Understanding the International Criminal Court
Understanding the International Criminal Court
Table of Contents

I. The International Criminal Court at a glance 3

II. Structure of the ICC 9

III. Crimes within the jurisdiction of the ICC 13

IV. How does the ICC operate? 17
   A. Referrals, analyses and investigations 17
   B. Arrests 19
   C. The rights of suspects 23
   D. Confirmation of charges before trial 25
   E. The trial 27
   F. Judgment and sentence 31
   G. Appeals and revision 32

V. Victims’ Participation 35

VI. Witness Protection 39

VII. Further information about the ICC 43
“(...) the most serious crimes of concern to the international community as a whole must not go unpunished (...)”

Preamble to the Rome Statute of the International Criminal Court

On 17 July 1998, 120 States adopted a statute in Rome - known as the Rome Statute of the International Criminal Court (“the Rome Statute”) - establishing the International Criminal Court. For the first time in the history of humankind, States decided to accept the jurisdiction of a permanent international criminal court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on 1 July 2002.

The International Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The International Criminal Court can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.

The primary mission of the International Criminal Court is to help put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

A well-informed public can contribute to guaranteeing lasting respect for and the enforcement of international justice. The purpose of this booklet is to promote a better understanding of the International Criminal Court by providing answers to the most frequently asked questions about the Court.
I. The International Criminal Court at a glance

1. What is the International Criminal Court?
The International Criminal Court (“the ICC” or “the Court”) is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

2. Why was the ICC established?
Some of the most heinous crimes were committed during the conflicts which marked the twentieth century. Unfortunately, many of these violations of international law have remained unpunished. The Nuremberg and Tokyo tribunals were established in the wake of the Second World War. In 1948, when the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, the United Nations General Assembly recognised the need for a permanent international court to deal with the kinds of atrocities which had just been perpetrated.

The idea of a system of international criminal justice re-emerged after the end of the Cold War. However, while negotiations on the ICC Statute were underway at the United Nations, the world was witnessing the commission of heinous crimes in the territory of the former Yugoslavia and in Rwanda. In response to these atrocities, the United Nations Security Council established an *ad hoc* tribunal for each of these situations.

These events undoubtedly had a most significant impact on the decision to convene the conference which established the ICC in Rome in the summer of 1998.

3. What is the Rome Statute?
On 17 July 1998, a conference of 160 States established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. Among other things, it sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties.

The Assembly of States Parties, which meets at least once a year, sets the general policies for the administration of the Court and reviews its activities. During those meetings, the States Parties review the activities of the working groups established by the States and any other issues relevant to the ICC, discuss new projects and adopt the ICC’s annual budget.

4. How many countries have ratified the Rome Statute?
Over 120 countries are States Parties to the Rome Statute, representing all regions: Africa, the Asia-Pacific, Eastern Europe, Latin America and the Caribbean, as well as Western European and North America.
5. Where is the seat of the Court?
The seat of the Court is in The Hague in the Netherlands. The Rome Statute provides that the Court may sit elsewhere whenever the judges consider it desirable. The Court has also set up offices in the areas where it is conducting investigations.

6. How is the Court funded?
The Court is funded by contributions from the States Parties and by voluntary contributions from governments, international organisations, individuals, corporations and other entities.

7. How does the ICC differ from other courts?
The ICC is a permanent autonomous court, whereas the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as other similar courts established within the framework of the United Nations to deal with specific situations only have a limited mandate and jurisdiction. The ICC, which tries individuals, is also different from the International Court of Justice, which is the principal judicial organ of the United Nations for the settlement of disputes between States. The ad hoc tribunal for the former Yugoslavia and the International Court of Justice also have their seats in The Hague.

8. Is the ICC an office or agency of the United Nations?
No. The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations. On 4 October 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

9. Is the ICC meant to replace national courts?
No. The ICC does not replace national criminal justice systems; rather, it complements them. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot or is unwilling genuinely to do so. This might occur where proceedings are unduly delayed or are intended to shield individuals from their criminal responsibility. This is known as the principle of complementarity, under which priority is given to national systems. States retain primary responsibility for trying the perpetrators of the most serious of crimes.

10. Under what conditions does the ICC exercise its jurisdiction?
When a State becomes a party to the Rome Statute, it agrees to submit itself to the jurisdiction of the ICC with respect to the crimes enumerated in the Statute. The Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party. Also, a State not party to the Statute may decide to accept the jurisdiction of the ICC. These conditions do not apply when the Security Council, acting under Chapter VII of the United Nations Charter, refers a situation to the Office of the Prosecutor.
11. Is the ICC’s jurisdiction time bound?
The ICC has jurisdiction only with respect to events which occurred after the entry into force of its Statute on 1 July 2002. If a State becomes a party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State has made a declaration accepting the jurisdiction of the ICC retroactively. However, the Court cannot exercise jurisdiction with respect to events which occurred before 1 July 2002. For a new State Party, the Statute enters into force on the first day of the month after the 60th day following the date of the deposit of its instrument of ratification, acceptance, approval or accession.

12. Who can be prosecuted before the ICC?
The ICC prosecutes individuals, not groups or States. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. In fact, the Office of the Prosecutor’s prosecutorial policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes, and does not take into account any official position that may be held by the alleged perpetrators.

13. Can the ICC try children?
No. The Court has no jurisdiction with respect to any person who was under the age of 18 when the crimes concerned were committed.

14. If those who bear the greatest responsibility hold high political or military office, are they not exempt from prosecution? Can they not be granted immunity or amnesty?
No one is exempt from prosecution because of his or her current functions or because of the position he or she held at the time the crimes concerned were committed.

Acting as a Head of State or Government, minister or parliamentarian does not exempt anyone from criminal responsibility before the ICC.

In some circumstances, a person in a position of authority may even be held responsible for crimes committed by those acting under his or her command or orders.

Likewise, amnesty cannot be used as a defence before the ICC. As such, it cannot bar the Court from exercising its jurisdiction.

15. If the ICC issues an arrest warrant against a current or former head of state, is it for political reasons?
No. The ICC is a judicial institution with an exclusively judicial mandate. It is not subject to political control. As an independent court, its decisions are based on legal criteria and rendered by impartial judges in accordance with the provisions of its founding treaty, the Rome Statute, and other legal texts governing the work of the Court.
16. There are allegations that the ICC is only targeting African countries. Is that true?

No. The ICC is concerned with countries that have accepted the Court’s jurisdiction and these are in all continents.

African countries made great contributions to the establishment of the Court and influenced the decision to have an independent Office of the Prosecutor. In 1997, the Southern African Development Community (SADC) was very active in supporting the proposed Court and its declaration on the matter was endorsed in February 1998, by the participants of the African Conference meeting in Dakar, Senegal, through the “Declaration on the Establishment of the International Criminal Court”. At the Rome Conference itself, the most meaningful declarations about the Court were made by Africans. Without African support the Rome Statute might never have been adopted. In fact, Africa is the most heavily represented region in the Court’s membership. The trust and support comes not only from the governments, but also from civil society organisations. The Court has also benefited from the professional experience of Africans and a number of Africans occupy high-level positions in all organs of the Court.

The majority of ICC investigations were opened at the request of or after consultation with African governments. Other investigations were opened following a referral by the United Nations Security Council, where African governments are also represented.

Finally, in addition to its formal investigations, the Court’s Office of the Prosecutor is conducting preliminary examinations in a number of countries across four continents.
Structure of the Court: Four Organs

- **Presidency**
  Head of the Court

- **Chambers**
  Ensuring fair trials

- **Office of the Prosecutor**
  Conducting investigations and prosecutions

- **Registry**
  Supporting the Court
II. Structure of the ICC

The ICC is composed of four organs: the Presidency, the Chambers, the Office of the Prosecutor and the Registry. Each of these organs has a specific role and mandate.

17. What does the Presidency do?
The Presidency consists of three judges (the President and two Vice-Presidents) elected by an absolute majority of the 18 judges of the Court for a maximum of two, three-year terms.

The Presidency is responsible for the administration of the Court, with the exception of the Office of the Prosecutor. It represents the Court to the outside world and helps with the organisation of the work of the judges. The Presidency is also responsible for carrying out other tasks, such as ensuring the enforcement of sentences imposed by the Court.

18. What do the Chambers do?
The 18 judges, including the three judges of the Presidency, are assigned to the Court’s three judicial divisions: the Pre-Trial Division (composed of seven judges), the Trial Division (composed of six judges), and the Appeals Division (composed of five judges). They are assigned to the following Chambers: the Pre-Trial Chambers (each composed of one or three judges), the Trial Chambers (each composed of three judges) and the Appeals Chamber (composed of the five judges of the Appeals Division). The roles and responsibilities of the judges are outlined below, by category of Pre-Trial, Trial, and Appeals Chambers.

19. How are the judges elected?
The judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court’s judicial activity.

The judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights. They have extensive expertise on specific issues, such as violence against women or children.

The election of the judges takes into account the need for the representation of the principal legal systems of the world, a fair representation of men and women, and equitable geographical distribution.

The judges ensure the fairness of proceedings and the proper administration of justice.
20. What is the role of the Pre-Trial Chambers?
The Pre-Trial Chambers, each of which is composed of either one or three judges, resolve all issues which arise before the trial phase begins. Their role is essentially to supervise how the Office of the Prosecutor carries out its investigatory and prosecutorial activities, to guarantee the rights of suspects, victims and witnesses during the investigatory phase, and to ensure the integrity of the proceedings. The Pre-Trial Chambers then decide whether or not to issue warrants of arrest or summons to appear at the Office of the Prosecutor’s request and whether or not to confirm the charges against a person suspected of a crime. They may also decide on the admissibility of situations and cases and on the participation of victims at the pre-trial stage.

21. What is the role of the Trial Chambers?
Once an arrest warrant is issued, the alleged perpetrator arrested and the charges confirmed by a Pre-Trial Chamber, the Presidency constitutes a Trial Chamber composed of three judges to try the case.

A Trial Chamber’s primary function is to ensure that trials are fair and expeditious and are conducted with full respect for the rights of the accused and due regard for the protection of the victims and the witnesses. It also rules on the participation of victims at the trial stage.

The Trial Chamber determines whether an accused is innocent or guilty of the charges and, if he or she is found guilty, may impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment. Financial penalties may also be imposed. A Trial Chamber may thus order a convicted person to make reparations for the harm suffered by the victims, including compensation, restitution or rehabilitation.

22. What are the main functions of the Appeals Chamber?
The Appeals Chamber is composed of the President of the Court and four other judges. All parties to the trial may appeal or seek leave to appeal decisions of the Pre-Trial and Trial Chambers. The Appeals Chamber may uphold, reverse or amend the decision appealed from, including judgments and sentencing decisions, and may even order a new trial before a different Trial Chamber.

It may also revise a final judgment of conviction or sentence.

23. What does the Office of the Prosecutor do?
The Office of the Prosecutor is an independent organ of the Court. Its mandate is to receive and analyse information on situations or alleged crimes within the jurisdiction of the ICC, to analyse situations referred to it in order to determine whether there is a reasonable basis to initiate an investigation into a crime of genocide, crimes against humanity, war crimes or the crime of aggression, and to bring the perpetrators of these crimes before the Court.

In order to fulfil its mandate, the Office of the Prosecutor is composed of three divisions: (i) the Investigation Division, which is responsible for conducting investigations (including gathering and examining evidence, questioning persons under investigation as well as victims and witnesses). In
this respect, for the purpose of establishing the truth, the Statute requires the Office of the Prosecutor to investigate incriminating and exonerating circumstances equally. (ii) The Prosecution Division has a role in the investigative process, but its principal responsibility is litigating cases before the various Chambers of the Court. (iii) The Jurisdiction, Complementarity and Cooperation Division, which, with the support of the Investigation Division, assesses information received and situations referred to the Court, analyses situations and cases to determine their admissibility and helps secure the cooperation required by the Office of the Prosecutor in order to fulfil its mandate.

24. What does the Registry do?

The Registry helps the Court to conduct fair, impartial and public trials. The core function of the Registry is to provide administrative and operational support to the Chambers and the Office of the Prosecutor. It also supports the Registrar’s activities in relation to defence, victims, communication and security matters. It ensures that the Court is properly serviced and develops effective mechanisms for assisting victims, witnesses and the defence in order to safeguard their rights under the Rome Statute and the Rules of Procedure and Evidence.

As the Court’s official channel of communication, the Registry also has primary responsibility for the ICC’s public information and outreach activities.
III. Crimes within the jurisdiction of the ICC

25. Which crimes fall within the jurisdiction of the ICC?
The mandate of the Court is to try individuals (rather than States), and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the Court’s jurisdiction over the latter are fulfilled.

26. What is genocide?
According to the Rome Statute, “genocide” means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:
- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

27. What are crimes against humanity?
“Crimes against humanity” include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of population;
- imprisonment;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds;
- enforced disappearance of persons;
- the crime of apartheid;
- other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.
28. What are war crimes?
“War crimes” include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts “not of an international character” listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale. These prohibited acts include:
- murder;
- mutilation, cruel treatment and torture;
- taking of hostages;
- intentionally directing attacks against the civilian population;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals;
- pillaging;
- rape, sexual slavery, forced pregnancy or any other form of sexual violence;
- conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

29. What is a crime of aggression?
As adopted by the Assembly of States Parties during the Review Conference of the Rome Statute, held in Kampala (Uganda) between 31 May and 11 June 2010, a “crime of aggression” means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State.

