

**Part III**  
**Resolutions adopted by the Assembly of States Parties**

## Resolution ICC-ASP/5/Res.1

*Adopted at the 7th plenary meeting on 1 December 2006, by consensus*

### ICC-ASP/5/Res.1 Permanent Premises

*The Assembly of States Parties,*

*Recalling* its resolution ICC-ASP/4/Res.2, which emphasized that “the Court is a permanent judicial institution and as such requires functional permanent premises to enable the Court to discharge its duties effectively and to reflect the significance of the Court for the fight against impunity” and recommended, “bearing in mind the recommendation of the Committee contained in paragraph 86 of its report on the work of its fifth session (ICC-ASP/4/27), that the Bureau of the Assembly and the Committee remain seized of the matter and report to the fifth session of the Assembly of States Parties on the issue of permanent premises of the Court”<sup>1</sup>,

*Recalling* that three options for permanently housing the Court have been under consideration, namely: (1) remaining in the current location (Arc Building); (2) moving to the premises of the International Criminal Tribunal for the Former Yugoslavia; and (3) building purpose-built premises on the Alexanderkazerne site,

*Further recalling* the original host State bid that provided premises free of charge until 2012, and the further host State bid as provided in the letter dated 25 January 2006 from the Minister for Foreign Affairs of the host State to the President of the Assembly of States Parties<sup>2</sup>,

*Noting* the report of the Bureau on the issue of permanent premises of the International Criminal Court<sup>3</sup> that refers to the informal interim report on permanent premises, which tends to conclude that the third option would probably offer the greatest flexibility in terms of planning and costs,

*Underscoring* that the premises of the Court must respond to the needs of the different stakeholders in terms of functionality, flexibility (both in construction terms and in the application of costs), scalability, security, character and identity and that the design should reflect these requirements,

*Mindful* of the reports of the Committee on Budget and Finance on the work of its sixth<sup>4</sup> and seventh<sup>5</sup> sessions,

1. *Requests* that, without prejudice to the prerogative of the Assembly to make a final decision on where to permanently house the Court, the International Criminal Court should now focus on option 3 only, purpose-built premises on the Alexanderkazerne site, with a view to allowing the Assembly to take an informed decision at its next session;

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November to 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III.

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed fourth session, New York, 26-27 January 2006* (International Criminal Court publication, ICC-ASP/4/37), annex IV.

<sup>3</sup> ICC-ASP/5/29.

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part II.D.6(a).

<sup>5</sup> *Ibid.*, part II.D.6(b).

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2. *Requests* the Court, in order to allow a review by the Committee on Budget and Finance at its eighth session in 2007:
    - a) To finish preparing in the shortest possible time a detailed functional brief that would include its user and security requirements reflecting scalability in terms of staffing levels;
    - b) To prepare, in consultation with the host State, cost estimates for the project; and
    - c) To prepare, in consultation with the host State, a provisional timetable with key decision points, a summary of planning and permit issues, and a planning strategy for the site showing possible modular approaches to scalability;
  3. *Requests* the host State, in order to allow a review by the Committee on Budget and Finance at its eighth session in 2007, to provide further information on the financial and land offers contained in the further host State bid, including the possible options and methods for managing the proposed loan, any legal issues concerning the separation of ownership of the land and the proposed buildings and other issues that would be subject to a contract between the host State and the Court;
  4. *Requests* the Bureau to review the information requested in operative paragraphs 2 and 3 and to identify any gaps or other concerns to the Court and the host State so that the information is completed to the required level;
  5. *Requests* the host State, in consultation with the Bureau and the Court, to propose the framework, criteria, legal parameters and modalities for an international architectural concept design competition, including any pre-selection criteria and process;
  6. *Mandates* the Bureau, if it is satisfied with the information provided under operative paragraphs 2, 3 and 5 above, to invite the host State to commence provisionally an international pre-selection process for architects, in accordance with the host State offer to organize and fund such a process, without prejudice to the prerogative of the Assembly of States Parties to respond to the remaining elements of the further host State bid of 25 January 2006;
  7. *Requests* the Bureau, in consultation with the Court and the host State, to prepare options for a governance structure for the project that would specify the respective roles and responsibilities of the Assembly, the Court and the host State;
  8. *Requests* the Bureau to prepare options for effective participation by the Assembly of States Parties in the project governance and oversight structures;
  9. *Requests* the Court to establish and staff a project management structure within the Court as per programme 5200 of the proposed programme budget for 2007<sup>6</sup>;
  10. *Encourages* the Bureau to make use of experts from States Parties in fulfilling its mandate under this resolution.

