The European Law Students' Association

REPORT

THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

1ST SESSION, FIRST AND SECOND RESUMPTIONS

WITH EXCERPT REPORTS FROM THE ICC PREPARATORY COMMISSION

UNITED NATIONS HEADQUARTERS
NEW YORK CITY
21-23 APRIL 2003

ESPEN ROSTRUP NAKSTAD (ED.)

ELSA INTERNATIONAL 2003

original version

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[1] / [2] Introductory chapters and Annex I by Espen Rostrup Nakstad (ELSA International)

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23. April 2003

FIRST ICC BENCH INAUGURATED / PROSECUTOR ELECTED IN NEW YORK

Dear friends,

Tuesday, March 11, 2003 marked the inauguration of the eighteen judges to the first-ever permanent International Criminal Tribunal in The Hague. On April 21 the Court moved another step closer to becoming a functioning reality with the election of Dr. Luis Moreno Ocampo as its Prosecutor. The creation of the International Criminal Court is one of the best examples of what can be achieved through strong cooperation among governments, international organizations and civil society groups. The European Law Students' Association is proud to have been part of this process from the early meetings of the ad hoc Committee in 1995, through the 1996-98 meetings of the ICC Preparatory Committee, the 1998 Rome treaty conference and the ten sessions of the ICC Preparatory Commission, which paved the way for the Assembly of States Parties. Now it is time to look ahead, as the centre of events moves from New York to The Netherlands.

It is truly remarkable that only five years have passed since the international community first met at the Rome Diplomatic Conference of Plenipotentiaries in an effort to strengthen international justice mechanisms and bring an end to impunity. At the time, the fifty students representing ELSA International thought it impossible that five weeks of negotiations would result in the adoption of a treaty. Yet, on 17 July 1998 the Rome Statute was adopted by an overwhelming majority of states, making July 17th a new "international day of justice". There have been many obstacles to the ICC process, however, and predictions were made that it would be decades before enough governments would make the political commitment to bring the treaty into force. Still, a new epoch in international justice arrived on 11 April 2002, less than four years after the creation of the treaty, with 66 instruments of ratification deposited and enter into force of the treaty on 1 July 2002.

The Preparatory Commission (PrepCom) has drafted annexes to the ICC treaty that will help enhance a swift and fast change into action as the Court is being established in The Hague. At the first meeting of the Assembly of States Parties (ASP) in September 2002, the commission's recommendations were adopted, providing management oversight to the Presidency, Prosecutor and Registrar regarding the administration of the Court. Much work remains, however, to ensure that the Court will be as fair, effective and independent as possible. The annual meetings of the ASP will continue to discuss issues such as the Court's rules of procedure and budget, its cooperation with the United Nations and proposals for a provision on the Crime of Aggression.

This report from the European Law Students' Association has been compiled in order to give both background knowledge of the International Criminal Court and a more detailed presentation of the proceedings of the Assembly of States Parties at its first session. It is therefore available both in its *original version* and as a *handout version*. It is our hope that lawyers and students with a general interest in international law and international criminal law will take interest in the report. All contributions have been prepared by members of ELSA delegations to the ICC Preparatory Commission and the Assembly of States Parties respectively, and are based on their individual experiences as members of NGO legal expert teams. A special introductory report and guide to the Rome statute is also included (Annex I). We encourage new readers to study these document carefully before getting to grips with the enclosed working group reports.

Special thanks are due to the entire CICC staff in New York, its convenor Bill Pace, program Director Tanya Karanasios, legal advisors Jennifer Schense and Cecilia Nilsson; to CICC European coordinator Irune Aguirrezabal and ELSA's International Board in Brussels for supporting the work of the team and help make ELSA's contribution to the ICC project continue; to ELSA's international legal research groups; to the ASP Bureau and ASP President H.R.H. Prince Zeid Raad Al Hussein; to Professor Benjamin Ferencz for his long-time support; and to all members of previous ELSA delegations who have done outstanding work at previous UN meetings on the International Criminal Court in Europe and in the United States.

On behalf of the ELSA delegation to the Assembly of States Parties,

Espen Rostrup Nakstad
Director for United Nations, ELSA International

KEY INFORMATION

The International Criminal Court *(ICC) is the world's first permanent institution capable of investigating and trying individuals accused of war crimes, crimes against humanity and genocide. The ICC is complementary to national courts and its jurisdiction is not retroactive.*

The Preparatory Commission *(PrepCom) has convened at UN headquarters to finalise the work of the ICC treaty conference, draft annexes to the ICC statute and develop documents that will enhance a swift and fast change into action once the Court is established in The Hague.*

ITEMS OF THE AGENDA - ICC PREPARATORY COMMISSION AND ASP

RPE	Rules of Procedure and Evidence	finalised June 2000
EoC	Elements of Crimes	finalised June 2000
ICC-UN	Relationship Agreement between the Court and the UN	finalised Oct 2001
APIC	Agreement on Privileges and Immunities of the Court	finalised Oct 2001
RP/ASP	The Rules of Procedure of the Assembly of States Parties	finalised Oct 2001
FR	Financial Regulations	finalised Oct 2001
FR	Financial Rules	finalised Apr 2002
HQA	Basic principles governing a Headquarters Agreement	finalised Apr 2002
ASP-PD	Assembly of States Parties - Preparatory Documents	10th sess. July 2002
FYB	Budget for the Court's first operational year	finalised July 2002
FI-VTF	Financial issues - Victims Trust Fund	finalised July 2002
FI-RJ	Financial issues - Remuneration of judges, the Prosecutor and Registrar	finalised July 2002
EJ&P	Procedure for the nomination and election process for the Court's judges and Prosecutor.	finalised Sept 2002
EJ	Election of ICC Judges	election Feb 2002
EPB	Election of ICC Prosecutor and Budget Committee	election April 2003
CA	Proposals for a provision on the Crime of Aggression	ongoing

AVAILABLE DOCUMENTS

UN	UN reports on proceedings of PrepCom and ASP meetings	www.un.org
CICC	CICC reports on proceedings of PrepCom and ASP meetings	www.iccnow.org
ELSA	ELSA reports, proceedings of PrepCom and ASP meetings [1]	www.elsa.org

ELSA DELEGATION – ASSEMBLY OF STATES PARTIES [2]

Martina Kocjan	(Slovenia)	kocjan@jeanmonnetprogram.org
Julianna Koppãny	(Hungary)	koppany@axelero.hu
Richard Cohen	(USA)	richardcohen@emea.att.com
Espen Rostrup Nakstad	(Norway) - Head of Delegation	elsa_un@gmx.net

TIME-LINE 2003

Swearing in ceremony of ICC Prosecutor	16 June 2003
Appointment of the Registrar of the Court	June 2003
Meeting of the Budget Committee	4-8 August
2nd session of the Assembly of States Parties	8-12 September 2003

[1] This report is available at www.elsa.org - www.iccnow.org - and through elsa@brutele.be
[2] First session, second resumption 21-23 April 2003, UN Headquarters, New York City.

JUDGES OF THE INTERNATIONAL CRIMINAL COURT [3]

name	*country*	*list, region, gender*	*term of office*
René Blattmann	Bolivia	List B, LA/C, M	6 years
Maureen Harding Clark	Ireland	List A, WEO, F	9 years
Fatoumata Dembélé Diarra	Mali	List A, AFR, F	9 years
Adrian Fulford	United Kingdom	List A, WEO, M	9 years
Karl Hudson-Philips	Trinidad and Tobago	List A, LA/C, M	9 years
Claude Jorda	France	List A, WEO, M	6 years
Hans-Peter Kaul	Germany	List B, WEO, M	3 years
Philippe Kirsch [4]	Canada	List B, WEO, M	6 years
Erkki Kourula	Finland	List B, WEO, M	3 years
Akua Kuenyehia	Ghana	List B, AFR, F	3 years
Elisabeth Odio Benito	Costa Rica	List A, LA/C, F	9 years
Georghios M. Oikis	Cyprus	List A, ASIA, M	6 years
Navanethem Pillay	South Africa	List B, AFR, F	6 years
Mauro Politi	Italy	List B, WEO, M	6 years
Tuiloma Neroni	Samoa	List A, ASIA, M	3 years
Sang-hyun Song	Republic of Korea	List A, ASIA, M	3 years
Sylvia Helena de Figueiredo Steiner	Brazil	List A, LA/C, F	9 years
Anita Usacka	Latvia	List B, EE, F	3 years

BUREAU OF THE FIRST SESSION OF THE ASP

The Bureau

President	H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan)
Vice-Presidents	Mr. Allieu Ibrahim Kanu (Sierra Leone)
	Mr. Felipe Paolillo (Uruguay)
Rapporteur	Mr. Alexander Marschik (Austria)

Other members of the Bureau

Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Malta, Mongolia, Namibia, The Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Serbia and Montenegro, Trinidad and Tobago, The United Kingdom

[3] LA/C = Latin American and Caribbean States, WEO = Western European and other States, AFR = African States, ASIA = Asian States, EE = Eastern European States, M = male, F = female.
[4] President of the International Criminal Court

FUNCTIONS OF THE ASSEMBLY OF STATES PARTIES [5]

General oversight-functions vis-á-vis the Court

• Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court	Rome Statute Art 112, para 2 (b)
• Consider the reports and activities of the Bureau	Rome Statute Art 112, para 2 (c)

Financial oversight and management functions vis-á-vis the Court

• Consider and decide on the budget for the Court	Rome Statute Art 112, para 2 (d)
• Administration of the Victims Trust Fund	Rome Statute Art 79

Legal oversight and management functions vis-á-vis the Court

• Election of the Prosecutor	Rome Statute Art. 42., para 4
• Election of Judges	Rome Statute Art. 36
• Make recommendations on selection of Registrar	Rome Statute Art. 43, para 4
• Decide whether to alter the number of judges	Rome Statute Art 112, para 2 (e)
• Removal of Officers and Disciplinary Measures	Rome S.Art 46.2, Rule 30 of RPE
• Provide oversight and offer support in issues relating to the Host Country and the UN	Rome Statute Art 2 and 3, para 2
• Staff regulations and other related documents	Rome Statute Art 44, para 3
• Amendments to Secondary Documents	

Monitoring and support to States Parties

• Monitor payments of States Parties' financial contributions	Rome Statute Art 112, para 8
• Support the Court in questions relating to non-cooperation	Rome Statute Art 112, para 2 (f)
• Support states against external pressure	
• Provide oversight and offer support in issues relating to Privileges and Immunities	
• Provide oversight in the nomination process of judges	Rome Statute Art 36, para 4
• Manage procedures for dispute settlement	Rome Statute Art 119
• Provide oversight in the process of providing temporary premises and building the permanent premises of the Court	
• Establish and manage a trust fund for Least Developed Countries participating in the Meetings of the Assembly	

Processes of reviews and amendments

• Review Conference	Rome Statute Art 121
• Completion of the work on the Crime of Aggression	ICC-ASP/1/Res.1

Organisation of the Assembly

• Assembly meetings at least once a year	Rome Statute Art 112, para 6
• Establish subsidiary bodies	Rome Statute Art 112, para 4
• Meetings of subsidiary bodies	

The Assembly of States Parties *will be responsible both in the monitoring of the Court and in the evaluation of the implementation of the Rome Statute worldwide*

The principle of ***universal Jurisdiction*** *stems from the idea that certain crimes are so heinous that they offend the whole world and, as a result, every country has a right, if not an obligation, to hold the perpetrators accountable*

[5] Functions of the Assembly of States Parties, draft provided by the CICC Secretariat

ORGANS OF THE INTERNATIONAL CRIMINAL COURT [6]

The Presidency - The Chambers - The Office of the Prosecutor - The Registry

18 judges are permanent members of the Court, elected by secret ballot at a Meeting of the Assembly of the States Parties. All judges are nationals of States Parties. The judges can hold office for a term of nine years and are not eligible for re-election, except for the cases provided by the Rome Statute. The judges elected for a term of three years are eligible for re-election for full term. After the solemn undertaking, the judges elect the Presidency and constitute the Chambers.

The Presidency is composed of the President, the First and the Second Vice-Presidents, all of whom are elected by an absolute majority of Judges for a three-year renewable term. The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor. However, the Presidency will coordinate and seek the concurrence of the Prosecutor on all matters of mutual concern.

The Presidency, acting on behalf of the Court, can propose to increase the number of the judges, if it is considered necessary and appropriate. The Registry then will circulate the proposal to all the States Parties. The proposal will be finally discussed at a meeting of the Assembly of the States Parties. In accordance with the decisions of the Presidency, the judges will serve on a full-time basis or on a part-time basis.

Chambers
The judiciary of the Court is composed of three divisions: Appeals Division, Trial Division, Pre-Trial Division. Each division is responsible for carrying out the judicial functions of the Court.

The Appeals Division is composed of the President and four other judges; the Trial and the Pre - Trial Division of not less than six judges each.

The Registry [7] is responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the function of the Prosecutor. It is headed by the Registrar, who is the principal administrative officer of the Court and exercises his/her functions under the authority of the President of the Court. The Registrar is elected by an absolute majority of the judges in plenary session, taking into account any recommendation by the Assembly of the States Parties.

The Office of the Prosecutor [8] acts independently as a separate organ of the Court. It is headed by a Prosecutor that is elected by secret ballot by an absolute majority of the Assembly of the States Parties.

The Office of the Prosecutor is responsible for receiving referrals of situations and information on crimes within the jurisdiction of the Court. The mandate of the Office is to conduct investigations and prosecutions of crimes that fall within the jurisdiction of the Court. The Prosecutor may start an investigation upon referral (by a State Party or by the Security Council, acting under Chapter VII of the Charter of the United Nations) of situations in which there is a reasonable basis to believe that such crimes have been or are being committed. The Prosecutor may also receive information on such crimes provided by other sources, and may, after a preliminary examination of the material received and following an authorisation by the Pre-Trial Chamber, start investigations.

The Office of the Prosecutor *is an independent organ of the Court responsible for receiving referrals of situations and information on crimes within the jurisdiction of the Court*

18 judges *are permanent members of the Court*

The judiciary *of the Court is composed of three divisions: the Appeals Division, the Trial Division, and the Pre-Trial Division*

[6] By Espen Rostrup Nakstad, ELSA International
[7] Article 43 of the Rome Statute deals with the Registry, which will be responsible for the non-judicial aspects of the administration and servicing of the Court.
[8] Article 42 of the Rome Statute deals with the Office of the Prosecutor that is to act independently as a separate organ of the

Pre-Rome ELSA delegations

1995 United Nations ad hoc Committee on the establishment of an International Criminal Court, United Nations, New York (3-13 April, 14-25 August 1995).[1]

1996-98 The Preparatory Committee on the establishment of an International Criminal Court, Session 1, 2, 3, 4 and 5, UN Headquarters, New York.

Pre-Rome ELSA publications

- **Handbook for the Draft Statute of the International Criminal Court (ELSA International) First Edition (1997) [1]**

  Project Coordinators: Peter Wilborn and Mette Damgaard
  Authors: Camilla Abrahamsson (Sweden), Mette Damgaard (Denmark), Elisabeth Baumgartner (Switzerland), David Donat-Cattin (Italy), Thomas Henquet (The Netherlands), Arne Hoppe (Germany), Malin Lundgren (Sweden), Mads Poulsen (Denmark), Corinna Wegener (Germany), Emilie Wiinblad (Denmark), Zoe Konstantopoulou (Greece)

- **Handbook for the Draft Statute of the International Criminal Court (ELSA International) Second Edition (May 1998)**

  Editor: Michael Cottier
  Authors: Ion-Stefan Georgescu, Thomas Henquet, Sebastian Knocke, Robert Spano, Elisabeth Baumgartner, David Donat-Cattin.

- **Report from the Preparatory Committee on the establishment of an International Criminal Court, 3rd session 11-21 February 1997 - Working Group on International Justice**
  Authors: Mette Damgaard (Denmark), Joanna Lundquist (Sweden), Per Westling (Sweden), Katrin May Lucken (Germany), Darko Trifunovic (Yugoslavia), Teresa Almeida (Portugal), Phillip Candreia (Switzerland)

Rome Conference

- **United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 15 June-17 July 1998**

  www.elsa.org - academic reports

Post-Rome ELSA delegations

1st session - ICC Preparatory Commission (16 - 26 February 1999), UN Headquarters, New York

The first session of the Preparatory Commission for the International Criminal Court was held in New York from 16 to 26 February 1999, in accordance with General Assembly resolution 53/105 of 8 December 1998. At its first plenary meeting, the Commission adopted its agenda contained in document PCNICC/1999/L.1

2nd session - ICC Preparatory Commission (26 July – 13 August 1999), UN Headquarters, New York

Matthias Neuner (Germany) Head of Delegation

3rd session - ICC Preparatory Commission (29 Nov-17 Dec 1999), UN Headquarters, New York

Astrid Reisinger (Austria)	Kirsti Guttormsen (Norway)	Monika Maier (Austria)	Shamim Farid (Austria)
Bjørn Åge Hamre (Norway)	Anne Lorgen Riise (Norway)	Alexander Schultz (Germany)	Ursula Winzer (Austria)
			Mads Harlem (Norway)

4th session - ICC Preparatory Commission (13 to 31 March 2000), UN Headquarters, New York

See www.elsa.org Academic reports Archive

5th session - ICC Preparatory Commission (12-30 June 2000), UN Headquarters, New York

Pascal Arnold	Hege A. Petterson (Norway)	Jochen Prinsen (NL)	Giedrius Sabaliauskas (Lithuania)
Anastasia Alvizou	Nicoline Mertz (Germany)	Shamim Farid	*Felix Ronkes Agerbeek (NL)-HoD*

6th session - ICC Preparatory Commission (27 Nov - 8 Dec 2000), UN Headquarters, New York

Sofia Candeias (Portugal)	Antonia Ford (UK)	Marta Samota (Croatia)	Victoria Banti-Markouti (Greece)
Alessandro Marra (Italy)	Anabela Moreira (Portugal)	Teresa Rocha, (Portugal)	Christian Wiese Svanberg (Denmark)
Lars Kristian Norgaard (Norway)	Martine Scheie (Norway)	Danielle Kurpershoek (The Netherlands)	Espen Nakstad (Norway)
	Inger-Lise Hognerud (Norway)		*Cornelia Schneider (Germany) - HoD*

7th session - ICC Preparatory Commission (26 February - 9 March 2001), UN Headquarters, New York

Carla Novais (Portugal)	Iason Kasselakis (Greece)	Attyia Sheikh (Switzerland)	Tiago Moreira Alves (Portugal)
Espen Nakstad (Norway)	Isabelle Walther (Germany)	Isabella Zamponi (Austria)	Maria Christine Schütz (Austria)
George Jokhadze (Geor.)	Vass Iulia Erszebet (Romania)	Malamatenia Katsomiti (G)	*Sofia Candeias (Portugal) - HoD*

8th session - ICC Preparatory Commission (24 Sept - 5 Oct 2001), UN Headquarters, New York

Ines Marinho (Portugal)	Anne-Sophie Massa (Belgium)	Isabelle Walther (Germany)	Danielle Kurpershoek (Netherlands)
Andrej Kristan (Slovenia)	Francisco Queiró (Portugal)	Anca Iulia Pop (Romania)	Khutsishvili Ketevan (Georgia)
Dora Gazi (Croatia)	Gonçalo Matias (Portugal)	Jenny Piipponen (Sweden)	Leonel Santos (Portugal)
Paola Sacchi (Italy)	Meinhard Schröder (Germany)	Patrick Guidon witzerland)	Mette Kristin Eriksen (Norway)
Silvia Michelli (Italy)	Matthias Goldmann (Germany)	Sofia Candeias (Portugal)	*Espen R. Nakstad (Norway) – HoD*

9th session - ICC Preparatory Commission (8-19 April 2002), UN Headquarters, New York

Paola Sacchi (Italy), Patrick Guidon (Switzerland)	Inês Marinho (Portugal) Matthias Goldmann (Germany)	Jenny Piipponen (Sweden) Meinhard Schröder (Germany)	Amardy Geerdink (The Netherlands) Sofia Candeias (Portugal)
			Espen R. Nakstad (Norway) – HoD

10th session - ICC Preparatory Commission (1-12 July 2002), UN Headquarters, New York

Myriam Bouazdi (France)	Andreas Stomps (Germany)	Silvia Martis (Romania)	Connie Schneider (Germany/
Johanna Hautakorpi (Finland)	Matthias Goldmann (Germany) Ann Swampillai (UK)	Roberta Ferrario (Italy) Heidi Bentzen (Norway)	United Kingdom) *Espen R. Nakstad (Norway) – HoD*

1st session - Assembly of States Parties to the Rome Statute of the International Criminal Court, UN Headquarters, New York, 3-10 September 2002

Paola Sacchi (Italy)	Regina Klosterman (Germany)	Michal Strzelecki (Poland)	Ilona Kostadinovova (Check Rep.)
Myriam Bouadzi (France)	Tamara Aleksidze (Georgia)	David Gonzalez Herrero (S	*Espen R. Nakstad (Norway) – HoD*

1st session, second resumption - Assembly of States Parties to the Rome Statute of the International Criminal Court, UN Headquarters, New York, 21-23 April 2003

Richard Cohen (USA) Julianna Koppãny (Hungary) Martina Kocjan (Slovenia) *Espen R. Nakstad (Norway) – HoD*

The European Law Students' Association

PINIL

PROJECT ON ICC NATIONAL IMPLEMENTATION LEGISLATION

- Executive Summary -

Since the inception of the International Criminal Court (***ICC***) at the Rome Diplomatic Conference in 1998, ELSA has sought to contribute to the critical dialogue surrounding the Court and its role. As a non-political organisation our involvement to date has been focused on research projects, including the ICC handbook which was distributed to all delegates at the Rome Conference, and the more recent research paper on the election of judges. In addition, ELSA has been actively involved in the ICC Preparatory Commission and the Assembly of States Parties.

After the coming into force of the Rome Statute on 1 July 2002, the focus of academics, governments and the NGO community has shifted to the implementation of the Rome Statute in domestic jurisdictions. In recognition of this fact ELSA International has created its legal research "Project on ICC National Implementation Legislation" (***PINIL***) to examine the conformity of national criminal laws with the Rome Statute. We feel that ELSA is particularly well placed to carry out this research task, since we are represented in 38 countries in Europe most of which we are hoping to get involved in this Project. We believe that PINIL will ultimately fill the current lacuna in detailed information on the countries within our extensive network, particularly in Central and Eastern Europe.

The Project will be a compendium of country reports, each of which will seek to analyse the relevant national laws. We aim to ensure a **consistent approach** in order to **faciliate comparison**. Nevertheless the focus will vary according to the individual country´s implementation status. In countries where there is draft, or finalised implementing legislation, the study will concentrate on their analysis. We are however aware that a number of countries have yet to commence the implementation process. In these instances our primary objective will be to compare the material criminal law of the domestic jurisdiction with that contained in the Rome Statute. In addition, we will examine the possibility of the country co-operating with the ICC at the present time.

Each country report will endeavour to address two questions:
- Is the domestic criminal law sufficient to preclude the ICC and its Prosecutor from commencing an investigation or prosecution? (Principle of Complementarity)
- Is the State in a position to comply with its obligations to co-operate with the ICC as detailed in the Rome Statute? (Co-operation)

The research will be carried out by students and young lawyers from across Europe who are selected on the basis of academic ability and specialist knowledge. Through this selection process, a clear academic structure and the advice of renowned academics we believe that the end result will be a **high quality publication** which will be of relevance to all those interested in the ICC. The publication is envisaged for 2004.

You can find more information about PINIL at **www.elsa-pinil.org**

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BACKGROUND – THE INTERNATIONAL CRIMINAL COURT [9]

More than fifty years ago the Nuremberg and Tokyo tribunals set the stage for efforts to create an international criminal court. These military war crimes tribunals came into existence almost a century after a permanent court was first called for by Mr. Gustav Moynier in response to the crimes of the Franco-Prussian war[10] and nearly three decades after the framers of the 1919 Versailles Treaty had envisaged an ad hoc international court to try war criminals. Even though roots go back to the early 19th Century, and in spite of repeated calls for an international criminal tribunal by the 1948 Genocide Convention, efforts to establish a permanent court were delayed for decades by the cold war and refusal of governments to accept a new international legal jurisdiction.

> *"[The International Criminal Court] promises, at last, to supply what has for so long been the missing link in the international legal system, a permanent court to judge the crimes of gravest concern to the international community as a whole - genocide, crimes against humanity, war crimes, and the crime of aggression.."*
>
> Kofi Annan, Secretary General of the United Nations

It was only with the establishment of temporary ad hoc tribunals for the former Yugoslavia and Rwanda respectively, that tables started to turn.[11] Discussions on a permanent Court were strengthened further during Preparatory Committee meetings and resulted in the negotiation of a treaty that was adopted in Rome on 17 July 1998. The treaty was welcomed by an overwhelming majority of states and by civil society at large.

The International Criminal Court (ICC) is a permanent court capable of investigating and trying individuals accused of the most serious violations of international humanitarian law, namely war crimes, crimes against humanity and genocide. Unlike the International Court of Justice (ICJ) in the Hague, whose jurisdiction is restricted to states, the ICC will consider cases against individuals; and unlike the Rwandan and Yugoslavian War Crimes Tribunals, created to consider crimes committed during these conflicts, its jurisdiction will not be situation specific. It should be emphasised that the ICC will be complementary to national criminal jurisdiction[12] and it has jurisdiction only with respect to crimes committed after the entry into force of the Statute.[13] States Parties to the Rome Statute, the Security Council and the Court's Prosecutor have the power to bring cases before the Court, which is composed of judges from 18 different countries. It has an independent Prosecutor elected through secret ballot by States Parties to the treaty.

