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**Report on the draft headquarters agreement
between the International Criminal Court and the host State**

Note by the Secretariat

The Secretariat of the Assembly of States Parties has received a report containing the draft headquarters agreement between the International Criminal Court and the host State. It is submitted for consideration and approval by the Assembly, pursuant to article 3, paragraph 2, of the Rome Statute.

Report on the draft headquarters agreement between the International Criminal Court and the host State

Introduction

1. Article 3, paragraph 2, of the Rome Statute provides for the Court to enter into a headquarters agreement with the host State, which is to be approved by the Assembly of States Parties (“the Assembly”) and thereafter concluded by the President of the Court on its behalf. The negotiated draft headquarters agreement is attached to this report for consideration by the Assembly.

2. It will be recalled that in preparing proposals for practical arrangements for the establishment and coming into operation of the Court, as mandated by the United Nations Diplomatic Conference of Plenipotentiaries in resolution F of its Final Act,¹ the Preparatory Commission drafted a set of basic principles to govern a headquarters agreement to be negotiated between the Court and the host country. These basic principles were subsequently adopted by the Assembly during its first session, held in New York from 3 to 10 September 2002.² Another relevant document drafted by the Preparatory Commission and subsequently adopted by the Assembly is the Agreement on the Privileges and Immunities of the International Criminal Court. Neither of these documents could be applied at the time that the Court began its operations in July 2002.

3. In the absence of a legal framework to govern their relationship, the host State and the Court agreed to enter into interim arrangements for dealing with the status of the Court, its relationship with the host State and, in particular, the privileges and immunities of staff and other categories of persons envisaged under the Agreement on the Privileges and Immunities of the International Criminal Court. For this purpose, it was agreed to provisionally apply the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Criminal Tribunal for the Former Yugoslavia. It has been the understanding of the Court and the host State that these interim arrangements are without prejudice to the negotiations concerning the headquarters agreement. Diplomatic Notes³ confirming the arrangements were exchanged on 19 November 2002 and the arrangements will continue to apply until the entry into force of the headquarters agreement. These interim arrangements have facilitated the Court’s operations thus far.

History and working methods for the negotiations

4. Negotiations between the Court and the host State began in January 2003. The Court’s negotiating team has been comprised of representatives of each of its organs, including the Secretariat of the Assembly of States Parties. Inter-organ meetings have been held on a regular basis to coordinate the Court’s positions and to elaborate proposals for presentation to the host State. These proposals were discussed during weekly or bi-weekly meetings with the host State team, which was comprised of representatives of the Ministries of Foreign Affairs and Justice.

5. Progress in the negotiations has not been as fast as initially anticipated owing to the complexity of some of the issues and the requirement for internal consultations on both sides. The host State team has had to seek guidance from the various line ministries that will be

¹ Annex 1 to the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, ICC-ASP/1/3), part II.F.

³ The Registrar signed the Notes on behalf of the Court.

involved in the implementation of the agreement. For its part, the Court also required time to consult internally and to harmonize its position on various issues.

6. In order to ensure more rapid progress in the negotiations, the parties held two full-day meetings on 12 May 2004 and 28 July 2005. The objectives of the meetings were to complete a reading of the text, identify issues on which further discussions were required, identify inconsistencies, and to generally edit the text.

7. In general, the negotiations have been characterized by a spirit of cooperation which has enabled many of the complicated issues to be resolved.

8. During the negotiations, the Court was guided by the need for consistency with the Statute, the basic principles, the Agreement on the Privileges and Immunities of the International Criminal Court, and the Rules of Procedure and Evidence. The main objectives have been to ensure that the provisions of the draft headquarters agreement facilitate the smooth and efficient operations of the Court in the host State, that the needs of all persons required to be present at the seat of the Court are met, and that information and evidence coming in and out of the host State is protected. The negotiations clarified the status of the Secretariat of the Assembly of States Parties and the privileges and immunities of representatives of States participating in proceedings before the Court and representatives of States participating in meetings of the Assembly, including its Bureau and subsidiary bodies.

Structure

9. The text contains a total of 58 articles divided into 6 chapters:

- Chapter I. General provisions
- Chapter II. Status of the Court
- Chapter III. Privileges, immunities and facilities accorded to persons under this agreement
- Chapter IV. Waiver of privileges and immunities
- Chapter V. Cooperation between the Court and the host State
 - Section 1: General
 - Section 2: Visas, permits and other documents
 - Section 3: Security, operational assistance
- Chapter VI. Final provisions

Content

10. The draft headquarters agreement covers a variety of issues concerning the Court, its staff and those required to be present at the seat of the Court as well as those engaged in activities of the Court. In addition to providing extensive details on issues such as tax and customs treatment, entry and residence of staff in the host State, identity cards and social security matters, the text also deals with the following issues:

- Juridical personality and legal capacity of the Court;
- Inviolability of the premises, archives and records of the Court;
- Immunity from prosecution and execution;
- Exemption from taxes, customs duties and taxes on goods and services;
- The right to hold and transfer funds;
- Freedom of communication;
- Privileges and immunities of officials, staff, representatives of States, counsel, witnesses, victims, experts and other persons required to be present at the seat of the Court;

- Cooperation between the Court and the host State with regard to security, transport of persons, detention and enforcement of sentences;
- Settlement of disputes.

Key provisions

11. The following key provisions should be highlighted:

Article 2

Purpose and scope of this draft headquarters agreement

12. This article defines the purpose and scope of the draft headquarters agreement and optimizes its terms with a view to ensuring that the Court functions effectively, efficiently and independently in the host State. The scope of application has been extended to cover the Secretariat of the Assembly of States Parties and to regulate matters arising from the holding of meetings of the Assembly, its Bureau and subsidiary bodies in The Hague. This important addition will greatly facilitate the work of the Assembly, including its Bureau and subsidiary bodies.

Article 20

Employment of family members of officials of the Court

13. The inability of spouses to engage in gainful employment in the host State is a significant work/life concern that can affect the productivity and efficiency of the Court. Moreover, employment opportunities for spouses of staff of the Court can enhance the Court's ability to attract and retain the best candidates for jobs. Under this provision, spouses of staff are entitled to work in the host State. Children up to the age of 27 years are also allowed to work, subject to certain conditions. This, however, does not mean that spouses and children of staff are guaranteed employment in the host State, as the realities of the labour market come into play. The ability of spouses and children to seek gainful employment in the host State is a useful addition to the draft headquarters agreement.

Article 40

Independent bodies of counsel or legal associations, journalists and non-governmental organizations

14. This provision is intended to facilitate the entry into and stay in the host State of the bodies to which it refers. Both sides recognize the important role played by these bodies and agree to cooperate and coordinate in order to ensure the smooth processing of their applications for visas and stay in the host State through a consultative process for dealing with any problems that could delay the issuance of visas. The modalities for consultations are spelt out in the explanatory notes, which reflect the common understanding of the parties on the application and interpretation of this provision.