The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations.

The perpetrator of the act of aggression is a person who is in a position effectively to exercise control over or to direct the political or military action of a State.

30. When will the Court have jurisdiction over the crime of aggression?
The Court may exercise jurisdiction over the crime of aggression, subject to a decision to be taken after 1 January 2017 by a two-thirds majority of States Parties and subject to the ratification of the amendment concerning this crime by at least 30 States Parties.
31. Under which conditions would the Court be able to exercise its jurisdiction over the crime of aggression?

The Court will be able to exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction.

Except when the situation is referred to the Court by the United Nations Security Council, the Court has no jurisdiction over crimes of aggression committed in the territory of a State which is not party to the Rome Statute or by its citizens.

The Court will have jurisdiction only over crimes of aggression committed one year after 30 States Parties ratify or accept the amendments of the Rome Statute in relation with the crime of aggression, which were adopted by the Assembly of States Parties in June 2010.

32. How would an investigation into a crime of aggression be opened?

If the United Nations Security Council determines that an act of aggression has been committed, the ICC Prosecutor can decide to open an investigation, under the conditions mentioned above.

Otherwise, the Prosecution may examine the situation and, based on its assessment, may notify the United Nations Secretary General of the situation.

If, within six months of being notified by the Prosecution, the United Nations Security Council does not make a determination on whether or not an act of aggression has been committed, the Prosecutor may still proceed with an investigation into a crime of aggression, subject to authorisation by the ICC’s Pre-Trial Division.
IV. How does the ICC operate?

A. Referrals, analyses and investigations

33. How do cases come before the Court?
Any State Party to the Rome Statute can request the Office of the Prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Office of the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the Court.

34. Can the Prosecutor decide on his own initiative to open an investigation?
Yes, if the Office of the Prosecutor receives reliable information about crimes involving nationals of a State Party or of a State which has accepted the jurisdiction of the ICC, or about crimes committed in the territory of such a State, and concludes that there is a reasonable basis to proceed with an investigation. Such information can be provided by individuals, intergovernmental or non-governmental organisations, or any other reliable sources. The Prosecution must, however, obtain permission from the Pre-Trial Chamber judges before initiating an investigation under such circumstances.

35. What happens when a situation is referred to the ICC for investigation?
The Prosecutor determines whether, in his or her opinion, the Court has jurisdiction with respect to the alleged crimes. Following a thorough analysis of the available information, the Prosecution decides whether there is a reasonable basis to proceed with an investigation. Thus, it must establish whether the crime of genocide, crimes against humanity or war crimes may have been committed and, if so, whether they were committed after 1 July 2002. The Prosecution must also ascertain whether any national authorities are conducting a genuine investigation or trial of the alleged perpetrators of the crimes. Lastly, it must notify the States Parties and other States which may have jurisdiction of its intention to initiate an investigation.

36. How is an investigation conducted?
The Office of the Prosecutor sends its investigators to collect evidence in areas where crimes are alleged to have been committed. The investigators must be careful not to create any risk to the victims and witnesses. The Office of the Prosecutor also requests the cooperation and assistance of States and international organisations. The investigators look for evidence of a suspect’s guilt or innocence.

37. Will the ICC prosecute all persons suspected of committing the most serious crimes?
No. The Court will not be able to bring to justice every person suspected of committing crimes of concern to the international community. The prosecutorial policy of the Office of the Prosecutor is to focus its investigations and prosecutions on those who, having regard to the evidence gathered, bear the greatest responsibility for such crimes.

38. Can other courts try the perpetrators that the ICC does not prosecute?
Under the principle of complementarity, national judicial systems retain their responsibility for trying perpetrators of crimes.
B. Arrests

39. Who has the power to issue a warrant of arrest or a summons to appear?
After the initiation of an investigation, only a Pre-Trial Chamber may, at the request of the Prosecution, issue a warrant of arrest or summons to appear if there are reasonable grounds to believe that the person concerned has committed a crime within the ICC’s jurisdiction.

40. What information do the judges need from the Prosecution before they can issue a warrant of arrest or a summons to appear?
When the Prosecution requests the issuance of a warrant of arrest or summons to appear, it must provide the judges with the following information:
- the name of the person;
- a description of the crimes the person is believed to have committed;
- a concise summary of the facts (the acts alleged to be crimes);
- a summary of the evidence against the person;
- the reasons why the Prosecution believes that it is necessary to arrest the person.

41. What reasons may justify the issuing of a warrant of arrest?
The judges will issue a warrant of arrest if it appears necessary to ensure that the person will actually appear at trial, that he or she will not obstruct or endanger the investigation or the Court’s proceedings, or to prevent the person from continuing to commit crimes.

42. What happens after a warrant of arrest is issued?
The Registrar transmits requests for cooperation seeking the arrest and surrender of the suspect to the relevant State or to other States, depending on the decision of the judges in each case.

Once the person is arrested and the Court is so informed, the Court ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

43. Does the ICC have the power to arrest suspects?
The Court does not have its own police force. Accordingly, it relies on State co-operation, which is essential to the arrest and surrender of suspects.

According to the Rome Statute, States Parties shall cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

44. Who has to execute the warrants of arrest?
The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of Court’s orders.
States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties.

When the Court’s jurisdiction is triggered by the Security Council, the duty to cooperate extends to all UN Member States, regardless of whether or not they are a Party to the Statute. The crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

45. What happens after a person is arrested?
An arrested person is brought promptly before the competent judicial authority in the custodial State, which determines whether the warrant is indeed for the arrested person, whether the person was arrested consistently with due process and whether the person’s rights have been respected. Once an order for surrender is issued, the person is delivered to the Court, and held at the Detention Centre in The Hague, The Netherlands.

46. What are the conditions of detention at the Detention Centre in The Hague?
The ICC Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

At the ICC Detention Centre, the daily schedule affords the detainees the opportunity to take walks in the courtyard, exercise, receive medical care, take part in manual activities and have access to the facilities at their disposal for the preparation of their defence. Additionally, the centre has multimedia facilities and offers a series of training, leisure and sports programmes. ICC detainees also have access to computers, TV, books and magazines. Those who are indigent have the right to call their Defence Counsel free of charge during official working hours. Each 10m2 cell is designed to hold one person only. A standard cell contains a bed, desk, shelving, a cupboard, toilet, hand basin, TV and an intercom system to contact the guards when the cell is locked.

The Court provides three meals per day, but the detainees also have access to a communal kitchen if they wish to cook. A shopping list is also available to detainees so that they can procure additional items, to the extent possible.

All detainees may be visited by their families several times a year and, in the case of detainees declared indigent, at the Court’s expense, to the extent possible.
Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison outside The Netherlands, in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.
C. The rights of suspects

47. Are detainees deemed to have been convicted by virtue of their transfer to the Court?
No. Everyone is presumed innocent until proven guilty before the Court. The Prosecution must prove the guilt of the suspect and a Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt.

48. What rights do suspects have?
Suspects are presumed innocent. They are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court’s legal documents, including the following rights, to mention but a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecution disclose to the defence evidence in its possession or control which it believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of the Prosecution’s evidence.

49. What happens if a suspect does not have the means to pay for legal assistance?
Suspects have the right to legal assistance in any case where the interests of justice so require and, if the suspect does not have the means to pay for it, to legal assistance assigned by the Court.

50. Can detainees obtain interim release pending trial?
All detainees are entitled to apply for interim release pending trial. In the event of rejection, the decision is periodically reviewed by the competent chamber, at least every 120 days, and may be reviewed at any time at the request of the detained person or the Prosecution.

51. What is the role of the Office of Public Counsel for the Defence (OPCD)?
The OPCD promotes, represents and researches the rights of the defence, raises the profile of substantive defence issues, and endeavours to achieve equality of arms for the defence at all stages of an investigation and trial.

The Office is independent in terms of its substantive functions, but falls within the remit of the Registry solely for administrative purposes.
D. Confirmation of charges before trial

52. Do suspects appear before the Court as soon as they arrive in The Hague?
Yes. The suspect’s first appearance before the Court takes place shortly after his or her arrival in The Hague. During the first appearance, the Pre-Trial Chamber confirms the identity of the suspect, ensures that the suspect understands the charges, confirms that language in which the proceedings should be conducted, and sets a date to begin the confirmation of charges hearing.

At the confirmation of charges hearing – which is not a trial, but a pre-trial hearing – the Prosecution must present sufficient evidence for the case to go to trial. The suspect’s defence may object to the charges, challenge the Prosecution’s evidence and also present evidence.

The confirmation of charges hearing is held in the presence of the Prosecution, the person being prosecuted, and his or her counsel, as well as the representative of the victims. As provided by article 61 of the Statute, the suspect can waive his or her right to be present at this hearing.

53. What decisions can a Pre-Trial Chamber issue following a confirmation of charges hearing?
Following a confirmation of charges hearing, a Pre-Trial Chamber may:
• decline to confirm the charges; such a decision does not prevent the Prosecution from presenting a subsequent request for confirmation of the charges on the basis of additional evidence;
• adjourn the hearing and request the Prosecution to consider providing further evidence or conducting further investigation, or amending the charges because the available evidence shows that a different crime was committed;
• confirm the charges and commit the case for trial; upon confirmation, the Presidency of the Court constitutes a Trial Chamber responsible for the subsequent phase of the proceedings: the trial.

54. Does the confirmation of charges prejudice the suspect’s guilt?
No. The purpose of the confirmation hearing is to safeguard the rights of suspects by preventing proceedings with insufficient legal basis from being brought against them. In the pre-trial phase, the Prosecution must support each of the charges with sufficient evidence to establish substantial grounds to believe that the person committed the crimes charged. If one or more charge is confirmed, the case is committed to trial before a Trial Chamber.

55. What happens after the confirmation of charges?
After the confirmation of charges, the Pre-Trial Chamber commits the case for trial before a Trial Chamber, which will conduct the subsequent phase of the proceedings: the trial.

Before the commencement of the trial, the judges of the Trial Chamber consider procedural issues that may be submitted to them by the parties and hold hearings to prepare for trial and to resolve procedural matters in order to facilitate the fair and expeditious conduct of the proceedings.
E. The trial

56. Where does the trial take place?
Trials take place at the seat of the Court in The Hague, unless the judges decide to hold the trial elsewhere. This issue has been raised in several cases. The accused must be present at his or her trial, which is held in public, unless the Chamber determines that certain proceedings be conducted in closed session in order to protect the safety of victims and witnesses or the confidentiality of sensitive evidentiary material.

57. What happens at the commencement of the trial?
At the commencement of the trial, the Trial Chamber causes the charges against the accused to be read out to him or her and asks whether he or she understands them. The Chamber then asks the accused to make an admission of guilt or to plead not guilty.

58. What happens if the accused makes an admission of guilt?
First, the Trial Chamber ensures that the accused understands the nature and consequences of the admission of guilt, that the admission is voluntarily made by the accused after sufficient consultation with his or her lawyer and that the admission of guilt is supported by the facts of the case that are contained in the evidence and charges brought by the Prosecution and admitted by the accused. Where the Trial Chamber is satisfied that these conditions have been met, it may convict the accused of the crime charged. If it is not satisfied that the conditions have been met, the Chamber shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued.

59. How is the trial conducted?
At trial, the Prosecution and Counsel for the Defence have the opportunity to present their case. The Prosecution must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. This evidence may be in the form of documents, other tangible objects, or witness statements. The Prosecution must also disclose to the accused any evidence which may show that he or she is innocent.

The Prosecution presents its case first and calls witnesses to testify. When the Prosecution has finished examining each witness, the Counsel for the Defence is given the opportunity to also examine the witness.

Once the Prosecution has presented all its evidence, it is the turn of the accused, with the assistance of his or her counsel, to present his or her defence.
60. Who can present evidence?

All parties to the trial may present evidence relevant to the case. Everyone is presumed innocent until proven guilty according to law. The Prosecution has the burden of proving that the accused is guilty beyond all reasonable doubt. The accused has the right to examine the Prosecution’s witnesses, and to call and examine witnesses on his or her own behalf under the same conditions as the Prosecution’s witnesses.

When the personal interests of victims are affected, the Court allows their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Their views and concerns may be presented by their legal representatives.

In a judgment rendered on 11 July 2008, the Appeals Chamber granted victims the right to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence, although this right lies primarily with the parties, namely the Prosecution and the Defence. This right is subject to stringent conditions, namely proving that the victims have a personal interest in doing so, and to the request’s consistency with the rights of the defence and the requirements of a fair trial. Victims must also comply with disclosure obligations, notify the request to the parties, and comply with the Court’s orders on the protection of certain persons. Lastly, the appropriateness of the victims’ request is subject to the judges’ assessment.
F. Judgment and sentence

Once the parties have presented their evidence, the Prosecution and the Defence are invited to make their closing statements. The Defence always has the opportunity to speak last. The judges may order reparations to victims, including restitution, compensation and rehabilitation. To this end, they may make an order directly against a convicted person.

61. When is the sentence pronounced by the Court?
After hearing the victims and the witnesses called to testify by the Prosecution and the Defence and considering the evidence, the judges decide whether the accused person is guilty or not guilty.