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<sup>6</sup> Ibid., part II.D.5.

## **Resolution ICC-ASP/5/Res.2**

*Adopted at the 7th plenary meeting on 1 December 2006, by consensus*

### **ICC-ASP/5/Res.2**

#### **Strategic planning process of the Court**

*The Assembly of States Parties,*

*Recalling* operative paragraph 12 of resolution ICC-ASP/4/Res.4 whereby the Assembly of States Parties welcomed the initiation of the strategic planning process of the Court and invited the Court to engage with the Bureau on this process,

*Having regard* to the Strategic Plan prepared by the Court<sup>1</sup>,

*Having regard also* to the Strategic Plan for Outreach and the Strategy on Information and Communication Technologies prepared by the Court<sup>2</sup>, as well as the Prosecutorial Strategy presented by the Prosecutor at two public hearings,

*Having regard* to the report of the Bureau on the dialogue initiated with the Court on the Strategic Plan,

*Mindful* of the ongoing and interactive process of elaboration of such a Plan,

1. *Notes with appreciation* the efforts made to date by the Court to establish a Strategic Plan, a Strategic Plan for Outreach and a Strategy on Information and Communication Technologies, as well as the efforts made to date by the Prosecutor to establish a Prosecutorial Strategy;
2. *Invites* the Court to further develop the dialogue initiated with the Bureau on the Strategic Plan;
3. *Recommends* that such a dialogue should focus on the concrete implementation of the Strategic Plan and include, but not be specifically limited to, cross-cutting issues such as location of the activities of the Court, position of victims, outreach and communication activities of the Court, and the relationship between the Strategic Plan and the budget;
4. *Decides* to invite the Court to submit to the next session of the Assembly of States Parties an update on the Strategic Plan in the light of the dialogue engaged with the Bureau.

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<sup>1</sup> ICC-ASP/5/6.

<sup>2</sup> ICC-ASP/5/12.

## Resolution ICC-ASP/5/Res.3

*Adopted at the 7th plenary meeting on 1 December 2006, by consensus*

### ICC-ASP/5/Res.3

#### **Strengthening the International Criminal Court and the Assembly of States Parties**

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent the most serious crimes of concern to the international community, and to put an end to the impunity of the perpetrators of such crimes, is now widely acknowledged,

*Convinced* that the International Criminal Court is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

*Convinced further* that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court's central role as the only permanent international criminal court within an evolving system of international criminal justice,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly of States Parties and to ensure the broadest visibility of the Court and the Assembly,

*Conscious* of the risks faced by personnel of the Court in the field,

*Desirous* of assisting the Court and its organs, notably through management oversight and other appropriate action, in performing the duties assigned to them,

**A. Rome Statute of the International Criminal Court and other agreements**

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the fourth regular session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;
2. *Decides* to keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas and, to that end, *decides* to adopt and implement the plan of action for achieving universality and full implementation of the Rome Statute annexed to this resolution<sup>1</sup> and *requests* the Bureau to review implementation of the plan of action and progress towards its objectives and to report thereon to the Assembly in advance of its sixth session;
3. *Stresses* that the integrity of the Rome Statute must be preserved and that treaty obligations emanating therefrom must be fully adhered to, and *encourages* States Parties to the Rome Statute to exchange information and to support and assist each other to that end, particularly in situations where its integrity is being challenged and *reminds* States of the need to uphold the spirit of the Statute, and of their obligation to cooperate with the Court in the fulfilment of its mandate;
4. *Calls upon* those States that have not yet done so to become parties to the Agreement on the Privileges and Immunities of the International Criminal Court as a matter of priority and to incorporate it in their national legislation as appropriate;
5. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;
6. *Welcomes* the conclusion of the negotiations between the Court and the host State on the draft headquarters agreement between the International Criminal Court and the host State<sup>2</sup>, *approves* the draft agreement, the text of which is annexed hereto<sup>3</sup>, and *calls upon* the President of the Court to conclude the Agreement on behalf of the Court as soon as possible;