The ICC treaty is named "the Rome Statute of the International Criminal Court". It defines the crimes within the jurisdiction of the ICC, how the Court will work and what states must do to co-operate with it. Further, it stipulates that the Court will only come into existence following the creation of an Assembly of States Parties (ASP) after the 60th ratifications of the treaty.[14] The required sixty state ratifications were deposited by 11 April 2002, less than four years after the adoption of the Rome Statute, and the ICC treaty entered into force on 1 July 2002.

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[9] By Espen Rostrup Nakstad, The European Law Students' Association International – elsa_un@gmx.net

[10] Gustav Moynier was one of the founders of the International Committee of the Red Cross and proposed a permanent court in response to the crimes of the Franco-Prussian War in 1872.

[11] The International Criminal Tribunal for former Yugoslavia - ICTY - established 1993 by the UN Security Council
The International Criminal Tribunal for Rwanda - ICTR - established 1994 by the UN Security Council

[12] Article 1 of the Rome Statute

[13] Jurisdiction ratione temporis - Article 11of the Rome Statute. The Rome Statute entered into force on 1 July 2002.

[14] The Statute enters into force on the first day of the month after the 60th day following the

Following the successful negotiations of an ICC treaty in Rome in 1998, ten Preparatory Commission meetings were convened at UN headquarters with the mandate to finalise the work of the Rome Diplomatic Conference, draft annexes to the statute and develop documents that will enhance a swift and fast change into action once the Court is established.

THE PREPARATORY COMMISSION

Following the successful negotiations of an ICC treaty in Rome in 1998, a Preparatory Commission convened at UN headquarters with the mandate to finalise the work of the Rome Diplomatic Conference, draft annexes to the statute and develop documents that would enhance a swift and fast change into action once the Court is established.[15] All ten sessions of the commission were monitored by the worldwide coalition of non-governmental organisations - the CICC.[16] In accordance with the Rome Statute, the Preparatory Commission completed its work to be presented to the Assembly of State Parties which met for the first time from 3 - 10 September 2002. The Assembly elected the court's judges and prosecutor at the first and second resumption of its first session – in February and April 2003 respectively.

The Preparatory Commission remained in existence until the conclusion of the first session of the Assembly of States Parties. At its meeting in June 2000 the PrepCom adopted two key texts by consensus; one on Rules of Procedure and Evidence and the other on Elements of Crimes. The Rules cover such issues as composition and administration of the Court, penalties for crimes, obligations of international cooperation and assistance, as well as enforcement of sentences. On the matter of crimes initially within the Court's jurisdiction - genocide, war crimes and crimes against humanity - the Commission identified the elements that constituted those crimes.

The 2001-2002 Preparatory Commission Working Groups focused on the following issues;[17] a definition of the crime of aggression; a relationship agreement between the Court and the United Nations; a relationship agreement between the Court and the host country of its headquarters (The Netherlands); financial rules and regulations for the Court; privileges and immunities of the Court; a first-year budget for the Court; and rules of procedure of the Assembly of States Parties.

As regards the Crime of Aggression, the Rome Conference specifically requested the Commission to prepare proposals on the elements and conditions under which the Court shall exercise its jurisdiction over the crime. Once agreement is reached on a legal definition of aggression, the draft text will be presented to an International Criminal Court amendment conference, which may be convened seven years after the Court becomes operational.[18] In the meantime, a special working group will discussed various proposals on the subject.

"This manual [ICC Handbook] prepared by ELSA constitutes an extremely handy and useful guide to the preparatory work of the International Criminal Court. It should find its way onto the desk of every delegate to the Diplomatic Conference, and everyone who is trying to follow the complexities of the drafting process."

Professor William Schabas

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date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the UN. (Art. 126)

[15] Resolution F of the Final Act of the Rome Diplomatic Conference, July 1998

[16] The European Law Students' Association is a member of the CICC steering committee.

[17] Eight session of the ICC PrepCom September-October 2001, ninth session April 2002, tenth session July 2002

[18] The Review Conference, Article 123 of the Rome Statute

A review conference of States Parties would also have the authority to include other crimes under its jurisdiction. During the Rome Conference, some speakers called for such issues as terrorism, international drug trafficking and use or threat of use of nuclear weapons to be covered by the Court. There was concern, however, about overtaxing the Court in its initial stages. A door was left open, though, for their future inclusion.[19]

THE ASSEMBLY OF STATES PARTIES

The Assembly of States Parties has, in many ways, continued the work of the ICC Preparatory Commission. It has been responsible for further modification of the rules of procedure of the Assembly, the Second Year Budget and the Court's Financial Rules and Regulations. Further, the ASP has considered and adopted recommendations of the Preparatory Commission to provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court. It is likely that the Assembly of States Parties also will continue to discuss the status of the Court, its jurisdiction, and the nature of cases brought to the Court, as well as the Court's cooperation with the United Nations and other states.

The first annual meeting of the Assembly of States Parties was convened in New York from 3-10 September 2002.[20] From the year 2004, ASP meetings are likely to be convened in The Hague. Non-governmental legal expert teams will have the same opportunities to monitor these future meetings.

There is little doubt that the road to Rome was a long and contentious one. Nevertheless, the momentum for the International Criminal Court has been beyond all expectations in recent years. If one considers the governmental discussions in 1995-1998, it was presumed that it would take an estimated 20-25 years to create the Court. Now, only five years after the adoption of the Statute, the instruments most vital to the treaty have been successfully completed and the required 60 state ratifications are in place. Unfortunately, these events do not guarantee for an effective and successfull institution. Many other states will need to ratify the treaty to ensure that the Court has the widest possible jurisdiction. Furthermore, all states that ratify must ensure that their national laws have been modified to allow for complementarity and full cooperation with the Court. This is of great importance.

It is tempting to view the ICC's birth as a triumph of law over force. In reality, the ICC comes into the world under tough circumstances. Some major states refuse resolutely to become parties to the statute, and the ICC prosecutor could face a hard task in deciding which crimes to investigate. It is encouraging that, with the notable exceptions of the US and Turkey, most NATO states are parties to the treaty. So are a number of significant powers elsewhere, including Argentina, Nigeria and South Africa. The opposition of the US, however, based on the fear that a rogue ICC prosecutor might charge US servicemen with war crimes, has been much publicised despite the many safeguards in the statute that block any attempt of politically motivated prosecution.

Law without power is no law. International courts need the support of major powers if they are to operate effectively. The International Criminal Tribunal for

"A page in the history of humankind is being turned", said United Nations Under-Secretary General Hans Corell on 11 April 2002, well aware of the giant steps taken by 66 states to ratify the treaty, amend their constitutions and start implementing new legislation.

The result is an instrument that will strengthen international justice mechanisms concerning crimes that are universally condemned and help bring an end to centuries of impunity.

[19] The Review Conference, Article 123 of the Rome Statute
[20] Eight session of the ICC PrepCom September-October 2001, ninth session April 2002
ICC PrepCom: the Preparatory Commission for the establishment of the International Criminal Court

the Former Yugoslavia in The Hague is a good example of how important it is to have suitable conditions for the gathering of evidence and, eventually, the arrest of suspects to function as intended. As for the ICC's list of crimes[21], there is wide agreement that they make a sound basis for the Court. These crimes are based on solid law, and also on precedent from the Nuremberg tribunal right down to the ongoing Yugoslavia and Rwanda tribunals. The key challenge, however, is not what types of crimes the ICC will investigate, but which particular crimes, and in which countries.

The Court is expressly barred from pursuing a case that is being genuinely investigated or prosecuted within the state concerned.[22] Therefore, the ICC risk end up tackling a small number of cases, mainly from third world states, in the foreseeable future. The Prosecutor will hold the most important and politically sensitive post in the Court[23] and will, like the UN Security Council, have a delicate task in deciding which cases to investigate and prosecute. It could be hard to build up confidence in the Court's impartiality while being unavoidably selective in investigations; and even harder to secure the necessary minimum of cooperation from states that are not parties to the ICC

"At the end of the day, the ICC's greatest success may well be in getting states to take their obligations to implement international law seriously, and to investigate violations properly within their own legal systems, so that their nationals never see the dock in The Hague..."

At the end of the day the ICC's greatest success may well be in getting states to take their obligations to implement international law seriously, and to investigate violations properly within their own legal systems, so that their nationals never see the dock in The Hague. Like the nuclear deterrent, the ICC may have a function even if it is not used. It may also trigger further development of international law and a wider acceptance of universal jurisdiction.

"A page in the history of humankind is being turned", said UN Under-Secretary General Hans Corell on 11 April 2002, well aware of the giant steps taken by 66 states to ratify the treaty, amend their constitutions and start implementing new legislation. The result is an instrument that will strengthen international justice mechanisms concerning crimes that are universally condemned and help bring an end to centuries of impunity. Even though the Court will have to meet unrealistic expectations in its first operational years, with the capacity to indict a small number of criminals only, it has already fulfilled its main objective; - perpetrators can no longer feel safe from prosecution.

April 2003
Espen Rostrup Nakstad

The International Criminal Court, The Hague - 1 July 2002

[21] Genocide, crimes against humanity and war crimes.
[22] The Rome Statute Article 1
[23] The Court will be composed of the following organs: The Presidency; An Appeals Division, a Trial Division and a Pre-Trial Div; The Office of the Prosecutor; The Registry. (Art 34, Rome Statute)

DOCUMENTS - ASSEMBLY OF STATES PARTIES

GENERAL DOCUMENTS

First session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (first and second resumptions)

Symbol	*Description*
Plenary	
ICC-ASP/1/1	Provisional agenda
ICC-ASP/1/1/Add.1	Agenda of the Assembly of States Parties, adopted on 3 February 2003
ICC-ASP/1/2	Report of the Credentials Committee
ICC-ASP/1/L.1	Election of judges - Proposal submitted by France
ICC-ASP/1/L.2	Election of judges - Proposal submitted by Brazil, Chile, Costa Rica, Ecuador, Mexico, Nauru, Nigeria, Mongolia, Paraguay, Peru, Republic of Korea, Trinidad and Tobago and Uruguay
ICC-ASP/1/L.3	Draft report of the Assembly of States Parties to the Rome Statute of the International Criminal Court
ICC-ASP/1/L.5	Draft report first session (first and second resumptions)
ICC-ASP/1/INF/1	List of delegations
ICC-ASP/1/INF/1/Add.1	List of delegations resumed sessions
ICC-ASP/1/INF/1/Add.2	List of delegations resumed sessions
ICC-ASP/1/11	List of candidates for the post of Registrar
Working Group of the Whole	
ICC-ASP/1/C.1/L.1	Proposal submitted by Mexico in relation to a draft agreement on the privileges and immunities of the International Criminal Court
ICC-ASP/1/C.1/L.2	Report of the Working Group of the Whole
ICC-ASP/1/3	Official Records - Assembly of States Parties to the Rome Statute of the International Criminal Court First session New York, 3-10 September 2002
Resolutions adopted by the Assembly of States Parties	
ICC-ASP/1/Res.1.	Continuity of work in respect of the crime of aggression
ICC-ASP/1/Res.2	Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court
ICC-ASP/1/Res.3.	Procedure for the election of the judges for the International Criminal Court
ICC-ASP/1/Res.4	Establishment of the Committee on Budget and Finance
ICC-ASP/1/Res.5	Procedure for the nomination and election of members of the Committee on Budget and Finance
ICC-ASP/1/Res.6.	Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims

ICC-ASP/1/Res.7	Procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims
ICC-ASP/1/Res.8	Provisional arrangements for the secretariat of the Assembly of States Parties
ICC-ASP/1/Res.9.	Permanent secretariat of the Assembly of States Parties
ICC-ASP/1/Res.10	Selection of the staff of the International Criminal Court
ICC-ASP/1/Res.11	Relevant criteria for voluntary contributions to the International Criminal Court
ICC-ASP/1/Res.12	Budget appropriations for the first financial period and financing of appropriations for the first financial period
ICC-ASP/1/Res.13	Working Capital Fund for the first financial period
ICC-ASP/1/Res.14	Scales of assessments for the apportionment of the expenses of the International Criminal Court
ICC-ASP/1/Res.15	Crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court
Decisions adopted by the Assembly of States Parties	
ICC-ASP/1/Decision 1.	Provision of funds for the Court
ICC-ASP/1/Decision 2	Interim arrangements for the exercise of authority pending the assumption of office by the Registrar
ICC-ASP/1/Decision 3	Participation of the International Criminal Court in the United Nations Joint Staff Pension Fund
ICC-ASP/1/Decision 4	Seating arrangements for States Parties
Draft resolutions and reports	
ICC-ASP/1/10	Draft resolution concerning the recognition of the coordinating and facilitating role of the NGO Coalition for the International Criminal Court

DOCUMENTS - 10TH SESSION ICC PREPCOM

GENERAL DOCUMENTS

Tenth session of the Preparatory Commission for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002//L.3	Statement by the Preparatory Commission dated 3 July 2002, transmitted by the Chairmen of the Preparatory Commission to the President of the Security Council with copies to the members of the Security Council and to the Secretary-General
PCNICC/2002//L.4	Proceedings of the Preparatory Commission at its tenth session (1-12 July 2002)
PCNICC/2002/L.5	Draft Report of the Preparatory Commission for the International Criminal Court.
PCNICC/2002/DP.1	Note of the selection of the staff of the International Criminal Court – Proposal submitted by Spain
PCNICC/2002/DP.1/Rev.1	Note of the selection of the staff of the International Criminal Court – Proposal submitted by Spain and Chile
PCNICC/2002/INF/6/Corr.1	List of delegations Corrigendum (ninth session)
PCNICC/2002/INF/7	Statement of the European Union on the position of the United States of America towards the International Criminal Court – Information document submitted by Spain
PCNICC/2002/INF/8	List of delegations

WORKING GROUP ON A DRAFT BUDGET FOR THE FIRST FINANCIAL YEAR OF THE COURT

Tenth session of the Preparatory Commisssion for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002/WGFYB/L.3	Revised draft budget for the first financial period of the Court – Text of Part Two: prepared by the Secretariat
PCNICC/2002/WGFYB/L.4	Proposed text of provisions on external audit, on a Working Capital Fund and on outsourcing of procurement for inclusion in a draft budget for the first financial period of the Court, as well as an annex on non-recurrent requirements for furniture and equipment – prepared by the Secretariat

PCNICC/2002/WGFYB/L.5	Revised draft budget for the first financial period of the Court – Proposed changes to the text of Part One of the revised draft budget (PCNICC/2002/L.1/Rev.1/Add.1, section A)
PCNICC/2002/WGFYB/L.6	Revised draft budget for the first financial period of the Court – Proposed changes to the text of Part Two of the revised draft budget (PCNICC/2002/WGFYB/L.3)
PCNICC/2002/WGFYB/L.6/Corr.1	Corrigendum
PCNICC/2002/WGFYB/L.7	Report of the Working Group
PCNICC/2002/WGFYB/DP.2	Selection of the staff of the International Criminal Court – Proposal submitted by Argentina, Brazil, Chile, Colombia, Costa Rica, Paraguay, Spain and Venezuela: draft resolution
PCNICC/2002/WGFYB/DP.2/Rev.1	Selection of the staff of the International Criminal Court – Proposal submitted by Argentina, Brazil, Chile, Colombia, Costa Rica, Paraguay, Spain and Venezuela: draft resolution
PCNICC/2002/WGFYB/RT.5	Budget for the first financial period – Draft resolution to be adopted by the Assembly of States Parties: Proposal by the Coordinator (Scenario A – New York)
PCNICC/2002/WGFYB/RT.5/Rev.1	Budget for the first financial period – Draft resolution to be adopted by the Assembly of States Parties: Proposal by the Coordinator
PCNICC/2002/WGFYB/RT.6	Scale of assessments for the appointment of the expenses of the International Criminal Court – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.6/Rev.1	Scale of assessments for the appointment of the expenses of the International Criminal Court – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.7	Working Capital Fund for the first financial period – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.7/Rev.1	Working Capital Fund for the first financial period – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.8	General Fund for the first financial period – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.9	Budget for the first financial period – Draft resolution to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.10	Draft decision of the Assembly of States Parties relating to the scale of assessment – Proposal by the Coordinator
PCNICC/2002/WGFYB/RT.11	Draft decision of the Assembly of States Parties relating to the provision of funds for the Court – Proposal by the Coordinator

PCNICC/2002/WGFYB/RT.12	Proposed texts of provisions on plenary sessions of the Court subsequent to its Inaugural Meeting – Proposal by the Coordinator
PCNICC/2002/WGFYB/RT.13	Proposed texts of provisions on the conditions of service of judges of the International Criminal Court – Proposal by the Coordinator
PCNICC/2002/WGFYB/RT.14	Text of provisions on the issues related to a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, established pursuant to article 79 of the Rome Statute – Proposal by the Coordinator
PCNICC/2002/WGFYB/RT.15	Interim arrangements for the exercise of authority pending the assumption of office by the Registrar – Draft decision to be adopted by the Assembly of States Parties
PCNICC/2002/WGFYB/RT.16	Selection of the staff of the International Criminal Court – Draft resolution to be adopted by the Assembly of States Parties

WORKING GROUP ON FINANCIAL ISSUES – REMUNERATION OF JUDGES

Tenth session of the Preparatory Commisssion for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002/WGFI-RJ/DP.1	Proposal for an amendment submitted by the United Kingdom of Great Britain and Northern Ireland concerning non-full-time judges – Salaries, allowances and benefits
PCNICC/2002/WGFI-RJ/RT.2	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator
PCNICC/2002/WGFI-RJ/RT.2/Rev.1	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator
PCNICC/2002/WGFI-RJ/RT.2/Rev.2	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator

WORKING GROUP ON FINANCIAL ISSUES – VICTIMS TRUST FUND

Tenth session of the Preparatory Commisssion for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002/WGFI-VTF/L.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims
PCNICC/2002/WGFI-VTF/L.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims.
PCNICC/2002/WGFI-VTF/RT.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims
PCNICC/2002/WGFI-VTF/RT.1/Add.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims – Discussion paper proposed by the Coordinator
PCNICC/2002/WGFI-VTF/RT.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims - Discussion paper proposed by the Coordinator

WORKING GROUP ON ASSEMBLY OF STATES PARTIES PREPARATORY DOCUMENTS

Tenth session of the Preparatory Commission for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002/WGASP-PD/L.5	Election procedures of the committee on Budget and Finance of the International Criminal Court: comparative chart with the procedures of the Advisory Committee and Administrative and Budgetary Questions of the United Nations and the Finance Committee of the International Seabed Authority – Working paper by the Secretariat
PCNICC/2002/WGASP-PD/L.6	Draft report of the Working Group – Draft resolution of

	the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court
PCNICC/2002/WGASP-PD/L.6/Corr.1	Corrigendum
PCNICC/2002/WGASP-PD/L.7	Draft report of the Working group – Draft resolution regarding the permanent secretariat of the Assembly of States Parties
PCNICC/2002/WGASP-PD/L.8	Draft report of the Working group – Draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties
PCNICC/2002/WGASP-PD/L.9	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Committee on Budget and Finance
PCNICC/2002/WGASP-PD/L.10	Draft report of the Working Group – Provisional agenda for the first meeting of the Assembly of States Parties, to be held at united Nations Headquarters from 3 to 10 September 2002
PCNICC/2002/WGASP-PD/DP.5	Procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Proposal by Austria, Hungary and Liechtenstein, Romania, Sweden, and Switzerland concerning article 36(8)(a) of the Rome Statute
PCNICC/2002/WGASP-PD/DP.6	Proposal submitted by Spain – permanent Secretariat of the Assembly of States Parties
PCNICC/2002/WGASP-PD/DP.6/Corr.1	Corrigendum
PCNICC/2002/WGASP-PD/DP.7	Secretariat of the Assembly of States Parties: organization of a permanent secretariat – Proposal submitted by Belgium
PCNICC/2002/WGASP-PD/DP.8	Election of judges – Proposal submitted as a basis for discussion by the Assembly of States Parties by Austria, Belgium, Benin, Burundi, Denmark, Ecuador, Finland, France, Germany, Greece, Hungary, Italy, Kenya, Liechtenstein, Malawi, Mali, Mongolia, Mozambique, New Zealand, Norway, Paraguay, Portugal, Romania, Samoa, Senegal, Sierra Leone, South Africa, Sweden, Switzerland, the United republic of Tanzania and Zambia
PCNICC/2002/WGASP-PD/RT.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Rolling text prepared by the Coordinator

WORKING GROUP ON THE CRIME OF AGGRESSION

Tenth session of the Preparatory Commisssion for the International Criminal Court (1-12 July 2002)

Symbol	*Description*
PCNICC/2002/WGCA/L.2	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression
PCNICC/2002/WGCA/L.2/Rev.1	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression
PCNICC/2002/WGCA/DP.2	Elements of the Crime of Aggression – Proposal submitted by Samoa
PCNICC/2002/WGCA/DP.3	Proposed text on the definition of the crime and act of aggression – Proposal submitted by the delegation of Colombia
PCNICC/2002/WGCA/DP.4	Draft resolution of the continuity of work in respect of the Crime of Aggression – Proposal by the Movement of Non-Aligned Countries
PCNICC/2002/WGCA/DP.5	Incorporating the crime of aggression as a leadership crime into the definition – Proposal submitted by Belgium, Cambodia, Sierra Leone and Thailand
PCNICC/2002/WGCA/RT.1/Rev.1	Discussion paper proposed by the Coordinator
PCNICC/2002/WGCA/RT.1/Rev.2	Discussion paper proposed by the Coordinator

DOCUMENTS

UNITED NATIONS DIPLOMATIC CONFERENCE OF PLENIPOTENTIARIES ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT [24]

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, Italy 15 June-17 July 1998)

Symbol	*Description*
A/CONF.183/1	Provisional Agenda
A/CONF.183/2	Report of the Preparatory Committee on the Establishment of an International Criminal Court
A/CONF.183/2/Add.1	Draft Statute for the International Criminal Court and Draft Final Act
A/CONF.183/2/Add.1/Corr.1	
A/CONF.183/2/Add.1/Corr.2	
A/CONF.183/2/Add.1/Corr.3	
A/CONF.183/2/Add.2	Draft Rules of Procedure
A/CONF.183/2/Add.2/Rev.1	Revision
A/CONF.183/3	Memorandum of the Secretary-General on the methods of work and procedures for the Conference
A/CONF.183/3/Corr.1	
A/CONF.183/4	Communications received regarding consultations on the draft rules of procedure of the Conference (rules 6, 11 and 49) and the candidature of the Chairman of the Committee of the Whole
A/CONF.183/5	Communication received regarding consultations on the draft rules of procedure of the Conference (rules 19, 36 and 52)
A/CONF.183/7	Report of the Credentials Committee
A./CONF.183/7/Corr.1	
A/CONF.183/9	Rome Statute of the International Criminal Court
A/CONF.183/9*	Rome Statute of the International Criminal Court

[24] http://www.un.org/law/icc/docs.htm Last Update on: **28 September 1998**

A/CONF.183/10	
A/CONF.183/10*	Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
A/CONF.183/11	Proposal by the Holy See
A/CONF.183/12	Declaration by the Delegation of the Kingdom of the Netherlands
A/CONF.183/INF/1	Information note for participants
A/CONF.183/INF/2	Draft Programme of Work
A/CONF.183/INF/2*	Draft Programme of Work (reissued for technical reasons)
A/CONF.183/INF/2**	Draft Programme of Work (reissued for technical reasons)
A/CONF.183/INF/3	Non-Governmental Organizations accredited to Participate in the Conference
A/CONF.183/INF/4	- Communication received from Inter-Agency Standing Committee to the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court - Note by the Secretariat
A/CONF.183/INF/7	- Letter from the President of the Conference addressed to all representatives of participating States
A/CONF.183/INF/8	- Letter of the Secretary-General of the United Nations to the President of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
A/CONF.183/INF/9	Concerns on jurisdiction of the international criminal court relating to the bureau proposal (A/CONF.183/C.1/L.59) Information conveyed by New Zealand and the ICRC

ITEMS OF THE AGENDA, 1ST – 10TH SESSION OF THE ICC PREPARATORY COMMISSION[25]

Item	*Comments*
RPE - The Rules of Procedure and Evidence	The rules cover such issues as the composition and administration of the Court; penalties for crimes; obligations of international cooperation and assistance; enforcement of sentences.
EoC - The Elements of Crimes	The elements shall assist the Court in the interpretation and application of articles 6, 7 and 8; genocide, crimes against humanity, war crimes (but are not binding guidelines). By June 2000 the Commission identified the elements that constitute these crimes.
ICC-UN - A Relationship Agreement between the Court and the United Nations	The Rome Statute Art.2 states that the Court shall be brought into relationship with the United Nations through an agreement. The agreement covers such issues as; the independence of the Court, the integrity of the Statute; and institutional cooperation between the Court and UN.
APIC - An Agreement on Privileges and Immunities of the Court	Privileges and immunities safeguard the integrity and autonomy of any court. The scope of exploitation is huge (reprisals, prosecution) as the ICC will exercise jurisdiction across borders, within areas of conflict and against high level government officials. Therefore, different levels of privileges and immunities are provided depending on the risk of undue influence and the individual importance in the attainment of a just result.
RP/ASP - The Rules of Procedure of the Assembly of States Parties	The rules are applicable to the work of any Review Conference in accordance with article 121, paragraph 2, and article 123 of the Statute. Main issues; the observers at the Assembly, UN participation in the meetings of the Assembly Secretariat.
HQA - Basic principles governing a headquarters agreement	These are a set of principles and not the headquarters agreement itself. Therefore, they do not require the same degree of precision or detail that the agreement itself will require.
FRR - Financial Regulations and Rules	ICC is an independent organization established by a treaty, and does not enjoy institutional support. It will therefore need to establish and operate its own financial system. Most financial matters related to the Court and the meetings of the Assembly of State Parties, including its Bureau and subsidiary bodies, are governed by the Statute and the Financial Rules and Regulations adopted by the Assembly of State Parties. (Article 113 of Statute.) Main issues; Funding of the Court and the ASP, Committee on Budget and Finance, Draft Financial Regulations, Trust fund for Victims.
FYB – A Budget for the Court's First Operational Year	The budget is critically important for any institution and for an operational Court in particular. *See Working Group report from the 10th session.*
CA - The Crime of Aggression	The PrepCom is responsible for; drafting a definition of the crime, the elements of the crime and the conditions under which the ICC shall exercise jurisdiction with respect to the crime. *See WG report 10th session.*
FI - Remaining Financial Issues	These issues cover the remuneration of judges, Prosecutor, Registrar, and the victims' trust fund. *See Working Group report from the 10th session.*

[25] By Espen Rostrup Nakstad, The European Law Students' Association 2002

THE ASSEMBLY OF STATES PARTIES, RESUMED

SUMMARY [26]

In accordance with its decision at its 3rd meeting, on 9 September 2002,1 the Assembly of States Parties to the Rome Statute of the International Criminal Court held its first and second resumption of the first session at United Nations Headquarters from 3 to 7 February 2003 and from 21 to 23 April 2003, respectively.