Explanatory notes

15. In order to clarify the meaning of certain provisions included in this draft headquarters agreement, explanatory notes have been negotiated and drafted in parallel with the text of the agreement. These notes reflect the common understanding of the parties on the interpretation of the provisions to which they relate. The notes are directly linked to the draft headquarters agreement through the reference in article 52 to supplementary arrangements and will be formalized through an exchange of letters which will be signed at the same time as the draft headquarters agreement and attached thereto.

Compatibility of the draft headquarters agreement with the basic principles

16. As mandated by the Assembly, all elements of the basic principles have been incorporated in the draft headquarters agreement, with the exception of the following:

(i) *Most favourable treatment provision*

17. Principle 1 (j) of the basic principles approved by the Assembly of States Parties to govern the preparation of the headquarters agreement provides that the agreement “should ensure that the Court shall enjoy privileges, immunities and treatment that are no less favourable than those accorded to any international organization or tribunal located in the host country.”

18. In accordance with this principle, the Court sought treatment no less favourable than that presently accorded to any international organization in the host State. In his letter to the President of the International Criminal Court, dated 18 October 2006, the Honourable Minister for Foreign Affairs of the host State, H.E Mr. Bernard Bot, assured the Court that, except for a limited number of situations involving more generous fiscal treatment enjoyed by the technical and administrative staff of the International Court of Justice (with regard to cars, petrol and some imported consumables), which the host State considers to be outdated, the draft headquarters agreement would grant the Court the most favourable treatment that the host State offers to any international organization. In particular, Minister Bot has confirmed that, with the exception of a commissary, the host State is treating the Court and its officials as favourably as it does the Organisation for the Prohibition of Chemical Weapons (OPCW) in all respects. On the basis of this confirmation by the host State that the treatment offered to the Court is the most favourable currently offered to any international organization, the Court accepted, subject to the approval of the Assembly, article 53 of the draft headquarters agreement, which ensures that the Court will in the future enjoy the most favourable treatment accorded to any international organization located in the host State.

(ii) *Provisional application of the agreement*

19. Principle 1(l) provides for the provisional application of the draft headquarters agreement pending the completion by the host State of its internal legislative procedures. It has not been possible to regulate this issue in the draft headquarters agreement. According to the host State, provisional application would pre-empt the outcome of the parliamentary approval procedures. The host State has expressed a willingness, should the need arise and to the extent compatible with existing legislation, to consider the possibility of applying the provisions of the draft headquarters agreement as fully as possible in advance, even without the express provision on its provisional application.

Recommendation

20. To the extent possible, the draft headquarters agreement has attempted to provide comprehensive solutions to all of the issues required to facilitate the smooth and efficient functioning of the Court in the host State. In particular, the draft fully recognizes the independence of the Court and enables it to efficiently discharge its responsibilities and fulfill its purpose in the host State. With the increase in the Court’s activities and the experience gained over the years, the draft headquarters agreement may need to be supplemented by an exchange of letters and/or other appropriate arrangements to address any issues that may not have been foreseen.

21. Pursuant to article 3 of the Statute, the Court recommends that the Assembly approve the attached draft headquarters agreement, which has no programme budget implications.

Annex I

Headquarters agreement for the International Criminal Court

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The International Criminal Court and the Kingdom of the Netherlands,

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

Whereas article 3, paragraphs 1 and 2, of the Rome Statute respectively provide that the seat of the Court shall be established at The Hague in the Netherlands and that the Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf;

Whereas article 4 of the Rome Statute provides that the Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes;

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

Whereas the Assembly of States Parties, at the third meeting of its first session held from 3 to 10 September 2002, adopted Basic principles governing a headquarters agreement to be negotiated between the Court and the host country, and adopted the Agreement on Privileges and Immunities of the International Criminal Court;

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

Have *agreed* as follows:

Chapter I. General provisions

Article 1 Use of terms

For the purpose of this Agreement:

- a) “the Statute” means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;
- b) “the Court” means the International Criminal Court established by the Statute; for the purpose of this Agreement, the Secretariat shall be an integral part of the Court;
- c) “the host State” means the Kingdom of the Netherlands;
- d) “the parties” means the Court and the host State;
- e) “States Parties” means States Parties to the Statute;
- f) “representatives of States” means all delegates, deputy delegates, advisers, technical experts, secretaries, and any other accredited members of delegations;
- g) “the Assembly” means the Assembly of States Parties;
- h) “the Bureau” means the Bureau of the Assembly;
- i) “subsidiary bodies” means the bodies established by the Assembly or the Bureau;
- j) “the officials of the Court” means the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of the Court;
- k) “the judges” means the judges of the Court elected by the Assembly in accordance with article 36, paragraph 6, of the Statute;
- l) “the Presidency” means the organ composed of the President and the First and Second Vice-Presidents of the Court in accordance with article 38, paragraph 3, of the Statute;
- m) “the President” means the President of the Court elected by the judges in accordance with article 38, paragraph 1, of the Statute;
- n) “the Prosecutor” means the Prosecutor elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- o) “the Deputy Prosecutors” means the Deputy Prosecutors elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;
- p) “the Registrar” means the Registrar elected by the judges in accordance with article 43, paragraph 4, of the Statute;
- q) “the Deputy Registrar” means the Deputy Registrar elected by the judges in accordance with article 43, paragraph 4, of the Statute;
- r) “staff of the Court” means the staff of the Registry and the Office of the Prosecutor as referred to in article 44 of the Statute. Staff of the Registry includes staff of the Presidency and of Chambers, and staff of the Secretariat;
- s) “the Secretariat” means the Secretariat of the Assembly established by resolution ICC-ASP/2/Res.3 of 12 September 2003;

t) “interns” means graduates or postgraduates who, not being members of staff of the Court, have been accepted by the Court into the internship programme of the Court for the purpose of performing certain tasks for the Court without receiving a salary from the Court;

u) “visiting professionals” means persons who, not being members of staff of the Court, have been accepted by the Court into the visiting professional programme of the Court for the purpose of providing expertise and performing certain tasks for the Court without receiving a salary from the Court;

v) “counsel” means defence counsel and the legal representatives of victims;

w) “witnesses”, “victims” and “experts” means persons designated as such by the Court;

x) “the premises of the Court” means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Court in the host State in connection with its functions and purposes, including detention of a person, or in connection with meetings of the Assembly, including its Bureau and subsidiary bodies;

y) “the Ministry of Foreign Affairs” means the Ministry of Foreign Affairs of the host State;

z) “the competent authorities” means national, provincial, municipal and other competent authorities under the laws, regulations and customs of the host State;

aa) “the Agreement on Privileges and Immunities of the Court” means the Agreement on Privileges and Immunities of the International Criminal Court referred to in article 48 of the Statute and adopted at the third meeting of the first session of the Assembly held from 3 to 10 September 2002 at the United Nations Headquarters in New York;

bb) “the Vienna Convention” means the Vienna Convention on Diplomatic Relations of 18 April 1961;

cc) “the Rules of Procedure and Evidence” means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

Article 2

Purpose and scope of this Agreement

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Court in the host State. It shall, inter alia, provide for the long-term stability and independence of the Court and facilitate its smooth and efficient functioning, including, in particular, its needs with regard to all persons required by the Court to be present at its seat and with regard to the transfer of information, potential evidence and evidence into and out of the host State. This Agreement shall also regulate matters relating to or arising out of the establishment and proper functioning of the Secretariat in the host State, and its provisions shall apply, mutatis mutandis, to the Secretariat. This Agreement shall, as appropriate, regulate matters relating to the Assembly, including its Bureau and subsidiary bodies.