**B. Institution-building**

7. *Takes note* of the latest report on the activities of the Court to the Assembly of States Parties<sup>4</sup>;
8. *Takes note* of the statements presented to the Assembly of States Parties by the senior representatives of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims and the representative of the Committee on Budget and Finance;
9. *Notes with satisfaction* the fact that owing, not least, to the dedication of its staff, the Court is fully operational and *takes note* of the considerable progress in its analyses, investigations and

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<sup>1</sup> Annex I.

<sup>2</sup> ICC-ASP/5/25.

<sup>3</sup> Annex II.

<sup>4</sup> ICC-ASP/5/15.

judicial proceedings in various situations which were referred to the Court by States Parties and the United Nations Security Council<sup>5</sup>;

10. *Takes note also* of the continued operation and further enhancement of the Court's field presence;

11. *Takes note* of the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence and *encourages* further applications to the list with a particular view to ensuring equitable geographical representation and gender balance;

12. *Welcomes* the conclusion of the Cooperation Agreement between the Court and the European Union, as well as other agreements of the Court and the Office of the Prosecutor, *looks forward* to the early conclusion of a cooperation agreement with the African Union and *invites* other relevant regional organizations to consider concluding such agreements with the Court;

13. *Calls upon* the Court to promote the full implementation of the Relationship Agreement between the International Criminal Court and the United Nations;

14. *Acknowledges with appreciation* the expanding cooperation between the Court and the United Nations system, as evidenced by the hosting of a trial by the Special Court for Sierra Leone, by the final leave of absence of the Deputy Prosecutor for Investigations to serve at the International Independent Investigation Commission<sup>6</sup> at the request of the United Nations and by several supplementary arrangements established within the framework provided by the Relationship Agreement between the Court and the United Nations;

15. *Welcomes* the establishment of a New York Liaison Office of the Court;

16. *Welcomes* the presentation of the second report of the Court to the General Assembly of the United Nations<sup>7</sup>;

17. *Expresses* its appreciation to the Secretary-General and the Secretariat of the United Nations for their support in facilitating the fifth resumed session of the Assembly to be held at United Nations Headquarters and *looks forward* to continuing such cooperation regarding future sessions of the Assembly;

18. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties, *reiterates* that the relations between the Secretariat and other sections of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *underscores* the importance of inviting the Director of the Secretariat of the Assembly of States Parties to the meetings of the Coordination Council when matters of mutual concern are considered;

19. *Welcomes* the steps undertaken by the Court to implement the One Court principle, including by coordinating the activities of the Court among its organs at all levels, while respecting their necessary independence under the Statute;

20. *Recognizes* the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process and, to that end, *encourages* the

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<sup>5</sup> United Nations Security Council resolution 1593 (2005).

<sup>6</sup> United Nations Security Council resolution 1595 (2005).

<sup>7</sup> United Nations document A/61/217.

Court to intensify such outreach activities, including through the implementation of the Strategic Plan for Outreach of the Court;

21. *Reminds* the Court of its obligation under the Statute, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, violence against women or children;

22. *Welcomes* in this regard the dialogue initiated between the Court and the Bureau of the Assembly of States Parties with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, and *requests* the Bureau to take forward its work and present a detailed report to the sixth session of the Assembly of States Parties on the status thereof, including, if necessary, any proposals to further improve geographical and gender balance in the recruitment process;

23. *Takes note* of the interim report by the Court and *invites* the Court, in consultation with the Bureau, to submit concrete proposals for the establishment of an independent oversight mechanism to the next regular session of the Assembly of States Parties;

24. *Urges* States to take the necessary measures to provide for the protection of the name, abbreviations and emblems of the Court in accordance with their national laws and *recommends* that such measures be similarly undertaken in respect of any emblem, logo, seal, flag or insignia adopted by the Assembly or the Court;