The Secretary-General of the United Nations invited all States Parties to the Rome Statute to participate in the resumed sessions. Other States which had signed the Statute or the Final Act were also invited to participate in the sessions as observers. [27] Representatives of intergovernmental organizations were also invited as observers.[28]

In accordance with rule 94 of the rules of procedure, the following States that had been invited during the first session to be present during the work of the Assembly, excluding those that had become party to the Statute, continued in that capacity at the resumed sessions: Bhutan, Cook Islands, Democratic People's Republic of Korea, Equatorial Guinea, Grenada, Kiribati, Lao People's Democratic Republic, Lebanon, Maldives, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu and Vanuatu. At its 6th meeting, on 3 February 2003, the Assembly further decided to invite the representative of the Special Court for Sierra Leone to participate, as observer, without the right to vote, in its deliberations.

The Assembly adopted the following agenda at the 6th meeting, on 3 February 2003: [29]

1. Adoption of the agenda.
2. Credentials of representatives of States Parties at the first session (resumed).
3. Organization of work.
4. Election of judges.
5. Election of the Prosecutor.
6. Bureau proposal for the meetings of the special working group on the crime of aggression.
7. Bureau report on the appointment of the External Auditor.
8. Recommendations concerning the election of the Registrar.
9. Election of members of the Committee on Budget and Finance.
10. Opening of the nomination period for members of the Board of Directors of the Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims.
11. Other matters.

[26] By Espen Rostrup Nakstad (ELSA International). Based on ELSA team reports and the report of the Assembly, adopted at its 12th meeting on 23 April 2003, covering both the first and second resumptions of the first session.
[27] Pursuant to General Assembly resolution 57/23 of 19 November 2002, and in accordance with the rules of procedure of ASP
[28] Pursuant to General Assembly resolution 57/23 of 19 November 2002, and in accordance with rule 92 of the rules of procedure of the Assembly of States Parties, also invited as observers to the resumed sessions were representatives of inter-governmental organizations and other entities that had received a standing invitation from the General Assembly pursuant to its relevant resolutions as well as representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly of States Parties.
[29] ICC-ASP/1/1Add.1

The resumed sessions were opened by the President of the Assembly of States Parties, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan).

The Bureau of the first session, with the exception of Germany, which had relinquished its functions on the Bureau and had been replaced by Malta at the 6th meeting of the Assembly, on 3 February 2003, continued in the two resumed sessions, as follows:

President:
H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan)

Vice-Presidents:
Mr. Allieu Ibrahim Kanu (Sierra Leone)
Mr. Felipe Paolillo (Uruguay)

Rapporteur:
Mr. Alexander Marschik (Austria)

Other members of the Bureau:
Austria, Croatia, Cyprus, Democratic Republic of the Congo, Ecuador, Gabon, Malta, Mongolia, Namibia, Netherlands, New Zealand, Nigeria, Norway, Peru, Romania, Serbia and Montenegro, Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland.

The Credentials Committee also continued to serve at the resumed sessions, with the following membership: Benin, Fiji, France, Honduras, Ireland, Paraguay, Serbia and Montenegro, Slovenia and Uganda.

The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Mr. Václav Mikulka, acted as Secretary of the Assembly. The Codification Division provided the substantive servicing for the Assembly.

PROCEEDINGS OF THE ASSEMBLY DURING THE FIRST AND SECOND RESUMPTIONS OF THE FIRST SESSION

Credentials of representatives of States Parties at the first session (resumed)

At its 8th meeting, on 7 February, the Assembly accepted the credentials of the representatives of Colombia, Djibouti, Malawi, Malta, the Republic of Korea, Samoa, Timor-Leste, the United Republic of Tanzania and Zambia, the nine States that had become parties since the first session in September on the understanding that Colombia, Djibouti, Malawi and Zambia which had not yet submitted formal credentials would do so as soon as possible.

At its 12th meeting, on 23 April, the Assembly accepted the credentials of the representatives of Barbados and St Vincent and the Grenadines, the two States that had become parties since the first resumed session, on the understanding that the two States Parties would submit formal credentials as soon as possible.

Election of judges

At the 6th meeting, on 3 February, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of the Assembly shall continue until as many candidates as were required for all seats to be filled had obtained, in one or

more ballots, the highest number of votes and a two thirds majority of the States Parties present and voting. Consequently, all candidates elected as judges should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days.

At its 7th meeting, held from 4 to 7 February, the Assembly proceeded to elect 18 judges of the International Criminal Court in accordance with the relevant provisions of the Rome Statute as well as resolutions ICC-ASP/1/Res.2 and ICC-ASP/1/Res.3.

The following candidates were elected judges of the International Criminal Court: [30]

René Blattmann (Bolivia)	(List B, LA/C, M, 6 years)
Maureen Harding Clark (Ireland)	(List A, WEO, F, 9 years)
Fatoumata Dembélé Diarra (Mali)	(List A, AFR, F, 9 years)
Adrian Fulford (United Kingdom)	(List A, WEO, M, 9 years)
Karl Hudson-Philips (Trinidad and Tobago)	(List A, LA/C, M, 9 years)
Claude Jorda (France)	(List A, WEO, M, 6 years)
Hans-Peter Kaul (Germany)	(List B, WEO, M, 3 years)
Philippe Kirsch (Canada)	(List B, WEO, M, 6 years)
Erkki Kourula (Finland)	(List B, WEO, M, 3 years)
Akua Kuenyehia (Ghana)	(List B, AFR, F, 3 years)
Elisabeth Odio Benito (Costa Rica)	(List A, LA/C, F, 9 years)
Georghios M. Oikis (Cyprus)	(List A, ASIA, M, 6 years)
Navanethem Pillay (South Africa)	(List B, AFR, F, 6 years)
Mauro Politi (Italy)	(List B, WEO, M, 6 years)
Tuiloma Neroni Slade (Samoa)	(List A, ASIA, M, 3 years)
Sang-hyun Song (Republic of Korea)	(List A, ASIA, M, 3 years)
Sylvia Helena de Figueiredo Steiner (Brazil)	(List A, LA/C, F, 9 years)
Anita Ušacka (Latvia)	(List B, EE, F, 3 years)

Summary of Election Results:

- Elected Candidates by UN Regional Group: 3 from African States, 3 from Asian States, 1 from Eastern European States, 4 from Latin America and Caribbean States, 7 from Western Europe and Other States.
- Elected Candidates by Legal Expertise: 10 List A [31] (competence in criminal law), 8 List B [32] (competence in international law).
- Elected Candidates by Gender: 7 women, 11 men.

Commencement of terms of office of Judges

At the 6th meeting, on 3 February, the Assembly, on the recommendation of the Bureau, decided that the terms of office of Judges of the International Criminal Court elected by the Assembly shall begin to run from the 11th of March following the date of the election. The Assembly also decided that the term of office of a judge elected to replace a judge whose term of office has not expired shall run from the date of the election for the remainder of that term.

[30] LA/C = Group of Latin American and Caribbean States; WEO = Group of Western European and Other States.
AFR = Group of African States; ASIA = Group of Asian States; EE = Group of Eastern European States;
M = Male; F = Female.
[31] LIST A: with established competence in criminal law and procedures, and the necessary relevant experience
[32] LIST B: with 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

Election of the Prosecutor of the International Criminal Court

At its 9th meeting, on 21 April, the Assembly proceeded to elect the Prosecutor of the International Criminal Court and conducted a secret ballot in accordance with the relevant provisions of the Rome Statute notwithstanding the fact that a consensus candidate in accordance with resolution ICC-ASP/1/Res.2 had emerged for the post of Prosecutor following months of consultations. [33]

At the same meeting, Mr. Luis Moreno Ocampo (Argentina), having obtained an absolute majority of the members of the Assembly of States Parties, was elected Prosecutor of the International Criminal Court. Seventy-eight ballots were cast, of which none were invalid; 78 were valid; number of States Parties voting was 78; the required absolute majority was 44; and the number of votes obtained by Mr. Moreno Ocampo was 78.

Mr. Ocampo has extensive practical experience in the prosecution and trial of criminal cases. During the last ten years he was main partner of Moreno Ocampo & Wortman Jofre , an Argentinean law firm which amongst others, specializes in corruption control programs for large organizations, criminal and human rights law. He has been involved in high profile public interest cases of international criminal justice, including the extradition of the former Nazi officer Mr. Erik Priebke to Italy, the trial of Chilean secret police for the murder of General Prats, political bribery cases, as well as journalists' protection cases.

Between 1985 and 1992 Mr. Ocampo worked on a large number of public and military corruption cases. He was assistant prosecutor in the trials against the chief of the Buenos Aires Police Force, General Camps, and against the military junta that ruled Argentina during its dictatorship years. In 1987 he was the Argentine prosecutor in the extradition process of former General Carlos Guillermo Suarez-Mason, commander of the Armed Forces in the Buenos Aires region from 1977-79 during Argentina's so called "dirty war" against suspected subversion.

In 1998 he was in charge of the trials against the military responsible for the Malvinas-Falkland war and those who headed the 1988 military rebellion. As a member of the Advisory Committee of Transparency International, a world-wide organization whose aims are to reduce corruption in international business transactions, Mr. Ocampo was President of Transparency International for Latin America and the Caribbean.

Commencement of the term of office of the Prosecutor

At its 9th meeting, on 21 April, the Assembly, on the recommendation of the Bureau, decided that the term of office of the Prosecutor of the International Criminal Court should begin to run from the 16th of June following the date of the election.

Bureau proposal for the meetings of the special working group on the crime of aggression

At its 8th meeting, on 7 February, the Assembly decided, on the basis of the proposal of the Bureau, that the Special Working Group on the Crime of Aggression should meet during annual sessions of the Assembly of States Parties. The first such meeting for 2003 would be held at the second session of the Assembly, in September. Two to three meetings of the Assembly should be allocated to the Special Working Group; and that this pattern should be repeated, as necessary, each year.

In addition, the Assembly, on the basis of the report of the Bureau, took note of the idea of holding

[33] For more information and consultation of the Curriculum vitae of the candidate, see the note by the Secretariat of the Assembly of State Parties concerning the Election of the Registrar: ICC-ASP/1/11.

informal inter-sessional meetings of the Special Working Group, but decided that it was not in a position to make any recommendations, since some delegations might find it financially difficult to send representatives to inter-sessional meetings and it would thus be preferable that the Special Working Group meet during the annual sessions of the Assembly of States Parties. The door was left open, however, for any Government wishing to fund the holding of an inter-sessional meeting.

Bureau report on the appointment of the External Auditor

At its 8th meeting, on 7 February, the Assembly took note of the report of the Bureau that in November 2002 the Office of the Director of Common Services of the International Criminal Court had circulated to missions of States Parties at The Hague and Brussels a request for proposal for the External Auditor, and that in the light of responses of States Parties for more time, the deadline for submission had been extended to 15 February 2003. Accordingly, the Assembly decided that the Bureau should report to the Assembly on further developments concerning the appointment of the External Auditor at the second resumption of the first session, in April 2003. Interested States Parties were also requested to inform their relevant authorities of the extension of the deadline for submission of the proposals.

At its 11th meeting, on 22 April, the Assembly was informed that the Bureau, acting under the delegated authority of the Assembly, had appointed the National Audit Office of the United Kingdom of Great Britain and Northern Ireland as auditor8 for the International Criminal Court for a period of four years.

Recommendations concerning the election of the Registrar

At the 9th meeting, on 21 April, the Assembly was informed that a list of candidates for the post of Registrar (ICC-ASP/1/11) had been received from the Presidency and it decided, on the recommendation of the Bureau, to proceed on the basis that a working group of the Bureau would consider further and make recommendations concerning the election of the Registrar for consideration by the Assembly. The working group of the Bureau was constituted under the chairmanship of the Vice-President Ambassador Felipe Paolillo (Uruguay).

At its 12th meeting, on 23 April, the Assembly, on the recommendation of the Bureau, adopted a recommendation that the judges proceed to elect the Registrar on the basis of the list submitted by the Presidency in accordance with rule 12 of the Rules of Procedure and Evidence.

Election of members of the Committee on Budget and Finance

The Committee on Budget and Finance was established by the Assembly of States Parties in resolution ICC-ASP/1/Res.4. It will be responsible for overseeing the financial, budgetary and administrative operations of the Court. Its members are elected among experts of recognized standing and experience in international financial matters. The Committee's responsibilities include technical examination of documents submitted to the Assembly containing financial or budgetary implications as well as reviews and recommendations on the Court's budget.

At its 10th meeting, on 21 April, the Assembly proceeded to elect the following as members of the Committee on Budget and Finance in accordance with resolution ICC-ASP/1/Res.5: [34]

[34] Election to the committee is on the basis of equitable geographical distribution with seats allocated as follows: Africa: 2;Asia: 2; Eastern Europe: 2; Latin America and the Caribbean States:2 and Western Europe and others:4

African States:[35]	Dah Kindji, Lambert (Benin) Muwanga, John F. S. (Uganda)
Asian States: [36]	Gharaibeh, Fawzi (Jordan) Hahn, Myung-jae (Republic of Korea)
Latin American and Caribbean States:[37]	Arnábal, Santiago Wins (Uruguay) Gallardo Aparicio, Eduardo E. (Bolivia)
Western European and Other States: [38]	Dutton, David (Australia) Lovell, Peter (United Kingdom of Great Britain and Northern Ireland) Paschke, Karl Th. (Germany) Tilemans, Michel-Etienne (Belgium)

Having received no nomination from Eastern European States, the Assembly, also at its 10th meeting, decided to defer the election of candidates from those States until its second session. The Bureau fixed the nomination period for candidates to run from 28 April to 21 August 2003 and the Secretariat was requested to issue an official note inviting nominations.

At the same meeting , the Assembly decided that the terms of office of the members should begin to run from 21 April, the date of their election. Since the number of members elected was less than the number of members required under the provisions of resolution ICC-ASP/1/Res.4, the Assembly adopted resolution ICC-ASP/1/9 authorizing the Committee to commence functions as partially constituted.

By the terms of the same resolution, the Assembly also decided that the two remaining members from Eastern European States should join the work of the Committee upon their election by the Assembly. It also decided to defer the drawing of lots in accordance with paragraph 13 of resolution ICC-ASP/1/Res.5 until the election of the remaining members.

Nomination period for members of the Board of Directors of the Victims' Trust Fund

At its 11th meeting, on 22 April, the Assembly decided to open the nomination period for members of the Board of Directors of the Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims to run from 28 April to 21 August 2003 and the Secretariat was requested to issue an official note inviting nominations.

OTHER MATTERS

Establishment of an international criminal bar

At its 6th meeting, on 3 February, the Assembly was informed that the President, in consultation with the Bureau, had appointed Mr. Hans Bevers (Netherlands) to act as focal point on the establishment of

[35] Elected by secret ballot. *Results of the vote*: Number of ballot papers: 81. Number of invalid ballots: 0. Number of valid ballots: 81. Number of abstentions: 0. Number of States Parties voting: 81. Two thirds required majority: 54. *Number of votes obtained*: Dah Kindji, Lambert (Benin): 70. Muwanga, F.S. (Uganda): 61. Mwango, Chitundu Norman (Zambia): 25.
[36] Elected by consensus/acclamation.
[37] Elected by consensus/acclamation.
[38] Elected by consensus/acclamation.

an international criminal bar in order to assist the Assembly in its future discussions on the matter. Mr. Bevers would report to the Bureau developments thereon.

At its 11th meeting, on 22 April, the Assembly, on the basis of the report of the Bureau, decided to inscribe on its agenda for the second session an item concerning the establishment of an international criminal bar and to have issued, as an official document, the written report submitted by the focal point to the Bureau.

Status of contributions to the budget of the International Criminal Court for the first financial period

At the 8th meeting, on 7 February, the Assembly was apprised of the status of contributions to the budget of the Court for the first financial period and an appeal was made to States Parties, which had not yet done so, to pay their assessed contributions as soon as possible. At the 12th meeting, on 23 April, the President renewed the appeal for contributions.

Agreement on the Privileges and Immunities of the International Criminal Court

At the 8th meeting , on 7 February, and at the 11th meeting, on 22 April, the President appealed to States that had not yet done so to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court to facilitate its early entry into force.

Review of the procedure for election of judges

57. At the 8th meeting, on 7 February, the representative of Honduras drew the attention of the Assembly to paragraph 11 of resolution ICC-ASP/1/ Res. 3, under which the Assembly is required to review the procedure for election of judges on the occasion of future elections with a view to making any improvements as may be necessary and pointed out that in the light of the first election it would be necessary to provide a threshold of at least one-third of the votes present and voting for a candidate to continue in any subsequent round.

Statements by the President and the Prosecutor of the Court

At its 11th meeting, 21 April, the Assembly heard statements from Judge Philippe Kirsch, President of the Court, and Mr. Luis Moreno Ocampo, the Prosecutor of the Court.

THE ASSEMBLY OF STATES PARTIES, SESSION 1

SUMMARY OF PROCEEDINGS [39] [40]

The first session of the Assembly of States Parties to the Rome Statute was held from 3 to 10 September 2002, at the United Nations Headquarters, New York. The meeting was chaired by H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), who was elected President of the bureau as one of the first orders of business, along with two Vice-Presidents and eighteen other members of the bureau, divided equitably among all regions. The following legal instruments and agreements were formally adopted by the Assembly at its first session:

- The Rules of Procedure and Evidence
- Elements of Crimes
- Financial Rules and Regulations
- Relationship Agreement between the Court and the United Nations
- Agreement on the Privileges and Immunities of the Court [41]
- Basic Principles Governing a Headquarters Agreement to be negotiated between the Court and the Host State
- Rules of Procedure of the Assembly of States Parties
- Procedure for the nomination and election process for the Court's judges and Prosecutor.[42]
- In addition, the Assembly adopted a budget of Euro 30,893,500 for the first financial period of the Court. It also established a Working Capital Fund of Euro 1,915,700 to cover the short-term liquidity requirements of the Court while it awaits assessed contributions.

The Assembly further;

- decided to delegate to its Bureau the task of appointing an External Auditor for the Court.
- extended the mandate of the Advance Team until 31 October 2002 to allow for overlap between the Advance Team and the start of the Director's term of employment.
- approved the appointment of Bruno Cathala (France) to serve as the first Director of Common Services for the Court.
- received an update on the work of the Advance Team
- reached agreement on procedures for the election of judges, concluding what were five difficult months of informal consultations and negotiations. [43]
- postponed some decisions, including any relevant decisions on the International Criminal Bar and on the nomination period for the members of the Board of Directors of the Trust Fund for the benefit of victims.

The Bureau created a subcommittee to draft proposals for how the Assembly should continue discussions on the crime of aggression, to be further considered at the resumed session in February.
During the last two days, the Assembly heard general statements from forty-two States Parties, six non-States Parties and from Palestine on behalf of the Arab Group[44]. The statements reiterated the governments' strong support for the Court and for the process to establish the Court.

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[39] By Espen Rostrup Nakstad (ELSA International). ASP documents, incl. session1 report; www.un.org/law/icc/asp/aspfra.htm.
[40] See CICC report by Jennifer Schense, Legal Adviser for the Coalition for the International Criminal Court, for further details
[41] The Assembly agreed to small changes to the Agreement on Privileges and Immunities regarding its potential application to nationals in their own States of nationality or residence.
[42] Se the below ELSA report on the nomination and election process for the Court's Judges and Prosecutor.
[43] The nomination period for judges and the prosecutor was officially opened on 9 September 2002.
[44] Statements from the Assembly of States Parties are available on http://www.iccnow.org/html/new.html.

THE AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE COURT – A PRECONDITION FOR A SUCCESSFUL COURT [45] [46]

The International Criminal Court is an entity with international legal personality and must enjoy the legal capacity necessary to fulfil its functions and purposes on the territory of any State Party. In order for the Court to achieve its mandate of bringing to justice those individuals who have committees the most heinous crimes known to humankind, the ICC must function with a strong and reliable framework protecting officials, staff, victims, witnesses and other persons involved in its work. Given the treaty based nature of the Court, however, people involved in its work will not be able to rely on the immunities and privileges granted to UN officials. Nor will they be sufficiently protected by the Vienna Convention on Diplomatic Relations. The Headquarters agreement cannot guarantee protection either, as the Court will have to operate outside the Netherlands, particularly with regard to transfers to and from The Hague.

The agreement on Privileges and Immunities, adopted by The Assembly of States Parties on 9 September 2002, enters into force after the 10th ratification. It is an international treaty open to signatures by all states, not only States Parties to the Court. As witnesses, victims and evidence may be present on the territory of States not party to the Rome Statute and/or may have to travel through a third State, non-States Parties should also recognise the significance of privileges and immunities of the International Criminal Court by ratifying the Agreement.

All States are required to have the necessary domestic legislation to ensure privileges and immunities for the ICTY and ICTR. That task was made easier by the fact that these two institutions are covered by the UN immunities agreements. However, the immunities linked to such judicial institutions are, in practice, different from other UN institutions. With regards to the ICC, Article 48 of the Rome Statute defines *general levels* of immunities and privileges granted to officials and staff of the Court. These protections may not be sufficient to convince victims and witnesses that their privileges and immunities will be respected. The article does not discuss details concerning states' obligations regarding immunities and privileges of counsel, experts, witnesses or any other persons required to be present at the seat of the Court, protections which are elaborated in the Agreement of Privileges and Immunities of the Court. This agreement is of great importance, as it provides for a smooth and successful start to the first cases heard by the International Criminal Court. Yet, as of January 2003, Norway is the only State to have ratified the agreement.

Norway's early ratification of the agreement was based on several factors. First, Norwegian authorities undertook the necessary preparations, including a review of legislation, after the draft agreement was finalised by the Preparatory Commission on July 2002. The second factor of importance to Norway's early ratification was that the country already had a national statute on immunities concerning organisations other than the UN. It was thus possible to adopt all necessary regulations through decisions of the King in Council on the basis of the existing statute and other formal laws. An additional important consideration in this process was that ratification of the Agreement would not by itself require a prior decision of Parliament. Norway's ratification bill for the Rome Statute stated expressly that the Court would be afforded all necessary privileges and immunities in order to make it possible for the Court to function properly according to the Statute. One can therefore see the later adoption of the APIC as a detailed implementation of a Rome Statute provision that was already accepted by the Parliament. At a broad hearing of all relevant institutions, all parties accepted the need to be bound by the APIC and adopted the agreement. Other governments should follow Norway's lead with respect to the APIC, as it is imperative that all states (both States Parties and non-States Parties) ratify this landmark agreement.

[45] By Espen Rostrup Nakstad (ELSA International). Article published in the ICC Monitor - Issue 23, February 2003

[46] The Agreement on Privileges and Immunities was officially opened for signature and ratification on 10 September 2002, and was signed that day by thirteen States and ratified by one (Norway).

PROCEDURES FOR THE NOMINATION AND ELECTION OF JUDGES [47] [48]

INTRODUCTION

The procedures for the election of judges were the 11th item on the Agenda adopted at the first meeting[49] of the ASP and appeared to be the most contentious issue during the Assembly's first session. It was also a matter of consideration for the Working Group of the Whole[50], which was chaired by the President of the Assembly, H.R.H. Prince Zeid Ra'ad Zeid Al- Hussein (Jordan). Delegates met several times for informal consultations led by Ambassador Don MacKay[51] (New Zealand).

One could mention at least two reasons why it proved hard to reach consensus on the election of judges' issue. Firstly, the issue is of the outmost importance for the future of the court. Judges (along with the Prosecutor) must meet "the highest standards of legal rigour, human sensitivity and professional probity" [52]. The Court is a new institution that has raised both hopes and doubts on the international arena and risks being both scrutinized and subject to criticism. This is why the carrying out of the duties on the highest professional level (the judges) must prove the Court's opponents wrong, as they make visible sign of the court's work in the eyes of public opinion. Secondly, the Rome Statute itself provides high demands for the process of casting votes. There shall be two lists of candidates: list A comprised of those candidates with an experience in criminal law and procedure and list B of experts competent in international law, especially International Humanitarian Law and the Law of Human Rights. At least 9 candidates from list A and 5 from list B shall be elected at the first elections, approved by the two-thirds majority of the States Parties sent and voting (art.36, para 5,6). During the voting process, the State Parties should also take into account; 1) The need for a fair representation of female and male judges; 2) Equitable geographic representation; and 3) Representation of the principle legal systems of the world.