Chapter II. Status of the Court

Article 3

Legal status and juridical personality of the Court

The Court shall have international legal personality in accordance with article 4, paragraph 1, of the Statute, and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It shall, in particular, have the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings.

Article 4

Freedom of assembly

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

Article 5

Privileges, immunities and facilities of the Court

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

Article 6

Inviolability of the premises of the Court

1. The premises of the Court shall be inviolable. The competent authorities shall ensure that the Court is not dispossessed and/or deprived of all or any part of its premises without its express consent.
2. The competent authorities shall not enter the premises of the Court to perform any official duty, except with the express consent, or at the request of the Registrar, or a member of staff of the Court designated by him or her. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Court except with the consent of and in accordance with conditions approved by the Registrar.
3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Court, the consent of the Registrar, or a member of staff of the Court designated by him or her, to any necessary entry into the premises of the Court shall be presumed if neither of them can be contacted in time.
4. Subject to paragraphs 1, 2 and 3 of this article, the competent authorities shall take the necessary action to protect the premises of the Court against fire or other emergency.
5. The Court shall prevent its premises from being used as a refuge by persons who are avoiding arrest or the proper administration of justice under any law of the host State.

Article 7
Protection of the premises of the Court and their vicinity

1. The competent authorities shall take all effective and adequate measures to ensure the security and protection of the Court and to ensure that the tranquility of the Court is not disturbed by the intrusion of persons or groups from outside the premises of the Court or by disturbances in their immediate vicinity, and shall provide to the premises of the Court the appropriate protection as may be required.
2. If so requested by the Registrar, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Court or in the immediate vicinity thereof, and for the removal of persons there from.
3. The competent authorities shall take all reasonable steps to ensure that the amenities of the premises of the Court are not prejudiced and that the purposes for which the premises are required are not obstructed by any use made of the land or buildings in the vicinity of the premises. The Court shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the premises are not prejudiced by any use made of the land or buildings in the premises.

Article 8
Law and authority on the premises of the Court

1. The premises of the Court shall be under the control and authority of the Court, as provided under this Agreement.
2. Except as otherwise provided in this Agreement, the laws and regulations of the host State shall apply on the premises of the Court.
3. The Court shall have the power to make rules, operative within its premises, as are necessary for the carrying out of its functions. The Court shall promptly inform the competent authorities upon the adoption of such rules. No laws or regulations of the host State which are inconsistent with rules of the Court under this paragraph shall, to the extent of such inconsistency, be enforceable within the premises of the Court.
4. The Court may expel or exclude persons from the premises of the Court for violation of its rules and shall inform in advance the competent authorities of such measures.
5. Subject to the rules referred to in paragraph 3 of this article, and consistent with the laws and regulations of the host State, only staff of the Court shall be allowed to carry arms on the premises of the Court.
6. The Registrar shall notify the host State of the name and identity of each staff member of the Court who is entitled to carry arms on the premises of the Court, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.
7. Any dispute between the Court and the host State as to whether rules of the Court come within the ambit of this provision or as to whether laws or regulations of the host State are inconsistent with rules of the Court under this provision shall promptly be settled by the procedure set out in article 55 of this Agreement. Pending such settlement, the rule of the Court shall apply and the law and/or regulation of the host State shall be inapplicable on the premises of the Court to the extent that the Court claims it to be inconsistent with its rules.

Article 9

Public services for the premises of the Court

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

2. In cases where the services referred to in paragraph 1 of this article are made available to the Court by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the host State.

3. In case of any interruption or threatened interruption of any such services, the Court shall be accorded the priority given to essential agencies and organs of the host State, and the host State shall take steps accordingly to ensure that the work of the Court is not prejudiced.

4. Upon request of the competent authorities, the Registrar, or a member of staff of the Court designated by him or her, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Court under conditions which shall not unreasonably disturb the carrying out of the functions of the Court.

5. Underground constructions may be undertaken by the competent authorities on the premises of the Court only after consultation with the Registrar, or a member of staff of the Court designated by him or her, and under conditions which shall not disturb the carrying out of the functions of the Court.

Article 10

Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.

Article 11

Funds, assets and other property

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

2. Funds, assets and other property of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Court, funds, assets and other property of the Court, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, control or moratoria of any nature.

Article 12

Inviolability of archives, documents and materials

The archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever

located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 13 **Facilities in respect of communications**

1. The Court shall enjoy in the territory of the host State for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.
2. No censorship shall be applied to the official communications or correspondence of the Court.
3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.
4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall enjoy the same privileges, immunities and facilities as diplomatic couriers and bags.
5. The Court shall have the right to operate radio and receive correspondence and other telecommunication equipment on any frequencies allocated to it by the host State in accordance with its national procedures. The host State shall endeavour to allocate to the Court, to the extent possible, frequencies for which it has applied.
6. For the fulfilment of its purposes and efficient discharge of its responsibilities, the Court shall have the right to publish freely and without restrictions within the host State in conformity with this Agreement.

Article 14 **Freedom of financial assets from restrictions**

1. Without being subject to any financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Court may freely:
 - a) purchase any currencies through authorized channels and hold and dispose of them;
 - b) operate accounts in any currency;
 - c) purchase through authorized channels, hold and dispose of funds, securities and gold;
 - d) transfer its funds, securities, gold and currencies to or from the host State, to or from any other country, or within the host State and convert any currency held by it in any other currency; and
 - e) raise funds in any manner which it deems desirable, except that with respect to the raising of funds within the host State, the Court shall obtain the concurrence of the competent authorities.

2. The Court shall enjoy treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions.

Article 15

Exemption from taxes and duties for the Court and its property

1. Within the scope of its official activities, the Court, its assets, income and other property shall be exempt from all direct taxes, whether levied by national, provincial or local authorities.

2. Within the scope of its official activities, the Court shall be exempt from:

- a) import and export taxes and duties (*belastingen bij invoer en uitvoer*);
- b) motor vehicle tax (*motorrijtuigenbelasting, MRB*);
- c) tax on passenger motor vehicles and motorcycles (*belasting van personenauto's en motorrijwielen, BPM*);
- d) value added tax (*omzetbelasting, BTW*) paid on goods and services supplied on a recurring basis or involving considerable expenditure;
- e) excise duties (*accijnzen*) included in the price of alcoholic beverages and hydrocarbons such as fuel oils and motor fuels;
- f) real property transfer tax (*overdrachtsbelasting*);
- g) insurance tax (*assurantiebelasting*);
- h) energy tax (*regulerende energiebelasting, REB*);
- i) tax on mains water (*belasting op leidingwater, BOL*);
- j) any other taxes and duties of a substantially similar character as the taxes provided for in this paragraph, imposed by the host State subsequent to the date of signature of this Agreement.