25. *Takes note* of the important work done by the Committee on Budget and Finance and *reaffirms* the independence of the members of the Committee;

26. *Recalls* that, according to its Rules of Procedure<sup>8</sup>, the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications and *requests* the Secretariat to make the necessary arrangements to ensure that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly of States Parties at which such documents are considered;

27. *Decides* that the Pension Scheme Regulations for judges of the International Criminal Court should be amended immediately to preclude the possibility of individuals receiving a pension from the Court while serving as a judge at another international court, as referred to in document ICC-ASP/5/19;

28. *Requests* the Court to invite the United Nations General Assembly to consider amending the Pension Scheme Regulations for judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in order to ensure that no former judge of any of these courts receives a pension while also serving as a judge of the International Criminal Court;

29. *Decides* that the conditions of service and compensation of the Prosecutor and Deputy Prosecutors shall be the same as those of Under-Secretary-General and Assistant Secretary-General in the United Nations common system, respectively, and thus in accordance with the contributory nature of the United Nations Joint Staff Pension Fund, and *further decides*, without prejudice to the above:

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<sup>8</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003* (United Nations publication, Sales No.E.03.V.13, ICC-ASP/2/10), annex III.



- (a) To invite the current Prosecutor and Deputy Prosecutors to consider joining the United Nations Joint Staff Pension Fund;
- (b) To request the Court to approach the Board of the United Nations Joint Staff Pension Fund for its agreement as to the retroactive participation of the current Prosecutor and Deputy Prosecutors in the Fund; and
- (c) To apply, if that were the case, unspent monies from the 2006 budget, up to a total of approximately €404,520, plus applicable actuarial computations, as set out in the report of the Court contained in document ICC-ASP/5/21, to meet the costs in full for their retroactive participation from the date of their entry on duty until 31 December 2006

### **C. Cooperation and implementation**

30. *Welcomes* the efforts undertaken by the Court to foster cooperation with States, international and regional organizations and civil society and *stresses* that effective cooperation remains essential for the Court to carry out its activities;

31. *Appeals* to all States in which personnel of the Court are deployed and to all others on which such personnel may rely to ensure the safety of, and to prevent attacks against, personnel of the Court and to provide cooperation and judicial assistance aimed at facilitating the conduct and fulfilling of their mandate;

32. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and judicial cooperation with the Court, and in this regard *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;

33. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws and to ensure effective enforcement of those laws;

34. *Urges* States to comply with their obligations to cooperate with the Court in such areas as preserving and providing evidence, sharing information, securing the arrest and surrender to the Court of persons for whom arrest warrants have been issued and protecting victims and witnesses and *encourages* States, international and regional organizations as well as civil society to intensify their support to the Court in its efforts to that end, as appropriate;

35. *Calls upon* States to enter into arrangements with the Court concerning, inter alia, witness relocation and sentence enforcement;

36. *Requests* the Bureau to address the issue of cooperation and to report to the Assembly of States Parties at its next regular session;

### **D. Assembly of States Parties**

37. *Takes note* of the report of the Special Working Group on the Crime of Aggression, *expresses its appreciation* to the Liechtenstein Institute on Self-Determination at Princeton University for hosting an informal intersessional meeting of the Special Working Group<sup>9</sup>, *recognizes* that the Special Working Group needs to conclude its work at least 12 months prior to

<sup>9</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), annex II.

the Review Conference to be held according to article 123, paragraph 1, of the Rome Statute in order to be in a position to submit proposals for a provision on aggression, in accordance with article 5, paragraph 2, of the Statute and with resolution ICC-ASP/1/Res.1, to the Assembly for its consideration at the Review Conference;

38. *Recalls* its decision that the Special Working Group in the years 2006 to 2008 shall be allocated at least 10 exclusive days of meetings in New York during resumed sessions of the Assembly, and shall hold intersessional meetings, as appropriate, *decides* therefore to hold a resumed session of four days for the Special Working Group in the first half of 2008 in New York, and *requests* the Bureau to fix specific dates;