1. The need for a fair representation of female and male judges (art.36.para 8. (a). iii)

As regards female representation, and as the Lawyers Committee for Human Rights has pointed out, it could be hard to reach the goal of fair representation for a number of reasons:
- Only one woman has ever served as a judge on the International Court of Justice since its establishment.

[47] Submitted by Tamara Aleksidze ELSA Tbilisi (Georgia) and Michal Strzelecki, ELSA Torun (Poland). Espen Nakstad (Ed.)
The first historic session of the Assembly of States Parties to the International Criminal Court (ASP), which took place at the United Nations Headquarters from 3 to 10 September 2002, was held in accordance with the decision of the Preparatory Commission at its 41st meeting on 8 July 2002 (PCNICC/2002/2 Para. 17).
[48] ELSA study on Nomination and Election of Judges to International Courts - www.iccnow.org/html/ELSAprepcom9annex.pdf
[49] AGENDA- UN. Doc (ICC-AP/1/1)
[50] The Working Group of the Whole was established on 3 September 2002. Since its establishment it held 6 meetings (through September 6)
[51] H.E. Mr. Don Mac Kay, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of New Zealand to the United Nations; Head of the delegation to the Assembly of States Parties
[52] UN Secretary General Kofi Annan in an address to the ASP on September, the 10th

- Of the 14 permanent judges of both ad hoc tribunals for former Yugoslavia and Rwanda, there have been at most 3 woman serving at any one time.
- Currently there is only one woman serving as a permanent judge at the ICTY

2. **Equitable geographic representation (art. 36. Para 8. (a) ii)**
3. **The representation of the principle legal systems of the world (art. 36. Para 8.(a)i).**

The Rome Statute sets forward the need for legal experts in specific issues, especially, violence against women and children (art. 36. para.8). Candidates should be of 'high moral character, impartiality and integrity' (art. 36. Para 3 .a) and fluent in at least one of the Court's working languages (art. 36. para.3.c).

If one examines the processes taking place before the adoption of the Resolution by the ASP and makes a brief summary of the most important issues on the table during the Preparatory Commission as well as the ASP, the major discussions on the election of judges seem to have taken place at the 8th, 9th, and 10th sessions of the ICC PrepCom. The main achievement at the ninth session was the adoption of the draft resolution on "the procedure of nomination and election" by the Working Group, to be submitted to the ASP. [53] Some countries opposed minimum voting requirements and restrictions in a right to abstain, as they were afraid of being compelled to vote for bad candidates in order to fulfill the necessary requirements. The Coalition for the International Criminal Court was indeed concerned with the outcome of the negotiations on this subject.

The two issues that remained open were the ratification deadline for the States wishing to submit their nominations for the election of judges, as well as the election procedure that would have satisfied the highest standards, meet the requirements of the Statute and be agreed upon by all States.
As regards the ratification deadline, the 10th session of the PrepCom extended the closing of the nomination from 1 November 2002 until 30 November (Para 10 of the draft resolution).[54] As to the election procedure, the discussions continued all the way through the 10th PrepCom and before the last day of the ASP. It took several rounds of informal talks to reach a consensus.

PROPOSALS SUBMITTED BY STATES IN THE NEGOTIATING PROCESS

1. The Two- Phase Procedure (annexed to the rolling text) [55]

The "Two- Phase Procedure" was set up by the sub-coordinator of the 9th session of the ICC PrepCom. It was based on the outcome of informal consultations, providing for the election of exactly 9 candidates for list A and 5 candidates for list B in the first phase. If less than 9 or 5 candidates from the respective lists were to be elected, additional ballots would be held. In case more than 9 or 5 candidates were to be elected, only the candidates with the highest number of votes would be considered elected. The remaining four seats would then be filled during a second phase (taking place at least 24 hours after the first phase). This process was thought to meet the requirements of the Art. 36(5).[56]

[53] Draft report of the Working Group –Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the prosecutor, and the Deputy –Prosecutor of the International Criminal Court, UN Doc. PCNICC/2002/WGASP-PD/L.6 of 8 July 2002 and Corr.1 of 10 July 2002.
[54] ELSA Report of the tenth session of the Preparatory Commission, p.37; www.iccnow.org/html/elsa/200207.pdf (you can try doc and txt extension as well)
[55] Cf. ELSA Report of the ninth session of the Preparatory Commission, p.17-18 www.iccnow.org/html/ELSAprepcom9.pdf
[56] ELSA Report of the tenth session of the Preparatory Commission, p38

2. Discussion Paper 4 (DP.4)

DP 4 was presented by Austria, Hungary and Liechtenstein as an amendment to the Two- Phase Procedure, proposing to return it to a one-phase procedure. DP.4 provides that it will not be a violation of the Art.36 (5) if not more that 13 candidates from list A or not more than 9 candidates from list B were to be elected. It would lead to the invalidation of only the 14th and subsequent election of a candidate from list A, and the 10th and subsequent election of a candidate from list B. The formula would be:

List A	min. 9	+ max. 4	9 + max. 4 = max 13 (13+5=18)
List B	min. 5		5 + max. 4 = max 9 (9+9 =18)

For example: If 10 candidates from list A were elected (one more than the minimum requirement) there would be enough places left on the list B for 8 candidates (where the min. requirement is 5)

3. DP.5 - equalized minimum voting requirements (2-2-2-2-2) [57]

This proposal was submitted by Hungary, Liechtenstein and other co-sponsoring delegates at the end of the 9th session of the ICC PrepCom. In accordance with this proposal State Parties would have to vote for a minimum of two candidates from each regional group and at least 6 candidates from each gender. There would be a one-phase election with up to 13 candidates from list A and 9 candidates from list B (DP. 4 incorporated). After each ballot, the minimum voting requirements ("MVR") would be adjusted and depending on the candidates elected so far. The MVR would be discontinued in case it becomes impossible to meet one of the requirements due to the number of remaining seats to be filled or the composition of the pool of candidates still available.[58] It was agreed that MVR would be discontinued after 3 ballots. The proposal was mainly focusing on Art.36 (8) (a) :(ii), (iii) provisions. However, it was argued that fixed quota (2 for each regional group) might result in forced elections and disrupt the whole process.

The issue of **abstention** was also discussed. The invalidation of ballots in cases where the MVR would not be met (DP.5 Para. 7), resulted in controversial opinions. Most of the delegations comprising the Western European and Other States Group (especially The U.K., Germany, The Netherlands, and France) were in favour of the abstention and a procedure with little restrictions and refused to support DP.5. Other States saw abstention as the major threat to the voting process, and to the MVR in particular. Subsequently, abstention was allowed after the minimum voting requirements had been fulfilled. Taking into account that the MVR was 2 for each regional group and 6 for each gender, the required votes for casting amounted to 12.

Stressing the MVR for gender (as the total MVR for it was 6+6=12), the MVR for each regional group could be included in this number "10" (=2-2-2-2-2). The decisive MVR in this case was gender, and each party could therefore abstain on 6 candidates.

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[57] Procedure for the nomination and election of judges, the prosecutor, and the Deputy –Prosecutor of the International Criminal Court-proposed by Austria, Hungary, Liechtenstein, Bosnia and Herzegovina, Romania, Sweden, and Switzerland UN Doc. PCNICC/2002/WGASP-PD/DP.5, June 17,2002

[58] ELSA Report of the tenth session of the Preparatory Commission, p39

4. DP.8 -proportional minimum voting requirements (3-3-3-2-2) [59]

Many states were not in favor of the equalized minimum voting requirements, as they thought some regional groups would have been underrepresented, especially those groups with many State Parties. Following their request, a new proposal co-sponsored by 31 States emerged: The MVR were revised into the proportional minimum voting requirements with regard to the proportion of State Parties in each region. Each region was assigned to MVR of 3, except for the Eastern Europe and Asia, for whom the MVR was 2, as they had the least number of State parties. Some delegations still argued that the MVR should be equal for all regional groups, as the number of State parties for those groups with less minimum voting requirements would certainly increase, but those delegations who agreed to support the new proposal refused to go back to the starting point (the equalized MVR) and the ones that opposed the DP.8 declined the proposal to raise the MVR up to 3, as it would lead to further restrictions in the voting process. The negotiations stalled until the ASP, even though some delegations were working on the new proposals during the inter-sessional period.[60]

5. Abstention

As the MVR was increased, so did the obligatory number of casting votes. For DP.8, it became 13 (3-3-3-2-2=13 as the MVR for gender was still 12). The MVR for each regional group was converted into the decisive factor. The possibility to abstain went down to 5. It turned out that the States had to sacrifice one vote of abstention if they wanted DP.8.

After the negotiations it was decided to recognize a "limited abstention"- allowing a State Party to abstain on one or more voting requirements on the condition that this abstention would be lost and could not be used for voting on another region or gender. (Para. 6 of the DP.8).

However, as mentioned by the Lawyers Committee for Human Rights, the mechanism was far from perfect as there was a theoretical possibility for a State to vote only for his candidate or the candidates of the region, or the possibility to exclude a certain region based on private negotiations. DP.8 also proposed the discontinuation of the MVR after 4 ballots that would have practically resulted in free elections. DP.8 was annexed to the report of the coordinator at the end of the 10th session of the PrepCom.

DELIBERATIONS AT THE ASSEMBLY OF STATES PARTIES

The discussions over the procedure for the election of judges reached its peak during the first session of the ASP. During one week, several informal consultations were conducted aiming at reaching consensus among the States Parties. Two new proposals were also introduced.

[59] UN Doc. PCNICC/2002/WGASP-PD/DP.8

[60] The Election of the First Panel of Judges to the International criminal Court – Summary of concerns and recommendations, by Lawyers committee for Human Rights.pp11, 12,16,17.

1. Mexico/Costa Rica Proposal [61]

As mentioned above, States had an option between DP.5-equalized minimum voting requirements (2-2-2-2-2) and DP.8 -proportional minimum voting requirements (3-3-3-2-2). The Mexico/ Costa Rica proposal served as a compromise between DP.5 and DP.8. The proposal integrated the provision of DP.4- i.e. no more that 13 candidates from list A or no more than 9 candidates from list B would be considered elected (Para. 1 of the Draft Resolution).

Each State Party should vote for at least 9 candidates from list A and at least 5 candidates from list B. Each State Party should vote for at least:
- 3 candidates from the African Group
- 3 candidates from the Latin American and Caribbean Group (GULAC)
- 3 candidates from the Western European and Other States Group (WEOS)
- 3 candidates from the Asian Group, and
- 3 candidates from the Eastern European Group (Para. 3 (b) of the Draft Resolution)

This proposal raised and equalized the MVR, but there was also a provision '(3+1)' according to which if the number of the candidates from the regional group is not at least one more that the MVR for that regional group, the MVR will go down and be equal to one less than the number of candidates from that region. For example, if there would be 4 candidates for the Asia regional group, the MVR for this group would be 3 as provided, but if the there would be only three candidates for the above mentioned group the MVR for the region would be 3-1=2.

The minimum voting requirements for gender remained 6, but if the number of candidates would be less than eight, the MVR for that gender would be lowered to two less than the number of candidates for that gender (Para. 3(c) of the Draft Resolution). For example, if there would be 7 female candidates the MVR for the female gender would equal 7-2=5. If less than 18 candidates were elected after the first ballot, the minimum voting requirements would be adjusted list-by-list, group-by-group, gender-by-gender, by subtracting the number of elected candidates. (Para. 6 (a, b, c) of the Draft Resolution).

Each minimum voting requirement would be adjusted until it can no longer be met, after that the use if that requirement would be discontinued. If an adjusted voting requirement could be met individually but not jointly, the use of all regional and gender requirements would be discontinued. The MVR would also be discontinued if the judges would not be elected after four ballots. (Para's of the Draft Resolution).

As regards **abstentions**, only ballots observing minimum voting requirement would be valid. But, a State would have the right, which is regarded as the 'right of partial abstention'. A State Party could abstain if it fulfilled the MVR using less than the maximum number of votes allowed for that ballot. (Para. 38 of the Draft Resolution). The Mexico/Costa Rica Proposal was regarded to be more satisfactory that the DP.8

It should also be mentioned that in the present situation the MVR for the first election of judges would be more likely to follow the pattern 3-3-3-2-2, as there are not enough State Parties in the regional groups of Asia and Eastern Europe at present. Then the MVR for the State Party would be 14. In this case the MVR for the lists (A, B) would be decisive, as the proposal explicitly indicates that each State Party should vote for **at least 9** candidates from list A and **at least 5** candidates from list B (Para. 3 (a) of the Draft Resolution. Thus, every State can easily abstain on the remaining **4** votes.

[61] Proposal submitted by Brazil, Chile, Costa Rica, Ecuador, Mexico, Nauru, Nigeria, Paraguay, Peru, Republic of Korea, Trinidad and Tobago and Uruguay.

Proposal Submitted by France

This proposal is not a very well known and popular one on the contrary to the Mexico/ Costa Rica proposal. The explanation can perhaps be found in the extremely difficult language and the complexity of the document. Nevertheless, the basic features of the French Proposal will be explained in the following;
The French proposal is dividing the process of the elections into 3 phases-3 ballots.

1. The first ballot:

The first ballot is a gender ballot (Para 3. of the French Proposal). 18 votes would have to be cast, which would be distributed between the female list and the male list. The proportion of votes allocated on each list would depend on the number of names on the list, in relation to the total number of candidates. The MVR for gender is 6. If there would be less than 8 candidates from one gender (= on either the male or the female list), the MVR for that gender would equal to two less than the number of candidates for that gender (=on that list).

For example, if there were 5 candidates on the female list and 40 candidates on the male list, the MVR for the female gender would be 5-2=3(as the number of candidates 5 is below the required number of the proposal, which is 8). Further, the MVR of the gender that would be fully presented (the number of candidates is not below 8, in this case, the male list) equals the full number of judges (18) minus the MVR of the gender that is not fully represented (the number of candidates is below 8, in this case, the female list). I.e. the MVR for the male list would be 18-3=15. The formula for that would be:

Male list-5 candidates < 8	MVR = 5-2 = 3
Female list-40 candidates > 8	MVR = 18-3 =15

If the number of female candidates would be equal to the number of male candidates, each State will have to vote for nine names on each list. If there are still seats left, a second ballot would be held (to be precise, this will be the second round of the first ballot). If among the elected candidates 13 were on list A or 9 were on list B (i.e. the maximum number for either list has been reached), the next ballot would concern only the candidates on the list for which the minimum quota has not been reached.
If, for example, 9 candidates have been elected for list B and 7 for list A, the next ballot would then consider only filling the two seats left on the list A.

2.The second ballot

The second ballot concerns the MVR for the regional groups. (Para 5. of the Proposal)
The MVR for the regional groups, according to the French Proposal is as follows: 3-3-3-2-2, minus the number of candidates from each regional group elected in the first ballot. The principle of 3+1 (mentioned in the Mexico/ Costa Rica Proposal) also applies to this proposal, with the exception that the number of candidates elected in the first ballot could reduce the MVR. If the number of the seats remaining does not permit the application of the MVR (if the adjusted quota is less than or equal to 0 for any regional group), all MVR should be reduced- (would not apply for that regional group).

3. The third ballot

The third ballot concerns the MVR for the lists. Para. 6 of the proposal says: “Starting from the 3rd ballot the MVR for each of the lists as follows:

List A: 9, List B: 5, minus the number of candidates in each list elected in the preceding ballots. If for either list the adjusted quota is less than or equal to 0 the MVR shall cease to apply for that list. This quota shall be adjusted following each ballot according to the number of candidates elected. As many ballots shall be held as are needed to fill the 18 seats. Once 13 candidates, at most from list A or 9 candidates, at most from list B are elected and if there are still vacancies to be filled, subsequent ballots shall concern only the candidates from the list for which the minimum quota has not been attained."

Those ballot papers that disregard the MVR would be invalidated. It must be mentioned that the provisions put into the French proposal were not considered (most of them) by the delegations. The consensus reached on the issue was mainly based on the Mexico/Costa Rica Proposal. The French Proposal was disregarded as many thought the 3-ballot procedure created unfair basis for the competition of the Court.

RESOLUTION ON THE PROCEDURE FOR THE ELECTION OF JUDGES TO THE ICC

After long and tiresome deliberations, a consensus was reached by the Assembly of States Parties, which adopted the "Draft Resolution on the Procedure for the Election of Judges for the International Criminal Court" (contained in PCNICC/2002/annex XII amended accordingly) and the "draft resolution of the Working Group of the Whole", dealing with the outstanding issue of the election of judges.

Though the language of the Resolution was mostly the reiteration of the Mexico/ Costa Rica proposal, especially paragraphs: 1,2,3(a), 4,5,6,7,8,9,10, there were some major differences even between the two documents.

Every Regional Group was allocated the MVR of 3. If there is only one candidate from a regional group, there shall be no MVR for that region. (Para 3(b) of the Resolution). If the number of States Parties of any regional group is less than three eighteenths of all States Parties to the Rome Statute, the minimum voting requirement shall be adjusted by subtracting 1.

Each State Party shall vote for at least six candidates from each gender. If the number of the candidates is ten or less, the minimum voting requirements for that gender shall be in accordance with the following formula (Para 3(c) of the Resolution):

Number of candidates:	10	9	8	7	6	5	4	3	2	1
Minimum Voting Requirement:	6	6	5	5	4	3	2	1	1	0

Parties shall vote for al least 9 candidates from list A (max. 13) and at least 5 from list B(max. 9).
If, after the first ballot, less than 18 candidates are elected, the maximum number of votes by a State Party (18) shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates (Para 4. of the Resolution). The MVR shall be discontinued if after four ballots 18 Judges still have not been elected.

*Abstentions:*The State Party can abstain if it fulfils the MVR using less than the maximum number of votes allowed for that ballot.

Comments on the Resolution

The NGO Coalition thought that the last two phrases of Paragraph 7 of the Resolution that provide for the discontinuation of the minimum voting requirements, constitute the major defect of the Resolution. Also, the representation of the principal legal systems of the world still remains an unresolved issue.

While commenting on the Resolution, one should also remember the requirements of the Rome Statute. Art. 36. Para. (8)(a), which states that **"The States parties shall, in selection of judges, take into account, within membership of the Court, for "the need for a fair representation of female and male judges (art.36.para 8. (a).iii)"**. The question is, whether female judges will be represented to a larger extent in the ICC, than in temporary tribunals for former Yugoslavia and Rwanda. There is a clear conclusion that a State Party putting forward a female candidate has a greater chance for that person to be elected. As to the nominations submitted up to now – there is one woman in a pool of 9 candidates. The Coalition for the International Criminal Court therefore thinks that the discontinuation after 4 ballots can influence the outcome of the elections. The CICC recalls, that in November 1999, it took 5 ballots to elect 9 judges to the International Criminal Tribunal for Rwanda, and in March 2001, it took 7 ballots to elect 14 permanent judges for the International Criminal Tribunal for the Former Yugoslavia.

Equitable geographic representation (art. 36. Para 8. (a)ii)
Many governments were concerned about this issue. Asian and African group fought for minimal voting requirements, whereas Western European countries wanted less restrictions. Asian group strived for equal minimal voting requirements, regardless of the fact that only 8 states from this region were parties to the Rome Statute at the moment. Consensus reached at the ASP meeting will hopefully meet concerns of both sides. The present MVR for both Asian and Eastern European Groups will apparently equal 2 and the others will still have 3, although the situation is going to change if more countries from these regions become parties to the Rome Statute.

The representation of the principle legal systems of the world (art. 36. Para 8.(a)i) is not dealt with in any specific provision. After the ASP adopted the procedure for the elections of the judges, Spain pointed out this fact in its statement. However, it will always be hard to reach agreement on this, as there is no explicit definition of legal systems. The need for geographical representation can solve this problem to some extent. One could also argue that the resolution adopted, with its meticulous voting requirements, does not need another factor that States would have to take into account during the casting of votes.

CONCLUSION

Despite of the fact that neither proposal was perfect, the vital task of ensuring the nomination of highly qualified candidates is reflected strongly in the Resolution. "…This issue was resolved in a way which was ideal for no one but which clearly reflected the concerns of all delegations, and, I think, it is fair to say this document is ideal for none but in my view is as close as we will get to an outcome at this stage.." said Ambassador Don Mackay.

However, in their statements after the adoption of the resolution, France and Spain stressed the need for the Assembly to work on this issue also in the future. Nigeria complained that the "complicated nature of voting might not guarantee the election of a minimum of three judges in the Court". There will be a chance to do it soon in the future. In three years one third of the judges will be re-elected, and there are no provisions referring to this. Changes in the main resolution may also be done then.

Elections are due to be held from 3-7 February in UN Headquarters in New York and goverments will probably take note of the President of the Bureau, Prince Zeid Ra'ad Zeid Al- Hussein, who called for non-participation in the "regime of reciprocal agreements or swaps of votes in the conduct of ICC elections".

FINANCIAL ISSUES

A) REMUNERATION OF JUDGES [62]
B) VICTIMS TRUST FUND [63]

The Working Group on Financial Issues (**FI**) used the 10th session to finalise its outstanding issues. The original FI Working Group had been split into several sub-Working Groups of which the Working Groups on (a) the Remuneration of (non full-time) Judges and (b) the Victims Trust Fund, met at the tenth session. The topics were discussed in separate sessions and under the moderation of different chairpersons. However, the results of the two Working Groups were reported to the First Year Budget Working Group (**FYB**) and had a direct impact on its proceedings.
Despite the enormous time pressure, the Coordinators for the Working Group on Remuneration of Judges, Mr. John Holmes of Canada, and for the Working Group on the Victims Trust Fund, Ms. Gaile Ramoutar of Trinidad & Tobago, succeeded in leading their groups to a conclusion for the results to be passed on to the FYB Working Group in time.

A) REMUNERATION OF (NON FULL-TIME) JUDGES

INTRODUCTION

The Working Group on Remuneration of Judges conducted two formal sessions and one informal meeting at the 10th PrepCom. The issue of Conditions of service of *full-time* judges was completed at the 9th PrepCom, and the task for this PrepCom was to finalize the conditions of service of *non-full-time* judges. The Secretariat had prepared a discussion paper on the latter at the 9th session, but some delegations wanted to give the issue more thought during the intersessional period and finalize the task of the Working Group at the 10th PrepCom. The main concern was that some of the judges might end up being non-full-time judges for a long period of time with very limited tasks. In light of this, the suggested annual allowance of Euro 60,000 was by many seen as too high.

List of documents **Financial Issues; Remuneration of Judges**

Symbol	*Description*
PCNICC/2002/WGFI-RJ/DP.1	Proposal for an amendment submitted by the United Kingdom of Great Britain and Northern Ireland concerning non-full-time judges – Salaries, allowances and benefits
PCNICC/2002/WGFI-RJ/RT.2	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator
PCNICC/2002/WGFI-RJ/RT.2/Rev.1	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator
PCNICC/2002/WGFI-RJ/RT.2/Rev.2 [64]	Conditions of service of non-full-time judges of the International Criminal Court – Discussion paper by the Coordinator

[62] By Johanna Hautakorpi (ELSA Finland). [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]
[63] By Roberta Ferrario (ELSA Milan)

PROCEEDINGS

In the first formal session, the Coordinator introduced a discussion paper[65] which had been published on 6 June. This paper suggested the same allowances and benefits for non-full-time judges as those outlined in the proposal discussed at the 9th PrepCom, but the paragraph structure had been modified. At the same session the United Kingdom also presented a proposal for an amendment to the original proposal[66], which they made available to delegations on 27 June 2002. The UK proposal differed from the Coordinator's proposal only in Part A, section 1, concerning the annual allowance. These two proposals were the basis for most discussions of the Working Group.

Since the paper that was adopted by the Working Group in the end was a revised version of the Coordinator's original proposal, the author of this report has decided to follow the structure of the Coordinator's proposal in the following. The Coordinator's proposal consists of two parts; part A concerning allowances and part B concerning benefits. Both parts are divided into three sections (1-3 and 4-6). The UK proposal is dealt with in relation to Part A, section 1 of the Coordinator's proposal because it is the only section that substantially differs from the Coordinator's proposal.

Allowances (Annual Allowance) - Part A, Section 1 and the UK proposal

The Coordinator's proposal was that a non-full-time judge would receive an annual allowance of € 60,000. The UK was worried about the cost-effectiveness of this section and suggested that the salary of non-full-time judges merely be *subsidised to* € 60,000 if the salary of their main employment did not reach the amount of € 60,000 per year, or if judges had to give up their main employment because it would be incompatible with their position as an ICC judge. Otherwise, the judges would only receive the special allowance for the days that they actually spent working in the Court. Many other delegations shared this concern about the cost-effectiveness of the Coordinator's proposal. On the other hand, many delegations saw the UK proposal as a very complicated solution. It was also pointed out that the annual allowance should best be seen as a type of *compensation* for the sacrifices which a judge had to make in order to assume his or her position, rather than as a mere salary.

A compromise solution was found during the informal meeting: judges will receive an annual allowance of € 20,000, and in addition those judges whose annual income is less than € 60,000 will receive a top-up payment which will raise their overall income to € 60,000.

Allowances (Special Allowances) - Part A, Section 2

Part A, Section 2 of the Coordinator's proposal was adopted in the first formal session. Judges will receive € 270 for each day they are engaged on the business of the Court.

Allowances (Subsistence Allowance) – Part A, Section 3

Concerning Part A, section 3, the changes made to the Coordinator's proposal were technical in nature. During the first formal meeting, the third paragraph had been agreed to in principle. Since the UN has several rates for different categories of employees under its various agencies, the exact meaning of the term "subsistence allowance" raised confusion. Therefore, a technical change was approved in the second formal session regarding paragraph 3, where subsistence allowance was more clearly defined as being the same as that received by *ICJ judges*.