3. The exemptions provided for in paragraph 2, subparagraphs (d), (e), (f), (g), (h), (i) and (j) of this article may be granted by way of a refund.

4. Goods acquired or imported under the terms set out in paragraph 2 of this article shall not be sold, let out, given away or otherwise disposed of, except in accordance with conditions agreed upon with the host State.

5. The Court shall not claim exemption from taxes which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

Article 16

Exemption from import and export restrictions

The Court shall be exempted from all restrictions on imports and exports in respect of articles imported or exported by the Court for its official use and in respect of its publications.

Chapter III. Privileges, immunities and facilities accorded to persons under this Agreement

Article 17

Privileges, immunities and facilities of judges, the Prosecutor, the Deputy Prosecutors and the Registrar

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy privileges, immunities and facilities in the host State when engaged on or with respect to the business of the Court. They shall, inter alia, enjoy:

- a) personal inviolability, including immunity from personal arrest or detention or any other restriction of their liberty;
- b) immunity from criminal, civil and administrative jurisdiction;
- c) inviolability of all papers, documents in whatever form and materials;
- d) exemption from national service obligations;
- e) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;
- f) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Court;
- g) the same facilities in respect of currency and exchange facilities as are accorded to diplomatic agents;
- h) together with members of their family forming part of their household, the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- i) together with members of their family forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;
- j) together with members of their family forming part of their household, the right of unimpeded entry into, exit from or movement within the host State, as appropriate and for purposes of the Court.

2. In addition to the privileges, immunities and facilities listed in paragraph 1 of this article and the privileges and immunities that apply in accordance with article 48, paragraph 2, of the Statute, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, together with members of their family forming part of their household who do not have Netherlands nationality or permanent residence status in the host State, shall enjoy the same privileges, immunities and facilities as are accorded by the host State to heads of diplomatic missions in conformity with the Vienna Convention.

3. Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in the host State for the discharge of their functions shall not be considered as periods of residence.

4. Paragraphs 1, 2 and 3 of this article shall also apply to judges of the Court who continue to be in office in accordance with article 36, paragraph 10, of the Statute.

5. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every

kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

6. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants.

7. Without prejudice to paragraphs 1(f) and 3 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

a) immunity from personal arrest or detention or any other restriction of their liberty;

b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Court, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Court;

c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;

d) for the purpose of their communications with the Court the right to receive and send papers in whatever form;

e) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

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

Article 18

Privileges, immunities and facilities of the Deputy Registrar and staff of the Court

1. The Deputy Registrar and staff of the Court shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

a) immunity from personal arrest or detention or any other restriction of their liberty, and from seizure of their personal baggage;

b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of their employment with the Court;

c) inviolability of all official papers, documents in whatever form and materials;

d) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Court;

e) exemption from national service obligations;

f) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;

g) exemption from inspection of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the official concerned;

h) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the host State;

i) together with members of their family forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

j) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. Staff of the Court of P-5 level and above, and such additional categories of staff of the Court as may be designated, in agreement with the host State, by the Registrar, in consultation with the President and the Prosecutor, together with members of their family forming part of their household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic agents of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.

3. Staff of the Court of P-4 level and below shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

4. Where the incidence of any form of taxation depends upon residence, periods during which the Deputy Registrar and staff of the Court are present in the host State for the discharge of their functions shall not be considered as periods of residence.

5. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of staff of the Court and their dependants.

6. Without prejudice to paragraphs 1(d) and 4 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

a) immunity from personal arrest or detention or any other restriction of their liberty;

b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Court, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Court;

c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;

d) for the purposes of their communications with the Court the right to receive and send papers in whatever form;

e) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

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

Article 19
Personnel recruited locally and not otherwise covered by this Agreement

Personnel recruited locally by the Court and not otherwise covered by this Agreement shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Court. Such immunity shall continue to be accorded even after termination of their employment with the Court. During their employment, they shall also be accorded such other facilities as may be necessary for the independent performance of their functions for the Court.

Article 20
Employment of family members of officials of the Court

1. Members of the family forming part of the household of any official of the Court shall be authorized to engage in gainful employment in the host State for the duration of the term of office of the official of the Court concerned.

2. The following persons shall be authorized to engage in gainful employment in the host State:

- a) the spouses or registered partners of officials of the Court;
- b) children of officials of the Court who are under the age of 18;
- c) children of the officials of the Court aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this household, and that they are unmarried, financially dependent on the official of the Court concerned and are attending an educational institution in the host State;
- d) any other persons who, in exceptional cases or for humanitarian reasons, the Court and the host State agree to treat as members of the family forming part of the household.

3. Persons mentioned in paragraph 2 of this article who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

4. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the immunity of officials of the Court of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of article 30 of this Agreement.

5. The employment referred to in paragraph 1 of this article shall be in accordance with the legislation of the host State, including fiscal and social security legislation.

Article 21
Representatives of States participating in the proceedings of the Court

1. Representatives of States participating in the proceedings of the Court shall, while performing their official functions in the host State, enjoy the following privileges, immunities and facilities:

- a) immunity from personal arrest or detention or any other restriction of their liberty;
- b) immunity from legal process of every kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue to be accorded even after they have ceased to perform their functions as representatives;
- c) inviolability of all papers, documents in whatever form and materials;
- d) the right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags and to receive and send electronic communications;
- e) exemption from immigration restrictions, alien registration requirements and national service obligations;
- f) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign governments on temporary official missions;
- g) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents under the Vienna Convention;
- h) the same protection and repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;
- i) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives referred to in paragraph 1 of this article are present in the host State for the discharge of their functions shall not be considered as periods of residence.

3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the host State if he or she is a national or permanent resident of the host State or if he or she is or has been a representative of the host State.

4. Representatives of States referred to in paragraph 1 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.

Article 22
Representatives of States participating in the Assembly and its subsidiary bodies and representatives of intergovernmental organizations

Representatives of States Parties attending meetings of the Assembly, of the Bureau and of subsidiary bodies, representatives of other States that may be attending such meetings as observers in accordance with article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to such meetings shall, while

performing their official functions and during their journey to and from the place of meeting, enjoy the privileges, immunities and facilities referred to in article 21 of this Agreement.

Article 23

Members of the Bureau and of subsidiary bodies

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

Article 24

Interns and visiting professionals

1. Within eight days after the first arrival of interns or visiting professionals in the host State the Court shall request the Ministry of Foreign Affairs to register them in accordance with paragraph 2 of this article.

2. The Ministry of Foreign Affairs shall register interns or visiting professionals for a maximum period of one year, provided that the Court supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:

a) the intern or visiting professional entered the host State in accordance with the applicable immigration procedures;

b) the intern or visiting professional has sufficient financial means for living expenses and for repatriation, as well as sufficient medical insurance (including coverage of costs of hospitalization for at least the duration of the internship or visiting professional programme plus one month) and third party liability insurance, and will not be a charge on the public purse in the host State;

c) the intern or visiting professional will not work in the host State during his or her internship or visiting professional programme other than as an intern or a visiting professional for the Court;

d) the intern or visiting professional will not bring any family members to reside with him or her in the host State other than in accordance with the applicable immigration procedures;

e) the intern or visiting professional will leave the host State within fifteen days after the end of the internship or visiting professional programme.

