

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

## **Resolution ICC-ASP/4/Res.1**

*Adopted at the 3<sup>rd</sup> plenary meeting on 2 December 2005, by consensus*

### **ICC-ASP/4/Res.1**

#### **Code of Professional Conduct for counsel**

*The Assembly of State Parties,*

*Having regard to* rule 8 of the Rules of Procedure and Evidence;

*Having regard to* rule 20, sub-rule 3;

*Having regard to* the consultations conducted by the Registrar with independent representative bodies of counsel or legal associations;

*Recognizing* the general principles governing the practice and ethics of the legal profession;

*Recalling* resolution ICC-ASP/3/Res.3, of 10 September 2004, whereby the Assembly of States Parties requested the Bureau of Assembly of States Parties to prepare an amended draft Code for adoption by the Assembly at its fourth session;

*Having regard to* the Report of the Bureau on the draft Code of Professional Conduct for counsel,<sup>1</sup> submitted pursuant to the above resolution;

*Decides* to adopt the Code of Professional Conduct for counsel, the text of which is annexed hereto.

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<sup>1</sup> ICC-ASP/4/21.

## Annex

### Code of Professional Conduct for counsel

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## Code of Professional Conduct for counsel

### Chapter 1 General provisions

#### Article 1 Scope

This Code shall apply to defence counsel, counsel acting for States, *amici curiae* and counsel or legal representatives for victims and witnesses practising at the International Criminal Court, hereinafter referred to as “counsel”.

#### Article 2 Use of terms

1. Unless otherwise defined in this Code, all terms are used as defined in the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.
2. In this Code:
  - “Court” refers to the International Criminal Court;
  - “associate” refers to lawyers who practise in the same law firm as counsel;
  - “national authority” refers to the bar association of which counsel is a member or any other organ competent to regulate and control the activity of lawyers, judges, prosecutors or professors of law, or other qualified counsel according to rule 22, paragraph 1, of the Rules of Procedure and Evidence;
  - “client” refers to all those assisted or represented by counsel;
  - “defence team” refers to counsel and all persons working under his or her oversight; and
  - “agreement” refers to the oral or written legal relationship which binds counsel to his or her client before the Court.

#### Article 3 Amendment procedure

1. States Parties, judges, the Registrar, counsel and independent organizations representing lawyers’ associations and counsel may submit proposals for amendments to this Code. Any proposal for amendments to this Code shall be submitted to the Registrar, together with explanatory material, in one or both working languages of the Court.
2. The Registrar shall transmit the proposals to the Presidency, together with a reasoned report prepared after consultation with the Prosecutor and, as appropriate, with any independent organization representing lawyers’ associations and counsel.
3. Any proposal to amend this Code, submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar.

4. Any proposal to amend this Code, other than one submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar. In such circumstances, the Presidency shall provide the Assembly of States Parties with the Presidency's reasoned recommendations as to whether or not any such proposal should be adopted. If the Presidency recommends adoption, it shall submit a draft amendment in relation to that proposal to the Assembly of States Parties for the purpose of adoption.

5. Amendments to this Code shall be adopted by the Assembly of States Parties in accordance with article 112, paragraph 7, of the Statute.

**Article 4**  
**Primacy of the Code of Professional Conduct for counsel**

Where there is any inconsistency between this Code and any other code of ethics or professional responsibility which counsel are bound to honour, the terms of this Code shall prevail in respect of the practice and professional ethics of counsel when practising before the Court.

**Article 5**  
**Solemn undertaking by counsel**

Before taking office, counsel shall give the following solemn undertaking before the Court: "I solemnly declare that I will perform my duties and exercise my mission before the International Criminal Court with integrity and diligence, honourably, freely, independently, expeditiously and conscientiously, and that I will scrupulously respect professional secrecy and the other duties imposed by the Code of Professional Conduct for Counsel before the International Criminal Court".

**Article 6**  
**Independence of counsel**

1. Counsel shall act honourably, independently and freely.
2. Counsel shall not:
  - (a) Permit his or her independence, integrity or freedom to be compromised by external pressure; or
  - (b) Do anything which may lead to any reasonable inference that his or her independence has been compromised.

**Article 7**  
**Professional conduct of counsel**

1. Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings.
2. Counsel shall maintain a high level of competence in the law applicable before the Court. He or she shall participate in training initiatives required to maintain such competence.
3. Counsel shall comply at all times with the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and such rulings as to conduct and procedure as may be made by the Court, including the enforcement of this Code.

4. Counsel shall supervise the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with this Code.

### **Article 8**

#### **Respect for professional secrecy and confidentiality**

1. Counsel shall respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. The relevant provisions referred to in paragraph 1 of this article include, inter alia, article 64, paragraph 6 (c), article 64, paragraph 7, article 67, paragraph 1 (b), article 68, and article 72 of the Statute, rules 72, 73, and 81 of the Rules of Procedure and Evidence and regulation 97 of the Regulations of the Court. Counsel shall also comply with the relevant provisions of this Code and any order of the Court.

3. Counsel may only reveal the information protected under paragraphs 1 and 2 of this article to co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case.

4. Subject to paragraph 3 of this article, counsel may only disclose the information protected under paragraphs 1 and 2 of this article, where such disclosure is provided for by a particular provision of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court or this Code or where such disclosure is ordered by the Court. In particular, Counsel shall not reveal the identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless he or she has been authorized to do so by an order of the Court.

### **Article 9**

#### **Counsel-client relationship**

1. Counsel shall not engage in any discriminatory conduct in relation to any other person, in particular his or her client, on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status.

2. In his or her relations with the client, counsel shall take into account the client's personal circumstances and specific needs, in particular where counsel is representing victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

3. Where a client's ability to make decisions concerning representation is impaired because of mental disability or for any other reason, counsel shall inform the Registrar and the relevant Chamber. Counsel shall also take the steps necessary to ensure proper legal representation of the client according to the Statute and the Rules of Procedure and Evidence.

4. Counsel shall not engage in any improper conduct, such as demanding sexual relations, coercion, intimidation, or exercise any other undue influence in his or her relations with a client.

### **Article 10**

#### **Advertising**

Counsel may advertise provided the information is:

- (a) Accurate; and
- (b) Respectful of counsel's obligations regarding confidentiality and privilege.

**Chapter 2**  
**Representation by counsel**

**Article 11**  
**Establishment of the representation agreement**

The agreement is established when counsel accepts a request from a client seeking representation or from the Chamber.

**Article 12**  
**Impediments to representation**

1. Counsel shall not represent a client in a case:
  - (a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or
  - (b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.
2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.
3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless:
  - (a) The testimony relates to an uncontested issue; or
  - (b) The testimony relates to the nature and value of legal services rendered in the case.
4. This article is without prejudice to article 16 of this Code.

**Article 13**  
**Refusal by counsel of a representation agreement**

1. Counsel has the right to refuse an agreement without stating reasons.
2. Counsel has a duty to refuse an agreement where:
  - (a) There is a conflict of interest under article 16 of this Code;
  - (b) Counsel is incapable of dealing with the matter diligently; or
  - (c) Counsel does not consider that he or she has the requisite expertise.



**Article 14****Performance in good faith of a representation agreement**

1. The relationship of client and counsel is one of candid exchange and trust, binding counsel to act in good faith when dealing with the client. In discharging that duty, counsel shall act at all times with fairness, integrity and candour towards the client.
2. When representing a client, counsel shall:
  - (a) Abide by the client's decisions concerning the objectives of his or her representation as long as they are not inconsistent with counsel's duties under the Statute, the Rules of Procedure and Evidence, and this Code; and
  - (b) Consult the client on the means by which the objectives of his or her representation are to be pursued.

**Article 15****Communication between counsel and the client**

1. Counsel shall provide the client with all explanations reasonably needed to make informed decisions regarding his or her representation.
2. When counsel is discharged from or terminates the agreement, he or she shall convey as promptly as possible to the former client or replacement counsel any communication that counsel received relating to the representation, without prejudice to the duties which subsist after the end of the representation.
3. When communicating with the client, counsel shall ensure the confidentiality of such communication.

**Article 16****Conflict of interest**

1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.
2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.
3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:
  - (a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or
  - (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.

**Article 17****Duration of the representation agreement**

1. Counsel shall advise and represent a client until:
  - (a) The case before the Court has been finally determined, including all appeals;

- (b) Counsel has withdrawn from the agreement in accordance with article 16 or 18 of this Code; or
  - (c) A counsel assigned by the Court has been withdrawn.
2. The duties of counsel towards the client continue until the representation has ended, except for those duties which subsist under this Code.

**Article 18**  
**Termination of the representation**

1. With the prior consent of the Chamber, counsel may withdraw from the agreement in accordance with the Regulations of the Court if:
- (a) The client insists on pursuing an objective that counsel considers repugnant; or
  - (b) The client fails to fulfil an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled.
2. Where counsel withdraws from the agreement, he or she remains subject to article 8 of this Code, as well as any provisions of the Statute and the Rules of Procedure and Evidence relating to confidentiality.
3. Where counsel is discharged by the client, counsel may be discharged in accordance with the Regulations of the Court.
4. Where counsel's physical or mental condition materially impairs his or her ability to represent the client, counsel may be withdrawn by the Chamber at his or her request or at the request of the client or the Registrar.
5. In addition to complying with the duties imposed by article 15, paragraph 2, of this Code, counsel shall convey to replacement counsel the entire case file, including any material or document relating to it.