Benefits – Part B, Section 4

Part B, Section 4 was unresolved after the first formal session because there was a dispute about the fairness of the provision. According to section 4, judges with non-full-time status were not entitled to a

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[64] PCNICC/2002/WGFI-RJ/RT.2/Rev.2 was the document that was finally adopted in the final plenary 12 July 2002. It is identical with the document PCNICC/WGFI-RJ/RT.2 apart from sections 1 and 3 from part A.

[65] PCNICC/2002/WGFI-RJ/RT.2

[66] PCNICC/2002/WGFI-RJ/DP.1

pension benefit. Judges of the International Tribunal for the Law of the Sea (***ITLOS***), on the other hand, who also work on a non-full-time basis, *are* entitled to a pension benefit. The issue seemed quite complicated, since full-time judges are not automatically entitled a pension benefit either. Full-time judges are only entitled to a pension benefit after having served three years and for a full pension benefit only after having served nine years in the Court. In the end, delegates agreed *not* to give pension benefits to non-full-time judges. Delegates seemed to be of the opinion that most likely all judges will be called to work full-time after a short transitional period. The section was adopted according to the Coordinator's proposal in the second formal session without any changes.

Benefits (Health Insurance, Travel Costs) – Part B, Sections 5 and 6

Sections 5 and 6 of part B were adopted in the first formal session of the Working Group according to the Coordinator's proposal, saying that judges are to be responsible for their own health insurance and that business-class travel to official meetings will be covered.

CONCLUSION

In its second formal session, the Working Group adopted document PCNICC/WGFI-RJ/RT.2/Rev.2. As explained above, a substantive change to the Coordinator's original proposal PCNICC/WGFI-RJ/RT.2 was made only concerning Part A, section 1, and a technical change was made to Part A, section 3. The Working Group has completed its tasks and the documents were finalised for approval by the Assembly of States Parties in September 2002.

B) VICTIMS TRUST FUND [67]

INTRODUCTION

The purpose of this chapter is to give an up-to-date account of; (1) the results that the Working Group on the Trust Fund for Victims (a Sub-Working Group of the Preparatory Commission's Working Group on Financial Issues); and (2) what the Assembly of States Parties will have to undertake at its first formal meeting in September 2002 with regards to the establishment of a Trust Fund for Victims.[68]

List of documents **Financial Issues; Victims Trust Fund**

Symbol	*Description*
PCNICC/2002/WGFI-VTF/L.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims
PCNICC/2002/WGFI-VTF/L.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims.
PCNICC/2002/WGFI-VTF/RT.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims
PCNICC/2002/WGFI-VTF/RT.1/Add.1	Draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and for the families of such victims – Discussion paper proposed by the Coordinator
PCNICC/2002/WGFI-VTF/RT.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims - Discussion paper proposed by the Coordinator [69]

Summary of negotiations at previous sessions

The Preparatory Commission began discussions on the establishment of a Trust Fund for Victims at its sixth session.[70] The Chairman of the Preparatory Commission, Mr. Philippe Kirsch of Canada, then established a Working Group on the Court's Financial Regulations and Rules. Even though the Coordinator of this Working Group, Mr. Georg Witschel of Germany, highlighted the importance of the establishment of the Trust Fund for Victims during the sixth and seventh sessions, the issue was not discussed in any detail. However, the French delegation did submit a Proposal[71] at the time and the Norwegian delegation made a statement calling for flexibility in the Trust Fund.

During the eighth session[72] the Coordinator of the Working Group on Financial Regulations and Rules submitted a Discussion Paper entitled "*Draft resolution of the Assembly of States parties on the*

[67] Report by Roberta Ferrario, ELSA Milan. [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]
[68] The establishment of a trust fund is one of the Assembly's obligations pursuant to Article 79 of the Rome Statute.
[69] On the basis of a previous proposal of the French Delegation, 8th Session of the Preparatory Commission
[70] One of the PrepCom's tasks, set out in Article 79 of the Rome Statute of the ICC,
[71] Cfr. Document: PCNICC/2000/WGFIRR/DP.33.
[72] Eight session of the PrepCom; September 24 - October 5, 2001

establishment of a fund for the benefit of victims of crimes within the jurisdiction of the court, and of the families of such victims"[73], which was taken into consideration by the Working Group. The paper was structured in two parts of which the first part dealt with sources of financing for the Trust Fund and the second part with both the criteria for accepting voluntary contributions and the management structure of the fund. An agreement was reached only on Paragraph 1 (obligation incumbent upon the Assembly of States Parties to establish a Trust Fund for the benefit of the Victims) and on Paragraph 2 (sources of financing the Trust Fund for Victims) of the Discussion Paper,[74] which was amended as in Paragraph 5 of the Annex to the French Proposal.[75]

During the ninth Session of the Preparatory Commission[76] the French delegation submitted a Proposal only on the Annex to the Discussion Paper PCNICC/2001/WGFIRR/RT.5, concerning voluntary contributions and the management structure. The Working Group held one formal meeting on the subject which gave the French delegation an opportunity to present its Proposal concerning a Trust Fund for the benefit of Victims; PCNICC/2002/WGFI-VTF/DP.1. The Delegations generally welcomed the French Proposal, even though several questions were raised during the discussions within the Working Group (i.e.: size of the Board of Directors, its location in the structure of the Court, workload of the Board of Directors, financial implications of the French Proposal, independence in the management of the Trust Fund). On the whole, delegates considered the French Proposal as a workable basis for further discussions during the 10th and final Session of the Preparatory Commission. Several formal and informal sessions were scheduled in order to allow the Working Group to complete its work on this issue at the tenth Preparatory Commission.

PROCEEDINGS AT THE 10TH SESSION

The Working Group on Financial Issues - Trust Fund for Victims, coordinated by Ms. Gaile Ramoutar of Trinidad and Tobago, conducted two formal sessions and three informal sessions at the tenth session. The discussion within the Working Group focused on the Proposal submitted by France at the ninth Session (PCNICC/2002/WGFI-VTF/DP.1), regarding the management structure and administration of the Trust Fund for Victims and the voluntary contributions issues.

The French Proposal (PCNICC/2002/WGFI-VTF/DP.1)

The French delegation briefly commented on the background of the Proposal and reminded to the Working Group that an agreement had already been reached at the 9th Session as to the "sources of financing" (Paragraph 4(1) and (2) of PCNICC/2002/WGFI-VTF/DP.1), as amended in Paragraph 5 of the Annex to the French Proposal on page 3). The discussion was not reopened on this point.
The first Paragraph of the Annex (page 4 of the French Proposal[77]) is designed to ensure that a Board of Directors would be established in order to manage the Trust Fund for the benefit of the victims. Autonomy from the Court is necessary to deal with the distribution of the sources of the Trust Fund coming from voluntary contributions. It is necessary to isolate the Court from such problems and to entrust the management of such funds to an independent Board of Directors (Paragraph 1, 2 3 and 5 of the Annex to the French Proposal on page 4). The Board will be a subsidiary body of the Assembly of States Parties pursuant to Article 112 of the Rome Statute of the ICC. The criteria for the election of the members of the Board are directly taken from Article 36(8), which sets the criteria used for the nomination and elections of the Judges of the ICC. It was established that the Members of the Board of Directors must have a recognised international competence in assisting victims of grave crimes. France responded in this way to the criticism that had been addressed to its former proposal presented in the 8th

[73] Document: PCNICC/2001/WGFIRR/RT.5
[74] PCNICC/2001/WGFIRR/RT.5.
[75] Cfr. PCINN/2002/WGFI-VTF/DP.1, page 3.
[76] Ninth session of the Prepcom; New York, 8-19 April 2002
[77] Cfr. PCNICC/2002/WGFI-VTF/DP.1

Session[78]. The French Delegation changed its proposal by saying that experts would be expert in victims' issues instead of being financial experts.

The most sensitive issue was the role of the Registrar of the Court[79]. The French position was clear on this point: France wanted to establish a strong connection between the Trust Fund for the benefit of victims and the International Criminal Court. France was aware that NGOs criticised this aspect of its proposal, but did not share the NGO's position because the Fund does not only have one function.
The Trust Fund for Victims is supposed to (a) pay reparations in order to fulfil the orders of the ICC (Rule 98(1) of the Rules of procedure and Evidence), and (b) to benefit the victims of serious crimes under the jurisdiction of the Court and the family of such victims (Article 79(1) of the Rome Statute and Rule 98(5) of the Rules of procedure and Evidence). The Trust Fund shall also help the Court in providing compensation for victims. Therefore, according to France, it is necessary to establish a clear and strong relationship between the Trust Fund and the ICC and have an independent unit within the Registrar to ensure the management of the Trust Fund, if possible a unit for participation and reparation to victims or another unit within the Registry.
As regards voluntary contributions, France stated that this source of income should be submitted to the Board for approval, in accordance with the principles settled down in Paragraphs 7, 8 and 9 of the Annex on page 4 of the French Proposal[80]. The Board has to report all voluntary contributions to the Assembly of States Parties, regardless of whether they are accepted or refused.

As an agreement was not reached neither on the management structure nor on the voluntary contribution's issue, the discussion within the Working Group was reopened at the tenth Session of the Preparatory Commission. The working basis was still the French Proposal (PCNICC/2002/WGFI-VTF/DP.1) and the Chairman of the Working Group opened the floor for general comments before doing a "paragraph-by-paragraph review" in order to reach a final agreement and complete the PrepCom's work.
In the following a summarised presentation will be given of: (a) the position of France as stated in the French Proposal[81] and in the working material of the Working Group; (b) a report on the comments of the delegations in relation to each paragraph of the French text; (c) a report on the results reached by the Working Group at its final Session; (d) a list of documents approved by the Preparatory Commission which will form the basis of the work of the Assembly of States Parties at its first meeting in September 2002 as to the establishment of a Trust Fund for the Victims.

PCNICC/2002/WGFI-VTF/DP.1: The sources of income of the Trust Fund for Victims
An agreement had already been reached on Paragraph 4 (1) and (2) of the document PCNICC/2001/WGFIRR/RT.5, as amended during the ninth Session of the Preparatory Commission[82] (see paragraph 5 on page 3 of the document PCNICC/2002/WGFI-VTF/DP.1.)
In view of this agreement, the discussion on Paragraph 4 of the French proposal was not reopened during the first formal session of the Working Group. The Preparatory Commission agreed that the Trust Fund for Victims would benefit from four sources of funding:

a) Resources collected through awards for reparations if ordered by the Court pursuant to Rule 98 of the Rules of Procedure and Evidence;
b) Money or other property collected through fines and forfeiture transferred to the Trust Fund if ordered by the Court pursuant to Article 79(2) of the Rome Statute of the International Criminal Court;

[78] PCNICC/2001/WGFIRR/DP.33
[79] See paragraph 4 of the French Proposal (PCICC/2002/WGFI-VTF/DP.1
[80] See PCNICC/2002/WGFI-VTF/DP.1.
[81] PCNICC/2002/WGFI-VTF/DP.1.
[82] Agreed version in PCNICC/2002/WGFI-VTF/RT.1, par. 1 and 2

c) Voluntary contributions from Governments, international organizations, individuals, corporations or other entities, in accordance with relevant criteria adopted by the Assembly of States Parties;
d) Such resources, *other than assessed contributions* (amendment to the original document PCNICC/2001/WGFIRR/RT.5 stated at the eighth Session of the Preparatory Commission), which the Assembly of States Parties can decide to allocate to the Trust Fund.

These two different and independent types of sources of funding are strictly related to the fact that the Trust Fund for Victims can be used in two different ways:
i) To fulfil the orders of the Court to pay reparations through the Trust Fund, in accordance with Rule 98 (1) to (4) of the Draft Rules of Procedure and Evidence. In this case the Trust Fund for Victims is only the device through which the Court is operating, but the Court has the power to decide on the allocation of the funds;
ii) To benefit the victims of crimes under the jurisdiction of the Court and the families of such victims in accordance with article 79(1) and rule 98(5). In this case the Court doesn't have power over the funds, and the Trust Fund for Victims is independent in deciding their allocation.

The agreement on the sources of financing does not fit the principles on the establishment of the Trust Fund for Victims set by the NGOs. The NGOs should have preferred a broader and more flexible list of sources of income than those strictly listed in the approved paragraph 2 of the document PCNICC72002/WGFI-VTF/TR.1.

PCNICC/2002/WGFI-VTF/DP.1: Management Structure
Since the Trust Fund for Victims has two different tasks, the management structure and the administration of the Trust Fund for Victims must reflect both these tasks. This is particularly relevant due to the fact that the Fund exercises also an independent activity. As to the management structure, the first proposal, contained in document PCNICC/2001/WGFIRR/RT.5, envisaged for this task either the Registry, but does not fit because an organ of the Court cannot exercise a function that the whole Court doesn't have, or the Committee on Budget and Finance, which raised concerns among the delegations because it is composed of financial experts and not of experts on victims' issues.
This solution was not adopted and the French delegation proposed a new management system: a Board of Directors in charge with the management of the Trust Fund and a Secretariat within the Registry (a unit of the Registry) to provide the daily legal and administrative support to the Board.

PCNICC/2002/WGFI-VTF/DP.1: The Board of Directors
In the French Proposal, the necessity of a politically independent Board of Directors, created by the Assembly of the States Parties, which will have its seat at the Headquarters of the Court and will be in charge with the management of the Trust Fund for Victims, is clearly stated in Paragraphs 1 and 2 on page 4 of the document PCNICC/2002/WGFI-VTF/DP.1.

According to Par. 2, the Members of the Board of Directors, shall be elected by the Assembly of States Parties, following the same criteria stated for the nomination and election of Judges to the International Criminal Court: equitable geographical distributions; equitable gender distribution; representation of the principal legal system of the world; established competence at the international level in the field of protection and of assistance to victims of serious crimes (Art. 36 (8) of the Rome Statute).
The Board of Directors would be responsible for determining the activities and the projects of the fund and the allocation of the property and the money available as well as approving the voluntary contributions.

A question, strictly related to the cost of this structure was the number of the Members of the Board of Directors. Canada raised this question. The French Proposal stated that the Board of Directors should be composed of 12 Members (French Proposal, Par. 1) but that this number was open to negotiations. The members should have experience in assisting victims of severe human rights violations and acting on a pro bono basis. The Board of Directors would be a subsidiary body of the Court pursuant to Article 112 of the Rome Statute, so the expenses connected to the meetings and activities of this Board comes under the Court's Budget, while the members of the Board would act on a voluntary basis.

Table: Comments from delegations concerning the number of members of the Board of Directors:

Canada	Taking into consideration the costs of this management structure, the Canadian delegation suggested to reduce the number of the Members of the Board from 12 to 7.
The Netherlands	The delegation agrees with the proposal of Canada to reduce the number of the Members of the Board from 12 to 7.
United Kingdom	The delegation agrees with the proposal of Canada to reduce the number of the Members of the Board from 12 to 7.
France	There is no problem for the French delegation to adopt the solution proposed by Canada.
Germany	The Delegation agrees with the Canadian Proposal
Uganda	In favour to contain and reduce the costs

During the meeting of the Working Group on the Trust Fund for Victims, Austria proposed to add the words "on a pro bono basis" at the end of Paragraph 2. Only the Philippines raised a comment on this issue, stating that they agree with this Proposal, but necessary expenses must be reimbursed.
As to the criteria for the election of the Members of the Board, the French proposal referred to the Article 36(8) of the Rome Statute of the ICC (Paragraph 2 of the Annex on page 4 of the French proposal).

The Coordinators' discussion paper
A Discussion Paper was proposed by the Coordinator of the Working Group and approved by the Preparatory Commission, PCNICC/2002/WGFI-VTF/RT.1. The paper states the following;

a) in Paragraph 1 of the Annex: The Assembly of the States Parties must establish a Board of Directors of the Trust Fund for Victims;

b) in Paragraph 2 of the Annex: The number of the Members of the Board of Directors is reduced from 12 to 5.The Members serve in an individual capacity on a pro bono basis;

c) in Paragraph 3 of the Annex: the Members of the Board are elected with the same criteria used for the election of judges of the ICC, pursuant to Article 36(8) of the Rome Statute. They must have competence in the assistance to victims of serious crimes.

   As to the nomination and election of the members of the Board of Directors, the Preparatory Commission approved a document PCNICC/2002/WGFI-VTF/RT.2 "Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of the members of the Board of Directors of the Trust Fund for the benefit of the victims."

d) in Paragraph 7 of the Annex: the Board of Directors is responsible for determining the activities of the Trust Fund for Victims as well as approving voluntary contributions. A new Unit in the Registry would serve as the Secretariat of the Board, providing the daily support and would play a consultative role in deciding the activities of the Trust Fund.

The Assembly of the States parties must refer to these documents (PCNICC/2002/WGFI-VTF/RT.1; PCNICC/2002/WGFI-VTF/RT.2) for the election of the Members of the Board of Directors.

The Role of the Registrar of the Court

Paragraph 4 of the French Proposal was thoroughly discussed during the first formal session of the Working Group and regards the relationship between the Court and the Registrar. It proposes that the Registrar of the Court, through a specialized unit, would serve as Secretariat of the Board providing the necessary administrative and legal assistance for the proper functioning of the Board carrying out its tasks. The Registrar or his/her representative should also take part in the meetings of the Board of Directors in an advisory capacity and should be responsible for submitting observations on the activities and projects envisaged by the Trust Fund and on the allocation of the property and money available to the Fund.

Table: Comments on the Role of the Registrar of the Court

Country	**Comments**	**In accordance with NGO position**
Belgium	Agrees with Switzerland.	Yes
Bosnia	Agrees with France on the role of the Registrar. In her opinion, it is desirable that the Registrar is responsible for the administration of the Trust Fund, because of its Unit for victims and witnesses. Sharing the Unit expertise is important to ensure consistency to victims.	No
Canada	Agrees with France on the role of the Registrar. It is important, in his opinion, to maintain a link between the Trust Fund and the Court, when executing orders of reparation of the Court. Canada could support to remove "and legal" and, in this way to change the focus on administrative assistance by the Registrar.	No
Gambia	Day-to-day management to the Board of Directors and not to the Registrar.	Yes
Germany	Agrees with the French proposal. If the Fund is located within Registrar, it seems natural to give Registrar a voice in the Board of Directors.	No
Japan	In favor of the French Proposal.	No
Mali	Agrees with France on the role of the Registrar	No
The Netherlands	Day-to-day management of the Trust Fund with the Registrar. Although the second function of the Trust Fund (assistance in broad sense to the victims), is something different from the reparations from the Court, there must be, in any case, a link between them (the Registrar)	No
Philippines	Hesitations on the role of the Registrar as in the French Proposal	Neutral
Samoa	Administration of the Trust Fund under the Registrar. Hesitant to form a new body such as a Board of Directors, due to the costs that this structure will imply	No
Senegal	Agreeing with France	No
Switzerland	More in favour of a structure with a Board of Directors either with its own Secretariat or with a Secretariat set up temporarily under the Registrar, but that the Registrar should not be too involved with the work of the Trust Fund. The workload is already very great for the Registrar	Yes
Uganda	Support of linking the Fund with the Registrar. Uganda is not in favor to create a Board of Directors, because it duplicate the work and the costs.	No
United Kingdom	Question whether the Registrar should be given a voice at the level of the Board of Directors	Neutral

As this was the last Session of the Preparatory Commission and the Coordinator wanted to reach an agreement on the issue of the Trust Fund for Victims, an annex to the discussion paper was prepared and discussed in informal sessions. The Working Group documents were approved at the last formal session on Wednesday 10 July 2002, with amendments, and then approved by the Preparatory Commission at its final plenary.
In Paragraph 5 of the Annex of the Discussion Paper (PCNICC/2002/WGFI-VTF/RT.1), the assistance that the Registrar of the Court has to provide to the Board of Directors has been generalized. The Registrar is responsible for providing "such assistance" as is necessary for the proper functioning of the Board in carrying out its tasks, without referring anymore to legal or administrative assistance. The Registrar still has the right to participate in the meetings of the Board of Directors in an advisory capacity.
The conclusion doesn't really fit the principles expressed by NGOs concerning the establishment of a Trust Fund for the Victims. Many NGOs believe that assigning the Registrar of the Court with the responsibility of providing assistance to the Board of Directors will hamper the independence of the Trust Fund and make it difficult for it to provide assistance to victims of crimes within the jurisdiction of the Court who are not involved in specific cases before the Court.

The Executive Director
In Paragraph 6 of the Annex of the Discussion Paper submitted by the Coordinator it is stated that the Assembly of State Parties has to consider the appointment of an Executive Director, either within or outside the Registrar, on the recommendation of the Board and after consulting the Registrar, to provide further assistance in the day by day administration of the Trust Fund. This is a great achievement for the NGOs who preferred an Executive Director of the Trust Fund, appointed directly by the Board to act permanently with important responsibilities in the daily management of the Fund. (A "consultative voice" in determining the activities of the Fund, review of voluntary contributions).

Voluntary contributions
Both the French Proposal and the Discussion Paper proposed by the Coordinator of the Working Group, dealt with the criteria to accept voluntary contributions affected to a specific project or purpose.
All voluntary contributions should be in keeping with the goals and activities of the Trust Fund, and donations affected to a specific purpose or project should not lead to an inequitable distribution of the available funds among the different groups of victims. The voluntary contributions should be submitted to the Board of Directors for approval. The Board of Directors has to follow the rules stated in paragraphs 9, 10 and 11 of the Annex of the document PCNICC/2002/WGFI-VTF/RT.1.
As NGOs suggested, the Board of Directors should submit a detailed report on the acceptance and refusal of voluntary contributions to the Assembly of the States Parties every year (paragraph 11 of the Discussion Paper proposed by the Coordinator of the Working Group).

CONCLUSION

The Working Group on Financial Issues - Trust Fund for Victims completed its tasks at the last Preparatory Commission. The Working Group approved the following documents; PCNICC/2002/WGFI-VTF/RT.1; PCNICC/2002/WGFI-VTF/RT.1/Add.1; and PCNICC/2002/WGFI-VTF/RT.2. At the first meeting of the Assembly of the States Parties,[83] the Trust Fund for Victims will be established following the provisions contained in the documents approved by the PrepCom at its final session.

[83] First ASP meeting 3-10 September 2002

FIRST YEAR BUDGET [84]

INTRODUCTION

The Working Group on the Budget for the First Financial Period of the Court (***FYB***)[85] was first established at the 8th PrepCom and continued its work at the 9th and 10th sessions where it concluded its work and succeeded in adopting the Budget in full.[86]

In order to conclude its discussions on the Budget and to be able to fill the whole Budget with exact figures, the FYB Working Group had to rely on the findings of several other Working Groups. By way of example, the decisions taken in the two Working Groups on Financial Issues, Remuneration of (non full-time) Judges and the Victims Trust Fund, had a direct impact on the final Budget.[87] The discussions in these other Working Groups are set out elsewhere in this ELSA report, but it is important to remember that cross-references to the results of other Working Groups will be made.

The Coordinator for the First Year Budget, Mr. Valentin Zellweger of Switzerland, really pushed delegations to reach agreement on the Budget. By meeting with delegations bilaterally and continuously insisting during the meetings that problems be solved instead of created anew, he managed to complete his task in an impressively efficient and speedy manner.

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[84] By Cornelia Schneider, ELSA London. This report aims to be concise rather than necessarily precise and will thus inevitably miss out some essential points. It is hoped that these shortcomings will not distort the reliability of the statements made herein. Please direct any comments and corrections to connieschneider@gmx.net [Ed. by Espen Rostrup Nakstad (EI) April 2003.]

[85] The Working Group was referred to interchangeably as being either on the "first financial period" or the "first *year* period" or "budget". The reason for this confusing terminology is that, although the budget period will generally run for one *year*, the very first financial period will actually run for a period of 16 months (from the first meeting of the Assembly of States Parties in September 2002 to the end of 2003).

[86] Although note that several figures have remained outstanding which will be decided by Committee decisions or the Assembly of States Parties.

[87] For a full list of issues that affected the final form of the Budget, see the "Task List for the preparation of the discussion on a draft budget for the first financial period of the Court at the 10th PrepCom", PCNICC/2002/L.1/Rev.1/Add.1.

The Working Group´s final Budget fixed the estimate for the total cost for the first financial period of the Court at € 30,893,500 (plus an extra € 300,000 which the Netherlands as host country have decided to contribute). Readers of this report may consider this figure to be fairly meaningless in isolation, which is probably true for most of us unfamiliar with budgets of international organistions or financial issues in general. Those wishing to dismiss the FYB Working Group as a whole as dry and boring, however, should remember that it was this Working Group which dealt with the widest variety of issues of concern to the ICC. It incorporated the decisions of many other Working Groups and thereby set a framework for the whole Court, which in all likelihood will be carried through many other financial periods. Without the commitment of States Parties to contribute the necessary funds, the Court would be dead in its tracks. Delegations and NGOs alike recognised the importance of this Working Group, which was noticeable in its proceedings inside and outside the Conference Room. This excitement helped participants get through many extremely technical issues, and by following the proceedings in the Working Group, participants also gained a wider understanding of the various organs and sections of the Court.
Lastly, please note that this report is intended to give a concise overview of the major issues discussed and focus mainly on the final results. It is *not* meant to provide a lengthy analysis of the various provisions and scenarios that were originally proposed and discussed. For detailed notes of the proceedings in the PrepCom, please see the ad verbatim notes of all formal meetings available at http://groups.yahoo.com/group/icc-info/ (for the period of 1 – 12 July 2002).[88] We also recommend that you refer to the actual PCNICC documents listed in this report (available on the UN website http://www.un.org/law/icc/prepcomm/prepfra.htm), as they are essential to a full understanding of the issues involved.