3. Upon registration of the intern or visiting professional in accordance with paragraph 2 of this article, the Ministry of Foreign Affairs shall issue an identity card to the intern or visiting professional.

4. The Court shall not incur liability for damage resulting from non-fulfilment of the conditions of the declaration referred to in paragraph 2 of this article by interns or visiting professionals registered in accordance with that paragraph.

5. Interns and visiting professionals shall not enjoy privileges, immunities and facilities, except:

a) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Court, which immunity shall continue to be accorded even after termination of the internship or visiting professional programme with the Court for activities carried out on its behalf;

b) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court.

6. The Court shall notify the Ministry of Foreign Affairs of the final departure of the intern or visiting professional from the host State within eight days after such departure, and shall at the same time return the intern's or visiting professional's identity card.

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

Article 25

Counsel and persons assisting counsel

1. Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the certificate referred to in paragraph 2 of this article:

a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

b) immunity from seizure of their personal baggage;

c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions;

d) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;

e) for the purposes of communications in pursuance of their functions as counsel, the right to receive and send papers and documents in whatever form;

f) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;

g) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the counsel concerned;

h) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign governments on temporary official missions;

i) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Upon appointment of counsel in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court, counsel shall be provided with a certificate under the signature of the Registrar for the period required for the performance of their functions. This certificate shall be withdrawn if the power or mandate is terminated prior to the expiry of the certificate.

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel are present in the host State for the discharge of their functions shall not be considered as periods of residence.

4. Counsel who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions before the Court:

- a) immunity from personal arrest or detention or any other restriction of their liberty;
 - b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions, which immunity shall continue to be accorded even after they have ceased to perform their functions;
 - c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions;
 - d) for the purpose of their communications with the Court the right to receive and send papers in whatever form.
5. Counsel shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.
6. The provisions of this article shall apply, *mutatis mutandis*, to persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence.

Article 26 **Witnesses**

1. Witnesses shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence, subject to the production of the document referred to in paragraph 2 of this article:
- a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
 - b) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;
 - c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;
 - d) inviolability of all papers, documents in whatever form and materials relating to their testimony;
 - e) for purposes of their communications with the Court and counsel in connection with their testimony, the right to receive and send papers and documents in whatever form;
 - f) exemption from immigration restrictions or alien registration when they travel for purposes of their testimony;
 - g) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.
2. Witnesses shall be provided by the Court with a document certifying that their appearance is required by the Court and specifying a time period during which such appearance is necessary. This document shall be withdrawn prior to its expiry if the witness's appearance before the Court, or his or her presence at the seat of the Court is no longer required.
3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the witness concerned is no longer required by the Court, provided such witness had an opportunity to leave the host State during that period.

4. Witnesses who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for their appearance or testimony before the Court:

- a) immunity from personal arrest or detention or any other restriction of their liberty;
- b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance or testimony, which immunity shall continue to be accorded even after their appearance or testimony;
- c) inviolability of all papers, documents in whatever form and materials relating to their appearance or testimony;
- d) for the purpose of their communications with the Court and with their counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form.

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

Article 27 Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

- a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;
- b) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;
- c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court;
- d) inviolability of all papers, documents in whatever form and materials relating to their participation in proceedings before the Court;
- e) exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.

2. Victims shall be provided by the Court with a document certifying their participation in the proceedings of the Court and specifying a time period for that participation. Such document shall be withdrawn prior to its expiry if the victim is no longer participating in the proceedings of the Court, or if the victim's presence at the seat of the Court is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the victim concerned is no longer required by the Court, provided such victim had an opportunity to leave the host State during that period.

4. Victims who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their appearance before the Court, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court.

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

Article 28 **Experts**

1. Experts, including gratis personnel, performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the document referred to in paragraph 2 of this article:

a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

b) immunity from seizure of their personal baggage;

c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their functions for the Court, which immunity shall continue to be accorded even after the termination of their functions;

d) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Court;

e) for the purposes of their communications with the Court, the right to receive and send papers and documents in whatever form and materials relating to the performance of their functions for the Court by courier or in sealed bags;

f) exemption from inspection of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the expert concerned;

g) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign governments on temporary official missions;

h) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

i) exemption from immigration restrictions or alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts shall be provided by the Court with a document certifying that they are performing functions for the Court and specifying a time period for which their functions will last. Such document shall be withdrawn prior to its expiry if the expert is no longer performing functions for the Court, or if the expert's presence at the seat of the Court is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of the expert concerned is no longer required by the Court, provided such expert had an opportunity to leave the host State during that period.

4. Experts who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions or their appearance or testimony for the Court:

- a) immunity from personal arrest or detention or any other restriction of their liberty;
- b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions or in the course of their appearance or testimony, which immunity shall continue to be accorded even after they have ceased to perform their functions or their appearance or testimony;
- c) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions or their appearance or testimony;
- d) for the purpose of their communications with the Court the right to receive and send papers in whatever form.

5. Experts shall not be subjected by the host State to any measure which may affect the independent performance of their functions for the Court.

6. This article shall apply, *mutatis mutandis*, to experts of the Assembly, including its Bureau and subsidiary bodies, whose presence is required in the host State, in connection with the work of the Assembly, including its Bureau and subsidiary bodies.

Article 29

Other persons required to be present at the seat of the Court

1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, be accorded the privileges, immunities and facilities provided for in article 27 of this Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Persons referred to in this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Court is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of such other person concerned is no longer required by the Court, provided that such other person had an opportunity to leave the host State during that period.

4. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their presence at the seat of the Court, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Court. Such immunity shall continue to be accorded even after their presence at the seat of the Court is no longer required.

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

Chapter IV. Waiver of privileges and immunities

Article 30

Waiver of privileges, immunities and facilities provided for in articles 17, 18, 19, 24, 25, 26, 27, 28 and 29

1. The privileges, immunities and facilities provided for in articles 17, 18, 19, 24, 25, 26, 27, 28 and 29 of this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

2. The privileges, immunities and facilities may be waived:

- a) by an absolute majority of the judges:
 - (i) in the case of a judge or the Prosecutor;
- b) by the Presidency:
 - (i) in the case of the Registrar;
 - (ii) in the case of counsel and persons assisting counsel;
 - (iii) in the case of witnesses and victims; or
 - (iv) in the case of other persons required to be present at the seat of the Court;
- c) by the Prosecutor:
 - (i) in the case of the Deputy Prosecutors and staff of the Office of the Prosecutor; or
 - (ii) in the case of interns and visiting professionals of the Office of the Prosecutor;
- d) by the Registrar:
 - (i) in the case of the Deputy Registrar and staff of the Registry;
 - (ii) in the case of interns and visiting professionals not covered by paragraph 2(c)(ii) and (g) of this article;
- e) by the head of the organ of the Court with which they are employed, in the case of personnel referred to in article 19 of this Agreement;
- f) by the President of the Assembly, in the case of the Director of the Secretariat;
- g) by the Director of the Secretariat, in the case of staff, experts, interns and visiting professionals of the Secretariat;
- h) by the head of the organ of the Court appointing the expert, in the case of experts.

