the discharge of their duties, in accordance with the Staff Regulations, the Staff Rules and any other

administrative issuances of the Court. Gratis personnel may be required to sign additional confidentiality undertakings upon commencement of duty.

11.2. Gratis personnel shall respect the impartiality and independence of the Court and of the receiving organ, and shall be precluded from seeking or accepting instructions regarding the services performed under the agreement from any government or any authority external to the Court. They shall refrain from any conduct that would adversely reflect on the Court or on the receiving organ, and may not engage in any activity that is incompatible with the aims and objectives of the Court.

11.3. Gratis personnel shall exercise the utmost discretion in all matters relating to their functions. Unless otherwise authorized by the appropriate Court official, they may not communicate at any time to the media or to any institution, person, government or other external authority any information that has not been made public and that has become known to them by reason of their association with the Court or the receiving organ. They may not use any such information without the written authorization of the head of the receiving organ of the Court, and such information may never be used for personal gain. These obligations shall continue after the end of their service with the Court.

Section 12 Accountability

12.1. Unsatisfactory performance, or failure to conform to the standards of conduct set out above, may lead to the immediate termination of service at the initiative of the Court.

12.2. Any serious breach of duties and obligations which, in the view of the head of the receiving organ of the Court, would justify separation before the end of the notice period shall be immediately reported to the donor with a view to obtaining agreement on an immediate cessation of service. The Court may decide to limit or bar access to the Court's premises by the individual concerned when the circumstances so warrant.

12.3. The donor shall reimburse the Court for financial loss or for damage to Court-owned equipment or property caused by gratis personnel provided by the donor if such loss or damage: (a) occurred outside the performance of services on behalf of the Court; (b) arose or resulted from gross negligence or wilful misconduct; or (c) arose or resulted from the violation or reckless disregard of applicable rules and policies by such gratis personnel.

Section 13 Third-party claims

The Court shall be responsible for dealing with claims by third parties where loss of or damage to their property, or death or personal injury was caused by the actions or omissions of gratis personnel in the performance of services on behalf of the Court under the agreement with the donor. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the gratis personnel provided by the donor, the donor shall be liable to the Court for all amounts paid by the Court to the claimants and all costs incurred by the Court in settling such claims.

Section 14
Agreement with the Court

14.1. The respective obligations of the Court, the donor and the gratis personnel shall be clearly specified in a formal agreement between the Court and the donor. Individuals who are to serve as gratis personnel shall serve under the terms agreed upon by the Court and the donor, including full and direct remuneration of the gratis personnel by the donor. The agreement shall conform with these guidelines.

14.2. The essential duties and obligations that the Court expects each individual brought in as gratis personnel to respect shall be spelt out both in the agreement with the donor and in an individual undertaking signed by the gratis personnel.

Section 15
Implementation of the present guidelines

15.1. Each organ of the Court shall be responsible for the proper application of the provisions of these guidelines. The Human Resources Section of the Court shall ensure compliance with all the terms, conditions and requirements of the present guidelines.

15.2. Each organ of the Court shall submit to the Human Resources Section, on request, the information needed for the preparation of annual reports on gratis personnel for submission to the Assembly of States Parties.

Section 16
Final provisions

The present guidelines shall enter into force on.....

- - - 0 - - -