PROCEEDINGS

The Working Group conducted three formal sessions and various informal meetings. The objectives of the Working Group, as reiterated by the Coordinator, Mr Valentin Zellweger of Switzerland, were: (a) to agree on the provisions of the second part of the Budget for the first financial period of the Court, and (b) to adopt the entire Budget and put it forward to the Assembly of States Parties for approval.
The entire Budget consists of "Part One" of the Budget (which had already been provisionally adopted at the 9th PrepCom, but had to be confirmed at this PrepCom) and "Part Two". Whereas Part One sets out the structure and administrative arrangements of the Court (seat, premises requirements, assembly of states parties, presidency, office of the prosecutor, registry, etc), Part Two of the Budget is more concerned with actual *figures*, or cost estimates. Delegations had to first agree what functions they actually wanted the Court to carry out and how they wanted these to be implemented (Part One) before specific details and figures could be inserted in Part Two. It was also a main concern of the Coordinator that the Budget – as a "constitutional document" which will set precedents for years to come – combined the two aspects of flexibility and scalability. Flexibility to allow officials to use the funds available as necessity and efficiency may from time to time dictate; scalability by allowing for full accountability and records.

In the first formal session on Wednesday, 3 July, the Coordinator went through document **L.3**[89], the revised Part Two of the Budget (prepared by the Secretariat and made available on 6 June 2002) and pointed out the changes compared to the original document **L.1**[90]. Individual delegations then commented on the provisions.

[88] Prepared by members of ELSA and ISC-ICC who attended the 10th PrepCom and to whom the author would like to express her sincerest thanks.
[89] References are to "PCNICC/2002/WGFYB" documents, unless stated otherwise.
[90] Please note that the latest version of document L.1 is PCNICC/2002/WGFYB/L.1/Rev.1/Add.1. For ease of reference, I will be referring to that document as "L.1".

In the second formal session on Friday, 5 July, the Coordinator introduced some of the additional papers that had been made available and invited comments from the delegations. The additional papers specifically introduced were (in the order mentioned): **RT.12** (plenary sessions of the Court subsequent to the inaugural meeting), **L.4** (External Audit, Working Capital Fund, Outsourcing Procurement), **RT.8** (General Fund), **RT.7** (Working Capital Fund), **RT.5** (Budget Resolution for the 2nd Assembly of States Parties, Location A), **RT. 9** (Budget Resolution for the 2nd Assembly of States Parties, Location B), **RT.6** (Scale of Assessment), **RT.10** (Provision of Funds for the Court), **RT.11** (Adaptation of Budget by Registrar), **RT.4** (UN Joint Pension Fund), **DP.1/Rev.1** (Appointment of Staff).

The third, and final, formal session on Thursday, 11 July, focused on adopting the documents that had been discussed in informal meetings. The conduct of the meeting exemplified the extreme time pressure that the Working Group was under: the time allocated for a formal meeting was taken up mostly by informal consultations (until 12.30), the formal meeting which ensued had to be broken up into informals on two occasions so that final changes could be agreed, and the final minutes of the Working Group were held without interpretation and with the threat of an electricity cut off at 13.30! With all this in mind (and with the Coordinator continuously reminding the delegates), the Working Group managed to reach conclusion on all outstanding issues just in time.

ADOPTION

In brief, the Working Group decided to adopt **Part One** of the Budget (PCNICC/2002/L.1/Rev1/Add1 to be read in conjunction with L.5 "proposed changes to Part One"); and **Part Two** of the Budget (L.3 to be read in conjunction with L.6 "proposed changes to Part Two"). They also adopted several of the additional documents which were discussed during the Session – these are marked with an asterisk in the following table. Documents marked with a + were not adopted as such by the Working Group, but their wording was incorporated into document L.5 and therefore Part One of the Budget.

	Documents (discussed or adopted)	First Year Budget – 10th session
	" * " denotes those documents that were actually adopted by the Working Group	
	" + " denotes those documents whose wording was incorporated into document L.5	
	Documents L.1 and L.3 were not officially adopted at the 10th session, but adopted by reference.	
	PCNICC/2002/L.1/Rev.1/Rev.1/Add.1, sect. A (referred to herein as "L.1")	Revised draft **budget** for the first financial period of the Court
	PCNICC/2002/WGFYB/L.3	Revised draft **budget** for the first financial period of the Court (Text of **Part Two**)
+	PCNICC/2002/WGFYB/L.4	Proposal by Secretariat concerning an **External Audit**, a **Working Capital Fund**, and **Outsourcing Procurement** (including an Annex)
*	PCNICC/2002/WGFYB/L.5	Proposed changes to the text of **Part One**
*	PCNICC/2002/WGFYB/L.6	Proposed changes to the text of **Part Two**
	PCNICC/2002/WGFYB/DP.1	Proposal by France regarding **Vacancy Rate**
	PCNICC/2002/WGFYB/DP.1/Rev.1	Proposal by Spain and Chile for the **appointment of staff**
	PCNICC/2002/WGFYB/DP.2	Proposal by Argentina, Brazil, Chile, Colombia, Costa Rica, Paraguay, Spain and Venezuela for the **selection of staff** in the ICC
*	PCNICC/2002/WGFYB/DP.2/Rev.1	Proposal by Argentina, Brazil, Chile, Colombia, Costa Rica, Paraguay, Spain and Venezuele for the **selection of staff** in the ICC (Addendum)
	PCNICC/2002/WGFYB/RT.3	**Task List** for the preparation of the discussion on a draft budget for the first financial period of the Court at the tenth session of the Preparatory Commission
*	PCNICC/2002/WGFYB/RT.4	Draft Decision of the Assembly of States Parties relating to participation of the International Criminal Court in the **United Nations Joint Staff Pension Fund**
	PCNICC/2002/WGFYB/RT.5	Budget Resolution for the second Assembly of States Parties, **Location A**
*	PCNICC/2002/WGFYB/RT.5/Rev.1	Draft Resolution for **Budget and Finance** for the first financial period to be adopted by the Assembly of States Parties
*	PCNICC/2002/WGFYB/RT.6	**Scale of assessments** for the apportionment of the expenses of the International Criminal Court
	PCNICC/2002/WGFYB/RT.7	**Working Capital Fund** for the first financial period
	PCNICC/2002/WGFYB/RT.7/Rev.1	Draft Resolution for the **Working Capital Fund** for the first financial period to be adopted by the Assembly of States Parties

	PCNICC/2002/WGFYB/RT.8	**General Fund** for the first financial period (6.1 of the Financial Rules)
	PCNICC/2002/WGFYB/RT.9	Budget Resolution for the second Assembly of States Parties, **Location B**
*	PCNICC/2002/WGFYB/RT.10	Proposed Decision of the Assembly of States Parties relation to the **provision of funds** for the Court (5.5 of the Financial Rules)
	PCNICC/2002/WGFYB/RT.11	Proposed Decision for the adaptation of the Budget by the **Registrar to account for an increase** in the Assembly of States Parties during the first financial period
+	PCNICC/2002/WGFYB/RT.12	Proposed texts of the provisions on **plenary sessions** of the Court subsequent to its Inaugural Meeting
+	PCNICC/2002/WGFYB/RT.13	Proposed texts of the provisions on the **conditions of service of judges** to the ICC
+	PCNICC/2002/WGFYB/RT.14	Proposal for the establishment of a **Trust Fund for Victims** pursuant to Article 79 of the Rome Statute
*	PCNICC/2002/WGFYB/RT.15	Proposal for the **Director of Common Services** to carry out the functions of the **Registrar** before the appointment of the latter (except the moving of money from one budget category to another)

INDIVIDUAL ITEMS

As stated above, the FYB Working Group adopted the entire Budget by the end of the 10th PrepCom, namely Part One (mainly discussed at the 9th PrepCom), Part Two (discussed at the 10th PrepCom) and several additional documents as listed above (*).
The author of this report considered brief explanations of the relevant issues preferable to a discussion of the proceedings in chronological order. This should hopefully ensure an understanding of the final budget as adopted and avoid getting lost in the "jungle" of lengthy proceedings full of repetition, amendments and cross-references.
It should be noted at the beginning, however, that the Working Group opted for two different ways of adopting their agreements. On the one hand, they adopted two documents outlining changes to the original Budget (L.5 and L.6). These documents incorporated the wording of a lot of additional papers which had been discussed during the 10th PrepCom (e.g. RT.7 on a Working Capital Fund). There was therefore no need to specifically adopt those already incorporated additional papers (thus, the fact that several "RT" documents in the table above are not marked with an asterisk does *not* mean that the ideas behind them have not been adopted). On the other hand, the Working Group specifically adopted several additional papers, for example RT.15 on the functions of a Director of Common Services. This gives the Assembly of States Parties the option to discuss these issues separately, without jeopardizing the adoption of the Budget as a whole. It therefore appears that the more controversial issues were adopted as separate additional papers which might be amended at a later stage.

Budget Part One: Structure and Administrative Arrangements

This part was mostly agreed on during the 9th PrepCom, although certain changes were implemented at the 10th session of the PrepCom (see document L.5). It outlines the structure and administrative arrangements of the Court and deals with the following issues in particular:

I. The Seat of the Court
II. Premises requirements
III. Assembly of States Parties
IV. Bureau of the Assembly
V. Inaugural Meeting of the Court
V.bis Subsequent Meetings of the Court in plenary session (new)
V.ter Meeting of the Board of Directors of the Victims Trust Fund (new)
VI. Committee on Budget and Finance
VII. Critical needs of the Court during the first financial period
VIII. The Presidency
IX. Judges other than those comprising the Presidency
X. Office of the Prosecutor
XI. The Registry

XII. Common Services Division
XII.bis External Audit (new)
XIII. Furniture and Equipment

Thus, Part One makes provisions for the financial requirements[91] of the *organs* and *divisions* of the Court in the first financial period (those established directly by the Rome Statute, such as the Registry, as well as others which were considered necessary at a later stage, such as the Common Services Division). Part One also set a yardstick for general issues that needed to be considered. For example, by the inclusion of a section on furniture and equipment it brought home the point that without money being provided for this cause (in Part Two of the Budget), the Court would not be able to function.

The most important changes that were agreed during the 10th PrepCom were the inclusion of provisions for two plenary sessions of the Court subsequent to the Inaugural Meeting, a meeting of the Board of Directors of the Victims Trust Fund and for costs related to the Inaugural Meeting. It also inserted provisions for an external audit and the establishment of a Working Capital Fund, amended the duration envisaged for meetings of the Court and the Assembly of States Parties (see table below) and effected other minor changes. The main changes are discussed in more detail below.

Budget Part Two: Estimates for the first financial period of the Court
Part Two provides the content which fills the skeleton of Part One "with flesh". It gives the provisional estimates for the first financial period of the Court, and as such provides specific details, numbers and the precise allocation of funds. It is divided as follows:

I. Summary of Estimates

II. Work Programme
(General running costs: salary, travel, furniture etc. for the main organs; including a reserve for unforeseen expenses)

III. Meetings of certain parties and organs
(Meetings of the Assembly of States Parties, of the Bureau, Inaugural Meeting of the Court, Meeting of the Budget and Finance Committee, including conference-serving and non-conference-serving costs, as well as programme support costs and contingency reserve)

IV. Annexes
(Annexes 1 and 2 provide a chart and a list of post requirements for the organs for illustrative purposes; Annex 3 shows detailed break downs of the cost estimates for the meetings, Annex 4 the breakdown of provisions for the reserve for unforeseen circumstances; Annex 5 lists the Netherlands` contribution to the Court in terms of premises, furniture etc.)

The changes made to the cost estimates were affected as a direct consequence of changes to Part One or the adoption of additional papers. The estimate of the overall costs was moderately revised from €31,995,400/ €31,682,400 to €30,893,500. These and other small changes are shown in the revised tables and charts laid out in document L.6 which amends document L.3.

The overall costs consist mainly of expenses for staff salaries and meetings. They were amended in mainly two aspects: (i) decisions were taken on the duration and location of various meetings, and (ii) the overall number of staff was amended.

[91] For expenses such as staff salaries and meetings.

(i) In the previous versions of the Budget, two cost scenarios were given which were based meetings taking place in either New York or The Hague. These two scenarios had slight cost implications reflected in the overall estimate. At the 10th session, the Working Group decided the location for every meeting, a detailed list of which can be found in the table on the next page.
(ii) The Working Group also implemented the decision of the Working Group on the Victims Trust Fund to create one P-3 position dealing exclusively with the Fund.[92]

Meeting (chronological order)	**Time and Duration** (revised)	**Location** (revised)	**Costs** (estimate)	**Provisions in the Budget** (revised)
First Meeting of the ASP	September 2003 Six days	New York	€ 2,582,200	Para 6 (Part One), L.1 , L.5/ Annex III (Part Two), L.3, L.6
Resumed Special Meeting of the ASP	January/ February 2003 Five days	New York	€ 1,571,800	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6

Meeting (chronological order)	**Time and Duration** (revised)	**Location** (revised)	**Costs** (estimate)	**Provisions in the Budget** (revised)
Inaugural Meeting of the Court	early 2003; after the Resumed Special Meeting	The Hague	€ 97,000 (only for travel, since otherwise financed by the Netherlands)	Paras 6 and 7 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6
Resumed Special Meeting of the ASP	April 2003 Three days	New York	€ 746,200	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6
Meeting of the Bureau of the ASP	June 2003 One day	New York	€ 96,600	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6
"Second" Meeting of the ASP	September 2003 Five days	New York	€ 1,187,700	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6
Committee on Budget and Finance	August 2003 Five days	New York	€ 845,000	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6
Board of Directors (VTF)	2003 Three days	The Hague	€ 26,100	Para 6 (Part One), L.1, L.5/ Annex III (Part Two), L.3, L.6

<u>Additional Papers Implemented by means of L.5 and/ or L.6</u>

[92] Although note that this position is originally only intended for six months.

Victims Trust Fund

The discussions in the FYB Working Group on this topic were closely coupled with those taking place in the Working Group on a Victims Trust Fund (*VTF*). The latter decided that a fund should be established for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.[93] The VTF Working Group also decided, *inter alia*, that the Fund should be headed by a board of directors consisting of five (pro bono) members.
These decisions had a direct impact on the Budget. Discussions were based on document RT.14 which suggested two insertions into Part One of the Budget (L.1) and one insertion into Part Two of the Budget (L.3):
(i) A new Chapter V ter (new paragraph 29 quater) in Part One, making provisions for funds to be allocated to a three-day meeting of the Board of Directors at The Hague in 2003 (including business class travel and daily subsistence allowance).
(ii) A new paragraph 87 bis in Part One, making provisions for funds to be allocated to a P-3 post dealing exclusively with matters related to the Victims Trust Fund (to be created within the Victims Participation and Reparation Unit of the Registry). Costs for this post for the first financial period are estimated at € 48,000.
(iii) A new Chapter C bis (new paragraph 170 bis) – in the end adopted as new Chapter D bis (new paragraph 171 primo) - in Part Two, allocating € 26,100 for a meeting of five Directors of the Victims Trust Fund to be held at The Hague in 2003.
All suggestions contained in RT.14 were taken on board by the Working Group and implemented, but they were adopted as part of changes outlined in documents L.5 and L.6 and are therefore directly incorporated into the Budget (L.1 and L.3).

Working Capital Fund
The Working Capital Fund is meant to ensure that the Court will have sufficient capital to meet short-term liquidity requirements pending the receipt of assessed contributions from States Parties.
The establishment of a Working Capital Fund was dealt with in documents L.4 as well as RT.7/Rev.1. It seems that the two documents are quite incompatible (for example, L.4 states that the Working Capital Fund shall be established "pursuant to regulation 6.2 of the draft Financial Regulations", whereas RT.7/Rev.1 insists that advances shall be made "as an exception to regulation 6.2"). However, it also appears that *both* documents were incorporated/ adopted by the Working Group.
On 11 July, when going through the list of additional papers that the Working Group had to decide on, the Coordinator stated that document RT.7/Rev.1 was adopted.[94] Document L.5, on the other hand, states that paragraph 11 (bis) is to be inserted into document L.1 (Part One of the Budget). Without knowledge of the discussions that took place at the informal meetings, it is difficult to decide what the correct approach is. However, since document L.4 was orally amended (indication an intention to amend the proposal rather than rejecting it outright), we will assume that the Working Capital Fund will be established in accordance with the provisions outlined in L.4.
L.4 establishes that parties will have to contribute to the Fund in the proportions set out in the scale of assessment (but their contributions shall be held on account of the Parties which have made such payments[95]). The exact amount of the Fund has not yet been determined, but it will amount to 1/12 of the operation costs of the Court.[96] The establishment of the Fund is based on regulation 6.2 of the draft Financial Regulations.[97]

[93] The establishment of such a fund is pursuant to Article 79 of the Rome Statute.
[94] See ad verbatim notes of the meeting on 11 July taken by ELSA and ISC-ICC students, which are available at http://groups.yahoo.com/group/icc-info/.
[95] This is an oral amendment to L.4 which was made during negotiations at the 10th PrepCom.
[96] This is based on the practice of the United Nations.
[97] PCNICC/2001/1/Add.2.

External Audit and Outsourcing of Procurement

In line with what the Coordinator had proclaimed to be one of the fundamental aims which the Working Group was trying to achieve, the Working Group decided to make provisions for an external audit – this will go a long way in achieving transparency and accountability of the Court and in preventing or investigating misconduct.
Discussions on these two issues were based on document L.4 which suggested the insertion of five new paragraphs into Part One of the Budget. These were all accepted as follows (although with minor oral amendments):
(i) A new paragraph **98 bis** explaining that during the initial phase, the Court ought to outsource procurement, but only on a limited time and extent basis. A staff member of the Court is to be placed within the entity providing such procurement services so that the Court may develop its own internal procurement capability.
(ii) A new paragraph **98 ter** establishing that the position of Procurement Officer within the Procurement Section (already set up by the original budget L.3) could be assigned the task outlined in paragraph 98 bis. It also reiterates that provision was already made in document L.3 for € 382,600 for the outsourcing of procurement.
(iii) a new paragraph **109 bis** stating that an external auditor is to be appointed by the Assembly of States Parties to conduct audits in conformity with generally accepted common auditing standards. This also fulfills the requirement set out in Regulation 12 of the draft Financial Regulations of the Court. [98]
(iv) a new paragraph **109 ter** requesting an initial audit for the period from the Court´s very first activities until such time when the Registrar takes up his or her duties. This also takes account of the fact that the first financial period will be for an extended period (16 months rather than 12 months).
(v) a new paragraph **109 quater** setting the estimate for the total cost of the audit at €40,000, a figure which was already reflected in Part Two of the Budget (L.3).
All suggestions contained in L.4 were taken on board by the Working Group and implemented (although with minor oral amendments), but they were adopted as part of changes outlined in document L.5 and are therefore directly incorporated into the Budget (here L.1).

Adopted Additional Papers

Selection of ICC Staff
Discussions on this issue in the Working Group were based on a proposal submitted originally by Spain and Chile, but later also supported by Argentina, Brazil, Colombia, Costa Rica, Paraguay and Venezuela (DP.2/Rev.1).
This was a hotly debated proposal aiming to set up guidelines for the selection and appointment of ICC staff (until the adoption of Staff Regulations in accordance with the Rome Statute). The revised proposal (DP.2/Rev.1) was adopted by the Working Group, although with some oral amendments agreed in the final session on 11 July.
The guidelines do not establish binding quotas on gender or geographical terms, although candidates of given nationalities or gender may be given preferential consideration "where appropriate".[99] Candidates will, *inter alia*, be assessed on grounds of analytical and drafting skills (where this is required for their position). This initial assessment stage will be followed by an oral interview on English o French. Knowledge of another official language (Arabic, Chinese, English, French, Russian and Spanish) will be an advantage to candidates.

[98] PCNICC/2001/1/Add.2.
[99] It is interesting to note that the original proposal submitted by Spain and Chile (DP.1/Rev.1) did not make any reference to gender balance at all.

Staff members of a "P" position (professional rather than general service staff)[100] shall be selected in accordance with a scheme of geographical representation which is to be "guided in principle by"[101] the system of geographical representation of the United Nations. States Parties and states engaged in the process of ratification or accession to the Rome Statute will be given "adequate representation", but applications by nationals of non-member states will also be considered.

UN Joint Pension Fund

The Working Group adopted document RT.4 which comes in the form of a draft decision of the Assembly of States Parties relating to the participation of the ICC in the United Nations Joint Staff Pension Fund.

Once adopted by the Assembly, the decision will in effect become a request to the Registrar of the ICC to apply for membership (on behalf of the ICC) in the United Nations Joint Staff Pension Fund. Participation in the Fund will ensure that ICC staff members have the same access to the Staff Pension Fund as other UN employees. The scheme is administered by the UN and overseen by the UN Administrative Tribunal.

Scales of Assessment

Document R.6, on which discussions in the Working Group were based, defines that the applicable scale of assessments for the apportionment of the expenses of the Court shall be those of the United Nations applicable for the period 2002-2003 (although adjustments will have to be made to reflect the fact that membership of the Rome Statute is less than membership of the United Nations). France also made a request for an amendment which would reflect the wording of the Rome Statute, Article 117, and Article 5.2 of the Financial Regulations. They suggested to add to the end of the paragraph outlined in RT.6 the wording: "in accordance with the principles upon which the scale of the UN is based."

Document RT.6, together with the additional wording suggested by France, was adopted in the final session of the Working Group on 11 July.

Director of Common Services to carry out functions of Registrar

This proposal RT.15 was submitted by Spain on the morning of 11 July (the same day the Working Group voted on all its proposals). The author has not had a chance to review the exact wording of the proposal, but it seems that the Registrar´s functions will be carried out by the Director of Common Services until the Registrar gets appointed. The Director will have the same rights as the Registrar, although he will not be entitled to move money from one budget category to another.

[100] This only applies for established (budgeted) posts and appointments of at least 12 months duration.

[101] This wording was subject to much debate, with various delegations favouring "the selection … shall **be subject to** [the UN system]", "…**shall bear in mind**", and "**shall be guided by**". The wording "shall be guided in principle" was a compromise solution adopted at the last minute.

ASSEMBLY OF STATES PARTIES – PREPARATORY DOCUMENTS [102]

INTRODUCTION

The Working Group on the Assembly of States Parties met for the second time at this session and was chaired by Mr. Saeid Mirzaee-Yengejeh of the Islamic Republic of Iran. It conducted three formal and nine informal meetings, as well as further informal meetings during the weekend, and concluded its work on Friday 12 July 2002. On the agenda of the Working Group were items which had not been finished at the last session, i.e. procedures for the election of the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, measures necessary for the establishment of a Secretariat of the Assembly of States Parties, and the agenda for the first meeting of the Assembly of States Parties. In addition, the Working Group had to deal with two new issues: the selection procedure for the members of the Committee on Budget and Finance, as well as the composition of the Bureau of the Assembly.

In the course of its consultations, the Working Group adopted a draft agenda for the first meeting of the Assembly of States Parties,[103] which did not give rise to lengthy discussions. Another draft resolution was adopted on seating arrangements for the Assembly. Accordingly, States Parties will not sit in alphabetical order in the Assembly, but in an order to be determined by lot.[104]

Most of the time was spent on considerations concerning the election of the judges. In the following, this central issue, as well as other key issues, will be presented in full detail.

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[102] Introduction, I-Election of judges, II Election of the Prosecutor and the Deputy Prosecutors, and III – Election of the Registrar by Matthias Goldmann (ELSA Würzburg/Germany); IV – Secretariat of the Assembly, V – Composition of the Committee on Budget and Finance, and VI – Composition of the Bureau of the Assembly by Andreas Stomps (ELSA Marburg/Germany). [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]

[103] Draft report of the Working Group – Provisional agenda for the first meeting of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002, UN Doc. PCNICC/2002/WGASP-PD/L.10 of 10 July 2002.

[104] Draft report of the Working Group – Draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties, UN Doc. PCNICC/2002/WGASP-PD/L.8 of 8 July 2002.