Article 31

Waiver of privileges, immunities and facilities of representatives of States and members of the Bureau provided for in articles 21, 22 and 23

Privileges, immunities and facilities provided for in articles 21, 22 and 23 of this Agreement are accorded to the representatives of States, members of the Bureau and intergovernmental organizations not for the personal benefit of the individuals themselves, but

in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, States Parties to the Agreement on Privileges and Immunities of the Court not only have the right but are under a duty to waive the privileges, immunities and facilities of their representatives in any case where, in the opinion of those States, they would impede the course of justice and can be waived without prejudice to the purpose for which the privileges, immunities and facilities are accorded. States not party to the Agreement on Privileges and Immunities of the Court and intergovernmental organizations are granted the privileges, immunities and facilities provided for in articles 21, 22 and 23 of this Agreement on the understanding that they undertake the same duty regarding waiver.

Article 32

Waiver of privileges, immunities and facilities of members of subsidiary bodies and of experts for the Assembly, including its Bureau and subsidiary bodies, provided for in articles 23 and 28, paragraph 6

Privileges, immunities and facilities provided for in articles 23 and 28, paragraph 6 of this Agreement are accorded to the members of subsidiary bodies and to experts, respectively, not for the personal benefit of the individuals themselves, but in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, the President of the Assembly not only has the right but is under a duty to waive the privileges, immunities and facilities of the members of subsidiary bodies or of experts in any case where, in the opinion of the President of the Assembly, they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

Chapter V. Cooperation between the Court and the host State

Section 1: General

Article 33

General cooperation between the Court and the host State

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

Article 34 **Cooperation with the competent authorities**

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

Article 35 **Notification**

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

Article 36 **Social security regime**

1. The social security system of the Court offers coverage comparable to the coverage under the legislation of the host State. Accordingly, the Court and its officials to whom the

aforementioned scheme applies shall be exempt from social security provisions of the host State. Consequently, such officials shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to such officials, unless they take up gainful activity in the host State.

2. Paragraph 1 of this article shall apply, *mutatis mutandis*, to members of the family forming part of the household of the persons referred to in paragraph 1, unless they are engaged in gainful employment in the host State, or are self-employed, or receive social security benefits from the host State.

Section 2: Visas, permits and other documents

Article 37

Visas for the officials of the Court, visas for representatives of States participating in the proceedings of the Court, and visas for counsel and persons assisting counsel

1. The officials of the Court, representatives of States participating in the proceedings of the Court, and counsel and persons assisting counsel, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State including unimpeded access to the premises of the Court.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

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

Article 38

Visas for witnesses, victims, experts, interns, visiting professionals and other persons required to be present at the seat of the Court

1. All persons referred to in articles 24, 26, 27, 28 and 29 of this Agreement, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this article, movement within the host State, as appropriate and for the purposes of the Court.

2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses and victims, who have been notified as such by the Registrar to the host State.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 3 of this article, the host State will seek observations from the Court.

Article 39

Visas for visitors of persons detained by the Court

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Court are processed promptly. Visas for visitors who are family members of a person detained by the Court shall be processed promptly and, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph 1 of this article may be subjected to territorial limitations. Visas may be refused in the event that:

a) the visitors referred to in paragraph 1 of this article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence, both for the period of the intended stay and for the return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;

b) an alert has been issued against them for the purpose of refusing entry; or

c) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 2 or 3 of this article, the host State will seek observations from the Court.

Article 40

Independent bodies of counsel or legal associations, journalists and non-governmental organizations

1. The parties recognize the role of:

a) independent representative bodies of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties in accordance with rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

b) press, radio, film, television or other information media reporting on the Court; and

c) non-governmental organizations that support the fulfilment of the mandate of the Court.

2. The host State shall take all necessary measures to facilitate the entry into, stay and employment in the host State of representatives of bodies or organizations referred to in paragraph 1 of this article, deployed in, or visiting the host State in connection with activities relating to the Court. The host State shall also take all necessary measures to facilitate the entry into and stay of members of the family forming part of the household of such representatives who are deployed in the host State.

3. For the purpose of facilitating the procedure of entry into, stay and employment in the host State of the representatives of bodies or organizations referred to in paragraph 1 of this article, the host State and the Court shall consult, as appropriate, with each other, and with any independent representative bodies of counsel or legal associations, media, or non-governmental organizations. Each of the groups referred to in paragraph 1 of this article shall promptly inform the host State and the Court of the office designated to serve as the official contact point of that group for such consultations, and of any subsequent changes in this regard.

4. Following the consultations referred to in paragraph 3 of this article, the Court shall, on the basis of verifiable information available to it, indicate whether the representative

concerned may be regarded as representing a body or organization referred to in paragraph 1 of this article.

5. The host State may attach such conditions or restrictions to the visas as are necessary to prevent violations of its public order or to protect the safety of the person concerned.

6. Visas and residence permits shall be granted to persons referred to in this article in accordance with the relevant laws and regulations of the host State, taking into account the obligations of the host State referred to in paragraph 2 of this article.

7. Visas and residence permits granted in accordance with this article shall be issued as promptly as possible.

Article 41 **Laissez-passer**

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

Article 42 **Driving licence**

During their period of employment, officials of the Court, members of their family forming part of their household and their private or domestic servants shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided the holder is in possession of an identity card issued by the host State in accordance with article 35 of this Agreement.

Section 3: Security, operational assistance

Article 43 **Security, safety and protection of persons referred to in this Agreement**

1. The competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Court, free from interference of any kind.

2. The Court shall cooperate with the competent authorities to ensure that all persons referred to in this Agreement observe the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Article 44 **Transport of persons in custody**

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

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

3. Any transport of persons in custody in the host State outside the premises of the Court shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.

4. The Court shall give reasonable notice to the competent authorities of the arrival of persons referred to in this article. Whenever possible, 72 hours' advance notice will be given.

5. Where the host State receives a request under this article and identifies problems in relation to the execution of the request, it shall consult with the Court, without delay, in order to resolve the matter. Such problems may include, inter alia,

- a) insufficient time and/or information to execute the request;
- b) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the persons;
- c) the existence of a threat to public order and security in the host State.

6. A person in custody shall be transported directly and without impediment to the destination specified in paragraphs 1 and 2 of this article or to any other destination as requested by the Court under paragraph 3 of this article.

7. The Court and the host State shall, as appropriate, make practical arrangements for the transport of persons in custody in accordance with this article.

Article 45

Transport of persons appearing before the Court voluntarily or pursuant to a summons

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

Article 46

Cooperation in detention matters

1. The host State shall cooperate with the Court to facilitate the detention of persons and to allow the Court to perform its functions within its detention centre.

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

Article 47

Interim release

1. The host State shall facilitate the transfer of persons granted interim release into a State other than the host State.

2. The host State shall facilitate the re-entry into the host State of persons granted interim release and their short-term stay in the host State for any purpose related to proceedings before the Court.

3. The Court and the host State shall make practical arrangements as to the implementation of this article.

Article 48
Release without conviction

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

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

3. The provisions of article 44 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons referred to in this article within the host State.