**Article 19**  
**Conservation of files**

Following the termination of the representation, counsel shall keep files containing documents and records of work carried out in fulfilment of the agreement for five years. Counsel shall allow the former client to inspect the file unless he or she has substantial grounds for refusing to do so. After this time counsel shall seek instructions from the former client, his or her heirs or the Registrar on the disposal of the files, with due regard to confidentiality.

**Article 20**  
**Counsel's fees**

Prior to establishing an agreement, counsel shall inform the client in writing of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the client's right to receive a bill of costs.

**Article 21**  
**Prohibitions**

1. Notwithstanding article 22, counsel shall not accept remuneration, in cash or in kind, from a source other than the client unless the client consents thereto in writing after consultation and counsel's independence and relationship with the client are not thereby affected.
2. Counsel shall never make his or her fees contingent on the outcome of a case in which he or she is involved.
3. Counsel shall not mix funds of a client with his or her own funds, or with funds of counsel's employer or associates. Counsel shall not retain money received on behalf of a client.
4. Counsel shall not borrow monies or assets from the client.

**Article 22**  
**Remuneration of counsel in the framework  
of legal assistance**

1. The fees of counsel where his or her client benefits from legal assistance shall be paid exclusively by the Registry of the Court. Counsel shall not accept remuneration in cash or in kind from any other source.
2. Counsel shall neither transfer nor lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.
3. Counsel shall sign an undertaking to respect the obligations under this article when accepting the appointment to provide legal assistance. The signed undertaking shall be sent to the Registry.
4. Where counsel is requested, induced or encouraged to violate the obligations under this article, counsel shall advise the client of the prohibition of such conduct.
5. Breach of any obligations under this article by Counsel shall amount to misconduct and shall be subject to a disciplinary procedure pursuant to this Code. This may lead to a permanent ban on practising before the Court and being struck off the list of counsel, with transmission to the respective national authority.

**Chapter 3**  
**Relations with the Court and others**

**Article 23**  
**Communications with the Chambers and judges**

Unless the judge or the Chamber dealing with a case permits counsel to do so in exceptional circumstances, counsel shall not:

- (a) Make contact with a judge or Chamber relative to the merits of a particular case other than within the proper context of the proceedings; or
- (b) Transmit evidence, notes or documents to a judge or Chamber except through the Registry.

**Article 24**

**Duties towards the Court**

1. Counsel shall take all necessary steps to ensure that his or her actions or those of counsel's assistants or staff are not prejudicial to the ongoing proceedings and do not bring the Court into disrepute.
2. Counsel is personally responsible for the conduct and presentation of the client's case and shall exercise personal judgement on the substance and purpose of statements made and questions asked.
3. Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous.
4. Counsel shall not submit any request or document with the sole aim of harming one or more of the participants in the proceedings.
5. Counsel shall represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings.

**Article 25**

**Evidence**

1. Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect.
2. If counsel, while collecting evidence, reasonably believes that the evidence found may be destroyed or tampered with, counsel shall request the Chamber to issue an order to collect the evidence pursuant to rule 116 of the Rules of Procedure and Evidence.

**Article 26**

**Relations with unrepresented persons**

1. When required in the course of representation, counsel may communicate with and meet an unrepresented person in the client's interest.
2. When counsel communicates with unrepresented persons he or she shall:
  - (a) Inform them of their right to assistance from counsel and, if applicable, to their right to legal assistance; and
  - (b) Without infringing upon the confidentiality of counsel-client privilege, inform them of the interest that counsel represents and the purpose of the communication.
3. If counsel becomes aware of a potential conflict of interest in the course of a communication or meeting with an unrepresented person, he or she shall, notwithstanding paragraph 1 of this article, refrain immediately from engaging in any further contact or communication with the person.

**Article 27**

**Relations with other counsel**

1. In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously.

2. All correspondence between counsel representing clients with a common interest in a litigated or non-litigated matter and who agree on exchanging information concerning the matter, shall be presumed confidential and privileged by counsel.
3. When counsel does not expect particular correspondence between counsel to be confidential, he or she shall state clearly at the outset that such correspondence is not confidential.

#### **Article 28**

#### **Relations with persons already represented by counsel**

Counsel shall not address directly the client of another counsel except through or with the permission of that counsel.

#### **Article 29**

#### **Relations with witnesses and victims**

1. Counsel shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom.
2. Counsel shall have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

### **Chapter 4**

#### **Disciplinary regime**

#### **Article 30**

#### **Conflict with other disciplinary regimes**

Subject to article 38 of this Code, the present chapter is without prejudice to the disciplinary powers of any other disciplinary authority that may apply to counsel subject to this Code.

#### **Article 31**

#### **Misconduct**

Counsel commits misconduct when he or she:

- (a) Violates or attempts to violate any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a substantial ethical or professional duty on him or her;
- (b) Knowingly assists or induces another person to commit any misconduct, referred to in paragraph (a) of this article, or does so through the acts of another person; or
- (c) Fails to comply with a disciplinary decision rendered pursuant to this chapter.

#### **Article 32**

#### **Liability for conduct of assistants or other staff**

1. Counsel shall be liable for misconduct under article 31 of this Code by his or her assistants or staff when he or she:
  - (a) Orders or approves the conduct involved; or
  - (b) Knows or has information suggesting that violations may be committed and takes no reasonable remedial action.
2. Counsel shall instruct his or her assistants or staff in the standards set by this Code.

**Article 33**  
**The Commissioner**

1. A Commissioner responsible for investigating complaints of misconduct in accordance with this chapter shall be appointed for four years by the Presidency. The Commissioner shall be chosen from amongst persons with established competence in professional ethics and legal matters.
2. The Commissioner shall not be eligible for re-appointment. A Commissioner who is involved in an investigation when his or her mandate expires shall continue to conduct such an investigation until it is concluded.

**Article 34**  
**Filing a complaint of misconduct**

1. Complaints against counsel regarding misconduct as referred to in articles 31 and 32 of this Code may be submitted to the Registry by:
  - (a) The Chamber dealing with the case;
  - (b) The Prosecutor; or
  - (c) Any person or group of persons whose rights or interests may have been affected by the alleged misconduct.
2. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the Registry. It shall identify the complainant and the counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.
3. The Registrar shall transmit the complaint to the Commissioner.
4. The Registrar may, on his or her own initiative, make complaints to the Commissioner regarding the misconduct referred to in articles 31 and 32 of this Code.
5. All complaints shall be kept confidential by the Registry.

**Article 35**  
**Limitation period**

The right to file a complaint against counsel for misconduct shall lapse five years after the termination of the representation agreement.

**Article 36**  
**Composition and management of the Disciplinary Board**

1. The Disciplinary Board shall comprise three members, two of whom shall be permanent and one *ad hoc*.
2. The members of the Disciplinary Board shall perform their functions under this Code in an independent and impartial manner.
3. The Registry shall make appropriate arrangements for the elections, provided for in paragraph 4 of this article, in consultation with counsel and, as appropriate, national authorities.
4. The two permanent members, as well as one alternate member who may serve as a replacement in accordance with paragraph 10 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

5. The *ad hoc* member shall be a person appointed by the national authority competent to regulate and control the activities of counsel subject to the disciplinary procedure.
6. The permanent members shall not be eligible for re-election.
7. Notwithstanding paragraph 4 of this article, at the first election one of the permanent members shall be selected by lot to serve for a term of six years.
8. After each election and in advance of the first meeting of the newly-elected Disciplinary Board, the permanent and alternate members shall elect one of the permanent members as a chairperson.
9. All members of the Disciplinary Board shall have the same rights and votes. The Disciplinary Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 10 of this article shall have the same rights and votes as permanent and *ad hoc* members serving on the same case.
10. If one of the permanent members is unavailable to deal with the case or serve on the Disciplinary Board, the chairperson or, where the chairperson is the permanent member concerned, the other permanent member, shall request the alternate member to serve as a replacement on the Disciplinary Board.
11. Permanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined including all appeals.
12. The Registrar shall appoint a staff member of the Registry who will render secretariat services to the Disciplinary Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry and, subject to article 44, paragraph 12 of this Code, solely as the secretariat of the Disciplinary Board.

**Article 37**  
**Preliminary procedures**

1. If the complaint filed meets the requirements in article 34 of this Code, the Commissioner shall forward it to counsel subject to the disciplinary procedure, who shall submit a response within sixty days from the date the complaint is forwarded.
2. The response shall indicate whether the alleged misconduct has been or is the subject of a disciplinary procedure before the national authority. If so, it shall include:
  - (a) The identity of the national authority deciding on the alleged misconduct; and
  - (b) A certified communication by the national authority stating the alleged facts that are the basis of the disciplinary procedure before it.