The sentence is pronounced in public and, wherever possible, in the presence of the accused, and victims or their legal representatives, if they have taken part in the proceedings.

62. What penalties may be imposed by the Court?
The judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The Court cannot impose a death sentence. The maximum sentence is 30 years. However, in extreme cases, the Court may impose a term of life imprisonment.

63. Where are the sentences served?
Convicted persons serve their prison sentences in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

The conditions of imprisonment are governed by the laws of the State of enforcement and must be consistent with widely accepted international treaty standards governing the treatment of prisoners. Such conditions may not be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
G. Appeals and revision

64. When may a decision be appealed?
Any party may appeal the decisions of a Pre-Trial or Trial Chamber. The Prosecution may appeal against a conviction or acquittal on any of the following grounds: procedural error, error of fact or error of law.

The convicted person or the Prosecution may also appeal on any other ground that affects the fairness or reliability of the proceedings or the decision, in particular on the ground of disproportion between the sentence and the crime.

The legal representatives of the victims, the convicted person, or a bona fide owner of property adversely affected by an order for reparations to the victims may also appeal against such an order.

The Appeals Chamber may reverse or amend the decision or conviction or order a new trial before a different Trial Chamber.

65. Does the convicted person remain in custody pending an appeal?
Unless otherwise ordered by the Trial Chamber, a convicted person remains in custody pending an appeal. However, in general, when a convicted person’s time in custody exceeds the sentence of imprisonment imposed, the person is released. In addition, in the case of an acquittal, the accused is released immediately unless there are exceptional circumstances.

66. When can a decision be revised?
The convicted person or the Prosecution may apply to the Appeals Chamber to revise a final judgment of conviction or sentence where:
• new and important evidence has been discovered;
• it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
• one or more of the judges has committed an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under the Rome Statute.

67. What happens if someone has been the victim of unlawful arrest or detention?
Anyone who has been the victim of unlawful arrest or detention has an enforceable right to compensation. The Court can award compensation if a grave and manifest miscarriage of justice is conclusively shown.
V. Victims’ participation

68. What is the difference between a victim and a witness?
A victim is a person who has suffered harm as a result of the commission of a crime within the ICC’s jurisdiction. The Rome Statute ensures that a number of rights are accorded to victims, as outlined in detail below, the most groundbreaking of which is the right to participate in proceedings independently of the Prosecution or Defence. Victims have the right to have their own legal representative in the Courtroom presenting their concerns and personal interests to the Court.

A witness is a person who testifies before the Court, giving a statement as evidence, often called by either the Prosecution or Defence.

69. Who is considered a “victim” before the ICC?
Victims are individuals who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. Victims may also include organisations or institutions that have sustained harm to any of their property which is dedicated to religion, education, art, science or charitable purposes.

The judges of the ICC determine the types of harm to be taken into account, such as bodily harm, psychological harm, that is, where a person’s mind has been affected by what he or she has experienced or witnessed, or material harm, which consists of loss of or damage to goods or property.

70. What are the rights of victims before the ICC?
Victims before the ICC have rights that have never before been granted before an international criminal court. Victims may be involved in the proceedings before the ICC in various ways:
• victims can send information to the Office of the Prosecutor and ask the Office to initiate an investigation;
• at a trial, a victim may voluntarily testify before the Court, if called as a witness for the Defence or the Prosecution or other victims participating in the proceedings;
• victims are also entitled to participate in proceedings through a legal representative; during proceedings, victims may participate by presenting their views and concerns to the judges; such participation is voluntary and enables victims to express an opinion independently of the Prosecution or the Defence and offers them the opportunity to present their own concerns and interests;
• victims participating in proceedings may also, in some circumstances, lead evidence pertaining to the guilt or innocence of the accused; they may also challenge the admissibility or the relevance of evidence presented by the parties;
• lastly, victims can seek reparation for the harm that they have suffered.
71. **How can victims participate in the proceedings?**

If the Court considers it appropriate, victims may present their point of view directly to the judges at various stages in the proceedings. Such participation is generally through a legal representative (that is, a lawyer) who presents their views and concerns to the Court, since criminal proceedings are quite complex.

To make it easy for victims to participate, they are required to fill out an application for participation form. Victims may obtain a copy of the application for participation forms from the Court’s website or from the Victims Participation and Reparations Section in The Hague. The forms must be returned to the Victims Participation and Reparations Section in The Hague by fax, email or post, using the information provided below.

Victims who wish to be assisted in filling out the form and sending it to the Court may contact that same section.

**The Victims Participation and Reparations Section at The Hague may be contacted at:**

**International Criminal Court**
**Victims Participation and Reparations Section**
P.O. Box 19519
2500 CM, The Hague
The Netherlands
**Fax:** +31 (0) 70 515 9100
**Email:** vprsapplications@icc-cpi.int

72. **Can all victims in a situation participate in the proceedings?**

The judges review applications on a case-by-case basis and decide whether or not the applicant is entitled to participate in proceedings before the ICC and at what stages.

73. **Do victims have to travel to the seat of the Court in The Hague?**

Generally, victims do not have to travel to the seat of the Court if they do not wish to do so. Their legal representatives present their views and concerns to the Court.
74. How can victims find a legal representative?
Vicfims may freely choose their legal representative as long as the representative has the necessary qualifications: he or she must possess ten years’ experience as judge, prosecutor or lawyer in criminal proceedings and fluency in at least one of the working languages of the Court (English or French). The ICC Registry helps victims to find a legal representative by providing a list of qualified lawyers. At the Court, there is also an Office of Public Counsel for Victims (OPCV) which can represent victims and provide them and their legal representative with legal assistance.

If there are a large number of victims, the judges may ask them to choose one or more common legal representatives. This is called common legal representation, and its purpose is to ensure the effectiveness of the proceedings.

75. What happens if the victims cannot afford a legal representative?
Although the Court has limited resources for legal assistance, it may be able to provide some financial assistance. The Office of Public Counsel for Victims can also provide legal assistance to victims without charge.

76. What is the role of the Office of Public Counsel for Victims?
The Office of Public Counsel for Victims (OPCV) provides legal support and assistance to victims and their legal representatives at all stages of the proceedings, thus ensuring their effective participation and the protection of their rights.

The OPCV falls within the remit of the Registry solely for administrative purposes, but operates as a wholly independent office.

77. Does the Court protect victims participating in proceedings?
The Victims and Witnesses Unit within the Registry may advise the Court on appropriate protective measures and security arrangements for victims who appear before the Court and others who are at risk on account of testimony given by witnesses. The Unit implements the necessary protective and security measures and arrangements for the above-mentioned persons.

In the course of their field work, all of the Court’s organs must adhere to good practices in order to ensure their security and that of individuals who interact with them. Protective measures may, for example, include anonymity for victims participating in proceedings, the use of pseudonyms, the redaction of documents or the prohibition of disclosure thereof and the use of audiovisual techniques which can disguise the identity of persons appearing before the Court.
78. What decisions may the judges take concerning reparations for victims at the end of a trial?
At the end of a trial, the Trial Chamber may order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials.

The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. An advantage of collective reparations is that they provide relief to an entire community and help its members to rebuild their lives, such as the building of victim services centres or the taking of symbolic measures. Furthermore, States Parties to the Rome Statute have established a Trust Fund for Victims of crimes within the jurisdiction of the ICC and for their families in order to raise the funds necessary to comply with an order for reparations made by the Court if the convicted person does not have sufficient resources to do so.

79. What is the role of the Trust Fund for Victims?
The Rome Statute created two independent institutions: the International Criminal Court and the Trust Fund for Victims.

While it is impossible to fully undo the harm caused by genocide, war crimes, crimes against humanity and the crime of aggression, it is possible to help survivors, in particular, the most vulnerable among them, rebuild their lives and regain their dignity and status as fully-functioning members of their societies.

The Trust Fund for Victims advocates for victims and mobilises individuals, institutions with resources, and the goodwill of those in power for the benefit of victims and their communities. It funds or sets up innovative projects to meet victims’ physical, material, or psychological needs. It may also directly undertake activities as and when requested by the Court.

The Trust Fund for Victims can act for the benefit of victims of crimes, regardless of whether there is a conviction by the ICC. It cooperates with the Court to avoid any interference with ongoing legal proceedings.

80. Do victims have to first participate in the proceedings before they are entitled to reparations?
No. A victim who has not participated in the proceedings may make an application for reparations. The two applications are independent of each other. The Court may even decide on its own to make an award for reparations.
VI. Witness Protection

81. Who can be a witness?
The Office of the Prosecutor, the Defence or victims participating in the proceedings can ask experts, victims or any other person who has witnessed crimes to testify as a witness before the Court.

82. What criteria does the Office of the Prosecutor use to select witnesses?
The Office of the Prosecutor selects witnesses based on the relevance of their testimony, their reliability and their credibility.

83. Are witnesses compelled to testify?
No. The Court does not compel a witness to appear before it to testify without his or her consent.

84. How does the Court know that witnesses are not lying?
Various measures have been put in place to prevent false testimony. Before testifying, each witness makes an undertaking to tell the truth. The judges have the authority to freely assess all evidence submitted in order to determine its relevance or admissibility.

If a witness gives false testimony, the Court may sanction him or her by a term of imprisonment not exceeding five years and/or by imposing a fine.

85. How are witnesses who appear before the Court assisted?
Witnesses who appear before the Court are provided with information and guidance. For this purpose, the Victims and Witnesses Unit’s (VWU’s) support team offers services including the provision of psychosocial support, crisis intervention, and access to medical care when needed.

The VWU also prepares all witnesses testifying before the Court by a process called “familiarisation”. This is a process where the courtroom and trial procedure is shown to the witnesses in advance of their testimony. Many witnesses will have never been in a courtroom before and may find it daunting. This could impact on their well-being, as well as their testimony, and the familiarisation process aims to avoid this. Familiarisation does not have an impact on the content of the testimony, as the evidence is not discussed at all during this process.
86. What are the protective measures available to witnesses testifying before the Court?

The Court has a number of protective measures that can be granted to witnesses who appear before the Court and other persons at risk on account of testimony given by a witness. The foundation of the Court’s protection system is good practices which are aimed at concealing a witness' interaction with the Court from their community and from the general public. These are employed by all people coming into contact with witnesses.

Operational protective measures can be implemented where witnesses reside; for example the Initial Response System is a 24/7 emergency response system that enables the Court, where feasible, to extract witnesses to a safe location should they be targeted or in fear of being targeted. Other operational protective measures include educating witnesses on the importance of confidentiality and cover stories or agreeing on an emergency backup plan.

The Court can also apply procedural protective measures. Such measures may consist of face/voice distortion or the use of a pseudonym. Separate special measures can be ordered by the Court for traumatised witnesses, a child, an elderly person or a victim of sexual violence. These can include facilitating the testimony of witnesses by allowing a psychologist or family member to be present while the witness gives testimony or the use of a curtain to shield the witness from direct eye contact with the accused.

A last resort protective measure is entry into the Court’s Protection Programme (ICCPP) through which the witness and his or her close relatives are relocated away from the source of the threat. This is an effective method of protection, but due to the immense burden on the relocated persons, relocation remains a measure of last resort and absolute necessity.

Protective measures do not affect the fairness of a trial. They are used to make witnesses safe and comfortable. They apply for both referring parties, the Prosecution and the Défence equally. All parties are bound by confidentiality and respect to protective measure, yet even when protective measures are applied, witness can still be questioned.
VII. Further information about the ICC

87. Where can I find further information about the ICC?
Further information about the Court can be found on its website at http://www.icc-cpi.int. The site contains legal texts, Court rulings and documents, the hearing schedule, information about situations and cases before the ICC as well as the organs of the Court, press releases and information for media representatives, employment opportunities, the ICC Internship and Visiting Professionals Programme, and other information about the Court.

In addition to the ICC’s live web-streaming provided through the official website, which allows users to follow the hearings directly, the Court launched in March 2010 its official YouTube channel at: www.youtube.com/user/IntlCriminalCourt, to bring the Court and its activities closer to the general public. Among other things, the video channel allows viewers to follow the various cases before the ICC, in several languages, through the weekly postings of summaries of the proceedings entitled “In the Courtroom”. Other audio-visual programmes are also available on the ICC YouTube channel, including outreach programmes and summaries of activities and events.

Following the launch of the ICC YouTube channel, the Court opened a Twitter account to share relevant news and last minute information in real-time, at: http://twitter.com/IntlCrimCourt. The use of this social media platform is part of the Court’s efforts to guarantee more accessible information in a diverse and transparent way.

88. In what languages is the information available?
In general, the information provided on the ICC’s website is available in English and French, which are the working languages of the Court. When relevant to the situation, documents are also available in Arabic. Some essential documents on the ICC’s website are available in Arabic, Chinese, Russian and Spanish which, together with English and French, are the official languages of the Court.

89. How can I visit the ICC for a briefing or attend a hearing?
The International Criminal Court welcomes to its seat in The Hague anyone who is interested in its structure, its operations and the nature of its work.
To attend a briefing about the Court:
Individuals and groups wishing to attend a briefing about the Court are requested to fill out the appropriate application form, which is available on the Court’s website at www.icc-cpi.int. Applications should be sent by email to visits@icc-cpi.int at least two months in advance for groups and one month in advance for individual visits.