39. *Requests* the Registrar of the Court to revise the terms of the Trust Fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 to allow other developing States to draw on the Fund so as to enhance the possibility of such States to participate in the meetings of the Assembly of States Parties, further *requests* the Secretariat to ensure that information regarding the availability of assistance from the Trust Fund is widely disseminated among developing States in good time prior to the annual session of the Assembly of States Parties and also that States Parties to the Rome Statute, in particular those that are least developed countries, are accorded priority access to the Fund, *reiterates* its call upon States, international organizations, individuals, corporations and other entities to contribute to the Fund and *expresses its appreciation* to those that have done so;

40. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions, or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly of States Parties;

41. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court and expresses its appreciation to those that have done so;

42. *Takes note* of the report of the Bureau on the arrears of States Parties<sup>10</sup>, *endorses* the recommendations of the report as annexed to this resolution<sup>11</sup> and *decides* that the Bureau should review on a regular basis the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by States Parties, as appropriate;

43. *Requests* the Secretariat of the Assembly of States Parties to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;

44. *Takes note* of the Manual of Procedures adopted by the Bureau and issued by the Secretariat of the Assembly of States Parties;

45. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly of States Parties on the result of their work;

46. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;

47. *Takes note* of the preliminary report by the focal point on the issue of the Review Conference<sup>12</sup>, under article 123 of the Rome Statute, and *requests* the Bureau to start preparation of the Review Conference, in particular on the issues of the rules of procedure applicable to the

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<sup>10</sup> ICC-ASP/5/27.

<sup>11</sup> Annex III.

<sup>12</sup> ICC-ASP/5/INF.2.

Review Conference and on practical and organizational issues, especially as regards dates and venue of the Review Conference, and to report to the next regular session of the Assembly of States Parties on the status of such preparations;

48. *Decides* that the Committee on Budget and Finance shall hold its next session in The Hague, from 23 to 26 April 2007 and a further five-day session to be determined by the Committee;

49. *Recalls* that according to article 112, paragraph 6, of the Rome Statute, the Assembly of States Parties shall meet at the seat of the Court or at the Headquarters of the United Nations;

50. *Reiterates* its decision to hold its fifth, sixth and seventh sessions alternating as follows:

- eight days in November/December 2006 in The Hague for its fifth session and a resumed session of not less than three days of the Special Working Group on the Crime of Aggression in 2007 in New York;
- not less than eleven days in 2007 in New York for its sixth session, including not less than three days exclusively for the Special Working Group on the Crime of Aggression;
- not less than eight days in 2008 in The Hague for its seventh session and not less than two days in 2009 in New York for a resumed session for elections;

51. *Requests* the Bureau to fix specific dates and to inform all States Parties accordingly.

## Annex I

### **Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court**

#### **Objectives**

1. Universality of the Rome Statute of the International Criminal Court is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice.
2. Full and effective implementation of the Rome Statute by all States Parties is equally vital to the achievement of these objectives.

#### **States Parties**

3. States Parties have the primary responsibility for promoting the objectives set out in paragraphs 1 and 2 above. States should make full use of the political, financial and technical means at their disposal to continue and strengthen their efforts to achieve these objectives.
4. To this end, States Parties should proactively promote universality and full implementation, including through bilateral and regional relationships, such as by developing initiatives that focus on neighbouring States and on the regions, subregions or other groupings to which they belong, as well as on the particular obstacles faced by those States, regions, subregions or groupings.
5. In addition, States Parties should deepen their own commitment to the Court and to the Rome Statute so as to ensure a strong, effective and efficient institution and thereby encourage other States to join.
6. States Parties' efforts should include:
  - (a) Direct political and other contacts with relevant States, regional groups or regional organizations with the objective of fostering political will and support for ratification and full implementation of the Rome Statute;
  - (b) Where appropriate, efforts to seek an agenda item on the Court in any bilateral contacts, including at the highest levels, with non-States parties;
  - (c) Ratification and full implementation of the Agreement on the Privileges and Immunities of the International Criminal Court and encouragement of its ratification and implementation by other States not yet parties to the Agreement;
  - (d) Providing technical or financial assistance to States wishing to become Parties to the Rome Statute as well as to States and other entities wishing to promote its universality;
  - (e) Convening and supporting seminars, conferences and other national, regional or international events aimed at promoting ratification and full implementation of, and support for, the Rome Statute;