**Article 38**  
**Complementarity of disciplinary measures**

1. The disciplinary procedure in this Code shall be applied by the Disciplinary Board.
2. The *ad hoc* member of the Disciplinary Board shall serve as the contact point with the relevant national authority for all communication and consultation regarding the procedure.

3. Counsel subject to the disciplinary procedure shall request the national authority dealing with the matter to inform the Disciplinary Board of the progress of any national disciplinary procedure concerning the alleged misconduct and of its final decision, and shall take all measures necessary to facilitate such communication.
4. When the alleged misconduct is the basis of a disciplinary procedure which has already been initiated before the relevant national authority, the procedure before the Disciplinary Board shall be suspended until a final decision is reached regarding the former procedure, unless:
  - (a) the national authority does not respond to communications and consultations in accordance with paragraph 2 of this article within a reasonable time;
  - (b) the Disciplinary Board considers that the information received is not satisfactory; or
  - (c) the Disciplinary Board considers that, in the light of the information received, the national authority is unable or unwilling to conclude the disciplinary procedure.
5. As soon as it receives the decision of the national authority, the Disciplinary Board shall:
  - (a) declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code; or
  - (b) declare that the decision of the national authority does not cover or only partially covers the misconduct brought before the Disciplinary Board and that therefore the procedure is to be continued.
6. In the case of paragraphs 3 and paragraph 4 (b) of this article, the Disciplinary Board may ask counsel subject to the disciplinary procedure to provide detailed information about the procedure, including any minute or evidence which might have been submitted.
7. A decision by the Disciplinary Board based on this article may be appealed before the Disciplinary Appeals Board.

**Article 39**  
**Disciplinary procedure**

1. The Commissioner conducting the investigation may dismiss a complaint without any further investigation if he or she considers on the basis of the information at his or her disposal that the allegation of misconduct is unfounded in fact or in law. He or she shall notify the complainant accordingly.
2. Should the Commissioner consider otherwise, he or she shall promptly investigate the counsel's alleged misconduct and decide either to submit a report to the Disciplinary Board or to bring the procedure to an end.
3. The Commissioner shall take into consideration all evidence, whether oral, written or any other form, which is relevant and has probative value. He or she shall keep all information concerning the disciplinary procedure confidential.
4. The Commissioner may try to find an amicable settlement if he or she deems it appropriate. The Commissioner shall report the outcome of any such efforts to reach an amicable settlement to the Disciplinary Board, which may take it into consideration. Any amicable settlement shall be without prejudice to the competence or powers of the Disciplinary Board under this Code.
5. The report of the Commissioner shall be submitted to the Disciplinary Board.
6. The Disciplinary Board hearing shall be public. However, the Disciplinary Board may decide to hold a hearing or parts of it in closed session, in particular to safeguard the confidentiality of information in the report of the Commissioner or to protect victims and witnesses.



7. The Commissioner and the counsel subject to the disciplinary procedure shall be called and heard. The Disciplinary Board may also call and hear any other person deemed useful for the establishment of the truth.

8. In exceptional cases, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Commissioner may lodge an urgent motion with the Chamber before which the counsel who is the subject of the complaint is appearing, so that it may, as appropriate, declare a temporary suspension of such counsel.

#### **Article 40**

#### **Rights of counsel subject to the disciplinary procedure**

1. Counsel subject to the disciplinary procedure shall be entitled to assistance from other counsel.

2. Counsel shall have the right to remain silent before the Disciplinary Board, which may draw any inferences it deems appropriate and reasonable from such silence in the light of all the information submitted to it.

3. Counsel shall have the right to full disclosure of the information and evidence gathered by the Commissioner as well as the Commissioner's report.

4. Counsel shall be given the time required to prepare his or her defence.

5. Counsel shall have the right to question, personally or through his or her counsel, any person called by the Disciplinary Board to testify before it.

#### **Article 41**

#### **Decisions by the Disciplinary Board**

1. The Disciplinary Board may conclude the procedure finding no misconduct on the basis of the evidence submitted to it or finding that counsel subject to disciplinary procedure committed the alleged misconduct.

2. The decision shall be made public. It shall be reasoned and issued in writing.

3. The decision shall be notified to counsel subject to the disciplinary procedure and to the Registrar.

4. When the decision is final, it shall be published in the Official Journal of the Court and transmitted to the national authority.

#### **Article 42**

#### **Sanctions**

1. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:

- (a) Admonishment;
- (b) Public reprimand with an entry in counsel's personal file;
- (c) Payment of a fine of up to €30,000;
- (d) Suspension of the right to practise before the Court for a period not exceeding two years; and
- (e) Permanent ban on practising before the Court and striking off the list of counsel.

2. The admonishment may include recommendations by the Disciplinary Board.
3. The costs of the disciplinary procedure shall be within the discretion of the Disciplinary Board.

**Article 43**  
**Appeals**

1. Sanctioned counsel and the Commissioner shall have the right to appeal the decision of the Disciplinary Board on factual or legal grounds.
2. The appeal shall be notified to the secretariat of the Disciplinary Board within thirty days from the day on which the decision has been delivered.
3. The secretariat of the Disciplinary Board shall transmit the notification of the appeal to the secretariat of the Disciplinary Appeals Board.
4. The Disciplinary Appeals Board shall decide on the appeal according to the procedure followed before the Disciplinary Board.

**Article 44**  
**Composition and management of the Disciplinary Appeals Board**

1. The Disciplinary Appeals Board shall decide on appeals against decisions of the Disciplinary Board.
2. The members of the Disciplinary Appeals Board shall perform their functions under this Code in an independent and impartial manner.
3. The Registry shall make appropriate arrangements for the elections provided for in paragraph 5 of this article, in consultation with counsel and, as appropriate, national authorities.
4. The Disciplinary Appeals Board shall comprise five members:
  - (a) The three judges of the Court who take precedence under regulation 10 of the Regulations of the Court, not including:
    - (i) the judges dealing with the case from which the complaint subject to the disciplinary procedure arose; or
    - (ii) any members or former members of the Presidency who appointed the Commissioner.
  - (b) Two persons elected in accordance with paragraph 5 of this article.
5. The two members of the Disciplinary Appeals Board referred to in paragraph 4 (b) of this article, as well as an alternate member who may serve as a replacement in accordance with paragraph 6 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.
6. If one of the elected members is unavailable to deal with the case or serve on the Disciplinary Appeal Board, the chairperson shall request the alternate member to serve as a replacement on the Disciplinary Appeals Board.
7. The functions of members of the Disciplinary Appeals Board are incompatible with those of members of the Disciplinary Board.
8. The elected members shall not be eligible for re-election.

9. The judge who takes precedence among the three judges referred to in paragraph 4 (a) of this article shall be the chairperson of the Disciplinary Appeals Board.

10. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 6 of this article shall have the same rights and votes as other members serving on the same case.

11. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined.

12. The staff member of the Registry appointed by the Registrar pursuant to article 36, paragraph 12, of this Code to provide secretariat services to the Disciplinary Board shall also act as the secretariat of the Disciplinary Appeals Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry.

## **Chapter 5**

### **Final provisions**

#### **Article 45**

##### **Entry into force**

This Code and any amendments to it shall enter into force 30 days after their adoption by the Assembly of States Parties in accordance with article 112, paragraph 2, of the Rome Statute.

#### **Article 46**

##### **Publication**

The Code adopted by the Assembly of States Parties shall be published in the Official Journal of the Court.

## Resolution ICC-ASP/4/Res.2

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### ICC-ASP/4/Res.2 Permanent Premises

*The Assembly of States Parties,*

*Taking note* of the reports prepared by the International Criminal Court (the “Court”) at the request of the Assembly of States Parties (the “Assembly”) and the Committee on Budget and Finance (the “Committee”),<sup>1</sup> and also *noting* that the Court is not seeking definitive recommendations or decisions on the issue of permanent premises at the fourth session of the Assembly,

*Recognizing* the need for further clarification on the issues of consolidation of estimated staffing levels as part of a strategic plan, as well as on the financing modalities for permanent premises,

1. *Emphasizes* 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,
2. *Recognizes* further that, according to the information so far available, a purpose-built building on the premises of the Alexanderkazerne would probably offer the most flexible solution in matching the requirements of a permanent Court, in terms of size, functionality and security,
3. *Recognizes* the significant financial implications for States Parties of a decision on permanent premises, and, in this regard, welcomes the additional financial bid made by the representative of the host State<sup>2</sup> as an important contribution to the further consideration of financing modalities, on the basis of the findings of the report prepared by the Court on “Financing methods used for the premises of other international organizations” (ICC-ASP/4/25),
4. *Invites* the Court to complete its staffing estimation and strategy planning well before the next session of the Assembly and to continue further preparatory and planning work on the detailed requirements of the permanent premises,

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<sup>1</sup> Report on the future permanent premises of the International Criminal Court: Project Presentation (ICC-ASP/4/22); Report to the Assembly of States Parties on the Future Permanent Premises of the International Criminal Court: Housing Options (ICC-ASP/4/1); Report on the Future Permanent Premises of the International Criminal Court: Financial Comparison of Housing Options (ICC-ASP/4/23); Report on the Future Permanent Premises of the International Criminal Court: Interim Report on the Composition of Estimated Staffing Levels (ICC-ASP/4/24); Report on the Future Permanent Premises of the International Criminal Court: Financing Methods Used for the Premises of Other International Organizations (ICC-ASP/4/25); Report of the Committee on Budget and Finance on the work of its fourth session (ICC-ASP/4/2); Report of the Committee on Budget and Finance on the work of its fifth session (ICC-ASP/4/27 and Corr. 1 (English only), Corr.2 and Add.1); Report of the Bureau on the permanent premises of the Court (ICC-ASP/4/28).