To attend a hearing:
ICC hearings are generally open to the public, unless the Chamber orders a closed session. Interested persons are invited to go to the entrance of the Court (there is no need to fill out a form beforehand). Any person entering the Court building will have to undergo security checks and present valid identification (passport, identity card or driver’s licence).

In addition, all public hearings are broadcast on the Court’s website with a half-hour delay. They can be accessed at www.icc-cpi.int.

For further information, please consult the hearing schedule. Also note that in the interests of public order, minors under the age of sixteen are not allowed in the Court building.

To contact us:

Public Information and Documentation Section
Registry, International Criminal Court
Maanweg 174
2516 AB, The Hague,
The Netherlands
Telephone: +31 (0) 70 515 9767
Fax: +31 (0) 70 515 8567
Email address: PublicAffairs.Unit@icc-cpi.int
Rome Statute of the International Criminal Court
Rome Statute
of the International
Criminal Court


Table of Contents

PREAMBLE 1

PART 1. ESTABLISHMENT OF THE COURT 2

Article 1 The Court 2
Article 2 Relationship of the Court with the United Nations 2
Article 3 Seat of the Court 2
Article 4 Legal status and powers of the Court 2

PART 2. JURISDICTION, ADMISSION AND APPLICABLE LAW 3

Article 5 Crimes within the jurisdiction of the Court 3
Article 6 Genocide 3
Article 7 Crimes against humanity 3
Article 8 War crimes 5
Article 8 bis Crime of aggression 9
Article 9 Elements of Crimes 10
Article 10 10
Article 11 Jurisdiction ratione temporis 10
Article 12 Preconditions to the exercise of jurisdiction 10
Article 13 Exercise of jurisdiction 11
Article 14 Referral of a situation by a State Party 11
Article 15 Prosecutor 11
Article 15 bis Exercise of jurisdiction over the crime of aggression (State referral, proprio motu) 12
Article 15 ter Exercise of jurisdiction over the crime of aggression (Security Council referral) 13
Article 16 Deferral of investigation or prosecution 13
Article 17 Issues of admissibility 13
Article 18 Preliminary rulings regarding admissibility 14
Article 19 Challenges to the jurisdiction of the Court or the admissibility of a case 15
Article 20 Ne bis in idem 16
Article 21 Applicable law 16

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW 18

Article 22 Nullum crimen sine lege 18
Article 23 Nulla poena sine lege 18
Article 24 Non-retroactivity ratione personae 18
Article 25 Individual criminal responsibility 18
Article 26 Exclusion of jurisdiction over persons under eighteen 19
Article 27 Irrelevance of official capacity 19
Article 28 Responsibility of commanders and other superiors 19
Article 29 Non-applicability of statute of limitations 20
Article 30 Mental element 20
Article 31 Grounds for excluding criminal responsibility 20
Article 32 Mistake of fact or mistake of law 21
PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34  Organs of the Court  23
Article 35  Service of judges  23
Article 36  Qualifications, nomination and election of judges  23
Article 37  Judicial vacancies  25
Article 38  The Presidency  25
Article 39  Chambers  26
Article 40  Independence of the judges  27
Article 41  Excusing and disqualification of judges  27
Article 42  The Office of the Prosecutor  27
Article 43  The Registry  28
Article 44  Staff  29
Article 45  Solemn undertaking  29
Article 46  Removal from office  29
Article 47  Disciplinary measures  30
Article 48  Privileges and immunities  30
Article 49  Salaries, allowances and expenses  31
Article 50  Official and working languages  31
Article 51  Rules of Procedure and Evidence  31
Article 52  Regulations of the Court  32

PART 5. INVESTIGATION AND PROSECUTION

Article 53  Initiation of an investigation  33
Article 54  Duties and powers of the Prosecutor with respect to investigations  34
Article 55  Rights of persons during an investigation  34
Article 56  Role of the Pre-Trial Chamber in relation to a unique investigative opportunity  35
Article 57  Functions and powers of the Pre-Trial Chamber  36
Article 58  Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear  37
Article 59  Arrest proceedings in the custodial State  38
Article 60  Initial proceedings before the Court  39
Article 61  Confirmation of the charges before trial  39

PART 6. THE TRIAL

Article 62  Place of trial  41
Article 63  Trial in the presence of the accused  41
Article 64  Functions and powers of the Trial Chamber  41
Article 65  Proceedings on an admission of guilt  42
Article 66  Presumption of innocence  43
Article 67  Rights of the accused  43
Article 68  Protection of the victims and witnesses and their participation in the proceedings  44
Article 69  Evidence  45
Article 70  Offences against the administration of justice  46
Article 71  Sanctions for misconduct before the Court  46
Article 72  Protection of national security information  47
Article 73  Third-party information or documents  48
Article 74  Requirements for the decision  48
Article 75  Reparations to victims  49
Article 76  Sentencing  49

PART 7. PENALTIES  50
Article 77  Applicable penalties  50
Article 78  Determination of the sentence  50
Article 79  Trust Fund  50
Article 80  Non-prejudice to national application of penalties and national laws  50

PART 8. APPEAL AND REVISION  51
Article 81  Appeal against decision of acquittal or conviction or against sentence  51
Article 82  Appeal against other decisions  52
Article 83  Proceedings on appeal  52
Article 84  Revision of conviction or sentence  53
Article 85  Compensation to an arrested or convicted person  53

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE  55
Article 86  General obligation to cooperate  55
Article 87  Requests for cooperation: general provisions  55
Article 88  Availability of procedures under national law  56
Article 89  Surrender of persons to the Court  56
Article 90  Competing requests  57
Article 91  Contents of request for arrest and surrender  58
Article 92  Provisional arrest  59
Article 93  Other forms of cooperation  59
Article 94  Postponement of execution of a request in respect of ongoing investigation or prosecution  61
Article 95  Postponement of execution of a request in respect of an admissibility challenge  62
Article 96  Contents of request for other forms of assistance under article 93  62
Article 97  Consultations  62
Article 98  Cooperation with respect to waiver of immunity and consent to surrender  63
Article 99  Execution of requests under articles 93 and 96  63
Article 100  Costs  64
Article 101  Rule of speciality  64
Article 102  Use of terms  64

PART 10. ENFORCEMENT  65
Article 103  Role of States in enforcement of sentences of imprisonment  65
<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>104</td>
<td>Change in designation of State of enforcement</td>
<td>65</td>
</tr>
<tr>
<td>105</td>
<td>Enforcement of the sentence</td>
<td>66</td>
</tr>
<tr>
<td>106</td>
<td>Supervision of enforcement of sentences and conditions of imprisonment</td>
<td>66</td>
</tr>
<tr>
<td>107</td>
<td>Transfer of the person upon completion of sentence</td>
<td>66</td>
</tr>
<tr>
<td>108</td>
<td>Limitation on the prosecution or punishment of other offences</td>
<td>66</td>
</tr>
<tr>
<td>109</td>
<td>Enforcement of fines and forfeiture measures</td>
<td>67</td>
</tr>
<tr>
<td>110</td>
<td>Review by the Court concerning reduction of sentence</td>
<td>67</td>
</tr>
<tr>
<td>111</td>
<td>Escape</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td><strong>PART 11. ASSEMBLY OF STATES PARTIES</strong></td>
<td></td>
</tr>
<tr>
<td>112</td>
<td>Assembly of States Parties</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td><strong>PART 12. FINANCING</strong></td>
<td></td>
</tr>
<tr>
<td>113</td>
<td>Financial Regulations</td>
<td>71</td>
</tr>
<tr>
<td>114</td>
<td>Payment of expenses</td>
<td>71</td>
</tr>
<tr>
<td>115</td>
<td>Funds of the Court and of the Assembly of States Parties</td>
<td>71</td>
</tr>
<tr>
<td>116</td>
<td>Voluntary contributions</td>
<td>71</td>
</tr>
<tr>
<td>117</td>
<td>Assessment of contributions</td>
<td>71</td>
</tr>
<tr>
<td>118</td>
<td>Annual audit</td>
<td>71</td>
</tr>
<tr>
<td></td>
<td><strong>PART 13. FINAL CLAUSES</strong></td>
<td></td>
</tr>
<tr>
<td>119</td>
<td>Settlement of disputes</td>
<td>72</td>
</tr>
<tr>
<td>120</td>
<td>Reservations</td>
<td>72</td>
</tr>
<tr>
<td>121</td>
<td>Amendments</td>
<td>72</td>
</tr>
<tr>
<td>122</td>
<td>Amendments to provisions of an institutional nature</td>
<td>73</td>
</tr>
<tr>
<td>123</td>
<td>Review of the Statute</td>
<td>73</td>
</tr>
<tr>
<td>124</td>
<td>Transitional Provision</td>
<td>73</td>
</tr>
<tr>
<td>125</td>
<td>Signature, ratification, acceptance, approval or accession</td>
<td>73</td>
</tr>
<tr>
<td>126</td>
<td>Entry into force</td>
<td>74</td>
</tr>
<tr>
<td>127</td>
<td>Withdrawal</td>
<td>74</td>
</tr>
<tr>
<td>128</td>
<td>Authentic texts</td>
<td>74</td>
</tr>
</tbody>
</table>
PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:
PART 1. ESTABLISHMENT OF THE COURT

Article 1
The Court
An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2
Relationship of the Court with the United Nations
The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3
Seat of the Court
1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4
Legal status and powers of the Court
1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.
PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5
Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression.

Article 6
Genocide

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
(a) Murder;
(b) Extermination;
(c) Enslavement;
(d) Deportation or forcible transfer of population;
(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

---

1 Paragraph 2 of article 5 (“The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.”) was deleted in accordance with RC/Res.6, annex I, of 11 June 2010.
4. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;
(ii) Torture or inhuman treatment, including biological experiments;
(iii) Wilfully causing great suffering, or serious injury to body or health;
(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
(vii) Unlawful deportation or transfer or unlawful confinement;
(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

2 Paragraphs 2 (e) (xiii) to 2 (e) (xv) were amended by resolution RC/Res.5 of 11 June 2010 (adding paragraphs 2 (e) (xiii) to 2 (e) (xv)).
(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, forced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 8 bis

Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3 Inserted by resolution RC/Res.6 of 11 June 2010.
Article 9
Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:
   (a) Any State Party;
   (b) The judges acting by an absolute majority;
   (c) The Prosecutor.

   Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10
Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11
Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12
Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
   (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
   (b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

As amended by resolution RC/Res.6 of 11 June 2010 (inserting the reference to article 8 bis).
Article 13
Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14
Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15
Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 15 bis
Exercise of jurisdiction over the crime of aggression
(State referral, *proprio motu*)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effectuated at any time and shall be considered by the State Party within three years.

5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State’s nationals or on its territory.

6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.

9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court’s own findings under this Statute.

10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

---

5 Inserted by resolution RC/Res.6 of 11 June 2010.
Article 15 ter
Exercise of jurisdiction over the crime of aggression
(Security Council referral)

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court’s own findings under this Statute.

5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

Article 16
Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17
Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

   (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

   (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

   (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

   (d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable.

---

6 Inserted by resolution RC/Res.6 of 11 June 2010.
(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18
Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State’s investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor’s deferral to a State’s investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State’s unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative
steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

**Article 19**

**Challenges to the jurisdiction of the Court or the admissibility of a case**

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:
   
   (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
   
   (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
   
   (c) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

   (a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

   (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
   (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
   (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law

1. The Court shall apply:
   (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
   (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

---

7 As amended by resolution RC/Res.6 of 11 June 2010 (inserting the reference to article 8 bis).
(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.
PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22
Nullum crimen sine lege
1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23
Nulla poena sine lege
A person convicted by the Court may be punished only in accordance with this Statute.

Article 24
Non-retroactivity ratione personae
1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25
Individual criminal responsibility
1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
   (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
   (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
   (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
   (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

---

8 As amended by resolution RC/Res.6 of 11 June 2010 (adding paragraph 3 bis).
19.  

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

3 bis. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26
Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27
Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29
Non-applicability of statute of limitations
The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30
Mental element
1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

Article 31
Grounds for excluding criminal responsibility
1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:
(a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(b) The person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person’s control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32
Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33
Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.
PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34
Organs of the Court

The Court shall be composed of the following organs:

(a) The Presidency;
(b) An Appeals Division, a Trial Division and a Pre-Trial Division;
(c) The Office of the Prosecutor;
(d) The Registry.

Article 35
Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36
Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of
judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee’s composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to
paragraph 7, the persons elected to the Court shall be the 18 candidates who
obtain the highest number of votes and a two-thirds majority of the States
Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot,
successive ballots shall be held in accordance with the procedures laid down
in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes
of membership of the Court, could be regarded as a national of more than one State
shall be deemed to be a national of the State in which that person ordinarily exercises
civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need,
within the membership of the Court, for:
(i) The representation of the principal legal systems of the world;
(ii) Equitable geographical representation; and
(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with
legal expertise on specific issues, including, but not limited to, violence
against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years
and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be
eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to
serve for a term of three years; one third of the judges elected shall be selected
by lot to serve for a term of six years; and the remainder shall serve for a term
of nine years.

(c) A judge who is selected to serve for a term of three years under
subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in
accordance with article 39 shall continue in office to complete any trial or appeal the
hearing of which has already commenced before that Chamber.