- (f) Wide dissemination of information about the Court and its role, including by giving consideration to inviting representatives of the Court or the Secretariat of the Assembly of States Parties to address national, regional and international events;
- (g) Identification of a national contact point for matters related to promotion of the ratification and full implementation of the Rome Statute;
- (h) Providing to the Secretariat of the Assembly of States Parties (“the Secretariat”) information relevant to promotion of the ratification and full implementation of the Rome Statute, including, inter alia:
  - (i) Information on obstacles to ratification or full implementation facing States;
  - (ii) National or regional strategies or plans of action to promote ratification and/or full implementation;
  - (iii) Technical and other assistance needs and delivery programmes;
  - (iv) Planned events and activities;
  - (v) Examples of implementing legislation for the Rome Statute;
  - (vi) Bilateral cooperation agreements between the Court and States Parties;
  - (vii) Solutions to constitutional issues arising from ratification;
  - (viii) National contact points for matters related to promotion of ratification and full implementation.
- (i) Full and effective implementation of the Rome Statute, including the duty to cooperate fully with the Court. To this end, any State facing difficulties with ensuring full implementation should identify its assistance needs promptly with a view to obtaining appropriate technical and/or financial assistance;
- (j) Active participation in and support for the meetings and activities of the Assembly of States Parties and its subsidiary bodies, in order to, inter alia, promote attendance at Assembly meetings by other States Parties and those not yet parties.

#### **Secretariat of the Assembly of States Parties**

7. The Secretariat should support States in their efforts to promote universality and full implementation of the Rome Statute by acting as a focal point for information exchange, within existing resources, including by:

- (a) Collecting and collating relevant information from States Parties, regional organizations, members of the non-governmental community and others engaged in promoting universality and full implementation of the Rome Statute;
- (b) Ensuring that such information is readily and widely accessible and disseminated to interested States and others.

#### **Assembly of States Parties**

8. The Assembly, through its Bureau, should keep this plan of action under review, including by monitoring the status of ratifications of the Rome Statute, developments in the field of implementing legislation, and the range of obstacles to ratification and full implementation faced by States.

## Annex II

### Headquarters agreement between the International Criminal Court and the host State

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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 III

### Recommendations on the arrears of States Parties

#### Recommendation 1:

*Requests* the Registry of the Court (“the Registry”) to provide States Parties, on a quarterly basis, with an updated information note on the contributions received from States Parties since the Rome Statute entered into force for each State Party, as applicable, in order to add transparency to the Court's management and to give States Parties up-to-date information on the financial situation of the Court. Such notification should be addressed to capitals as well as to the relevant embassies and permanent missions in The Hague and New York. In order to ensure that the relevant people receive the necessary information and act accordingly, it may be necessary to reach out to several representatives of any one State Party.

#### Recommendation 2:

*Requests* the Bureau and individual States Parties to continue to take up the subject of the financial situation of the Court in their bilateral contacts with other States Parties, as appropriate, and to underline the importance of timely payment of contributions for the effective functioning of the Court. In particular, representatives of States Parties in arrears should be made aware of the facts and of the possible implications for the Court of the non-payment or delayed payment of contributions and encouraged to intervene with the relevant authorities of their own Governments.

#### Recommendation 3:

*Requests*, in order to facilitate better communication between the Court and States Parties on matters of contributions, States Parties to provide the Registry, on a yearly basis and upon the Court's request, with information (name and contact details) of the individual responsible for the actual payments to the Court. This information could be accompanied, on a voluntary basis, by information on when that State Party expects to remit its financial contribution to the Court.

#### Recommendation 4:

*Requests* the Court to continue to provide States Parties at an early stage with information on its financial viability and ongoing planning in respect of the budget for the following financial period. Without prejudice to the relevant recommendations of the Committee on Budget and Finance and to the decisions of the Assembly of States Parties, such timely information should enable States Parties to take the necessary precautions that will enable them to pay their contributions without delay.

#### Recommendation 5:

*Decides* that a State Party requesting exemption from the loss of voting rights under article 112, paragraph 8, of the Rome Statute shall submit information and documentation (in accordance with paragraph 42 of resolution ICC-ASP/4/Res.4) that would substantiate and comprehensively support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the State Party concerned.