<sup>2</sup> Statement by the representative of the host State, 2 December 2005.

5. *Recommends*, 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.

## **Resolution ICC-ASP/4/Res.3**

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### **ICC-ASP/4/Res.3 Regulations of the Trust Fund for Victims**

*The Assembly of States Parties,*

*Recalling* its resolution ICC-ASP/1/Res.6 on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims,

*Bearing in mind* the provisions of articles 75 and 79, of the Rome Statute and rule 98 of the Rules of Procedure and Evidence,

*Taking note* with appreciation of the report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 16 July 2004 to 15 August 2005 contained in doc ICC-ASP/4/12 and corr.1, and of the statement made by the Chair of the Board of Directors of the Fund,

*Wishing* to ensure the proper and effective functioning of the Trust Fund,

1. *Adopts* the Regulations of the Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court annexed to the present resolution,
2. *Decides* to assess the implementation of the Regulations not later than at its seventh regular session,
3. *Decides* that, without prejudice to further evaluation by the Assembly of States Parties, expenses of the Board of Directors and its Secretariat shall be funded by the regular budget,
4. *Requests* the Board of Directors to continue to pursue its invaluable efforts in fundraising in accordance with paragraphs 8, 9, 10 and 11 of the annex to resolution ICC-ASP/1/Res.6 and the Regulations of the Trust Fund,
5. *Calls upon* governments, international organizations, individuals, corporations and other entities to contribute voluntarily to the Fund and expresses its appreciation to those that have done so this year.

## Annex

### Regulations of the Trust Fund for Victims

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## Annex

### Regulations of the Trust Fund for Victims

#### PART I MANAGEMENT AND OVERSIGHT OF THE TRUST FUND

##### CHAPTER I THE BOARD OF DIRECTORS

###### *Section I Election of a Chair of the Board of Directors*

1. A Chair shall be elected by an absolute majority of the members of the Board of Directors. The Chair shall serve until the end of his/her respective term as Board member. He/she shall be eligible for re-election as Chair once. If the Chair finds it necessary to be absent during a meeting or any part thereof, he/she may designate another Board member to take his/her place. If the Chair is unable to perform his/her functions, a new Chair shall be elected for the unexpired term.
2. The Chair shall be responsible for coordinating the work of the Board of Directors.

###### *Section II Meetings*

3. The Board of Directors shall meet in regular session at least once a year at the seat of the Court.
4. The Board may hold special sessions when circumstances so require, and the Chair shall fix the date of commencement, the duration and the location of each such special session. Special sessions may be held in person, or by telephone, web or video conferencing.
5. The Chair shall determine the provisional agenda for the regular and special sessions of the Board. The Chair may receive suggestions for agenda items from other members of the Board, the Bureau of the Assembly of States Parties, the President of the Court, the Prosecutor and the Registrar. Any item proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents or by a draft decision. All materials shall be distributed to members of the Board sufficiently in advance and, where possible, at least one month in advance of the session. The provisional agenda for any session shall be submitted for consideration and adoption to the Board of Directors at the commencement of that session.
6. The Chair shall preside over each session.
7. The Registrar shall participate in sessions of the Board in an advisory capacity. Members of the Trust Fund Secretariat may attend sessions of the Board.
8. The Board of Directors may invite others with relevant expertise to participate, as appropriate, in specified sessions of the Board and to make oral or written statements and provide information on any question under consideration.

9. The Board of Directors shall meet in closed session unless it decides otherwise. Decisions and minutes of the Board of Directors shall be made public, and shall be communicated, as appropriate, to the Court and to interested States, to implementing partners and, to the extent possible, to beneficiaries, subject to confidentiality. At the close of a meeting of the Board of Directors, the Chair may issue a communiqué through its Secretariat or the Registry, as appropriate.

10. For the purposes of these Regulations, all participating Board members shall be considered present during telephone, web or video conferences. Moreover, an electronic signature may be used to sign a document or agreement.

11. The working languages of the Board of Directors shall be English and French. The Board may decide that one of the other working languages of the Assembly of States Parties may be used where that language is understood and spoken by the majority of persons concerned and where its use would facilitate the proceedings of the Board.

*Section III*  
*Decisions of the Board of Directors*

12. Decisions of the Board of Directors shall be taken in regular or special sessions, in person as well as by telephone, web or video conferencing.

13. Every effort shall be made to reach decisions by consensus. If consensus cannot be reached, all decisions must be approved by an absolute majority of the voting members of the Board.

14. If necessary, the Chair shall take provisional decisions of an administrative nature between sessions in consultation with the Secretariat. Subsequently, the Chair shall submit the decision(s) to the Board for their approval in accordance with the procedures stipulated in paragraph 13 above.

15. The Board of Directors may adopt such additional administrative procedures as are necessary to implement these Regulations.

*Section IV*  
*Costs of the Board of Directors*

16. Members of the Board of Directors shall act in their personal capacity on a pro bono basis.

**CHAPTER II**  
**THE SECRETARIAT**

*Section I*  
*Seat and establishment*

17. The Secretariat, established in accordance with Resolution of the Assembly of States Parties ICC-ASP/3/Res.7 shall provide such assistance as necessary for the proper functioning of the Board of Directors in carrying out its tasks.

*Section II*  
*Reporting of the Secretariat*

18. The Secretariat shall provide periodic reports to the Board on its activities.

19. Bearing in mind the independence of the Secretariat, it shall consult the Registrar on all administrative and legal matters for which it receives the assistance of the Registry.

**PART II  
RECEIPT OF FUNDS**

**CHAPTER I  
PRIMARY CONSIDERATIONS**

20. The Board of Directors shall ensure, through a variety of means, publicity regarding the Trust Fund and the plight of victims of crimes within the jurisdiction of the Court, as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families.
21. The Trust Fund shall be funded by:
- (a) Voluntary contributions from governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties;
  - (b) Money and other property collected through fines or forfeiture transferred to the Trust Fund if ordered by the Court pursuant to article 79, paragraph 2, of the Rome Statute (“the Statute”);
  - (c) Resources collected through awards for reparations if ordered by the Court pursuant to rule 98 of the Rules of Procedure and Evidence;
  - (d) Such resources, other than assessed contributions, as the Assembly of States Parties may decide to allocate to the Trust Fund.

**CHAPTER II  
VOLUNTARY CONTRIBUTIONS**

22. The Board, as part of its annual report to the Assembly of States Parties on the activities and projects of the Trust Fund, shall present an annual appeal for voluntary contributions to the Trust Fund.
23. The Board, with the support of the Secretariat, shall establish contact with governments, international organizations, individuals, corporations and other entities to solicit voluntary contributions to the Trust Fund.
24. The Board shall adopt guidelines on how to solicit financial contributions from private institutions.
25. The Trust Fund shall take receipt of all voluntary contributions from sources stipulated in Resolution of the Assembly of States Parties ICC-ASP/1/Res.6, paragraph 2(a), and shall note the sources and amounts received.
26. The Board shall establish mechanisms that will facilitate the verification of the sources of funds received by the Trust Fund.
27. Voluntary contributions from governments shall not be earmarked. Voluntary contributions from other sources may be earmarked by the donor for up to one third of the contribution for a Trust Fund activity or project, so long as the allocation, as requested by the donor,
- (a) benefits victims as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families;

- (b) would not result in discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or other origin, property, birth or other status, provided that contributions aimed at assisting those enjoying specific protection under international law should not be considered to be discriminatory.
28. In the event that a voluntary contribution is earmarked and the related purpose cannot be achieved, the Board shall allocate the contribution to its General Account subject to the agreement of the donor.
29. The Board shall regularly review the nature and level of voluntary contributions in order to ensure that the conditions in paragraph 27 are constantly met
30. The Board shall refuse voluntary contributions
- (a) which are deemed not to be consistent with the goals and activities of the Trust Fund;
  - (b) which are deemed to be earmarked in a manner inconsistent with paragraph 27. Before refusing such a contribution, the Board may seek a decision by the donor to withdraw the earmarking or to change it in an acceptable manner.
  - (c) which would affect the independence of the Trust Fund.
  - (d) the allocation of which would result in a manifestly inequitable distribution of available funds and property among the different groups of victims.

**CHAPTER III  
MONEY AND OTHER PROPERTY COLLECTED  
THROUGH FINES OR FORFEITURE**

31. The Board of Directors shall, at the request of the Chamber pursuant to rule 148 of the Rules of Procedure and Evidence, make written or oral observations on the transfer of fines or forfeitures to the Trust Fund.
32. The Board shall, at the request of the Presidency, submit written or oral observations on the disposition or allocation of property or assets in accordance with rule 221 of the Rules of Procedure and Evidence.
33. The Trust Fund shall take receipt of all money and other property collected through fines or forfeiture that is transferred, by order of the Court, to the Trust Fund.