Article 49
Enforcement of sentences in the host State

1. The Court shall endeavour to designate a State of enforcement in accordance with article 103, paragraph 1, of the Statute.

2. If no State is designated under article 103, paragraph 1, of the Statute, the Court shall inform the host State about the necessity to enforce a sentence in a prison facility made available by the host State in accordance with article 103, paragraph 4, of the Statute.

3. After the commencement of the enforcement of a sentence under article 103, paragraph 4, of the Statute the Court shall continue its endeavours to designate a State of enforcement under article 103, paragraph 1, of the Statute. The Court will communicate to the host State developments that it considers relevant, which relate to the list referred to in article 103, paragraph 1, of the Statute. The Court shall inform the host State as soon as a State of enforcement has accepted the Court's designation under article 103, paragraph 1, of the Statute.

4. The enforcement of a sentence shall be governed by the Statute, in particular the provisions of Part 10, and the Rules of Procedure and Evidence, in particular the relevant provisions of Chapter 12. The conditions of imprisonment shall be governed by the law of the host State, as provided in article 106, paragraph 2, of the Statute.

5. The host State may communicate to the Court for its consideration humanitarian concerns or other concerns related to the conditions or modalities of enforcement for the purposes of supervision of enforcement of sentences and conditions of imprisonment.

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

Article 50
Short-term detention arrangements

1. If, after conviction and final sentence, or after reduction of a sentence in accordance with article 110 of the Statute, the time remaining to be served under the sentence of the Court is less than six months, the Court shall consider whether the sentence may be enforced in the detention centre of the Court.

2. Where there is a need for a change in designation of the State of enforcement and where the period pending transfer to another State of enforcement does not exceed six months, the Court and the host State shall consult as to whether the sentenced person may be transferred to a prison facility made available by the host State under article 103, paragraph 4, of the Statute. Where the period pending transfer exceeds six months, the sentenced person shall be transferred from the detention centre of the Court to a prison facility made available by the host State under article 103, paragraph 4, of the Statute upon a request by the Court to that effect.

Article 51
Limitation to the exercise of jurisdiction by the host State

1. The host State shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State with regard to persons surrendered to the Court in accordance with Part 9 of the Statute, persons granted interim release or persons who appear before the Court voluntarily or pursuant to a summons, for any acts, omissions or convictions prior to the surrender, the transfer or the appearance before the Court except as provided for in the Statute and the Rules of Procedure and Evidence.

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

Chapter VI. Final provisions

Article 52
Supplementary arrangements and agreements

1. The provisions of this Agreement shall be supplemented at the time of signature by an exchange of letters which confirms the joint interpretation of the Agreement by the parties.

2. The Court and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make other supplementary agreements and arrangements as appropriate.

Article 53
No less favourable treatment provision

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

Article 54
Settlement of disputes with third parties

The Court shall, without prejudice to the powers and responsibilities of the Assembly under the Statute, make provisions for appropriate modes of settlement of:

- a) disputes arising out of contracts and other disputes of a private-law character to which the Court is a party;
- b) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

Article 55
Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Court and the host State shall be settled by consultation, negotiation or other agreed mode of settlement.
2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 5 of this article.
3. The arbitral tribunal shall be composed of three members: one to be chosen by each party and the third, who shall be the chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within two months of the appointment of a member by the other party, that other party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within two months following their appointment, either party may invite the President of the International Court of Justice to choose the chairman.
4. Unless the parties otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.
5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of this Agreement and subsequent arrangements or agreements and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties.

Article 56
Application

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

Article 57
Amendments and termination

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

Article 58
Entry into force

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

DONE at The Hague on [...] in duplicate, in the English language.

For the Kingdom of the Netherlands

(sd.) MFA

For the International Criminal Court

(sd.) President

Annex II

Draft exchange of letters

.....2006

H.E. [...]
Minister of Foreign Affairs
Bezuidenhoutseweg 67
2594 AC The Hague

Excellency,

On the occasion of the signing of the Headquarters Agreement between the International Criminal Court and the Kingdom of the Netherlands, I would like to refer to negotiations held between representatives of the Court in which agreement was reached on the following explanatory notes constituting a joint interpretation by the parties of the provisions of the Headquarters Agreement to which the notes refer.

Article 1(i) The meaning of “subsidiary bodies”

In the Headquarters Agreement, there is frequent reference to “the Assembly, including its Bureau and subsidiary bodies”. It is the common understanding of the parties that the words “subsidiary bodies” include subgroups which can be established by the Assembly or its Bureau. It is understood that the members of such “subgroups” would be entitled to, and that the host State would accordingly extend to them, the same privileges, immunities and facilities accorded to the members of the respective parent body. Examples of such groups are the Working Groups established by the Bureau, in both The Hague and New York, on 1 December 2004.

Article 17 Privileges, immunities and facilities of judges, the Prosecutor, the Deputy Prosecutors and the Registrar

Article 18 Privileges, immunities and facilities of the Deputy Registrar and staff of the Court

During their term of office, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of the Court are exempted from taxation in the host State under article 17, paragraphs 1 and 2, and article 18, paragraphs 1, 2 and 3. Article 17, paragraph 3, and article 18, paragraph 4, specify that periods during which these persons are present in the host State for the discharge of their functions “shall not be considered as periods of residence”. These two provisions are not designed to create tax exemptions in addition to the exemptions accorded under article 17, paragraphs 1 and 2, and article 18, paragraphs 1, 2 and 3. They clarify that, in situations where the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar or staff of the Court maintain residence in the host State after the expiry of their term of office, no taxes will be due in

relation to exemptions which were applicable during the period in which these persons held office.

Article 17, paragraph 6, according to which the “host State shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants”, is based on the wording of article 15, paragraph 7, of the Agreement on the Privileges and Immunities of the International Criminal Court. It is understood by both parties that former judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants would only be subject to taxation by the host State if, upon expiry of their respective terms of office, they reside in the territory of the host State or are nationals of the host State. This explanation also applies, *mutatis mutandis*, to article 18, paragraph 5, which contains a provision similar to article 16, paragraph 2, with respect to former Deputy Registrars, members of staff of the Court and their dependants.

Article 27 **Victims**

Both parties understand that this provision applies also to victims participating in proceedings for reparation.

Article 39 **Visas for visitors of persons detained by the Court**

Both parties understand that visas will be issued in accordance with the national laws of the host State. It is also the understanding of both parties that in exceptional cases, such as where the applicant is unable to pay, visas for visitors who are family members of a detained person, shall, at the discretion of the national authorities of the host State, be issued free of charge or for a reduced fee.

Article 40 **Independent bodies of counsel or legal associations, journalists and non-governmental organizations**

The presence of representatives of independent bodies of counsel or legal associations, journalists and non-governmental organizations (NGOs) in the host State is fundamental to the fulfilment of the roles of the bodies, associations or organizations referred to in article 40, paragraph 1, in relation to the Court. Therefore, it has been decided to address in this Agreement issues relating to the entry into, stay and employment in the host State of representatives of independent bodies of counsel or legal associations, journalists and NGOs. This procedure will allow representatives of these three groups to fulfil their roles in relation to the functioning of the Court and to gain transparent and timely access to the host State.