Article 37
Judicial vacancies
1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill
the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor’s term
and, if that period is three years or less, shall be eligible for re-election for a full term
under article 36.

Article 38
The Presidency
1. The President and the First and Second Vice-Presidents shall be elected by an absolute
majority of the judges. They shall each serve for a term of three years or until the end
of their respective terms of office as judges, whichever expires earlier. They shall be
eligible for re-election once.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:
   (a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and
   (b) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39
Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.
   (b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
        (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;
        (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;
   (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
   (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no
circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40
Independence of the judges
1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41
Excusing and disqualification of judges
1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.
   (b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.
   (c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42
The Office of the Prosecutor
1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.
The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.

The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;

The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44
Staff
1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45
Solemn undertaking
Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46
Removal from office
1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

   (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

   (b) Is unable to exercise the functions required by this Statute.
2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:
   (a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
   (b) In the case of the Prosecutor, by an absolute majority of the States Parties;
   (c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47
Disciplinary measures
A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48
Privileges and immunities
1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:
   (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
   (b) The Registrar may be waived by the Presidency;
(c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;

(d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49
Salaries, allowances and expenses
The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50
Official and working languages
1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51
Rules of Procedure and Evidence
1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:
   (a) Any State Party;
   (b) The judges acting by an absolute majority; or
   (c) The Prosecutor.

   Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52
Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.
PART 5. INVESTIGATION AND PROSECUTION

Article 53
Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
   (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
   (b) The case is or would be admissible under article 17; and
   (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
   (a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;
   (b) The case is inadmissible under article 17; or
   (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
   (b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.
Article 54
Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:
   (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
   (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
   (c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:
   (a) In accordance with the provisions of Part 9; or
   (b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).

3. The Prosecutor may:
   (a) Collect and examine evidence;
   (b) Request the presence of and question persons being investigated, victims and witnesses;
   (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;
   (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;
   (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
   (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55
Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:
   (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
   (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
   (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

(b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

(d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

**Article 56**

**Role of the Pre-Trial Chamber in relation to a unique investigative opportunity**

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (b) may include:

(a) Making recommendations or orders regarding procedures to be followed;

(b) Directing that a record be made of the proceedings;

(c) Appointing an expert to assist;

(d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;

(e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
Taking such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor’s failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor’s failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

**Article 57**

**Functions and powers of the Pre-Trial Chamber**

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9;
Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

**Article 58**

**Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear**

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:
   
   (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
   
   (b) The arrest of the person appears necessary:
       
       (i) To ensure the person's appearance at trial;
       
       (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
       
       (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

2. The application of the Prosecutor shall contain:
   
   (a) The name of the person and any other relevant identifying information;
   
   (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
   
   (c) A concise statement of the facts which are alleged to constitute those crimes;
   
   (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
   
   (e) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:
   
   (a) The name of the person and any other relevant identifying information;
   
   (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
   
   (c) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.
6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:
   (a) The name of the person and any other relevant identifying information;
   (b) The specified date on which the person is to appear;
   (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
   (d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59
Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
   (a) The warrant applies to that person;
   (b) The person has been arrested in accordance with the proper process; and
   (c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

**Article 60**

**Initial proceedings before the Court**

1. Upon the surrender of the person to the Court, or the person’s appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

**Article 61**

**Confirmation of the charges before trial**

1. Subject to the provisions of paragraph 2, within a reasonable time after the person’s surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

   (a) Waived his or her right to be present; or

   (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

   In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

   (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

   (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.
The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:
   (a) Object to the charges;
   (b) Challenge the evidence presented by the Prosecutor; and
   (c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
   (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
   (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
   (c) Adjourn the hearing and request the Prosecutor to consider:
      (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
      (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.
PART 6. THE TRIAL

Article 62
Place of trial
Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63
Trial in the presence of the accused
1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64
Functions and powers of the Trial Chamber
1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
   (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
   (b) Determine the language or languages to be used at trial; and
   (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
   (a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;
   (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
(c) Provide for the protection of confidential information;
(d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
(e) Provide for the protection of the accused, witnesses and victims; and
(f) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:
(a) Rule on the admissibility or relevance of evidence; and
(b) Take all necessary steps to maintain order in the course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65
Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
(a) The accused understands the nature and consequences of the admission of guilt;
(b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
(c) The admission of guilt is supported by the facts of the case that are contained in:
(i) The charges brought by the Prosecutor and admitted by the accused;
(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
   (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
   (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66
Presumption of innocence
1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67
Rights of the accused
1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
   (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
   (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused’s choosing in confidence;
   (c) To be tried without undue delay;
   (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused’s choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor’s possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68
Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69
Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
   (a) The violation casts substantial doubt on the reliability of the evidence; or
   (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.
Article 70
Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
   (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
   (b) Presenting evidence that the party knows is false or forged;
   (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
   (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
   (e) Retaliating against an official of the Court on account of duties performed by that or another official;
   (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

2. The principles and procedures governing the Court’s exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.

3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;
   (b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

Article 71
Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.

2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.
Article 72
Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.

2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

   (a) Modification or clarification of the request;
   (b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;
   (c) Obtaining the information or evidence from a different source or in a different form; or
   (d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:
Rome Statute of the International Criminal Court

(a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7(a)(ii), request further consultations for the purpose of considering the State’s representations, which may include, as appropriate, hearings in camera and ex parte;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(b) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73
Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74
Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber’s decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber’s findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber’s decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75
Reparations to victims
1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76
Sentencing
1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.
PART 7. PENALTIES

Article 77
Applicable penalties
1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

   (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

   (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

   (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;

   (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78
Determination of the sentence
1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

Article 79
Trust Fund
1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80
Non-prejudice to national application of penalties and national laws
Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.
PART 8. APPEAL AND REVISION

Article 81
Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
   (a) The Prosecutor may make an appeal on any of the following grounds:
       (i) Procedural error,
       (ii) Error of fact, or
       (iii) Error of law;
   (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
       (i) Procedural error,
       (ii) Error of fact,
       (iii) Error of law, or
       (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
   (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
   (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;
   (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;
   (c) In case of an acquittal, the accused shall be released immediately, subject to the following:
      (i) Under exceptional circumstances, and having regard, inter alia, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
      (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.
Article 82
Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
   (a) A decision with respect to jurisdiction or admissibility;
   (b) A decision granting or denying release of the person being investigated or prosecuted;
   (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
   (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.

3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83
Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
   (a) Reverse or amend the decision or sentence; or
   (b) Order a new trial before a different Trial Chamber.

   For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person’s behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

**Article 84**
**Revision of conviction or sentence**

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused’s death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person’s behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

   (a) New evidence has been discovered that:

      (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

      (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

   (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

   (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

   (a) Reconvene the original Trial Chamber;

   (b) Constitute a new Trial Chamber; or

   (c) Retain jurisdiction over the matter,

   with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

**Article 85**
**Compensation to an arrested or convicted person**

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.
PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86
General obligation to cooperate
States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87
Requests for cooperation: general provisions
1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.
   Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.
   (b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.
   Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
   (b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.
Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

**Article 88**

**Availability of procedures under national law**

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

**Article 89**

**Surrender of persons to the Court**

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *ne bis in idem* as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

   (i) A description of the person being transported;

   (ii) A brief statement of the facts of the case and their legal characterization; and

   (iii) The warrant for arrest and surrender;

(c) A person being transported shall be detained in custody during the period of transit;

(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.
4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90
Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

(a) The respective dates of the requests;

(b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought, and

(c) The possibility of subsequent surrender between the Court and the requesting State.

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
(a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;

(b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91
Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

   (a) Information describing the person sought, sufficient to identify the person, and information as to that person’s probable location;

   (b) A copy of the warrant of arrest; and

   (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:

   (a) A copy of any warrant of arrest for that person;

   (b) A copy of the judgement of conviction;

   (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction, and

   (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.

4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.
Article 92
Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
   (a) Information describing the person sought, sufficient to identify the person, and information as to that person’s probable location;
   (b) A concise statement of the crimes for which the person’s arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
   (c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
   (d) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93
Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
   (a) The identification and whereabouts of persons or the location of items;
   (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
   (c) The questioning of any person being investigated or prosecuted;
   (d) The service of documents, including judicial documents;
   (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
   (f) The temporary transfer of persons as provided in paragraph 7;
   (g) The examination of places or sites, including the exhumation and examination of grave sites;
   (h) The execution of searches and seizures;
(i) The provision of records and documents, including official records and
documents;

(j) The protection of victims and witnesses and the preservation of evidence;

(k) The identification, tracing and freezing or seizure of proceeds, property and
assets and instrumentalities of crimes for the purpose of eventual forfeiture,
without prejudice to the rights of bona fide third parties; and

(l) Any other type of assistance which is not prohibited by the law of the
requested State, with a view to facilitating the investigation and prosecution
of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an
expert appearing before the Court that he or she will not be prosecuted, detained or
subjected to any restriction of personal freedom by the Court in respect of any act or
omission that preceded the departure of that person from the requested State.

3. Where execution of a particular measure of assistance detailed in a request presented
under paragraph 1, is prohibited in the requested State on the basis of an existing
fundamental legal principle of general application, the requested State shall promptly
consult with the Court to try to resolve the matter. In the consultations, consideration
should be given to whether the assistance can be rendered in another manner or
subject to conditions. If after consultations the matter cannot be resolved, the Court
shall modify the request as necessary.

4. In accordance with article 72, a State Party may deny a request for assistance, in
whole or in part, only if the request concerns the production of any documents or
disclosure of evidence which relates to its national security.

5. Before denying a request for assistance under paragraph 1 (l), the requested State
shall consider whether the assistance can be provided subject to specified conditions,
or whether the assistance can be provided at a later date or in an alternative manner,
provided that if the Court or the Prosecutor accepts the assistance subject to
conditions, the Court or the Prosecutor shall abide by them.

6. If a request for assistance is denied, the requested State Party shall promptly inform
the Court or the Prosecutor of the reasons for such denial.

7. (a) The Court may request the temporary transfer of a person in custody for
purposes of identification or for obtaining testimony or other assistance. The
person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer, and

(ii) The requested State agrees to the transfer, subject to such conditions as
that State and the Court may agree.

(b) The person being transferred shall remain in custody. When the purposes
of the transfer have been fulfilled, the Court shall return the person without
delay to the requested State.

8. (a) The Court shall ensure the confidentiality of documents and information,
except as required for the investigation and proceedings described in the
request.

(b) The requested State may, when necessary, transmit documents or information
to the Prosecutor on a confidential basis. The Prosecutor may then use them
solely for the purpose of generating new evidence.
(c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94
Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before
making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

**Article 95**

**Postponement of execution of a request in respect of an admissibility challenge**

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

**Article 96**

**Contents of request for other forms of assistance under article 93**

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. The request shall, as applicable, contain or be supported by the following:

   (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

   (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

   (c) A concise statement of the essential facts underlying the request;

   (d) The reasons for and details of any procedure or requirement to be followed;

   (e) Such information as may be required under the law of the requested State in order to execute the request; and

   (f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

**Article 97**

**Consultations**

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, *inter alia*:

   (a) Insufficient information to execute the request;
(b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or

(c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98
Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99
Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;

(b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State...
Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.

5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100
Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

   (a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;
   (b) Costs of translation, interpretation and transcription;
   (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
   (d) Costs of any expert opinion or report requested by the Court;
   (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
   (f) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101
Rule of speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.

2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102
Use of terms

For the purposes of this Statute:

(a) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute.

(b) "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.
PART 10. ENFORCEMENT

Article 103
Role of States in enforcement of sentences of imprisonment
1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.
   (b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.
   (c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court’s designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days’ notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.
   (b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:
   (a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
   (b) The application of widely accepted international treaty standards governing the treatment of prisoners;
   (c) The views of the sentenced person;
   (d) The nationality of the sentenced person;
   (e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104
Change in designation of State of enforcement
1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.
**Article 105**

**Enforcement of the sentence**

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.

2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

**Article 106**

**Supervision of enforcement of sentences and conditions of imprisonment**

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

**Article 107**

**Transfer of the person upon completion of sentence**

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.

2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.

3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

**Article 108**

**Limitation on the prosecution or punishment of other offences**

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person’s delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.

2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109
Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.

2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.

3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110
Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
   (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
   (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
   (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.
Article 111
Escape
If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.
PART 11. ASSEMBLY OF STATES PARTIES

Article 112
Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:
   (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
   (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
   (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
   (d) Consider and decide the budget for the Court;
   (e) Decide whether to alter, in accordance with article 36, the number of judges;
   (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
   (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.
   (b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.
   (c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:
   (a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting.
(b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.
PART 12. FINANCING

Article 113
Financial Regulations
Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114
Payment of expenses
Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115
Funds of the Court and of the Assembly of States Parties
The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

(a) Assessed contributions made by States Parties;
(b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116
Voluntary contributions
Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117
Assessment of contributions
The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118
Annual audit
The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.
ARTICLE 119
Settlement of disputes
1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

ARTICLE 120
Reservations
No reservations may be made to this Statute.