**CHAPTER IV  
RESOURCES COLLECTED THROUGH AWARDS  
FOR REPARATIONS**

34. The Trust Fund shall take receipt of resources collected through awards for reparations and shall separate such resources from the remaining resources of the Trust Fund in accordance with rule 98 of the Rules of Procedure and Evidence. It shall note the sources and amounts received, together with any stipulations contained in the order of the Court as to the use of the funds.

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**CHAPTER V  
RESOURCES ALLOCATED BY THE ASSEMBLY  
OF STATES PARTIES**

35. In its annual report to the Assembly, the Board of Directors may make suggestions of financial or other contributions, other than assessed contributions, that the Assembly of States Parties may allocate to the Trust Fund.

36. Where no such stipulation has been made by the Assembly of States Parties as to the uses of the financial or other contributions other than assessed contributions, the Trust Fund may allocate these contributions to its General Account for the benefit of victims, as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families.

**CHAPTER VI  
OPERATIONAL ISSUES REGARDING THE  
RECEIPT OF FUNDS**

37. Bank account(s) of the Trust Fund shall be opened in conformity with rule 108(1) of the Financial Regulations and Rules.

38. The accounting system of the Trust Fund shall allow for the separation of funds to facilitate the receipt of earmarked contributions, money and other property collected through fines or forfeiture transferred by the Court where the Court has stipulated particular usages, or resources collected through awards for reparations.

39. A computer tracking system shall be established to enable tracking of, inter alia:

- (a) The sources of funds received as stipulated in resolution 6, paragraph 2, including the name of the donor, the location, the region, the date and the amount of the contribution;
- (b) All requests for earmarked contributions, including the nature of the request, and what was ultimately agreed upon and received;
- (c) All pledges received, the date and nature of the pledge, any follow-up by the Court, and the date on which funds were actually received;
- (d) Separation of funds within the Trust Fund on the basis of categories of restrictions on use and on the basis of actual restrictions;
- (e) All resources that have been attributed by the Trust Fund, sorted by sources of funds, by the nature of the attribution, and by beneficiary(ies);
- (f) Receipt by beneficiaries of all attributed resources, by the date of the award, by the date of receipt by the beneficiary, where possible, or by the date of payment by the donor;
- (g) All resources that have been attributed by way of grants to organizations. A programme that is separate but linked to the main system will monitor by grantee: the beneficiary group, the object of the grant, the amount of the grant, obligations under the grant contract, reporting deadlines, verification of completion and the accomplishment of results.

40. The Secretariat shall take receipt of resources that the Assembly of States Parties may decide to allocate to the Trust Fund. It shall note the sources and amounts received, together with any stipulations contained as to the use of the funds.

41. The Board of Directors shall advise the Court of any difficulties or delays in the receipt of funds.

### **PART III THE ACTIVITIES AND PROJECTS OF THE TRUST FUND**

#### **CHAPTER I USE OF FUNDS**

##### *Section I Beneficiaries*

42. The resources of the Trust Fund shall be for the benefit of victims of crimes within the jurisdiction of the Court, as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families.

##### *Section II Resources collected through fines or forfeiture and awards for reparations*

43. When resources collected through fines or forfeiture or awards for reparations are transferred to the Trust Fund pursuant to article 75, paragraph 2, or article 79, paragraph 2, of the Statute or rule 98, sub-rules 2-4, of the Rules of Procedure and Evidence, the Board of Directors shall determine the uses of such resources in accordance with any stipulations or instructions contained in such orders, in particular on the scope of beneficiaries and the nature and amount of the award(s).

44. Where no further stipulations or instructions accompany the orders, the Board of Directors may determine the uses of such resources in accordance with rule 98 of the Rules of Procedure and Evidence, taking into account any relevant decisions issued by the Court on the case at issue and, in particular, decisions issued pursuant to article 75, paragraph 1, of the Statute and rule 97 of the Rules of Procedure and Evidence.

45. The Board of Directors may seek further instructions from the relevant Chamber on the implementation of its orders.

46. Resources collected through awards for reparations may only benefit victims as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families, affected directly or indirectly by the crimes committed by the convicted person.

##### *Section III Other resources of the Trust Fund*

47. For the purpose of these regulations, “other resources of the Trust Fund” set out in of rule 98, paragraph 5, of the Rules of Procedure and Evidence refers to resources other than those collected from awards for reparations, fines and forfeitures.

48. Other resources of the Trust Fund shall be used to benefit victims of crimes as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families, who have suffered physical, psychological and/or material harm as a result of these crimes.

**CHAPTER II**  
**IMPLEMENTATION OF THE ACTIVITIES AND PROJECTS**  
**OF THE TRUST FUND**

*Section I*  
*General principles*

49. The Board of Directors may consult victims as defined in rule 85 of the Rules of Procedure and Evidence and, where natural persons are concerned, their families as well as their legal representatives and may consult any competent expert or any expert organisation in conducting its activities and projects.

50. For the purposes of these regulations, the Trust Fund shall be considered to be seized when:

- (a) (i) the Board of Directors considers it necessary to provide physical or psychological rehabilitation or material support for the benefit of victims and their families;

and

- (ii) the Board has formally notified the Court of its conclusion to undertake specified activities under (i) and the relevant Chamber of the Court has responded and has not, within a period of 45 days of receiving such notification, informed the Board in writing that a specific activity or project, pursuant to rule 98, sub-rule 5 of the Rules of Procedure and Evidence, would pre-determine any issue to be determined by the Court, including the determination of jurisdiction pursuant to article 19, admissibility pursuant to articles 17 and 18, or violate the presumption of innocence pursuant to article 66, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

- (iii) Should there be no response from the Chamber or should additional time be needed by the Chamber, consultations may be held with the Board to agree on an extension. In the absence of such an agreement, the extension shall be 30 days from the expiry of the period specified in sub-paragraph (a) (ii). After the expiry of the relevant time period, and unless the Chamber has given an indication to the contrary based on the criteria in sub-paragraph (a)(ii), the Board may proceed with the specified activities.

- (b) When the Court makes an order for reparations against a convicted person and orders that the award be deposited with or made through the Trust Fund in accordance with rule 98, sub-rules 2 to 4 of the Rules of Procedure and Evidence.

*Section II*  
*Outreach*

51. Once the Trust Fund has been seized in accordance with paragraph 50, the Chair of the Board of Directors may issue a communiqué through its Secretariat or the Registry, as appropriate.

52. The communiqué may indicate the basis for its activities and projects in accordance with paragraph 50 and may provide any additional information, as appropriate. A call for voluntary contributions may accompany the communiqué.

53. The Board of Directors may engage in any outreach and information campaigns it deems appropriate for the purpose of raising voluntary contributions. The Board of Directors may ask for the assistance of the Registrar in this matter.

*Section III*

*If the activities and projects of the Trust Fund are triggered by  
a decision of the Court*

54. When the Court orders that an award for reparations against a convicted person be deposited with the Trust Fund or made through the Trust Fund in accordance with rule 98, sub-rules 2 to 4, of the Rules of Procedure and Evidence, the Secretariat shall prepare a draft plan to implement the order of the Court, to be approved by the Board of Directors.

55. Subject to the order of the Court, the Trust Fund shall take into account the following factors in determining the nature and/or size of awards, inter alia: the nature of the crimes, the particular injuries to the victims and the nature of the evidence to support such injuries, as well as the size and location of the beneficiary group.

56. The Board of Directors shall determine whether to complement the resources collected through awards for reparations with “other resources of the Trust Fund” and shall advise the Court accordingly. Without prejudice to its activities under paragraph 50, sub-paragraph (a), the Board of Directors shall make all reasonable endeavours to manage the Fund taking into consideration the need to provide adequate resources to complement payments for awards under rule 98, sub-rules 3 and 4 of the Rules of Procedure and Evidence and taking particular account of ongoing legal proceedings that may give rise to such awards.

57. The Trust Fund shall submit to the relevant Chamber, via the Registrar, the draft implementation plan for approval and shall consult the relevant Chamber, as appropriate, on any questions that arise in connection with the implementation of the award.

58. The Trust Fund shall provide updates to the relevant Chamber on progress in the implementation of the award, in accordance with the Chamber’s order. At the end of the implementation period, the Trust Fund shall submit a final narrative and financial report to the relevant Chamber.

**CHAPTER III**

**INDIVIDUAL AWARDS TO VICTIMS PURSUANT TO RULE 98(2)**

*Section I*

*Cases where the Court identifies each beneficiary*

59. Where the Court orders that an award for reparations against a convicted person be deposited with the Trust Fund in accordance with rule 98, sub-rule 2, of the Rules of Procedure and Evidence, the draft implementation plan shall set out the names and locations of victims to whom the award applies, where known (and subject to confidentiality), any procedures that the Trust Fund intends to employ to collect missing details, and methods of disbursement.