At the heart of these obligations is a consultation mechanism that establishes channels of cooperation and dialogue between the host State, the Court and dedicated contact points of independent bodies of counsel or legal associations, journalists and NGOs in order to determine whether a person may be regarded as representing a body or organization within the meaning of article 40, paragraph 1. This dialogue will assist all stakeholders in gaining reliable assurances as to whether that person is linked to an institution, association or organization that performs functions related to the work of the Court.

The outcome of the consultations will allow the relevant authorities of the host State to handle requests from such representatives, relating to their entry into, stay and employment

in the host State, in a way which duly reflects the importance for the functioning of the Court of the presence in the host State of the bodies, associations or organizations referred to in article 40, paragraph 1.

The procedure offers several benefits compared to the procedures that would normally apply when such persons come to the host State in a private capacity. Paragraph 2 of article 40 indicates that the host State has a special responsibility to facilitate the entry into, stay and employment in the host State of representatives of bodies, associations or organizations referred to in article 40, paragraph 1. Paragraph 6 of article 40 clarifies that the host State shall take into account this special responsibility when determining requests for visas and residence permits in accordance with the laws and regulations of the host State. Taken together, these two provisions provide a treaty basis for corresponding domestic practice. The information obtained through the consultation process envisaged under article 40, paragraph 3 may facilitate the practical aspects of the issuance of visas and residence permits. Moreover, it is important to note that persons who are considered as representing a body, association or organization referred to in article 40, paragraph 1 would not be obliged to obtain work permits. They are eligible for an exemption from the requirement of a work permit following their identification as representatives of the bodies, associations or organizations referred to in article 40, paragraph 1, and would thus be entitled to carry out their duties in the host State consistent with the roles of the bodies, associations or organizations referred to in article 40, paragraph 1.

It is understood by both parties that the host State will, where appropriate, assist the Court in obtaining information from countries other than the host State, where such information is necessary for the consultations under article 40, paragraph 3.

It is essential, as article 40, paragraph 3 emphasizes, that each of the groups specified under subparagraphs (a), (b) and (c) of paragraph 1 of article 40 must have an official contact in order to be able to participate in the consultations. Both parties understand that each of the groups should, in principle, have one single point of contact only (e.g. one for the bodies of counsel or legal associations, one for the media and one for the NGO community) in order to facilitate the consultations.

Further details concerning the implementation of the procedure envisaged in this article shall be clarified by way of subsequent practical arrangements.

Article 44

Transport of persons in custody

Paragraph 6 of article 44 ensures that the transport of persons in the custody of the Court for purposes of the Court will not be delayed by any impediment, such as the immigration and asylum procedures of the host State. The asylum law and procedures of the host State require that asylum seekers lodge a claim for asylum in person at an asylum seeker centre within the host State. As this procedure would hamper the immediate transport of the person for purposes of the Court, its application would be undesirable in this context. It is understood that article 44, paragraph 6 does not deny a person in the custody of the Court the ability to lodge a claim for asylum or another legal basis to remain in the Netherlands under the laws of the host State at a time other than during transport.

The term “transport” in this article refers to the transportation of a person within the territory of the host State.

The term “transfer” in this article refers to the transportation of a person from one State to another.

Article 47 **Interim release**

Article 47 addresses the issue of interim release. Both sides agreed to regulate only those aspects relating to interim release into a State other than the host State in this Agreement. This is reflected in the language of paragraph 1 of article 47. The Agreement does not address the conditions and modalities of interim release into the host State. This matter must be solved by future practice. Both sides acknowledge that it is for the Court to determine whether a request for interim release should be honoured and, if so, under what conditions, in accordance with the principle of judicial discretion reflected in article 60, paragraph 2, of the Statute, rule 119 of the Rules of Procedure and Evidence, and regulation 51 of the Regulations of the Court. It is understood that the host State will have an opportunity to present its views on this matter to the Court in accordance with regulation 51 of the Regulations of the Court before a decision on interim release is made, and that the views of the host State will be given full attention by the Court in the exercise of its judicial discretion.

Paragraph 2 of article 47 governs the re-entry into the host State of persons granted interim release. The practice of the International Criminal Tribunal for the former Yugoslavia (ICTY) has shown that there may be situations in which persons granted interim release may need to return to the host State for purposes related to proceedings before the Court. Article 47, paragraph 2 clarifies that the host State shall facilitate the transfer of such persons. The host State has entered into an arrangement to that effect with the ICTY, by way of an exchange of letters of December 2003, which governs “short-term stays on Dutch soil” of persons granted interim release by the ICTY. Paragraph 3 of this article provides a basis for both sides to conclude such and other types of practical arrangements concerning the implementation of article 47.

Article 49 **Enforcement of sentences in the host State**

Article 49, paragraph 5, provides that the “host State may communicate to the Court for its consideration humanitarian concerns or other concerns related to the conditions or modalities of enforcement for the purposes of supervision of enforcement of sentences and conditions of imprisonment”. Relevant concerns may relate to aspects such as the detained person’s mental or physical health or well-being. Both parties understand that a communication under article 49, paragraph 5, would be considered by the Court for the purposes of supervision of enforcement of sentences and conditions of imprisonment. It is the common understanding of both parties that article 106, paragraphs 1 and 2, of the Statute and rule 211 of the Rules of Procedure and Evidence would apply, as appropriate, to a communication under article 49, paragraph 5. The provision is also designed to facilitate dialogue between the host State and the Court in accordance with rule 216 of the Rules of Procedure and Evidence.

Articles 17, 18, 25, 26 and 28 **Nationals and permanent residents**

According to subparagraph 7(a) of article 17, subparagraph 6(a) of article 18, subparagraph 4(a) of article 25, subparagraph 4(a) of article 26 and subparagraph 4(a) of article 28, the persons concerned shall enjoy immunity from personal arrest or detention or

any other restriction of their liberty. In accordance with the *chapeau* of the respective subparagraphs of these articles, these persons shall enjoy such immunity to the extent necessary for the independent performance of their functions or their appearance or testimony before the Court. This shall be interpreted as follows: the persons concerned will not enjoy immunity from personal arrest or detention or any other restriction of their liberty in relation to acts performed outside the course of their official duties.

I should be grateful if you could confirm that the above is also the understanding of the host State.

Accept, Excellency, the assurances of my highest consideration,

[...]
President

Draft response of the Ministry of Foreign Affairs

H.E. [...]
President
International Criminal Court
Maanweg 174
2516 AB The Hague

Excellency,

I have the honour to acknowledge receipt of your letter of [...], in which you set out the understandings of the International Criminal Court regarding the joint interpretation of certain provisions of the Headquarters Agreement between the Kingdom of the Netherlands and the International Criminal Court.

In accordance with your request, I wish to confirm, on behalf of the Kingdom of the Netherlands, that the understandings reflected in your letter conform to those of the Kingdom of the Netherlands.

Accept, Excellency, the assurances of my highest consideration.

[...]
Minister of Foreign Affairs

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