ARTICLE 121
Amendments
1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after the deposit of their instruments of ratification or acceptance with the Secretary-General of the United Nations by seven-eighths of them.
5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party’s nationals or on its territory.
6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.
7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.
Article 122
Amendments to provisions of an institutional nature
1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123
Review of the Statute
1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124
Transitional Provision
Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125
Signature, ratification, acceptance, approval or accession
1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.
2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 126**

**Entry into force**

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

**Article 127**

**Withdrawal**

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

**Article 128**

**Authentic texts**

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

**In Witness Whereof**, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

**Done at Rome, this 17th day of July 1998.**
TO JOIN OR NOT TO JOIN THE INTERNATIONAL CRIMINAL COURT: ARGUMENTS FOR AND AGAINST AMERICAN RATIFICATION OF THE ROME STATUTE

Throughout the 20th century, the international community sought to create a permanent international court to handle crimes against humanity, war crimes and genocide. Following the atrocities of World War II, the Nuremberg and Tokyo Trials - in turn - addressed the crimes committed during World War II. Through the Geneva Conventions and the Universal Declaration of Human Rights, there was an increasing validity of “individual human rights as a legitimate subject of international law.” In the drafting stages of the Geneva Conventions, the United States lobbied for the inclusion of a provision that would establish an international criminal court; however, American views and policies of the establishment of an international criminal court have dramatically changed. A country once leading the charge of seeking justice for victims of genocide and crimes against humanity now remains on the outside of the International Criminal Court* fifteen years after the adoption of the Rome Statute.

This paper will first present the history of the International Criminal Court by analyzing the evolving positions of three Presidential administrations on American membership to the ICC. The arguments for and against ratification
will be presented. Supporters believe joining the ICC reflects solidarity with the 122 other States Parties, and enhances international law. Opponents of the Court believe the Rome Statute is incompatible with the United States Constitution, and exposes Americans to potential prosecution. The paper concludes by recommending what the United States should do with regards to joining the International Criminal Court.

I. AMERICA’S ROLE PRIOR TO THE INCEPTION OF THE INTERNATIONAL CRIMINAL COURT

Opposition to an international court throughout the Cold War stalled any progress of establishing a court following World War II, primarily over concerns of infringement on a country's sovereignty. However, towards the end of the Cold War, increasingly more common transnational crimes of terrorism and drug trafficking prompted the international community to reexamine the possibility of a global forum to address these issues, with sovereignty remaining the greatest concern. In October of 1990, the 101st Congress enacted H.R. 5114 recommending that the United States “explore the need for the establishment of an International Criminal Court on a universal or regional basis to assist in assisting the international community in dealing more effective with criminal acts as defined in the international conventions; and the effective prosecution of international criminals should not derogate from established standards of due process, the rights of the accused to a fair trial and the sovereignty of individual nations.”

Conversely, the George H.W. Bush White House remained wary and ambivalent of the establishment of an International Criminal Court, despite enthusiasm from Bush's Secretary of State James Baker and Undersecretary of State Robert Kimmitt. In 1993, Senator Christopher Dodd of Connecticut introduced Senate Joint Resolution 32 of 1993, calling for “the United States to support efforts of the United Nations to conclude an international agreement to establish an international criminal court” because it would serve the interests of the United States and the international community. Following the atrocities of former Yugoslavia and Rwanda, ad hoc tribunals were established specifically to prosecute crimes committed during a specific timeframe and specific conflict, although the international community generally agreed to the necessity of a permanent independent criminal court. The United States played an essential role in the arrests of indicted war criminals of the former Yugoslavia by being more forthcoming with its intelligence, as well as in the exertion of financial and diplomatic pressure on Serbia to arrest Radovan Karadzic and Ratko Mladic. In June 1998, the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court commenced in Rome with more than one hundred sixty governments participating, including the United States.

II. THE RATIFICATION OF THE ROME STATUTE & RELUCTANCE OF THE CLINTON ADMINISTRATION

In the beginning stages of the negotiating process, the Clinton administration accepted that a State Party to the ICC could initiate an investigation of a situation falling within the subject matter jurisdiction of the Court while the Security Council could also refer a situation to the ICC. The United States was persistent to preserve in the Statute - although concessions were ultimately made - the requirement that if a State Party referred a situation already the subject of deliberations by the United Nations Security Council to the Court, approval by the Security Council would be necessary before the ICC could take up the matter. The American delegation attempted to support a procedure that would give the Court universal jurisdiction over a crime of genocide, but would be able to “opt out” of war crimes and crimes against
When the proposal failed, they supported another proposal permitting a ten-year transitional period in which States Parties could opt out of crimes against humanity and war crimes. The final American proposal, not incorporated into the Rome Statute, was the requirement of express approval of the State of the alleged crime and the State of nationality of the perpetrator if either was not a State Party.

Despite the United States being the country most responsible for encouraging Kofi Annan, the UN Secretary General, to call for the Rome Conference, it was one of seven countries to vote against the Rome Statute, with one hundred twenty voting in favor of the creation of an International Criminal Court. The critical issues the United States could not ultimately agree on were the independence of the Prosecutor and the inclusion of crimes of aggression, of which the United States was particularly wary. David Scheffer, the United States Ambassador-at-Large for War Crimes Issues, believed that despite the United States' vote in Rome, sufficient progress had been made throughout the Conference to reconsider the U.S. position on signing the Rome Statute. The United States was able to secure provisions of the adoption of complementarity principle, the ability of the Security Council to defer cases, and postponing the definition of the crime of aggression.

While the international community waited for the sixtieth ratification necessary for the Rome Statute to take effect, the Clinton administration remained hesitant about signing the treaty. However, President Bill Clinton signed the Rome Statute on December 31, 2000 - the last possible day. In signing, the United States joined more than 130 countries by the December 31st deadline to affirm its “strong support for international accountability and for bringing to justice perpetrators of genocide, war crimes, and crimes against humanity.” In his statement, President Clinton noted that, despite his signing, there were concerns over significant flaws in the treaty, particularly the jurisdiction of the court over states that are not yet parties. Clinton believed that by signing the Rome Statute, the United States would be in a position to influence the shaping of the court while enhancing the ability to protect U.S. officials from “unfounded charges and to achieve the human rights and accountability objectives of the ICC.” Also, signing the Rome Statute may have been the only action the Clinton Administration could have taken, since there was a significant divide between the Democratic White House and a Republican Congress. Perhaps the greatest American opposition to the International Criminal Court stemmed from the Pentagon's fear of U.S. political and military leaders being tried before the Court. In less than ten years, political opinion dramatically shifted from Congress believing the United States should take the lead in establishing an international criminal court to Democratic reluctance and Republican vehement opposition with President George W. Bush about to take office.

**III. THE UNSIGNING BY PRESIDENT GEORGE W. BUSH**

Despite President Clinton's belief, a U.S. signature to the Rome Statute signaled the country's desire to influence the evolution of the Court. A year and a half later, the Bush administration unsigned the Rome Statute. On May 6th 2002, U.S. Undersecretary of State for Arms Control and International Security (and later U.S. Ambassador to the United Nations) John Bolton infamously notified Kofi Annan in a letter that read:

“This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States government is in the process of withdrawing its signature.”
States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty.”

John Bolton previously stated he believed the Rome Statute to be pernicious and debilitating; he assumed the role of chief architect of the Bush administration's campaign against the ICC by politicizing prosecutions and heightening the essential distinctions between U.S. and ICC practices. This letter was sent between the deposit of the 60th ratification on April 11, 2002 and the Statute entering into force on July 1, 2002. On July 2, 2002, President Bush stated that the ICC was troubling because diplomats and soldiers could be brought before the Court; he also reaffirmed there would be no American signature of the Rome Statute.

The administration went further to pursue its anti-ICC campaign when President Bush signed into law the American Servicemembers' Protection Act of 2002 (“ASPA”) on August 4, 2002. Passed by Congress and championed by Senator Jesse Helms of North Carolina, ASPA prohibited any U.S. participation with the ICC and required the President to withdraw all “military support from any state that ratifies the Rome Statute, unless that state enters into bilateral agreement with the US prohibiting the transfer of U.S. armed forced personnel to the ICC.” These agreements, known as Article 98 Agreements, ensured that no American could ever face charges before the ICC by banning the country the U.S. was making the Article 98 Agreement with from transferring any U.S. personnel to the ICC. In this way, no American could be sent to the ICC for prosecution.

On September 30, 2002, President Bush stated that he strongly rejected the ICC and would not accept the ICC that would put the United States “in a position where our soldiers and diplomats get hauled into a Court over which we have got-[with] the prosecutors whom we don't know, the judges-I mean, we're not going to allow ourselves to do that. And our friends shouldn't want us to be put in that position.” The United States negotiated more than 100 Article 98 agreements between 2002 and 2007. On July 1, 2003, President Bush suspended military aid to 35 States Parties who would not enter into an Article 98 agreement. This policy did not come without international opposition. The European Union urged the thirteen countries seeking to become EU members to resist signing Article 98 agreements. From 2003-2006, 12 Latin and South American countries (including Brazil and Mexico) lost more than ten million dollars in military aid, leading Mercosur to issue a joint presidential declaration opposing the American policy. Furthermore, by fighting terrorism abroad, the Bush administration exposed American citizens to “examination and condemnation,” making the administration's policy highly antagonistic, drawing further ire from the international community in the process.

Even though President Bush stated in his first presidential debate in October 2004 against Senator John Kerry that “[y]ou don't want to join the International Criminal Court just because it's popular in certain capitals in Europe,” there was some positive reassessment of the administration's policy during Bush's second term. When the Security Council voted to refer the Darfur situation to the ICC, the United States abstained, signaling some relaxing of hostilities towards the Court. The U.S. Secretary of State, Colin Powell, labeled Darfur as genocide, and the ICC Prosecutor, Luis Moreno-Ocampo, was able to issue a warrant against Sudanese President Omar al-Bashir. Additionally, a new legal adviser to the State Department, John Bellinger III, issued a transition paper expressing concern that the Bush administration's antipathy toward the ICC was deleterious to the United States' reputation and global position. Condoleezza Rice openly admitted that the Article 98 agreements essentially shot the U.S. in the foot, and by September 2008 the U.S.
retracted most of the restrictions against the countries who refused to sign Article 98 agreements, conceding the policy needed to be eliminated for good. 48

The Bush administration viewed the International Criminal Court as a useful tool to counter the genocide in Darfur, taking a more pragmatic approach towards engaging the ICC. The United States could now try to delegitimize a court with more than one hundred members. 49 Ultimately, the prevailing reason for the Bush administration’s opposition to the Court was its hypothetical ability to limit state sovereignty as body unaccountable to the United Nations and to the United States. With the Bush administration coming to a close, the United States was not as openly hostile as it once was in the early 2000's, but real cooperation from America was lacking.

*189 IV. THE OBAMA ADMINISTRATION AND THE ICC TODAY

In April 2008, then-Senator Barack Obama (D-IL) stated that the United States needed to work with the ICC to speed up the pace of indictments for perpetrators of war crimes and crimes against humanity. 50 In mid-2008, a survey revealed bipartisan public support for American engagement with the ICC, though the issue did not play a major role in the Presidential election. 51 After taking office in 2009, while speaking to a European audience President Obama recognized there have been times where America has shown arrogance and been dismissive, even derisive So I’ve come to Europe this week to renew our partnership, one in which America listens and learns from our friends and allies, but where our friends and allies bear their share of the burden. Together, we must forge common solutions to our common problems. 52

The Obama administration in its first year announced it would reevaluate the U.S. policy on the ICC, with Harold Koh stating that the relationship has been “reset from hostility to positive engagement.” 53 Furthermore, Secretary of State Hillary Clinton and United States Ambassador to the United Nations Susan Rice praised the ICC’s efforts and potential while indicating support for assisting with investigations. 54 This praise, along with Hillary Clinton’s public disappointment that the United States was an “ICC outsider”, 55 indicated that the Obama administration would officially affirm support for the Court.

In contrast to the Bush administration, which essentially refused to engage with the Court, in November 2009 Stephen Rapp, U.S. Ambassador-at-Large for War Crimes Issues, attended the meeting of the Assembly of States Parties 56 as an observer and reflected the decision to reengage with the ICC. 57 However, Rapp made it clear that, in his opinion, the United States was many years away from being a State Party to the International Criminal Court and would engage with the ICC to ensure it would be an effective instrument of accountability. 58 The Clinton administration, the Bush administrations and the Obama administration shared two major concerns: the fear of politically motivated prosecutions, and the risk of ICC investigations of American officials or service-members because of their role in wars. 59 Recent developments suggest that the United States views cooperation and engagement with the International Criminal Court as an appropriate means of American soft power. The United States voted with a unanimous Security Council in February 2011 to refer Libya to the ICC. 60

A positive and productive engagement took place in March 2013. A fugitive African warlord, General Bosco Ntaganda turned himself in to the American embassy in Rwanda and asked to be sent to the International Criminal Court, elating
TO JOIN OR NOT TO JOIN THE INTERNATIONAL..., 29 Conn. J. Int'l L. 181

ICC officials in the process. 61 One Court official stated anonymously “[i]t was important that Washington was so upfront about cooperating It was a great boost for the court.” 62 On April 3, Secretary of State John Kerry announced the expansion of the War Crimes Rewards Program by offering up to $5 million dollars for “information that leads to the arrest, transfer, and conviction of the top three leaders of the LRA”, including Joseph Kony, for committing crimes against humanity and war crimes. 63 Kerry announced a second $5 million dollar reward for the capture of Sylvester Mucadumura, military commander of the Democratic Forces for the Liberation of Rwanda that carried out brutal attacks on Rwandan civilians. 64 This American cooperation with the Court is monumental compared to the antagonism of the Bush administration. However, it is plausible that should the ICC decide to investigate a situation involving alleged crimes committed by the United States within a State Party - the Seychelles for example - American cooperation with the Court would cease. While the Obama administration has made substantial progress for American engagement with the ICC, it remains apparent that the concern of infringement on national sovereignty will continue to deter the United States from becoming a State Party.