*Section II**Cases where the Court does not identify the beneficiaries*

60. Where the names and/or locations of the victims are not known, or where the number of victims is such that it is impossible or impracticable for the Secretariat to determine these with precision, the Secretariat shall set out all relevant demographic/statistical data about the group of victims, as defined in the order of the Court, and shall list options for determining any missing details for approval by the Board of Directors.
61. Such options may include:
- (a) The use of demographic data to determine the members of the beneficiary group; and/or:
  - (b) Targeted outreach to the beneficiary group to invite any potential members of the group who have not already been identified through the reparations process to identify themselves to the Trust Fund, and, where appropriate, these actions may be undertaken in collaboration with interested States, intergovernmental organizations, as well as national or international non-governmental organizations. The Board of Directors may put in place reasonable deadlines for the receipt of communications, taking into account the situation and location of victims.
  - (c) The Secretariat may consult victims or their legal representatives and the families of individual victims, as well as interested persons, interested States and any competent expert or expert organization, in developing these options.

*Section III**Verification*

62. The Secretariat shall verify that any persons who identify themselves to the Trust Fund are in fact members of the beneficiary group, in accordance with any principles set out in the order of the Court.
63. Subject to any stipulations set out in the order of the Court, the Board of Directors shall determine the standard of proof for the verification exercise, having regard to the prevailing circumstances of the beneficiary group and the available evidence.
64. A final list of beneficiaries shall be approved by the Board of Directors.
65. Taking into account the urgent situation of the beneficiaries, the Board of Directors may decide to institute phased or priority verification and disbursement procedures. In such cases, the Board of Directors may prioritize a certain sub-group of victims for verification and disbursement.

*Section IV**Disbursement of reparations awards*

66. The Trust Fund shall determine the modalities for the disbursement of reparations awards to beneficiaries taking into account their present circumstances and locations.
67. The Trust Fund may decide to use intermediaries to facilitate the disbursement of reparations awards, as necessary, where to do so would provide greater access to the beneficiary group and would not create any conflict of interest. Intermediaries may include interested States, intergovernmental organizations, as well as national or international non-governmental organizations working in close proximity with the beneficiary groups.

68. The Secretariat shall put in place procedures to verify that awards were received by beneficiaries, following the implementation of a disbursement programme. Beneficiaries shall be required to acknowledge receipt of the award in writing or by other means of identification, and these acknowledgments shall be stored by the Secretariat. Additional spot checks and monitoring of the receipt of awards should be implemented to avoid unforeseen difficulties or the potential for fraud or corruption.

**CHAPTER IV  
COLLECTIVE AWARDS TO VICTIMS PURSUANT TO RULE 98(3)**

69. Where the Court orders that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate, in accordance with rule 98, sub-rule 3, of the Rules of Procedure and Evidence, the draft implementation plan shall set out the precise nature of the collective award(s), where not already specified by the Court, as well as the methods for its/their implementation. Determinations made in this regard should be approved by the Court.

70. The Board of Directors may consult victims as defined in rule 85 of the Rules of Procedure and Evidence and, where natural persons are concerned, their families, as well as their legal representatives, and may consult any competent expert or expert organization on the nature of the collective award(s) and the methods for its/their implementation.

71. The Trust Fund may identify intermediaries or partners, or invite proposals for the implementation of the award.

72. The Secretariat shall put in place procedures to monitor the implementation of a collective award.

**CHAPTER V  
AWARDS TO AN INTERGOVERNMENTAL, INTERNATIONAL OR  
NATIONAL ORGANIZATION, PURSUANT TO RULE 98(4)**

73. Where the Court orders that an award for reparations against a convicted person be made through the Trust Fund to an intergovernmental, international or national organization, in accordance with rule 98, sub-rule 4, of the Rules of Procedure and Evidence, the draft implementation plan shall set out, where not already specified by the Court:

- (a) The concerned organization(s) and a summary of their relevant expertise;
- (b) A list of the specific functions that the concerned organization(s) is/are to undertake in fulfilment of the Court's order;
- (c) A memorandum of understanding and/or other contractual terms between the Board of Directors and the concerned organization(s) setting out roles and responsibilities, monitoring and oversight.

74. The Secretariat shall oversee the work of the concerned organization(s) in fulfilling the Court's orders, subject to the overall oversight of the Court.

75. The regulations that relate to individual awards to victims pursuant to rule 98, sub-rule 2, and collective awards to victims in accordance with rule 98, sub-rule 3, shall apply mutatis mutandis to the procedures of the Board in implementing rule 98, and sub-rule 4, as appropriate, depending on whether the Court has indicated that the award shall be individual or collective.

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**PART IV  
REPORTING REQUIREMENTS**

76. The Board of Directors shall submit a written annual report on the activities of the Trust Fund to the Committee on Budget and Finance and the External Auditor and the Assembly of States Parties, through its President.

77. The Board of Directors shall also submit:

- (a) Any proposed budget for the Secretariat for review by the Committee on Budget and Finance; and
- (b) The accounts and financial statements of the Trust Fund for review by the External Auditor.

**PART V  
FINAL PROVISIONS**

**CHAPTER I  
AMENDMENTS**

78. Amendments to these Regulations may be proposed by a State Party, by the Court or by the Board of Directors. All proposals to amend these Regulations shall require the approval of the Assembly of States Parties in accordance with article 112(7) of the Statute.

**CHAPTER II  
ENTRY INTO FORCE**

79. These Regulations, and any amendments to them, shall enter into force immediately after their adoption by the Assembly of States Parties.

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

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

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

#### **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 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,

*Recognizing* that the Court continues to rely on sustained and undiminished support by States, international and regional organizations and civil society,

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

*Welcoming* the Bureau's acknowledgement, contained in the oral report of the outgoing President to the fourth session of the Assembly of States Parties, of the useful work achieved by the Bureau's two informal working groups since the third regular session of the Assembly,

*Taking 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 Chairperson of the Committee on Budget and Finance,

*Taking note* of the External Auditor's report on the financial statements of the Court,

*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 fact that the number of States Parties to the Rome Statute of the International Criminal Court has now reached one hundred;
2. *Invites* States that are not yet parties to the Rome Statute to become so as soon as possible;
3. *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 penal law and judicial cooperation with the Court, and in this regard encourages States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;
4. *Decides*, without prejudice to the functions of the Secretary-General of the United Nations in his capacity as depositary of the Rome Statute, 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 *requests* the Bureau to consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties or the States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute, and to report thereon to the Assembly in advance of its fifth session;
5. *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 *calls upon* States to uphold the spirit of the Statute, and to cooperate with the Court in the fulfilment of its mandate;
6. *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;
7. *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;

**B. Institution-building****1. General**

8. *Welcomes* the progress that has been achieved thus far, owing, not least, to the dedication of the Court staff in making the Court fully operational;
9. *Takes note* of the historic importance of the first referral by the Security Council of the United Nations of a situation to the Prosecutor of the International Criminal Court;

10. *Takes note* of the opening of an investigation by the Prosecutor in the situation in Darfur, Sudan, of the referral by the Central African Republic of the situation on its territory to the Prosecutor, of the ongoing investigation in the Democratic Republic of Congo and of the commencement of Pre-Trial proceedings, including several hearings and decisions and the issuance of first warrants of arrest for five senior leaders of the Lord's Resistance Army for Crimes against Humanity and War Crimes committed in Uganda since July 2002;
11. *Takes note also* of the establishment of several joint field presences by the Office of the Prosecutor and the Registry;
12. *Takes further note* of the inauguration of the Deputy Prosecutor (Prosecutions) and the adoption of the Code of Judicial Ethics and *welcomes* the initiation of the strategic planning process of the Court and *invites* the Court to engage with the Bureau on this process;
13. *Welcomes* the conclusion of the Relationship Agreement between the International Criminal Court and the United Nations, as well as other agreements of the Court or the Office of the Prosecutor and *looks forward* to the early conclusion of cooperation agreements with the African Union and European Union;
14. *Welcomes also* the presentation of the first report of the President of the Court to the General Assembly of the United Nations;
15. *Takes note* of the latest report on the activities of the Court to the Assembly of States Parties<sup>1</sup>;
16. *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 of persons to the Court and protecting victims and witnesses and *encourages* international and regional organisations as well as civil society to support the Court and States in their respective efforts to that end as appropriate;
17. *Appeals* to all States in which personnel of the Court are deployed and to all others on whom such personnel may rely, 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;
18. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer as soon as possible and in full their assessed contributions in accordance with relevant decisions taken by the Assembly of States Parties;
19. *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;
20. *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;

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<sup>1</sup> See document ICC-ASP/4/16.