List of documents submitted at the 10th session:

Symbol	*Description*
PCNICC/2002/WGASP-PD/L.5	Election procedures of the Committee on Budget and Finance of the International Criminal Court: comparative chart with the procedures of the Advisory Committee on Administrative and Budgetary Questions of the United Nations and the Finance Committee of the International Seabed Authority, 1 July 2002
PCNICC/2002/WGASP-PD/L.6 and Corr.1	Draft Report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutor of the International Criminal Court, 8 July 2002, and Corrigendum, 10 July 2002
PCNICC/2002/WGASP-PD/L.7	Draft report of the Working Group – draft resolution regarding the permanent secretariat of the Assembly of States Parties, of 8 July 2002
PCNICC/2002/WGASP-PD/L.8	Draft report of the Working Group – Draft recommendation of the Assembly of States Parties concerning seating arrangements for States Parties, 8 July 2002
PCNICC/2002/WGASP-PD/L.9	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Committee on Budget and Finance, 10 July 2002
PCNICC/2002/WGASP-PD/L.10	Draft report of the Working Group – Provisional agenda for the first meeting of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002, 10 July 2002
PCNICC/2002/WGASP-PD/RT.2	Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Rolling text prepared by the Coordinator, 26 April 2002
PCNICC/2002/WGASP-PD/DP.4	Procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Proposal by Austria, Hungary and Liechtenstein on an alternative procedure for the first election of the judges to the International Criminal Court to the proposal contained in PCNICC/2002/WGASP-PD/RT.2, annex, 14 June 2002
PCNICC/2002/WGASP-PD/DP.5	Procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Proposal by Austria, Bosnia and Herzegovina, Croatia, Hungary, Liechtenstein, Romania, Sweden and Switzerland concerning article 36 (8) (a) of the Rome Statute, 17 June 2002
PCNICC/2002/WGASP-PD/DP.6	Proposal submitted by Spain – Permanent Secretariat of the Assembly of States Parties, 1 July 2002
PCNICC/2002/WGASP-PD/DP.7	Secretariat of the Assembly of States Parties: organization of a permanent secretariat – Proposal submitted by Belgium, 1 July 2002

I – ELECTION OF JUDGES

Overview

At the ninth session of the PrepCom, the Working Group had agreed on many points of the election procedure. The Co-ordinator had prepared a rolling text between the sessions, which provided a good basis for the deliberations of the Working Group at this session.[105] Most of the provisions of the rolling text were not controversial, as they reflected the agreements reached at the last session. Some minor amendments were made to the text in order to provide that the diplomatic channel be used for all communications between the States Parties and the Secretariat of the Assembly. The Working Group finally adopted a draft resolution on the procedure of nomination and election to be submitted to the Assembly of States Parties.[106]

However, as to two crucial issues, a final agreement had not been achieved at the last session: the deadline until which States would have to ratify the Rome Statute in case they had not yet done so, but wished to submit nominations for the election of judges, still had to be fixed. Also, an election procedure that would lead to a balanced and truly universal composition of the bench of the Court had not been found yet.[107]

Nominations Submitted by non-States Parties

The provisional agreements of the last session on this issue are reflected in the rolling text. Accordingly, the nomination period should close on 1 November 2002 (para. 10 of the rolling text). States that have already started the ratification process should be able to submit provisional nominations, which would become definitive if the nominating State deposited its instrument of ratification before the closure of the nomination period (para. 7 of the rolling text). If the elections were to be held in January, this timeline would have ensured that all nominating States would have become States Parties according to Article 126 (2) of the Statute by the day of the elections. This was considered necessary to meet the requirements of Article 36 (4) (a), which provides that "any State Party" may submit nominations.

However, a considerable number of delegations, hoping to complete their ratification process before the first election of judges, but probably not before 1 November 2002, advocated for an extension of the deadline for ratification. A respectable argument was made that more candidates would be available, especially from Asia, a region that is considerably underrepresented in the Assembly, if the deadline for the deposit of the instrument of ratification was postponed. And the representative of the Republic of Korea pointed out that ratification was a definitive act and that the process of becoming a State Party would be irreversible once the instrument of ratification would be deposited.

As a consequence, the nomination period was extended until 30 November 2002 (para. 10 of the draft resolution). Nominating States will have to have submitted their instruments of ratification before that date. A later date would not have been possible as the UN Secretariat, which provides secretariat services for the first meetings of the Assembly, will need up to six weeks for the translation of the accompanying documents.

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[105] Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Rolling text prepared by the Coordinator, UN Doc. PCNICC/2002/WGASP-PD/RT.2 of 26 April 2002.

[106] Draft Report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutor of the International Criminal Court, UN Doc. PCNICC/2002/WGASP-PD/L.6 of 8 July 2002 and Corr.1 of 10 July 2002.

[107]. For a comparative study on the procedures of other international courts and tribunals see Falzon, N./Goldmann, M./Khutshishvili, K. (eds.), *Nomination and Election of Judges to International Courts*, ELSA Legal Research Paper (2002), downloadable at www.iccnow.org/html/ELSAprepcom9annex.pdf.

Composition of the Court

This issue was probably the most contentious one of the whole meeting of the PrepCom. As to the outset, the various provisions of Article 36 of the Rome Statute concerning the qualifications of the judges and the composition of the Court needed to be implemented. Accordingly, the Court

a) must comprise at least 9 judges with established competence in criminal law (candidates elected from list A) and at least 5 judges with established competence in international law (candidates elected from list B), cf. Article 36 (5);
b) should include judges with legal expertise on specific issues, such as violence against women and children, cf. Article 36 (8) (b).

Further, the Court should be composed in a manner as to ensure

c) equitable geographical representation;
d) the representation of the principal legal systems of the world; and
e) fair representation of men and women. (cf. Article 36 (8)).

The Working Group now faced the difficulty to develop a selection procedure that would take all these criteria into account, a rather complex task. For that purpose, Mr Gerard Dive from Belgium was appointed sub-coordinator.

At the last session, various more or less ambitious approaches were discussed.[108] Two of them were still on the table at this session:

(1) Two-Phase Procedure (annexed to the rolling text)

Provisions for a procedure featuring an election in two-phases were annexed to the rolling text.[109] This procedure had been set up by the sub-coordinator at the last session as a result of informal consultations. The purpose of the two-phase approach was to ensure that the requirements of Article 36 (5), which are generally regarded as binding, are fulfilled. Accordingly, exactly 9 candidates from list A and 5 candidates from list B should be elected in the first phase. Should less than 9 or 5 candidates from the respective lists be elected, additional ballots would be held. Should more than 9 or 5 candidates be elected, only those candidates with the highest number of votes would be considered elected.

The remaining four seats should be filled in the second phase, which would take place at least 24 hours after the end of the first phase. This time should allow States Parties to consult on voting strategies in order to achieve a balanced composition of the Court.

Austria, Hungary and Liechtenstein submitted a proposal for the amendment of this procedure.[110] The idea behind this proposal was to give full effect to Article 36 (6) (a) of the Statute, which states that a candidate that has received the required majority will be considered elected. Article 36 (5), on the other hand, provides only that there need to be *at least* 9 judges from list A and 5 from list B. In other words, it would not be violated if not more than 13 candidates from list A or not more than 9 candidates from list B were elected. Consequently, it was proposed to return to a one-phase procedure and to invalidate only the 14th and subsequent

[108] Cf. ELSA Report of the ninth session of the Preparatory Commission, p. 17-18.
[109] Rolling text prepared by the Coordinator, UN Doc. PCNICC/2002/WGASP-PD/RT.2 of 26 April 2002, p.6.
[110] Procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Proposal by Austria, Hungary and Liechtenstein on an alternative procedure for the first election of the judges to the International Criminal Court to the proposal contained in PCNICC/2002/WGASP-PD/RT.2, annex, UN Doc. PCNICC/2002/WGASP-PD/DP.4 of 14 June 2002.

election of a candidate from list A and the 10th and subsequent election of a candidate from list B.

(2) Minimum Voting Requirements (DP.5)

Hungary, Liechtenstein and other co-sponsoring delegations submitted a proposal on a procedure that had been developed during the last session of the PrepCom (hereinafter referred to as proposal DP.5).[111] In order to avoid a strict quota system as well as to reduce the need to invalidate the election of certain candidates due to incompatibilities with the requirements of the Statute, the underlying idea of the proposal was to focus on the voting pattern.

Accordingly, State Parties would have to vote for at least two candidates from each regional group and six candidates from each gender. These minimum voting requirements would be combined with the procedure envisaged by proposal DP.4 (one-phase elections with up to 13 judges from list A or 9 judges from list B). After each ballot the minimum voting requirements would be adjusted depending on the candidates elected so far. Should it become impossible to meet one of the requirements due to the number of remaining seats to be filled or to the composition of the pool of candidates still available, the requirement would be discontinued.

A few other informal proposals were also made in the course of the session. But discussions concentrated on proposal DP.5. Unfortunately, no agreement could be reached on important issues at this session. As the discussion will therefore need to be continued, its main points shall be reiterated in the following.

In the first formal meeting of the Working Group, the proposal DP.5 gave rise to a controversial discussion. Some delegations expressed principal objections because they favoured either a procedure that would guarantee a certain outcome (especially some African States), or because they were of the opinion that a procedure with as few restrictions as possible would be the best option (among others, the United Kingdom, Germany, the Netherlands, France). However, the majority of the delegations wanted to take the proposal as a basis for further discussions.

Apart from this fundamental criticism, some individual aspects of the proposal gave rise to objections. In the course of the session, the proposal was amended and re-amended several times. Additional minimum voting requirements were introduced for candidates from list A and list B, and the language was changed in order to make it easier to understand. Furthermore, the following issues were discussed:

"FORCED ELECTIONS"
Some delegations expressed their concerns about elections where there would be no real choice between candidates, because only as many candidates had been nominated from one geographical region or one gender as votes would need to be cast for candidates of the respective category. In this way, the proposal would rather discourage than encourage delegations to make as many nominations as possible and might lead to agreements within regional groups.
In order to avoid elections without a real choice, it was proposed that the minimum voting requirements should not be fixed, but rather depend on the number of candidates available from each category.

ABSTENTIONS
A number of delegations did not want to accept that their ballot paper would be invalidated entirely if they did not meet the minimum voting requirements. In particular, they wanted to preserve the right to

[111] Procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court – Proposal by Austria, Bosnia and Herzegovina, Croatia, Hungary, Liechtenstein, Romania, Sweden and Switzerland concerning article 36 (8) (a) of the Rome Statute, UN Doc. PCNICC/2002/WGASP-PD/DP.5 of 17 June 2002.

abstain. On the other hand, some delegations spoke against allowing States Parties to abstain, as this could undermine the whole system of the minimum voting requirements.
A very elaborate solution was eventually found in order to enable States Parties to make abstentions: if the minimum voting requirements were not met, the ballot paper would be invalidated, unless this could be explained as a consequence of abstentions. For example, if a State Party cast 17 votes and voted for only 1 candidate from Eastern Europe (instead of 2, as required) and for only 5 female candidates (instead of 6), the ballot paper would not be invalidated if the requirements could have been met with the last remaining vote. This would only be the case if there was at least one female candidate from Eastern Europe that the State Party could have voted for. However, some delegations had their doubts about the practicability of such a procedure.

EQUAL GENDER REPRESENTATION
With respect to equal representation of men and women in the Court, there was agreement that States Parties should have to vote for at least six candidates from each gender. Argentina, Costa Rica and Portugal advocated to increase this number, but the argument was made against this that the voting requirements were only a minimum and not a maximum, and that higher minimum voting requirements would render the voting procedure and the decision of States Parties how to vote more difficult.

REPRESENTATION OF THE PRINCIPAL LEGAL SYSTEMS OF THE WORLD
Some delegations pointed out that account should also be taken of this criterion. But because there is no generally accepted definition of the principal legal systems of the world, it was agreed that no provision on this criterion should be included. Moreover, the issue would be sufficiently addressed by rules for an equitable geographical representation.

DISCONTINUATION OF MINIMUM VOTING REQUIREMENTS
It was further decided that the minimum voting requirements should be discontinued after three ballots, because it was feared that a too lengthy voting procedure might challenge the legitimacy of the judges elected in later ballots and thus undermine the Court's authority.

EQUITABLE GEOGRAPHICAL REPRESENTATION
The repartition of seats between the different regional groups was an issue of high controversy. In particular African delegations were concerned about their group being underrepresented and favoured quotas guaranteeing a certain outcome. A compromise was found that the minimum voting requirements for the three regional groups with the most States Parties, i.e. the African group, the group of Western European and other States and the group of Latin American and Caribbean States should be increased to three, while the ones for the Asian group and the Eastern European group should remain two. This proposal, however, was not acceptable for many Asian delegations. They pointed out that the Asian group was probably the most diverse group and that the number of States Parties of that region would grow in the near future. Several delegations suggested going back to two votes for all regional groups, but a compromise could not be reached any more.

It was not only for the disagreement on the geographical distribution, but also for other remaining differences that no compromise could finally be achieved, although a number of delegations had spared no pains to find a solution, while others, recognising that there was no solution that would satisfy everybody, had given up their critical attitude in a remarkable spirit of compromise towards the end of the session.
Thus, no provision on these issues was included in the draft resolution. Still, the need to implement the requirements of Article 36 of the Rome Statute remains. It remains to be seen if the Assembly of States Parties will decide to take up the issue and to continue discussion on the *status quo* as of the end of the PrepCom

Extension of the Nomination Period
In the course of the discussions, delegations became more and more aware that not even the best election procedure, and in particular the Hungarian/Liechtenstein proposal would work if not a sufficient number of qualified candidates was available from each region, gender, etc. To address these concerns, the NGO Coalition suggested that the Bureau should provide updates on the development of the pool of candidates. Should at the end of the nomination period certain regional groups, gender or candidates with certain qualifications be underrepresented, the nomination period should be extended.

This proposal was integrated in the draft resolution. According to para. 10bis,[112] the President of the Assembly is requested to report to the States Parties on 1 November 2002 if there is an insufficient number of candidates of a certain category. In order to determine what "insufficient" means, a mixed approach was chosen, combining fixed minimum numbers (3 from each region, 9 from each gender, 13 on list A and 9 on list B) with provisions designed to achieve a balanced pool of candidates (e.g., the number of candidates from a regional group must be at least one fourth the number of States Parties belonging to that group).

If at the end of the nomination period the number of candidates should still be less than 3 from each regional group, 9 from each gender, less than 9 on list A or 5 on list B, the nomination period will be extended until 8 December 2002 (para. 10ter of the draft resolution). All these measures, however, will only apply to the first election.

II – ELECTION OF THE PROSECUTOR AND THE DEPUTY PROSECUTORS

The above mentioned draft resolution provides for the selection procedure of the Prosecutor and the Deputy Prosecutors.[113] Generally, no extensive discussions were conducted on this issue and only some minor modifications were made on the rolling text.

For the nomination of the Prosecutor, the procedure for the nomination of candidates for judges will be applied *mutatis mutandis*. Thus, it is secured that the nomination procedure will meet a high standard of transparency. The rolling text took up a proposal by Switzerland and Greece made at the last session to elect the Prosecutor by consensus,[114] which had been approved by a vast majority of delegations. However, should all efforts to reach a consensual election be in vain, the candidate receiving an absolute majority of the members of the Assembly will be elected. If no candidate receives the required majority after four ballots, subsequent ballots will be restricted to the two candidates receiving the highest number of votes.

Regarding the Deputy Prosecutors, the rolling text was slightly amended: first, as it is the Prosecutor who is competent for the nomination of candidates, the duty of the Prosecutor to take into account that the Deputy Prosecutors shall be of a different nationality than the Prosecutor and the other Deputy Prosecutors (Article 42 (2) of the Rome Statute) is now repeated in the draft resolution (para. 35). However, the election of a Deputy Prosecutor being of the same nationality as the Prosecutor or another Deputy Prosecutor will not be annulled, as opposed to the election of judges (cf. para. 19 of the draft resolution).

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[112] The paragraphs of the draft resolution (document L.6 and Corr.1) will be renumbered before submittal to the Assembly. Thus, para. 10bis will become para. 11, and para. 10ter will become para. 12. The numbers of the subsequent paragraphs will change accordingly.
[113] Draft Report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutor of the International Criminal Court, UN Doc. PCNICC/2002/WGASP-PD/L.6 of 8 July 2002.
[114] Nomination of the Prosecutor – Proposal submitted by Greece and Switzerland, UN Doc. PCNICC/2002/WGASP-PD/DP.3 of 16 April 2002.

Further, the same information as with the Prosecutor shall be provided on the candidates for the post of a Deputy Prosecutor, and the nomination procedure shall be as transparent. This means that the nominations and the accompanying statements will be made accessible on the web site of the Court as soon as they are received.

As to the election procedure, the draft resolution refers to the election procedure for the Prosecutor. Para. 38 of the draft provides that in case more candidates should be elected than there are posts to be filled, those obtaining the highest number of votes shall be considered elected. However, what is missing in the resolution is a provision for the event of a tie between two candidates for Deputy Prosecutor. If this should ever happen, the most reasonable way out would be to apply para. 18, which deals with ties in the context of an election of judges.

III – ELECTION OF THE REGISTRAR

Unlike last time, this issue was not addressed at this session. At the last session, no agreement was achieved if rules should be set up for recommendations by the Assembly with regard to the election of the Registrar (cf. Article 43 (4) of the Rome Statute). But as the Registrar will probably not be elected earlier than spring 2003, the Assembly will still have time to consider if a recommendation should be made and what the leading principles should be in doing so. At the last session, concerns were raised that the key positions in the Court should be held by individuals from different regional groups.

IV – SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES

At the ninth session of the PrepCom, a draft resolution was adopted to the extend that the Secretariat of the UN should be requested to carry out the functions of the ASP Secretariat for a provisional period, the end of which had not been determined yet.[115] Therefore, the question remained whether and how a permanent Secretariat of the Assembly should be established after the end of the provisional period. The discussion concentrated on measures necessary for the early establishment of a definitive secretariat of the Assembly.

Two proposals were introduced, one from Belgium, another one from Spain.[116] They both aimed at the same purpose, a timely establishment of an independent Secretariat which is to start the framework of a permanent secretariat of the Assembly, within the ICC institutional system,. Although the proposals were introduced in the first formal meeting, they have been subject to discussion only in the informal meetings.

The Spanish proposal intends to request the Bureau to study the question of the permanent secretariat of the Assembly, and to submit appropriate proposals for the establishment of a Secretariat at its session in 2003. According to Spain, the study is necessary to settle two basic questions: first, to get a more complete definition of the functions and composition of the secretariat, and of the budgetary implications. Secondly, to reach a decision on the date on which the permanent secretariat of the Assembly would start to function.

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[115] Cf. Draft resolution on the Assembly of States Parties concerning the provisional arrangements for the Secretariat of the Assembly of States Parties, UN Doc. PCNICC/2002/WGASP-PD/L.4 of 17 April 2002. See also ELSA Report of the 9th session of the PrepCom, p. 20.

[116] Proposal submitted by Spain – Permanent Secretariat of the Assembly of States Parties, UN Doc. PCNICC/2002/WGASP-PD/DP.6 of 1 July 2002; Secretariat of the Assembly of States Parties: organization of a permanent secretariat – Proposal submitted by Belgium, UN Doc. PCNICC/2002/WGASP-PD/L.7 of 1 July 2002.

The Belgian proposal, which its sponsor did not consider incompatible with the Spanish proposal, suggested that a core number of staff (in the proposal they suggested a minimum of three individuals) be recruited as soon as possible, i.e. already in the first financial period, in order to provide for a smooth and timely establishment of a permanent secretariat.

The two proposals were not seen as contradictory, but as complementary. Attempts were made to produce an integrated version of both proposals in order to address all aspects taken up in either of the proposals and to see how the transition could be effected from the UN Secretariat to a permanent secretariat of the Assembly of States Parties.

As a result of these deliberations, the Working Group adopted a draft resolution regarding the permanent secretariat of the Assembly of State Parties.[117] This resolution requests the Bureau to study the question of the permanent secretariat of the Assembly and to submit related proposals, including an assessment of the budgetary implications for the 2004 budget, to the Assembly so that it can take a decision thereon at its regular session in the second half of 2003. The Bureau was further requested to examine in that regard the modalities for the progressive replacement of the provisional secretariat by the permanent secretariat in an efficient and expeditious manner, in consultation with the Secretariat of the United Nations. However, no decision was made as to the character of the Secretariat, that is if should be independent from the UN Secretariat, staffed by it or even part of it.

The draft resolution will be submitted to the Assembly of States Parties in September for adoption.

V – COMPOSITION OF THE COMMITTEE ON BUDGET AND FINANCE AND ELECTION OF THE MEMBERS

Last year, the PrepCom had adopted a draft resolution for the establishment of a Committee on Budget and Finance.[118] At this session, the Chairman of the PrepCom charged the Working Group with the task to set up rules for the election of the members of that Committee. Ms Flores from Mexico was appointed sub-coordinator for the issue.

At the first formal meeting, the Secretariat introduced a comparative chart in which the Advisory Committee on Administrative and Budgetary Questions of the UN and the Finance Committee of the International Seabed Authority were analysed in order to provide a starting point for discussions on the composition of the Committee.[119] Three informal meetings were held on the issue. As a result, the Working Group adopted a draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Committee on Budget and Finance,[120] which will be submitted to the first Assembly for adoption.

Section A of this draft resolution pertains to the nomination of candidates for the election of the members of the Committee. The nomination procedure is taken *mutatis mutandis* from the procedure that had previously been adopted for the nomination of the judges: for example, it is also provided for

[117] Draft report of the Working Group – draft resolution regarding the permanent secretariat of the Assembly of States Parties, UN Doc. PCNICC/2002/WGASP-PD/L.7 of 8 July 2002.
[118] Cf. Draft resolution of the Assembly of States Parties on the establishment of the Committee on Budget and Finance, UN Doc. PCNICC/2001/1 of 8 January 2002, Annex I.
[119] Election procedures of the Committee on Budget and Finance of the International Criminal Court: comparative chart with the procedures of the Advisory Committee on Administrative and Budgetary Questions of the United Nations and the Finance Committee of the International Seabed Authority, UN Doc. PCNICC/2002/WGASP-PD/L.5 of 1 July 2002.
[120] Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Committee on Budget and Finance, UN Doc. PCNICC/2002/WGASP-PD/L.9 of 10 July 2002.

an extension of the nomination period in case there should be too few candidates. However, candidatures will not be placed on the web site of the Court.

Section B specifically refers to the geographical distribution of the 12 seats of the Committee, which will apply only for the first elections. Accordingly, the African, Asian, Eastern European, as well as the group of Latin American and Caribbean States are each entitled to two seats, while Western European and other States will get four. Thus, the distribution does not so much reflect the status of ratification of each geographical group than the financial contributions that each group will make to the Court's budget.

Section C refers to the elections, especially in terms of the voting procedure. The main idea is to reach a consensus on the election. To this end, the Bureau is requested to make a recommendation. Should there be only as many candidates as posts to be filled, it might be dispensed with an election. Otherwise, the election procedure is construed along the lines of the election procedure for judges.

The nominating State will have to bear the expenses of the member of the Committee necessary for the performance of its functions.

VI – COMPOSITION OF THE BUREAU OF THE ASSEMBLY OF STATE PARTIES

Another new topic at this session was the composition of the Bureau of the Assembly of States Parties. According to Mr Christian Much of Germany, who had been appointed sub-coordinator for this issue, the Working Group agreed that no resolution should be adopted to this end. Instead, he presented a common understanding of the Working Group on the distribution of five key positions within the Bureau and the Assembly.

Those five key positions are the President and the two Vice-Presidents of the Assembly, as well as a the post of a rapporteur, which is not provided for in the Statute, but which was considered useful. Each one of these four positions will be assigned to the African group, the Asian group, the group of Western European and Other States and the GRULAC group. No agreement was reached as to which group should hold which post. Further, the post of the Chairman of the Credentials Committee, another subsidiary body of the Assembly to be established under rule 25 of the Rules of Procedure of the Assembly of States Parties will be regarded as the fifth key position, which will be assigned to the Eastern European group.

Prince Zaid Ra'ad Zaid Al-Hussein of Jordan was designated to be the first President of the Assembly. It is expected that the assignment of the five key positions to the regional groups will be subject to the principle of rotation.

THE CRIME OF AGGRESSION

INTRODUCTION [121]

Article 5 paragraph 1 of the Rome Statute of the International Criminal states that "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."

The Crime of Aggression is thus one of the four core crimes within the jurisdiction of the International Criminal Court. The definitions of the first three crimes are found in articles 6 through 8 of the Rome Statute. The delegations to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (July 1998) were, however, unable to reach consensus with regards to the definition of the Crime of Aggression, its elements and the conditions for the existence of its jurisdiction. The dissension arose around two points: some remained uncertain about how to establish the paradigms of aggression in a criminal statute; and several states wanted reassurances that the ICC could remain independent of a politicised Security Council.

Therefore, Resolution F paragraph 7 of the Final Act of the 1998 UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court mandates the Preparatory Commission to: "prepare proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime. The Commission shall submit such proposals to the Assembly of States Parties at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in this Statute. The provisions relating to the crime of aggression shall enter into force for the States Parties in accordance with the relevant provisions of this Statute."

Article 5 paragraph 2 of the Rome Statute states that the Court *"shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with article 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise its jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations."*

The working group on the crime of aggression was established at the third session of the Preparatory Commission. The chair of the Preparatory Commission, Philippe Kirsch (Canada), appointed Tuvaku Manongi (United Republic of Tanzania) to lead the working group on the Crime of Aggression. Mr. Manongi oversaw discussions on aggression from the third through the sixth sessions. Before the start of the seventh session, Mr. Manongi indicated that he could no longer continue as coordinator, thus the chair appointed Silvia Fernandez de Gurmendi (Argentina) to succeed Mr. Manongi.

[121] Submitted by Heidi Bentzen, ELSA Oslo (Norway)
[Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]

Throughout the years, several delegations have submitted proposals on the subject of the crime of aggression. All the proposals are still on the table. The following documents were submitted during the tenth session:

List of documents submitted during the 10th session – the Crime of Aggression

Symbol	*Description*
PCNICC/2002/WGCA/L.2	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression
PCNICC/2002/WGCA/L.2/Rev.1	Draft report of the Working Group – Draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression
PCNICC/2002/WGCA/DP.2	Elements of the Crime of Aggression – Proposal submitted by Samoa
PCNICC/2002/WGCA/DP.3	Proposed text on the definition of the crime and act of aggression – Proposal submitted by the delegation of Colombia
PCNICC/2002/WGCA/DP.4	Draft resolution of the continuity of work in respect of the Crime of Aggression – Proposal by the Movement of Non-Aligned Countries
PCNICC/2002/WGCA/DP.5	Incorporating the crime of aggression as a leadership crime into the definition – Proposal submitted by Belgium, Cambodia, Sierra Leone and Thailand
PCNICC/2002/WGCA/RT.1/Rev.1	Discussion paper proposed by the Coordinator
PCNICC/2002/WGCA/RT.1/Rev.2	Discussion paper proposed by the Coordinator

Determining the future and continuity of the work was deemed the priority issue by the delegations to the tenth preparatory commission. Significant progress was made on substantive issues, including the elements of the crime of aggression.