As of May 1, 2013, there are 122 States Parties to the International Criminal Court, including the United Kingdom, France, Germany, Japan, South Africa, and Brazil. 65 With the gridlock in the U.S. Congress, it is highly unlikely the Rome Statute would be ratified even if the Obama administration decided to sign the *191 Rome Statute tomorrow. With or without the United States' help, the International Criminal Court issued its first judgment against a Congolese warlord, Thomas Lubanga, finding him guilty and sentencing him to fourteen years in prison 66 for war crimes and forcing children to fight. 67 Another major conviction was that of Charles Taylor, the former Liberian President, over his role in aiding and abetting war crimes during the Sierra Leone civil war that left more than 50,000 dead. 68 The States Parties of Uganda, the Central African Republic, and the Democratic Republic, have referred cases. Additionally, open cases include situations in Kenya, Sudan, Libya, and Côte d'Ivoire, and preliminary investigations are being carried out in Afghanistan, Guinea, Colombia, Honduras, Korea, Nigeria, and Georgia. 69 The major critique of the Court is its effectiveness, particularly how long the entire process takes from investigation to trial to judgment and sentencing. While the ICC has made significant progress since its inception, it still has a long way to go to achieve full legitimacy and credibility. With this, if the United States were to join, it would prove to be a very influential member of the Court, ensuring the justice that the Court seeks to achieve. The Obama administration still has time remaining to sign the Rome Statute, so it is essential to highlight the arguments for and against ratifying the Rome Statute.

V. ARGUMENTS FOR RATIFICATION

If the Obama Administration decided tomorrow to sign the Rome Statute because it believed it was in America's best interest to become a State Party to the International Criminal Court, it would certainly face opposition but would neither be against national security interests nor inconsistent with the American tradition of defending human rights abroad.

A. Solidarity with 122 States Parties to Ensure Accountability

Perhaps the best argument for American ratification of the Rome Statute is that ratification reflects solidarity with the 122 members of the International Criminal Court. The nations already members include some of our strongest allies: the United Kingdom, France, Mexico, Japan, and Australia, among others. In ratifying the Rome Statute, the official isolation of the United States in the realm of *192 international criminal justice would end, while America's engagement with the international community would be reaffirmed. In the wake of the Bush administration's shift from a unilateral foreign policy to an evolving multilateralism, the ratification of the Rome Statute recognizes the multipolar 70 reality
of foreign affairs. The Obama administration's position on foreign policy was to repair the international relationships damaged significantly during the Bush years. Vice President Joe Biden in a 2009 speech in Kyiv, Ukraine, highlighted that the United States as not seeking “a sphere of influence”, but rather was pursuing the creation of a multipolar world in which “like-minded nations make common cause of our common challenges.”

While much attention was focused on domestic affairs in the United States, foreign policy cannot be ignored, and can lead to domestic benefits. Robert Putnam, a professor at the John F. Kennedy School of Government developed the “two-level game” theory that assumes international agreements will only successfully be achieved if there is a domestic benefit. The longer the United States remains a non-State Party to the ICC, the Obama administration risks weakening the relationships with States Parties that have been rebuilt. The domestic benefit derived from joining the International Criminal Court would be the maintenance and expansion of relationships with States Parties. It is imperative that the United States have foreign allies if it continues the policy of taking the lead in maintaining order throughout the world.

America is no longer in the position where it can afford to be the sole protector of human rights and democracy abroad; it cannot and should not shoulder this burden alone. Thus, the United States could be extremely successful in the two-level game, as support for the ICC could strengthen bonds with allies, in turn leveraging support from other nations for other global initiatives. Given that critical allies are States Parties and also permanent veto holders on the United Nations Security Council, it is nearly inexcusable that the U.S. refuses to be a full member.

With the United States already serving as an observer to the Assembly of States Parties and expanding its Rewards for Justice Program, it is already working to help the ICC hold those who commit war crimes, genocide, and crimes against humanity accountable. The United States has traditionally supported international justice initiatives and initially pursued the establishment of an international criminal court. Also, the United States' brokering of Bosco Ntaganda's transfer to the ICC helps bolster the Court's influence without even being a member. If the United States were to become a full member of the International Criminal Court, it is plausible that the Court would be further legitimated, advancing American humanitarian and national security interests. The International Criminal Court has the potential to create stability in the realm of international criminal law; in Harold Koh's opinion, it could eliminate the need for expensive military interventions. Given the operating costs of the United States military, especially on Iraq and Afghanistan, American membership to the ICC could prove to be economically efficient to counteract situations of war crimes, crimes against humanity, and genocide.

The concern that Americans could be brought before the Court because of the situations in Iraq and Afghanistan are unfounded because the Court's jurisdiction is not retroactive. Only after the United States ratifies the Rome Statute would it be subject to the Court's jurisdiction. This would prove insufficient, then, for those who would like to see members of the Bush administration tried for war crimes because the United States was not a State Party to the Rome Statute when such actions would have been committed. Furthermore, Article 17's complementarity provision establishes that the Court will only investigate and prosecute cases when the State is unwilling or unable to do so. The United States judiciary is certainly equipped to investigate and prosecute virtually any situation that constitutes war crimes, genocide, and crimes against humanity, though willingness to do so is the major sticking point. It is worth noting that in 2013, Guatemala, a State Party to the ICC, was the first country to indict and convict a former head of state on charges of genocide by a national court. Though General Rios Montt's actions occurred before the establishment of the ICC, his indictment and conviction highlights that most countries are unwilling to prosecute former heads of state. Though the size and scope of the United States military poses a concern because it is the largest and most active throughout the globe, this does not and should not give the United States license to exempt itself from the ICC's jurisdiction, as nations like the United Kingdom and Australia also helped in the War Against Terror.
Given the traditional support for justice and accountability, ratification of the Rome Statute would reflect that the U.S. “practices what it preaches” in terms of human rights by affirming its commitment to global justice. At one point, the United States was leading the charge to establish an international criminal court because it recognized the value and necessity of such an institution, and the notion that nearly 70 years things have changed so dramatically is absurd. Over 100 countries have either signed or gone further by ratifying the Statute. The United States and its holdouts should not be exempted from upholding the principles and ideals of the ICC. By ratifying the Rome Statute, the United States would show it stands with the 122 States Parties of the International Criminal Court to ensure *194 justice for the victims of genocide, war crimes, crimes against humanity, and crimes of aggression.

B. Enhancement of the Importance of International Law

Another argument for ratifying the Rome Statute is that international law would be enhanced dramatically. If the United States ratified the Rome Statute, it could potentially leverage the cooperation of other crucial non-States Parties like Russia, China and India, which would be a dramatic gain for the ICC. Though the ICC has made significant progress since it came into force in 2002, the lack of support by these nations detracts from achieving further success. If the United States ratifies the Rome Statute, it could lead other key holdouts to reevaluate their own positions on the International Criminal Court. At the Eleventh Session of the Assembly of States Parties in 2011, Russia and China sent representatives to the meetings as observer states. 76 Their participation for the first time, following the United States' attendance in 2009 and 2010, illustrates that with the United States serving as an observer 77 they have a duty and an interest in engaging with the ICC, especially considering they are the remaining veto holders on the Security Council. Even if the United States ratifies the Rome Statute, it is no guarantee that the holdouts would do so as well. However, the Russian Federation did sign the Rome Statute in 2000 and in the mid-2000s a panel was established by the Ministry of Justice to facilitate Russian cooperation with the ICC. 78 While the Russian Federation has not ratified the Rome Statute, it has not sought to remove its signature like the United States. Nevertheless, continued engagement with the holdout countries is essential to the continued success of the International Criminal Court. The United States' role with the ICC could prove to be vital in getting the other holdouts to reevaluate their current positions on situations presently before the Court.

The situation of the Sudan and the two outstanding warrants for Omar al-Bashir reflect perhaps the greatest challenge of the ICC. The ICC placed two warrants on charges of genocide, war crimes, and crimes against humanity for the arrest of Omar Hassan al-Bashir, President of Sudan. However, the ICC has been unable to apprehend al-Bashir because of the government's reluctance to turn him in and the international community's reluctance to pursue him, which the United States could potentially leverage. The United States is essentially still viewed as the world superpower and could “utilize its diplomatic and economic leverage to pressure Sudan to apprehend the suspect in question, [just as the U.S. had done for *195 the ICTY in apprehending Slobodan Milos#evil#, which was achieved through] the U.S.'s military, diplomatic, and financial might.” 79 While the United States has recognized Darfur as a genocide, Russia and China continue to support the Sudan in the UN Security Council, largely because of their business interests in the Sudan. 80 As long as al-Bashir remains President of the Sudan, the ICC will continue to be criticized for ineffectiveness.

If the United States ratifies the Rome Statute, it will help develop the ICC by providing significant influence and clout to the Court. Furthermore, the United States' recognition of the International Criminal Court enhances the importance and legitimacy of international law. United States membership to the International Criminal Court could prove to be a deterrent to would-be perpetrators out of fear that the United States would use its financial might and intelligence to pursue these perpetrators and hold them accountable. By ratifying the Rome Statute, the United States would enhance the role international law in the global community by validating the legitimacy of the ICC and would reinforce America's role as a defender of human rights.
VI. ARGUMENTS AGAINST RATIFICATION

Conversely, because the United States has assumed the role as the world's policeman, ratification of the Rome Statute could seriously hinder and harm American military pursuits. With the United States' armed forces serving around the globe, already subjected to heightened scrutiny, ratification could lead to politically motivated charges by the ICC. Furthermore, the Rome Statute is considered to be incompatible with the United States Constitution and an infringement on American sovereignty. In other words, to critics, the International Criminal Court is repugnant to American values and joining the International Criminal Court is inconceivable. However, despite the objections to the Rome Statute and the International Criminal Court, concerns are primarily based on paranoia, the notion that the rest of the world will gang up on the United States. The benefits of joining the ICC far surpass these objections to becoming a State Party.

A. Exposure of Americans to ICC Prosecution

A stronger argument against American ratification of the Rome Statute is exposure to ICC prosecution. This stems from the Court's universal jurisdiction over States Parties for actions taken at times of war or during military intervention campaigns. Compared to other international courts like the European Court of Human Rights and the International Court of Justice in which actions are brought against nations, the International Criminal Court charges individuals. So, in theory, if the United States were to become a State Party, an individual soldier of the U.S. Army could be charged with war crimes for actions committed after joining the International Criminal Court. America's unique responsibility in foreign affairs and the sheer size of its military allows it to expose servicemembers to prosecutions by the ICC. However, Afghanistan has been a member of the ICC since 2003, and while the United States has been involved in the War on Terror for over ten years in that country, neither the ICC nor Afghanistan has sought to investigate or prosecute any Americans for their actions, though it is within the ICC's jurisdiction to do so and Afghanistan has the right to refer. Congress's passage of the American Servicemembers' Protection Act allowed the United States to ensure this scenario would never come to fruition. The United States punished those countries that refused to sign Article 98 agreements by cutting crucial military aid because of their commitment to the principles and ideals of the International Criminal Court. While it is very easy for nations like San Marino and Barbados to join the ICC because their militaries are relatively small and not active participants in policing the rest of the globe, they recognize that if their citizens or leaders commit a crime which the ICC has jurisdiction over, they will be held accountable for these crimes should they find themselves unwilling or unable to prosecute. The critics of the ICC, who argue the potential jurisdiction of the ICC over Americans as a legitimate and the argument against ratifying the Rome Statute, fail to remember the Court is a court of last resort and will only step in when the country is unwilling or unable to prosecute. The United States successfully prosecuted those soldiers responsible for the Abu Ghraib torture and prisoner abuses. Thus, the International Criminal Court would have no reason to intervene, even if Iraq had been a State Party at the time of the incidents. While the United States has a consistent history of prosecutions through the courts martial for service members, it is extremely unlikely that a George W. Bush, Dick Cheney, or John Yoo figure would be prosecuted because of their high-ranking roles. The ICC could, however, theoretically prosecute because of the country's unwillingness to do so. Furthermore, the Pre-Trial Chamber of the ICC developed a standard wherein a case cannot proceed if any of these three questions can be answered affirmatively:

is the conduct which is the object of case systematic or large-scale?; is the accused person in the category of most senior leaders of the situation under investigation?; and is the accused person in the category of most senior leaders suspected of being most responsible for the commission of the alleged ICC crimes?
*197 Therefore, it is unlikely that a “bad seed” American citizen would face prosecution by the International Criminal Court should the U.S. ratify the Rome Statute. Given the damage of the Iraq precedent, which reduces the United States' likelihood of responding to legitimate situations of crimes against humanity (Syria, for instance) the ICC could be a vital and responsible solution that allows America to ensure perpetrators are held accountable when military intervention is impossible. Americans should hold their leaders to a higher standard to ensure they will not even consider pursuing policies that constitute crimes against humanity, crimes of aggression, genocide, and war crimes. It is also plausible, based on the framework established by the ICC that American citizens will not be brought before the Court, rendering the objections to the Rome Statute unsubstantiated and hypothetical.