21. *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;
22. *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 Court to intensify such outreach activities and *requests* the Court to present a detailed strategic plan in relation to its outreach activities to the Assembly of States Parties, in advance of its fifth session;
23. *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, and *decides* to invite the Bureau, in consultation with the Court, to submit proposals to improve equitable geographical representation and gender balance in the recruitment of staff members, to the Assembly in advance of its fifth session;
24. *Decides* to invite the Court, in consultation with the Bureau, to submit proposals about an independent oversight mechanism;
25. *Takes note* of the “Option paper by the Bureau on the Establishment of a New York Liaison Office of the Court”<sup>2</sup>, *decides* to establish a New York Liaison Office to serve the purpose, and have the essential functions and structure set out in that paper, *urges* the Court to ensure that the costs associated with the New York Liaison Office are kept to a minimum and *requests* it to report to the fifth session of the Assembly on the operation of the New York Liaison Office;

## **2. Protection of the official name and abbreviation of the Court**

26. *Takes note* of the steps taken by the Court to protect the name, abbreviations and emblems of the Court with the World Intellectual Property Organization (WIPO) as well as the transmission by WIPO, to all States Parties of the Paris Convention for the Protection of Industrial Property and to the Members of the World Trade Organization (WTO), of the request for protection of the name, abbreviations and emblems of the Court;
27. *Urges* States to take the necessary measures to afford such protection in accordance with their national laws;
28. *Recommends* that such measures be similarly undertaken in respect of any emblem, logo, seal, flag or insignia adopted by the Assembly or the Court;

## **3. Administration**

29. *Takes note* of the important work done by the Committee on Budget and Finance and *reaffirms* the independence of the members of the Committee;
30. *Recalls* that, according to its Rules of Procedure<sup>3</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;

<sup>2</sup> See document ICC-ASP/4/6.

<sup>3</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), Annex III (ICC-ASP/2/10).

31. *Decides* to amend Resolution ICC-ASP/1/res.10 on the Selection of the staff of the International Criminal Court as contained in the first annex to the present resolution;
32. *Takes note of* the Staff Rules proposed by the Registrar pursuant to Staff Regulation 12.2<sup>4</sup>;
33. *Establishes* the guidelines for the selection and engagement of gratis personnel at the International Criminal Court as proposed by the Registrar in accordance with article 44, paragraph 4 of the Rome Statute<sup>5</sup>, contained in the second annex to the present resolution;
34. *Takes note of* the report of the Office of the Prosecutor regarding conditions of service and compensation of the Prosecutor and Deputy Prosecutors<sup>6</sup> as well as the request of the Committee on Budget and Finance to the Court to report on the matter, including some costed options, at its next session and *requests* the Committee to report thereon before the fifth session of the Assembly of States Parties;

#### **4. Host country**

35. *Takes note with appreciation of* the statement made by the representative of the host country on host country issues, more particularly on arrangements for the interim and permanent premises of the Court;
36. *Appreciates* the further progress made in the negotiations on the headquarters agreement between the Court and the host country, and *urges* the host country and the Court to finalize negotiations on this agreement;

#### **C. Assembly of States Parties**

37. *Takes note of* the report of the Special Working Group on the Crime of Aggression<sup>7</sup>, *expresses its appreciation* to the Liechtenstein Institute on Self-Determination at Princeton University for hosting an informal intersessional meeting of the Special Working Group, *recognizes* that the Special Working Group needs to conclude its work at least 12 months prior to 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 and *decides* 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, and hold intersessional meetings, as appropriate;
38. *Decides* to make a provisional change to the terms of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 for the year 2006 to allow other developing States to draw on the fund so as to enhance the possibility of such States to participate in the activities of the Assembly of States Parties in meetings in, but not limited to, The Hague, and requests the Bureau to review the terms of the trust fund and make recommendations on application criteria for accessing the fund to the fifth session of the Assembly of States Parties, through the Committee on Budget and Finance with a view to maximising its effectiveness within the resources available, *calls upon* States,

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<sup>4</sup> See document ICC-ASP/4/3.

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

<sup>6</sup> See document ICC-ASP/3/12, annex II.

<sup>7</sup> See document ICC-ASP/4/SWGCA/INF.1.



international organizations, individuals, corporations and other entities to contribute to the fund and *expresses its appreciation* to those that have done so;

39. *Requests* the Registrar to present a report in time for the next meeting of the Committee on Budget and Finance on the implications of changing the financial period of the Court to establish the most efficient financial period for the Court;

40. *Takes note* of the Report of the Bureau on the arrears of States Parties and the recommendations therein<sup>8</sup> and *invites* the Bureau to report back to the fifth session of the Assembly of States Parties on the status of arrears including on suggestions, if necessary, of measures to promote the timely, full and unconditional payment of assessed contributions and advances towards the costs of the Court;

41. *Recalls* that pursuant to article 112, paragraph 8, of the Statute and regulations 5.5 and 5.6 of the Financial Regulations and Rules of the Court<sup>9</sup>, a State Party which is in arrears in the payment of its assessed contributions and advances towards the costs of the Court may lose its vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the assessed contributions and advances due from it for the preceding two full years;

42. *Urges* all States Parties in arrears requesting exemption under article 112, paragraph 8, of the Rome Statute to provide the fullest possible supporting information, such as information on economic aggregates, government revenues and expenditure, foreign exchange resources, indebtedness, difficulties in meeting domestic or international financial obligations and any other information that might support the claim that failure to make necessary payments had been attributable to conditions beyond the control of the States Parties;

43. *Decides* that requests for exemption under article 112, paragraph 8, of the Rome Statute shall be submitted by States Parties to the Secretariat of the Assembly at least one month before the session of the Committee on Budget and Finance, so as to facilitate the Committee's review of the requests;

44. *Decides* that the Committee on Budget and Finance shall advise the Assembly of States Parties before the Assembly decides on any requests for exemption under article 112, paragraph 8, of the Rome Statute;

45. *Further decides* that the above decisions concerning exemption under article 112, paragraph 8, of the Rome Statute, shall apply from the fifth session of the Assembly of States Parties but that for the fourth session including any resumed session thereof, the Assembly may approve a request for exemption from a State Party directly and without the information requested in paragraph 42;

46. *Requests* the Secretariat of the Assembly of States Parties to advise the States Parties, based on the recommendations of the Committee on Budget and Finance, each year in January, and the President at the opening of each session, of the States that are ineligible to vote and of States that have requested an exemption from the loss of voting rights;

47. *Further 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;

48. *Requests* the Bureau of the Assembly of States Parties to adopt guidelines for submission of documentation to the Assembly and to convey them to the Court;

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<sup>8</sup> See document ICC-ASP/4/14.

<sup>9</sup> As amended by resolution ICC-ASP/4/Res.10.

49. *Also requests* the Bureau, pursuant to article 112, paragraph 3(c), of the Rome Statute, and while respecting prosecutorial and judicial independence and the special role of the Committee on Budget and Finance under resolution ICC-ASP/1/Res.4, in relation to the subject of intensification of dialogue between the Assembly of States Parties and the Court, to continue to focus upon those priority issues which the Bureau considers most appropriate, *authorizes*, where necessary, the Bureau to create such mechanisms as it considers appropriate in whichever location it views as most appropriate and *invites* the Bureau to report back informally to the Assembly of States Parties in relation to each priority issue;
50. *Welcomes* the decision of the Bureau to strengthen its presence in The Hague with the nomination of the Austrian and South African ambassadors in The Hague for the positions of Vice President of the Assembly and invites the Bureau to explore ways to further improve communication and coordination with its subsidiary components;
51. *Decides* that the Committee on Budget and Finance will hold its sessions in The Hague, from 24 to 26 April 2006 and for a further five-day session to be determined by the Committee;
52. *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;
53. *Decides* 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;
54. *Requests* the Bureau to fix specific dates and inform all States Parties accordingly.

## **Annex I**

### **Amendment to Resolution ICC-ASP/1/Res.10**

*Insert at the end of paragraph 4 of the Annex to Resolution ICC-ASP/1/Res.10:*

“For the purpose of recruitment, candidates who could be regarded as nationals of more than one State shall be considered nationals of the State in which they ordinarily exercise civil and political rights.”

## **Annex II**

### **Guidelines for the selection and engagement of gratis personnel at the International Criminal Court**

#### **Section 1 Scope of application**

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

#### **Section 2 Conditions under which gratis personnel may be accepted**

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

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

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

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

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

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

#### **Section 4 Selection**

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

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

#### **Section 5 Functions**

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

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

#### **Section 6 Duration of functions**

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

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

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

#### **Section 7 Status**

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

## **Section 8**

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

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

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

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

## **Section 9**

### **Annual leave**

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

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

## **Section 10**

### **Performance of functions**

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

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

## **Section 11**

### **Standards of conduct**

11.1. Gratis personnel shall maintain the highest standards of confidentiality in the discharge of their duties, in accordance with the Staff Regulations, the Staff Rules and any other administrative issuances of the Court. Gratis personnel may be required to sign additional confidentiality undertakings upon commencement of duty.

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

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

### **Section 12 Accountability**

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

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

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

### **Section 13 Third-party claims**

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

### **Section 14 Agreement with the Court**

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

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

**Section 15**  
**Implementation of the present guidelines**

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

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

**Section 16**  
**Final provisions**

The present guidelines shall enter into force on 3<sup>rd</sup> December 2006.