**Recommendation 6:**

*Decides* that such State Party may submit documentation that has earlier been submitted elsewhere for comparable purposes. A decision by another organization concerning the loss of voting rights due to non-payment of contributions shall be taken into due account by the Assembly of States Parties, but shall not prejudice its own decision.

**Recommendation 7:**

*Further decides* that, if possible, requests should be accompanied by a payment plan or other form of political commitment by the requesting State to address the issue as a matter of urgency and to take concrete steps towards payment as soon as possible. While it is up to each State Party to decide whether to engage in a concrete payment scheme, the provision of a payment plan to remit the arrears would substantially increase the possibilities that permission to vote would be granted.

**Recommendation 8:**

*Requests* that the Secretariat notify twice a year (in mid-January and in mid-June) States Parties which may face losing their voting rights so that they are able to take timely action to pay their arrears.

**Recommendation 9:**

*Decides* that the Assembly of States Parties could consider applications for exemption from the loss of voting rights with regard to any resumed session of the Assembly, or meeting of the Bureau, that takes place between 1 January and the first session of the Committee on Budget and Finance in any year, without prior recommendation by the Committee.

## Resolution ICC-ASP/5/Res.4

Adopted at the 7th plenary meeting on 1 December 2006, by consensus

### ICC-ASP/5/Res.4

**Programme budget for 2007, the Working Capital Fund for 2007, scale of assessments for the apportionment of expenses of the International Criminal Court and financing appropriations for the year 2007.**

*The Assembly of States Parties,*

*Having considered* the proposed programme budget for 2007 of the International Criminal Court and the related conclusions and recommendations contained in the Report of the Committee on Budget and Finance on the work of its seventh session,

#### A. Programme budget for 2007

1. *Approves* appropriations totalling €88,871,800 for the following appropriation sections:

<i>Appropriation section</i>	<i>Euros</i>
Major Programme I Judiciary	9,999,200
Major Programme II Office of the Prosecutor	23,370,900
Major Programme III Registry	48,840,900
Major Programme IV Secretariat of the Assembly of States Parties	4,377,800
Major Programme V Investment in the Court's premises	2,283,000
<b>Total</b>	<b>88,871,800</b>

2. *Further approves* the following staffing tables for each of the above appropriation sections:

	Judiciary	Office of the Prosecutor	Registry	Secretariat of the Assembly of States Parties	Investment in the Court's Premises	Total
USG		1				1
ASG		2	1			3
D-2						
D-1		2	5	1		8
P-5	3	10	14		1	28
P-4	2	25	28	2		57
P-3	4	41	61	1		107
P-2	17	41	45		1	104
P-1	1	13	5			19
<i>Subtotal</i>	<i>27</i>	<i>135</i>	<i>159</i>	<i>4</i>	<i>2</i>	<i>327</i>
GS-PL	1	1	18	3		23
GS-OL	15	64	215	2	1	297
<i>Subtotal</i>	<i>16</i>	<i>65</i>	<i>233</i>	<i>5</i>	<i>1</i>	<i>320</i>
<b>Total</b>	<b>43</b>	<b>200</b>	<b>392</b>	<b>9</b>	<b>3</b>	<b>647</b>

**B. Working Capital Fund for 2007**

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2007 shall be established in the amount of €7,405,983, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court.

**C. Scale of assessments for the apportionment of expenses of the International Criminal Court**

*The Assembly of States Parties,*

*Decides* that, for the year 2007, the International Criminal Court shall adopt the scale of assessments of the United Nations applicable for the year 2007, with adjustments to take into account the difference in membership between the United Nations and the Assembly of States Parties to the Rome Statute, in accordance with the principles upon which the scale of the United Nations is based.

*Notes* that, in addition, any maximum assessment rate for the largest contributor applicable for the United Nations regular budget will apply to the International Criminal Court's scale of assessments.

**D. Financing appropriations for the year 2007**

*The Assembly of States Parties,*

*Resolves* that, for the year 2007, budget appropriations amounting to €88,871,800 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part A, paragraph 1, and part B, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.