A secondary concern is that due to America's military primacy throughout the rest of the world, ratification would lead to politically motivated prosecutions of Americans. Critics of the Court highlight this because the Court is essentially an independent body; it can choose which situations to investigate and prosecute, which could depend on the Court's politics. John Bolton was concerned the rampant anti-Americanism in the international community would lead to a politicized Court. However, Article 64 ensures a fair trial. If necessary, Article 64 refers issues to a Pre-Trial Chamber or to another judge to be certain the accused has a fair trial. Furthermore, reaffirming American support for the ICC would likely remove the concern of politically motivated charges while continued disengagement could lead to actual hostility by the Court towards the United States. Since it is unlikely an American would face prosecution by the International Criminal Court, those who argue against ratifying the Rome Statute for fear of politically motivated charges should not be concerned. Given that the Court would like to see nothing more than American muscle behind its operation, this provides the United States with the opportunity to shape the Court in the future. Though the scenario where a politically motivated prosecution would still be possible, it is unlikely that the Court would pursue such an investigation or prosecution.

B. Incompatibility of the Rome Statute with the U.S. Constitution

The second major argument against ratification of the Rome Statute is the incompatibility of the Rome Statute with the United States Constitution because the Rome Statute does not contain the same constitutional guarantees. The Rome Statute does not ensure a trial by jury, which critics of the ICC point out is ensured twice in the Constitution: in Article III, and in the Fourth Amendment. However, the majority of rights guaranteed in the Fourth and Fifth Amendment are guaranteed in Article 12 of the Rome Statute: the right to a fair and expeditious trial; the right to examine opposing witnesses; the right to the assistance of counsel; the right to be informed of the nature of the charge; protection against arbitrary or warrantless arrest; protection against self-incrimination; and protection against illegally obtained evidence. Though not a copy of the language used in the Bill of Rights, the guarantees in the Rome Statute carry the same message as the United States Constitution.

Despite this, critics will argue that the ICC will not interpret these rights consistently with American constitutional law. However, this argument is flawed because it presupposes that every judge in America interprets constitutional guarantees in the same fashion, which is not the case. Despite the lack of a right to trial by jury at the ICC, the United States uses a trial by panel (judges) appeals. In any civil case from the outset, there is no guarantee to a jury. Since the Rome Statute can be amended, American membership, in theory, could lead to changes that would grant a trial by jury.

Another aspect of this argument is that the imposition of new regulations on the individual states by the federal government is inconsistent with the nation's tradition of sovereignty and states' rights. There is a fear that the Rome Statute, if ratified and constituted the “Supreme Law of the Land” would require the states to turn over Americans for
crimes they commit against other Americans within the United States to an international court that does not guarantee a right to a jury trial.

However, in Missouri v. Holland (1920), Justice Oliver Wendell Holmes ruled that treaties made by the federal government supersede any state concerns over treaties that have abrogated states' rights, although they must be made in pursuance of the Constitution. Under this holding and argument, the Rome Statute is unconstitutional in the United States because of the lack of a trial by jury. This argument once again assumes the ICC has jurisdiction because the United States is unwilling or unable to prosecute a case. It is more likely the United States or the individual states will prosecute cases that could subject an American citizen to ICC jurisdiction. Furthermore, this argument also presumes the crime meets the threshold standard established in Lubanga. With respect to these arguments, the remedy is easily available, as other nations with federalist governments have already done.

In ratifying the Rome Statute, Congress would likely need to approve and possibly amend its definitions and elements of crimes in order to implement the treaty into American law. Those concerned over infringement of sovereignty only need to look to Switzerland and Australia, which also have federal system of government, as excellent models to emulate in incorporating the Rome Statute in the United States. Switzerland adopted several laws using the inspiration of the Rome Statute to incorporate the crimes over which the ICC has jurisdiction into Swiss law (that were previously not a part of Swiss Law), as well as modifying Swiss law to reflect the Rome Statute. Australia amended its existing laws in order to have Australian jurisdiction over international crimes by creating offenses equivalent to the Rome Statute's crimes against humanity, war crimes, and crimes of genocide. By doing so, Australia is able to assert its jurisdiction over the ICC's and can then prosecute the perpetrators itself rather than surrendering the individual to the ICC for trial.

The laws enacted by Switzerland and Australia ensure that their laws are in line with the Rome Statute, while preserving Swiss and Australian sovereignty over their citizens. Furthermore, Australia declared that a case will be inadmissible before the ICC when it is already the subject of an Australian investigation and prosecution, and that it was reaffirming its “primacy of its criminal jurisdiction...” Based on the Swiss and particularly the Australian experience in ratifying the Rome Statute, the United States can make similar declarations of primacy of jurisdiction, establishing that Americans will primarily be subject to the American criminal justice system.

Like Australia and Switzerland, it may be entirely necessary for the United States to expand and modify current laws, but in a way to ensure American primacy over criminal jurisdiction. Furthermore, the United States could include provisions requiring the Attorney General to agree to an arrest or surrender requested by the ICC, which Australia does. Over the past 11 years of the ICC's existence, the Office of the Prosecutor's caution to proceed illustrates the Court's function as the court of last resort by allowing countries to exercise jurisdiction over their citizens. Therefore, the concerns over sovereignty and incompatibility with American law can be ameliorated through declarations on the Rome Statute upon ratification or amendments to American law, or even amendments to the Rome Statute to reflect American constitutional standards.

**CONCLUSION: WHY THE U.S. SHOULD JOIN THE ICC BY RATIFYING THE ROME STATUTE**

Given the United States' traditional role as a defender of human rights, American membership is essential for the legitimacy of the International Criminal Court. Following World War II, the United States sought the establishment of an international criminal court that would hold perpetrators of genocide, war crimes and crimes against humanity accountable. Yet, now that one exists, the U.S. has been reluctant to join. This reluctance stems from the fear that American military endeavors would be curtailed in order to avoid subjecting Americans to International Criminal
Court prosecution. However, the reality is more likely than not that the ICC would be very willing to accommodate American concerns in order to achieve greater legitimacy and better results in the future. Furthermore, the ideals of the International Criminal Court are not inconsistent with the American value of promoting human rights and ensuring accountability for those who have been oppressed and suffering.

*200 At a minimum, the United States should continue to engage with the ICC as an observer member by not reverting back to the Bush administration’s open hostility to the Court. However, if the United States seeks to “practice what it preaches” when denouncing leaders who commit crimes against their people, it needs to solidify its commitment to the ICC by ratifying the Rome Statute. As a nation that believes itself to be exceptional, it too should hold its leaders, Democratic or Republican, to a higher standard when pursuing foreign affairs. It should not be the policy of the United States to authorize practices that warrant prosecution by the ICC. If there comes a day when this is the case and the United States is unwilling to prosecute, the ICC should fulfill its role as the court of last resort to seek accountability for those harmed by American practices. The United States has far more to gain by joining the International Criminal Court than choosing to remain isolated. The arguments against ratifying the Rome Statute focus more so on hypothetical scenarios that may or may not take place, and fail to consider the actual concrete benefits of ICC membership. Showing solidarity with the 122 States Parties of the ICC is likely to engender more positive relationships with these nations, and American membership could see the other key holdouts engage more directly with the Court rather than just through the U.N. Security Council.

The ICC stands to gain greater legitimacy and power through American membership and would therefore be very willing to work with the United States to address its concerns. American ratification of the Rome Statute would be mutually beneficial for the U.S. and the ICC to ensure accountability for the most serious crimes. It is time for America to reaffirm its commitment to international criminal justice and become the 123rd State Party of the International Criminal Court.

Footnotes

1 The terms “International Criminal Court”, “the Court”, and “ICC” will be used interchangeably throughout this paper. The ICC at a Glance, International Criminal Court, http://www.icc-cpi.int/iccdocs/PIDS/publications/ICCAtAGlanceEng.pdf (last visited Nov. 16, 2013) [hereinafter The ICC].


3 Lee Feinstein & Tod Lindberg, Means to an End: U.S. Interest in the International Criminal Court 27 (2009) (explaining the reversal of the United States' position following World War I in which it advocated the use of domestic courts to try German war criminals).

4 The ICC, supra note 1.

5 Feinstein & Lindberg, supra note 3, at 28.

6 Id. at 29.


8 Feinstein & Lindberg, supra note 3, at 31.

About the Court, International Criminal Court, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx (last visited Nov. 16, 2013) [hereinafter About the Court].

Feinstein & Lindberg, supra note 3, at 33.


David J. Scheffer, Staying the Course with the International Criminal Court, 35 Cornell Int'l L.J. 47, 69 (2001-2002) (explaining that Scheffer was the head of the United States delegation to the United Nations talks on the ICC).

Id. at 70 (explaining that the U.S. ultimately supported Article 16, in which the Security Council could vote to delay proceedings and investigations).

Id. at 71.

Id.

Id. at 72.


Feinstein & Lindberg, supra note 3, at 38.

Andrea Birdsall, The “Monster That We Need to Slay”? Global Governance, the United States and the International Criminal Court, 16 Global Governance 451, 456 (2010).

Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 183/9, 2187 U.N.T.S. 90 at art. 17 (1998) [hereinafter Rome Statute]. The ICC is a court of last resort that will only investigate and prosecute when the national courts have failed. The case will be admissible only if the State is unwilling or unable genuinely to carry out an investigation or prosecution or when a State is unwilling or unable to genuinely prosecute.

The definition of crime of aggression was inserted to the Rome Statute as art. 8 bis by RC/Res.6 of 11 June 2010.

Feinstein & Lindberg, supra note 3, at 38.

Id. at 39.


Id.

Id.

Feinstein & Lindberg, supra note 3, at 38. Senator Rod Grams of Minnesota called the ICC “dangerous” and a “monster” that had to be slain, while Senator Jesse Helms vowed “as long as there is breath in me, the United States will never - and I repeat never, never - allow its national security decisions to be judged by an international criminal court.” Birdsall, supra note 20, at 451.

Goldstone, supra note 18, at 621.


Fairlie, supra note 30, at 537.

The ICC, supra note 1.


Id. at 1.

Feinstein & Lindberg, supra note 3, at 51.

Schaefer, supra note 34, at 42.

Bogdan, supra note 36, at 43-49 (including the countries of Afghanistan, Bosnia-Herzegovina, Colombia, Congo, Egypt, India, Israel, Pakistan, and the Seychelles, among others).

Feinstein & Lindberg, supra note 3, at 51.

Id. at 51-52.

Schaefer, supra note 34, at 61-62.

Id. at 65.

Fairlie, supra note 30, at 538-39.

Feinstein & Lindberg, supra note 3, at 53-56 (The American abstention from the Security Council vote on referring the Darfur situation to the ICC implicitly indicated support for a Court investigation.).

Id. at 52.

Birdsall, supra note 20, at 462.

Id. at 463.


Id. at 157.

See Fairlie, supra note 30.

See Feinstein & Lindberg, supra note 3, at 48.
TO JOIN OR NOT TO JOIN THE INTERNATIONAL...,

29 Conn. J. Int'l L. 181

55 See Fairlie supra note 30, at 541.


58 Id.


62 This statement was given anonymously because this official was not an authorized spokesman of the Court. Id.


64 Id.

65 The States Parties to the Rome Statute, Int'l Criminal Court (May 1, 2013) http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20Rome%20Statute.aspx (The regional breakdown is 34 African nations, 18 Asia-Pacific nations, 27 Latin American and Caribbean nations, 18 from Eastern European and 25 from Western Europe and other states.).


70 David Von Drehle, The Multipolar Unilateralist, Wash. Post (Mar. 5, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/03/03/AR2006030302055.html (discussing how the unipolar President Bush shifted from a policy of unilateralism to seeking multilateral partnerships primarily with emerging countries like India, Brazil, and China).

71 Joseph Biden, Vice President of the U.S., Remarks by Vice President Biden in Ukraine, (July 22, 2009) transcript available at http://www.whitehouse.gov/the_press_office/Remarks-By-Vice-President-Biden-In-Ukraine/.

72 Robert D. Putnam, Diplomacy and Domestic Politics: The Logic of Two-Level Games, 42 Int'l Org., 427, 434 (1988) (explaining how the politics of international negotiations can lead to both domestic and international gains in a two level game
meaning when “domestic groups pursue their interests by pressuring the government to adopt favorable policies [and] [a]t the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments.”)

73 Simons, supra note 61.
74 Rome Statute, supra note 21, art. 24.
81 Smith, supra note 51, at 171.
82 Randy James, A Brief History of the Court Martial, Time (Nov. 18, 2009), http://www.time.com/time/nation/article/0,8599,1940201,00.html.
83 Smith, supra note 51, at 168. See Prosecutor v. Lubanga, Case No. ICC-01/04-01/06, Decision on the Prosecutor's Application for a Warrant of Arrest, ¶63 (Feb. 10, 2006).
84 Rome Statute, supra note 21, art. 64.
85 Id.
86 U.S. Const. art. VI, cl. 2 (federal treaties take precedence over state law).
90 Id. at 508.
91 See Rome Statute, supra note 21.
92 Triggs, supra note 89, at 532.