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

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

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

#### **Procedure for filling vacancies in the Board of Directors of the Trust Fund for Victims**

*The Assembly of States Parties,*

*Recalling* its resolution ICC-ASP/1/Res.6 of 9 September 2002 on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims,

*Wishing* to ensure a full membership of the Board of Directors of the Trust Fund for the benefit of victims,

*Decides* to amend paragraph 3 of the annex by adding the following to the end of the paragraph:

“In the event of a vacancy, an election shall be held in accordance with the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims. The procedure shall apply *mutatis mutandis*, subject to the following provisions:

- (a) The Bureau of the Assembly of States Parties may fix a nomination period which is shorter than the one used for other elections.
- (b) The Bureau of the Assembly of States Parties may elect the member.
- (c) A member elected to fill a vacancy shall serve for the remainder of the predecessor’s term and may be re-elected once.”

## **Resolution ICC-ASP/4/Res.6**

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### **ICC-ASP/4/Res.6**

#### **Procedure for filling vacancies in the Committee on Budget and Finance**

*The Assembly of States Parties,*

*Recalling* its resolution ICC-ASP/1/Res.4 of 3 September 2002 on the establishment of the Committee on Budget and Finance, as well as the amendment introduced by resolution ICC-ASP/2/Res.5 of 12 September 2003,

*Wishing* to ensure a full membership of the Committee on Budget and Finance,

*Decides* to amend paragraph 2 of the annex to its resolution ICC-ASP/1/Res.4 of 3 September 2002, by adding the following to the end of the paragraph:

“In the event of a vacancy, an election shall be held in accordance with the procedure for the nomination and election of members of the Committee on Budget and Finance. The procedure shall apply *mutatis mutandis*, subject to the following provisions:

- (a) The Bureau of the Assembly of States Parties may fix a nomination period which is shorter than the one used for other elections.
- (b) The Bureau of the Assembly of States Parties may elect the member.
- (c) A member elected to fill a vacancy shall serve for the remainder of the predecessor’s term and may be re-elected.”

## **Resolution ICC-ASP/4/Res.7**

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### **ICC-ASP/4/Res.7**

#### **Amendment regarding the term of office of members of the Board of Directors of the Trust Fund for Victims**

*The Assembly of States Parties,*

*Recalling* its resolution ICC-ASP/1/Res.6 of 9 September 2002 on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims,

*Noting* that, pursuant to the elections held at the second session of the Assembly, the three year term of office of the members of the Board of Directors of the Trust Fund for Victims shall expire on 11 September 2006, which is approximately two months before the fifth session of the Assembly,

*Wishing* to ensure the necessary continuity in the work of the Board of Directors,

*Decides* to amend paragraph 2 of the annex by adding the following to the end of the paragraph:

“If the term of office of the members of the Board would otherwise expire before the date of the session when the Assembly would proceed with an election for members of the Board, the members shall continue to serve until the date of the election.”

## Resolution ICC-ASP/4/Res.8

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### ICC-ASP/4/Res.8

#### **Programme budget for 2006, the Working Capital Fund for 2006, scale of assessments for the apportionment of expenses of the International Criminal Court and financing appropriations for the year 2006**

*The Assembly of States Parties,*

*Having considered the proposed programme budget for 2006 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 fifth session,<sup>1</sup>*

#### **A. Programme budget for 2006**

1. *Approves appropriations totalling €80,417,200 for the following appropriation sections:*

<i>Appropriation section</i>	<i>Euros</i>
Major Programme I – Judiciary	7,751,200
Major Programme II – Office of the Prosecutor	20,876,300
Major Programme III – Registry	46,608,300
Major Programme IV – Secretariat of the Assembly of States Parties	4,075,600
Major Programme V – Investment in the Court's Premises	1,105,800
<b>Total</b>	<b>80,417,200</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	11	14			28
P-4	2	23	27	2		54
P-3	3	38	60			101
P-2	19	41	38			98
P-1	1	13	5			19
<i>Subtotal</i>	<i>28</i>	<i>131</i>	<i>150</i>	<i>3</i>		<i>312</i>
GS-PL	1	1	22	3		27
GS-OL	15	61	208	1		285
<i>Subtotal</i>	<i>16</i>	<i>62</i>	<i>230</i>	<i>4</i>		<i>312</i>
<b>Total</b>	<b>44</b>	<b>193</b>	<b>380</b>	<b>7</b>		<b>624</b>

<sup>1</sup> See Part II.B.6 (b) of this report.

**B. Working Capital Fund for 2006**

*The Assembly of States Parties,*

*Resolves* that the Working Capital Fund for 2006 shall be established in the amount of €6,701,400, 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 2006, the International Criminal Court shall adopt the scale of assessments of the United Nations applicable for the year 2006, 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.

**D. Financing of appropriations for the year 2006**

*The Assembly of States Parties,*

*Resolves* that, for the year 2006, budget appropriations amounting to €80,417,200 and the amount for the Working Capital Fund of €6,701,400, 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.

## Resolution ICC-ASP/4/Res.9

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### ICC-ASP/4/Res.9 Pension scheme for judges

*The Assembly of States Parties,*

*Being mindful* of the long-term budgetary consequences of the pension scheme regulations for judges; and

*Having carefully considered* the report of the International Criminal Court and the related observations and recommendations of the Committee on Budget and Finance contained in the report on the work of its fifth session;<sup>1</sup>

1. *Decides* that the pension scheme of the judges be accounted for and funded on an accrual basis;
2. *Further decides* that the estimated costs of the accrual for the period from 2003 to 31 December 2006 in the amount of up to € 8 million be funded by applying the provisional savings of the 2005 budget;
3. *Approves*, thus, in line with Financial Regulation 4.8, an appropriation transfer of up to € 4 million from Major Programme II – Office of the Prosecutor – to Major Programme I – Judiciary, and up to €4 million from Major Programme III – Registry – to Major Programme I – Judiciary;
4. *Decides* that the pension scheme be administered by an external party and requests the Court to report to the Committee on Budget and Finance on the most cost-effective option for administering the pension scheme, including the option of the United Nations Joint Staff Pension Fund;
5. *Determines* that the pension scheme applicable to the currently serving judges apply provisionally to the judges to be elected in 2006;
6. *Decides* to refer to the Committee on Budget and Finance for its consideration and report the issue of the pension terms applicable to judges. The Committee on Budget and Finance should thereby have regard to paragraph 98 contained in the report on the work of its fifth session<sup>2</sup> and to the pension regimes applicable to judges in other international courts, in order to provide the Assembly with the tools to make an informed decision on the pension terms to be applied to the judges;
7. *Requests* the Committee on Budget and Finance to consider further the issue of whether existing pensions payable to individual judges who have served at other international tribunals and organizations should be taken into account in determining the pensions payable by the Court – while also examining the practice of such tribunals and organizations themselves in relation to this issue – and to report its findings to States Parties in advance of the fifth session of the Assembly.

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<sup>1</sup> See Part II.B.6 (b) of this report.

<sup>2</sup> *Ibid.*

## Resolution ICC-ASP/4/Res.10

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### ICC-ASP/4/Res.10

#### **Amendments to the Financial Regulations and Rules**

*The Assembly of States Parties,*

*Recalling* paragraph 5 of Part B of resolution ICC-ASP/3/Res. 4, of 10 September 2004, in which the Assembly of States Parties requested the Court to submit through the Committee on Budget and Finance, a report on changes to the Financial Regulations and Rules which might be necessitated by the establishment of the Contingency Fund,

*Having* considered the report of the Committee on Budget and Finance,<sup>1</sup>

*Approves* the following amendments to the Financial Regulations and Rules:

#### **Amendments to regulation 5.5**

**After «Working Capital Fund» insert the following:**

“or the Contingency Fund if the Assembly of States Parties has determined in accordance with regulation 6.6 that the Fund shall be financed from assessed contributions...”

#### **Amendments to regulation 5.5 (b)**

**After «Working Capital Fund» insert the following:**

“or the Contingency Fund”

#### **Amendments to regulation 5.7**

**After «Working Capital Fund» in both instances insert the following:**

“and, as appropriate, to the Contingency Fund,”

<sup>1</sup> See Part II.B.6 (b) of this report.

## **Resolution ICC-ASP/4/Res.11**

*Adopted at the 4th plenary meeting on 3 December 2005, by consensus*

### **ICC-ASP/4/Res.11**

#### **Transfer of funds from Major Programme III to Major Programme V under the 2005 programme budget**

*The Assembly of States Parties,*

*Noting* that the Court requires €800,000 in 2005 to fund the construction costs of the second courtroom and that the appropriation in Major Programme V – Investment in the Court’s Premises has been exhausted,

*Considering* the proposal of the Court that the required €800,000 be transferred from Major Programme III – Registry – to Major Programme V – Investment in the Court’s Premises,

*Bearing in mind* that under Financial Regulation 4.8, such transfer would need the approval of the Assembly of States Parties,

*Having considered* the recommendation contained in paragraph 79 of the Report of the Committee on Budget and Finance on the work of its fifth session,<sup>1</sup>

*Approves* the transfer of the amount of €800,000 from the appropriation of Major Programme III – Registry – to Major Programme V – Investment in the Court’s Premises in 2005.

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<sup>1</sup> See Part II.B.6 (b) of this report.