Proposal Submitted by Samoa

At the formal meeting of the working group on crime of aggression on July 5, 2002, the delegate of Samoa, Professor Roger S. Clark, introduced a proposal, "Elements of the Crime of Aggression," PCNICC/2002/WGCA/DP.2. The paper built upon the discussion paper proposed by the Coordinator on April 1, 2002 at the 9th Session of the Preparatory Commission for the International Criminal Court (PCNICC/2002/WGCA/RT.1).

The proposal attempted to advance the dialogue on the crime of aggression by focusing on the elements of the crime[122] and bracketing some of the more controversial issues for future debate. Professor Clark stated that a discussion of the elements of the crime was important "for its own sake" and also "for the light it might shed on the technical aspects of the 'definition' and 'conditions."[123] In a meeting during the

[122] Professor Clark has defined the elements of a crime as "those basic building blocks (mental and physical/material) which fit together to constitute 'a crime.'" See Roger Clark, *The Mental Elements in International Criminal Law*, *Criminal Law Forum* 12, 317, 2002.

[123] PCNICC/2002/WGCA/DP.2

10th PrepCom with the CICC strategy team for the crime of aggression, he noted that focusing on the elements was also a political strategy to advance the dialogue on the crime of aggression by attempting to reach consensus on relatively minor issues in order to facilitate understanding on the more contentious issues.
According to Professor Clark, analysing criminal responsibility in respect of a particular event means thinking about what the Rome Statute terms material elements, mental elements and grounds for exclusion of criminal responsibility and the mixture between them.[124] According to Professor Clark, these terms are found, but not fully explained in articles 30 and 32 of the Rome Statute. [125] PCNICC/2002/WGCA/DP.2 tries to elucidate the material elements of the crime of aggression, namely the "conduct," consequences," and "circumstances" that give rise to a criminal act of aggression. At the end of the10th Preparatory Commission, the Coordinator for the working group on the crime of aggression presented PCNICC/2002/WGCA/RT.1/Rev. 2, a paper intended to reflect the final state of discussions in the working group. Section 2 of PCNICC/2002/WGCA/RT.1/Rev. 2 contained a section of the elements of the crime of aggression, which was based upon Samoa's proposal and the subsequent discussions of the Samoa proposal.

In general, delegations responded favourably to Samoa's proposal and the proposal generated a modest amount of discussion. Most delegations agreed that it would be helpful to decide upon the elements of the crime as a path forward in the debate. Time was very limited at the 10th PrepCom, however, and there where a number of critical issues to decide, so only a very small amount of progress appeared to be made on the substantive issues addressed in the Samoan proposal. It should be noted that the Syrian delegation, speaking on behalf of the Arab League, rejected the proposal outright as an intellectual obfuscation of the key issues, in particular the role the security council is to play in determining whether a crime of aggression has been committed.

PCNICC/2002/WGCA/DP.2 consists of three parts, an introduction, a draft section on the elements, and final comments. The draft section of the elements of the crime of aggression consists of six proposed elements, each with accompanying notes. Several delegations, such as Spain and Egypt, amongst others, thought it was premature to discuss the proposal at all because other more pressing outstanding issues remained to be decided by the working group. Therefore, many states declined to comment at all on the proposal.

Elements 1 and 2 were the least problematic elements listed in the proposal, and they were incorporated into PCNICC/2002/WGCA/RT.1/Rev. 2 as elements 5 and 6, respectively. However, unlike the Samoan proposal, in element 5 of PCNICC/2002/WGCA/RT.1/Rev. 2, General Assembly Resolution 3314 (XXIX) of 14 December 1974, is explicitly mentioned in the element. It is not mentioned at all in the elements of the Samoan proposal, although reference is made to it in the notes to the elements. CICC team members approve of explicitly referring to the resolution in the definition of the crime. The Coordinator expressed a strong preference for explicitly mentioning the resolution in the elements, stating in a CICC strategy meeting that it is not within the mandate of the working group to redefine the term and that deference must be paid to the 30 years the General Assembly spent on arriving at a definition of state aggression.

Element 3, which provided "[An appropriate organ of the United Nations] has determined that the State's actions amounted to an act of aggression" was roundly criticized. Only Samoa and Belgium thought this jurisdictional precondition should be conceptualised as an element of the crime. The CICC team on the working group of aggression also criticized the inclusion of the condition as an element. Delegates expressed great disagreement over what organ of the United Nations, if any, needed to

[124] Statement made by Professor Clark on behalf of the delegation of Samoa at the formal meeting of the working group of the crime of aggression, July 8, 2002.
[125] Id.

determine that the State committed an act of aggression. Many delegations thought that the ICC itself should decide whether the act had occurred, whereas others argued that the Security Council, the ICJ or the General Assembly should be entrusted with the decision. The rejection of the inclusion of the precondition as a element of the crime is reflected in PCNICC/2002/WGCA/RT.1/Rev. 2, which does not list the precondition as an element of the crime.

Element 4 listed several different options for carving out from the broader category of the crime of aggression a more serious example of aggression. In the notes to the element, Professor Clark stated that in Samoa's view, the entire element was unnecessary. Other delegations disagreed. Belgium stated its preference for option 2, although it added that element 4 may not be needed at all. Hungary stated a preference for option 3, and emphasized that the Hungarian delegation believes that it is important to include this element.[126] The element survived in the form of element 7 of PCNICC/2002/WGCA/RT.1/Rev. 2 and no consensus was reached on how to phrase the element.

Element 5 provided that the perpetrator be in a position to control the actions of the State responsible for the act of aggression. The draft element suggested several different ways to phrase the element. Cuba agreed with the general premise of the element that the perpetrator need not be a member of the government or military, as did Venezuela and Russia. Belgium, New Zealand, Thailand and Venezuela stated the term "effective" should be used, rather than "actual." China and Belgium thought that the word effective should be placed in a different position in the sentence, so the sentence would read "the perpetrator, who need not formally be a member of the Government or the military, was is a position to effectively exercise control." The Solomon Islands expressed its preference for the term "committed" rather than "was responsible for." Venezuela also thought that the term "committed," rather than "was responsible for" should be used because it thought it was less restrictive.

Element 6 was met with general approval. Cuba agreed that element 6 was a conduct element. New Zealand stated it was mostly pleased with the element. It survives as element 3 of PCNICC/2002/WGCA/RT.1/Rev. 2.

Although the Samoan proposal may have advanced the discussions of the working group in a small way, the primary problem for the working group remains the inability of delegations to reach a consensus on the role of the Security Council in determining whether a state act of aggression had taken place. Some countries, such as Syria, speaking on behalf of the Arab League, appeared to view the Samoan proposal with suspicion because it seemed to them to either be a preliminary attempt to smuggle a role for the Security Council into the definition of the elements of the crime or to sidestep the issue altogether. Other countries welcomed the opportunity to focus on the elements of the crime, viewing it as an area where some consensus can be reached.

Colombia's Proposal

The Colombian delegation submitted a proposal regarding the definition of the crime and act of aggression. This proposal was not extensively debated. The Colombian delegate presented the proposal to the Working Group on the Crime of Aggression during the July 5, 2002 formal meeting, and other delegates commented on the proposal at the July 8, 2002 formal meeting. The Colombian proposal separated the definition of the 'crime of aggression' from the definition of the 'act of aggression.'

Crime of Aggression

Colombia's proposal attempted to distinguish between two kinds of perpetrators who would be culpable of the crime of aggression. Thus, the proposal separated the crime of aggression into two subsets of

[126] Hungary stated that in choosing option three, it was concurring with the choice of the delegation of Belgium. However, according to our minutes of the formal meeting on the crime of aggression on July 5, 2002, Belgium stated a preference for option 2.

behaviour. Under the first definition of the crime of aggression, Art. 1 § (a), a person would be guilty of the crime of aggression who: (1) is in a position to exercise control or effectively direct the political or military action of the state, and (2.1) intentionally orders an act of aggression, or (2.2) actively and knowingly participates in the planning of an act of aggression.
The second person the Colombian proposal contemplates holding accountable for the crime of aggression is outlined in Art. 1 § (b). A person guilty under Art. 1§ (b) would be someone who: (1) is in a position to contribute to or effectively cooperate in shaping in a fundamental manner the political or military action of the state, (2) actively participates by means of an essential act in the planning of an act of aggression, (3) knowing that the act will take place, and (4) the act of aggression takes place.

The second above-mentioned definition attempts to cover a person who is not necessarily in a position to effectively exercise control in the state. The Colombian proposal would thus have a broader reach over individuals involved in the planning of an act of aggression. Nevertheless, the second definition limits its reach by requiring that individuals commit 'essential acts' that further lead to an act of aggression taking place. In contrast, the first definition of a crime of aggression in the Colombian proposal does not require that the act of aggression occur in order for a person to be guilty of the crime.

Act of Aggression
The Colombian delegation proposed a definition of an act of aggression that combined the General Assembly Resolution 3314 with other elements. The proposal included an act of aggression as that which would constitute a war of aggression, or a violation of territorial integrity or political independence as recognized by the U.N. Charter.

Responses to the Proposal
After Colombia initially presented its proposal, Spain indicated during a formal meeting that it disliked Colombia's separation of the crime of aggression into two separate definitions. Later, during the July 8th 2002 formal meeting, the Solomon Islands suggested that the word "effective" be inserted before "position" in Art. 1 § (a). The same delegate commented that both the Colombian and the Samoan proposals omitted the requirement that the Security Council first make a determination of whether an act of aggression had occurred. Colombia did not indicate whether they had omitted this requirement because they had intended for the ICC or another U.N. organ to make that determination.

During the July 11, 2002 formal meeting, the working group did not discuss the Colombian proposal, but rather focussed exclusively on the Coordinator's revised proposal. The Coordinator's revised proposal incorporated a number of elements from the previous Samoan proposal. The revised Coordinator's draft would not give the ICC the ability to reprimand an individual who is not able to exercise effective control in the state that commits an act of aggression, as the Colombian proposal would. Furthermore, the Coordinator's revised proposal also requires that the act of aggression actually occur. In contrast, Colombia's proposal contemplates that the ICC would have a broader reach over individuals who have either planned or executed an act of aggression.

The Draft Resolution on the Continuity of Work in respect of the Crime of Aggression proposed by the Movement of Non Aligned Countries.
This proposal[127] was submitted by the Movement of Non Aligned Countries (herein after referred to as the "NAM") and presented by Iran during a formal meeting of the Crime of Aggression working group on July 5th 2002[128]. The delegate from Iran expressed his wish that the working group complete its mandate by the end of the Preparatory Commission, but went on to recognise that this would not be a

[127] PCNICC/2002/WGCA/DP.4
[128] This Formal Meeting had been scheduled to take place on July 3rd 2002, however the meeting was postponed due to a plenary session on July 3rd 2002.

possibility. He placed great emphasis on the importance of the work of the group and stated that at this late stage of the Preparatory Commission all that could be done was to ensure that the work of the group continued. It was to this end that NAM had submitted a draft resolution of the Assembly of States Parties which was concerned with the future of the work in respect of the crime of aggression.

The draft proposal contained two perambulatory paragraphs and five operative paragraphs.

Paragraph 1 and 2
"Takes note with appreciation of the progress report of the Preparatory Commission for the International Criminal Court on the crime of aggression;
Decides to establish a special working group of the Assembly of States Parties on the Crime of Aggression, to be open to all States Members of the Preparatory Committee[129]*"*

Delegates agreed with the sentiment of these two paragraphs, however there were a number of issues raised concerning the wording of the text. Many countries expressed their concerns that the wording used in paragraph 2 should allow all states who wished to participate to do so and that all states who wished to participate should be able to do so on an equal footing. The statement made by the delegate from Portugal during the Formal meeting on July 5th 2002 is typical of the concerns expressed on this point,

"The NAM proposal is a timely and useful proposal and we favour very much that the work on aggression must continue, and we favour that the working group should be open to all states and as far as possible that it should be based on the equal standing of all states"

The delegate from Canada also raised the point during the same formal session, pointing out that it was important that non state parties and new states be allowed to participate to ensure that the text on the crime of aggression be widely accepted. Other delegates also expressed concerns that newly formed states who had become members of the United Nations, such as East Timor, should be able to participate in the special working group should they wish to. All delegates were in agreement that new states should be able to participate.

The final text of the proposal contained in PCNICC/2002/WGCA/L.2 reflected this concern by replacing the wording of paragraph 2 with the following; "Decides to establish a special working group on the crime of aggression, open on an equal footing to all States members of the United Nations or members of specialized agencies or of the Atomic Energy Agency, for the purpose of elaborating proposals for a provision on aggression in accordance with paragraph 2 article 5 of the Statute and paragraph 7 of resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998".
The above text was seen as allowing the widest possible participation in the special working group set up by the ASP.

During the Final formal meeting of the crime of aggression working group Turkey brought up the issue of the participation of the ICRC as it felt that it would not be able to participate under the final draft of the resolution. The delegate expressed the view that the ICRC had a specific role to play under the Geneva convention, it would be unwise not to provide for their participation. This concern was addressed as the rules relating to the Assembly were consulted and it appeared that the ICRC would be able to participate.

[129] Paragraph 2 of the proposal contains a typographical error corrected by the delegate from Iran during his presentation of the proposal. Instead of "States members of the Preparatory Committee" the text should read "States members of the Commission".

The CICC team on the crime of aggression produced an internal paper, which expressed the concerns of the team with regard to the NAM proposal. One of the these concerns[130] was the lack of any mention of NGO participation in the "special working group". "In terms of NGO access, Rule 93 para. (a),(b),(d) and Rule 42 para 3 would be particularly relevant. Yet since the proposal speaks of a special working group and provides for a specific rule with regard to the openness to States it would be advisable to include expressly a reference to the regular rules on participation, availability of documents and public meetings important to NGO's and other participants."
This was not however directly addressed in the final text of the proposal which was adopted.

Paragraph 3
The text of paragraph 3 of PCNICC/2002/WGCA/DP.4 reads as follows;
"Decides also that the special working group for shall continue to elaborate proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime. The special working group shall submit such proposals to the Assembly of States Parties at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the statute. The provisions relating to the crime of aggression shall enter into force for all States Parties in accordance with the relevant provisions of the Statute;"

Although the wording of paragraph 3 has been condensed in the final draft there is no real change in the wording of the paragraph.

Paragraph 4
The text of paragraph 4 of PCNICC/2002/WGCA/DP.4 reads as follows; "Decides further that the special working group shall meet during the regular sessions of the Assembly of States Parties" Concerns were expressed by delegates that this paragraph may not leave room for the special working group to meet more often if it was felt necessary. The text of the final draft reflected this concern by inserting the words, *"or at any other time the Assembly deems appropriate and feasible"* at the end of the paragraph.

Paragraph 5
During the final formal meeting of the crime of the aggression Greece proposed the addition of the phrase *"with a view to holding the first meeting in 2003"* to the text of paragraph 5 of PCNICC/2002/WGCA/L2. Many other delegates agreed with the addition proposed by the Greek delegate as they were all concerned that the momentum gained should not be wasted. The addition was therefore adopted.

The final text therefore reads; "Requests the bureau of the assembly to prepare a proposal for the meetings of the special working group and to submit it, as early as possible, together with its budgetary implications to a session of the Assembly in 2003, with a view to holding the first meeting in 2003".

Proposal submitted by Belgium, Cambodia, Sierra Leone and Thailand
The purpose of this proposal (DP.5), put forth by Belgium, Cambodia, Sierra Leone and Thailand, is to incorporate into the definition of aggression the idea that it is a leadership crime. This is based on the notion that the jurisprudence of both the Nuremberg tribunals and those created under Control Council Law No. 10 support the idea that aggression is a "*leadership crime which may only be committed by persons who have effective control of the State and military apparatus on a policy level*." The language

[130] Paragraph III of the Internal Paper entitled "Some initial thoughts regarding the Proposal by the Movement of Non-Aligned Countries for a Draft Resolution on the continuity of the work in respect of the crime of aggression, PCNICC/2002/WGCA/DP.4"

of the proposal expresses concern that, should this rationale not be included in the definition of aggression, the precept may be "subsequently diluted" for various reasons, including the application of Article 10 of the Rome Statute.

To assure that future events will not result in "subsequent dilution" of this long-standing principle, the proposal suggests that the word "effectively" be included prior to the words "exercise control" in the formal definition of aggression. Consequently, the language would read as such: "*For the purpose of this Statute, a crime of aggression means an act committed by a person who, being in a position to effectively exercise control over or direct the political or military action of a State, intentionally and knowingly orders or participates actively in the planning, preparation, initiation or waging of an act of aggression.*"

The Coordinator's Discussion Paper[12]

The Coordinator of the Working Group on the Crime of Aggression, Silvia Fernandez de Gurmendi, submitted a discussion paper at the 9th session of the Preparatory Commission (PCNICC/2002/WGCA/RT.1)[13] that continued to be discussed on the 10th session of the Prepcom. However those discussions within the Working Group lead to a new proposal by the Coordinator, which was issued during the 10th Preparatory Commission on July 11th 2002 (PCNICC/2002/WGCA/RT.1/Rev.2). This second draft text differs from the first one in its structure: as the first draft was focusing on the definitions of the crime and the act of aggression in its first two paragraphs and on the preconditions required for the exercise of jurisdiction in its last two paragraphs, the second draft also considers those issues in its part I but adds in its part II a list of the elements of the crime brought up by the Samoan proposal[14].

Part I: The definitions of the act of aggression and of the crime of aggression

Paragraph 1

The consensus reached in the first discussion paper about the definitions of an act of aggression as the one committed by a state and of the crime of aggression as the one committed by an individual[15] is still agreed on in the revision of the draft. However one can notice the adjunction of the word « effectively » concerning the exercise of control over or the direction of political or military action of a state when committing a crime of aggression. This emphasizes the will of the Working Group's delegates to make sure the actual responsible of the crime of aggression is indicted instead of the official and symbolic representative. Another element included in the definition of the crime of aggression is that the individual must act « intentionally » and « knowingly » when leading an act of aggression. But intent and knowledge will also be dealt with later in part II of the document as moral elements of the crime. Eventually, the act of aggression must constitute a « flagrant violation of the Charter of the United Nations » (some delegations were really eager to see the word manifest replaced by flagrant). Then, we have three options as regards to what an act of aggression is : the first two options partially use terms of the General Assembly resolution 3314 referring to a war of aggression and an occupation the first one starting by the words « such as, in particular », the second one by « and amounts to », the first one presenting these as example whereas the second proposition makes the war of aggression and the occupation exclusive cases. A third option has been added on the demand of several delegations who were not happy with a partial use of resolution 3314 and reads « Neither of the above ».

Paragraph 2

[12] Submitted by Myriam Bouazdi, ELSA France.
[13] See ELSA report on the 9th session of the PrepCom. pages 26 to 28 for analysis.
[14] See « Proposal submitted by Samoa » above.
[15] See ELSA report on the 9th session of the PrepCom. same pages.

The second paragraph of this draft deals with the exact definition of the act of aggression and refers therefore to the General Assembly resolution 3314 in accordance to which it must be determined that the State concerned has met the requirements of the resolution and has then committed an act of aggression. There are two options here: the first one referring to paragraphs 4 and 5 of the same draft (with which we shall deal later on) and the second one submitting the determination of an act of aggression to the UN Security Council.

Paragraph 3
The third paragraph of the Coordinator's paper excludes the use of some provisions of the Rome Statute contained in article 25 paragraph 3, article 28 and article 33 which respectively deal with individual criminal responsibility, responsibility of commanders and other superiors and superior orders and prescription of law[16]. This exclusion is perfectly understandable here since the provisions made in this very draft tend to allow indictment of the individuals these provisions of the Rome Statute exempt from jurisdiction of the Court.

Paragraph 4
This paragraph states the prosecutor of the ICC "must ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned" before undertaking action. And in the case the Security Council has not made such a determination then the Court shall notify the Security Council so that it may take action. However two options are submitted here as regards to which legal provisions the Security Council's action shall be submitted to: article 39 of the Charter of the UN[17] (option 1) or relevant provisions of the Charter of the UN (option 2). Option 2 offering of course a wider range of legal provisions to the Security Council in order to declare the commission of an act of aggression by a State.

Paragraph 5
The last paragraph of part I of the coordinator's draft considers the case in which the Security Council, in spite of the Court's notification, does not make any determination as to the existence of an act of aggression. It then offers five options for the Court: either the Court may proceed with the case or dismiss the case (options 1 and 2); or the Court may request a General Assembly recommendation in accordance of articles 12, 14 and 24 of the UN Charter[18] within twelve months in the absence of which the court may proceed with the case (option 3); or the Court may request the General Assembly (variant a) or the Security Council (variant b) to seek an advisory opinion from the International Court of Justice (ICJ) as to whether an act of aggression has been committed or not and if the ICJ gives a positive advice as to this question the Court may then proceed with the case (option 4); and, eventually, the Court may proceed with the case if it ascertains the ICJ has made a finding in accordance with chapter 2 of its statute that an act of aggression has been committed by the State concerned (option 5).
This paragraph then is more politically focused since the issue at stake here is which UN organ (and under which conditions) will allow the Court to undertake action in case the Security Council would fail declaring the commission of an act of aggression. The choice of this organ would of course influence the chances for the Court to undertake action in case of a Security Council disapproval.
Paragraph 5 also offers the possibility to use these procedures, or not, in case the Security Council invokes article 16 of the Rome Statute within six months from the date of notification. This article enables the Security Council to keep the Court from the exercise of its jurisdiction for a renewable period of 12 months over a case on which the Security Council would have voted a resolution under the prescriptions of chapter VII of the Charter of the UN for the Court not to undertake action[19].

[16] See Rome Statute at http://www.un.org/law/icc/statute/romefra.htm part 3 General Principles of Criminal Law.
[17] See Charter of the UN at http://www.un.org/Overview/Charter/contents.html chapter VII.
[18] See Charter of the UN, same URL, chapters IV and V.
[19] See Security Council Resolution 1422 at http://www.un.org/Docs/scres/2002/res1422e.pdf for example.

Part II: The elements of the crime

A footnote related to the title of part two mentions that the elements of the crime of aggression are drawn from the Samoan proposal and have not been thoroughly discussed in the working group. Therefore, the second part of the draft is rather a compromising listing of all the elements of the crime that were agreed on by most delegates but on which no substantial discussion has taken place yet and it shall be discussed in the special working group during the Assembly of States Parties.

Precondition

This part makes, in addition to the general preconditions contained in the Rome Statute, the determination by an appropriate organ of the commission of an act of aggression a precondition to the very existence of a crime of aggression. The delegate of Portugal raised the issue that if this is a precondition to the existence of the crime of aggression it may not be conform to the first part of the draft relating to the definition of the crime of aggression in paragraph 5 where the hypothesis of the Security Council not making any determination is considered as a possibility. The Portuguese delegate declared he was seeking conformity and wanted the elements of the crime to conform completely in the definition of the crime. As regards to the reference to an appropriate organ a footnote has been added to it referring to options 1 and 2 of paragraph 2 part I[20] meaning the term "appropriate organ" does not refer to a well defined organ yet and the note adds a mention to the rights of the accused which could be challenged by this precondition and should therefore be considered in connection with it as pointed out by the Philippines' delegate. Indeed the determination of the crime by an individual by an external organ where he has no rights to question witnesses may challenge the rights of the accused in a significant manner.

Elements

Paragraph 1

This paragraph refers to the effective position of the perpetrator to exercise control over or direct the action leading to a crime of aggression. Again, the use of the word "effectively" demonstrates the will of the working group to indict the actual responsible of the crime and no head of state or army…etc who would be more of a symbolic figure than the actual responsible individual.

Paragraph 2

This paragraph sets up a condition of knowledge as regards to the effective position referred to above.

Paragraph 3

The third paragraph underlines the requirement for an active participation of the accused in the planning, preparation or execution of the act of aggression.

Paragraph 4

This paragraph requires the accused to have actively participated in planning, preparation or execution of an act of aggression with intent and knowledge. France and Senegal have both expressed their views on the uselessness of these two terms but other delegations did not agree upon this idea and thus this paragraph was kept in the final draft.

Paragraph 5

Here the need to ensure that an act of aggression according to the definition of the General Assembly Resolution 3314 was committed by a state is underlined as being an element of the crime of aggression.

Paragraph 6

[20] See report above.

This paragraph adds to the elements of the crime of aggression the knowledge by the perpetrator that the actions of the State amounted to an act of aggression.

Paragraph 7
This paragraph requires that "the act of aggression by its character, gravity and scale, constituted a flagrant violation of the Charter of the UN" and then offers three options to clarify the concept of flagrant violation of the Charter of the UN. The first two options refer to a war of aggression and occupation of or annexing the territory of another state but while the first option reads "such as a war of aggression…" the second option reads "And amounts to a war of aggression…" which is a lot more narrow options since it does not seem to allow anything else than the cases mentioned whereas option 1 seems to be giving a non-exhaustive list of examples. Eventually the third and last option reads "neither of the above" which leaves the choice to put the first two options aside if not considered satisfying.

Paragraph 8
The last paragraph imposes the condition of intent and knowledge of the perpetrator as regards to the elements listed in paragraph 7.

There is a note at the end of part II of the document referring to the elements listed in paragraphs 2, 4, 6 and 8 (all related to knowledge of the perpetrator) and stating that in the case nothing were said, the default rule of article 30 of the Rome Statute would then apply (this rule attributes the burden of proof of the knowledge to the prosecutor who must demonstrate the knowledge of the accused). The note then underlines the fact that the requirement for both knowledge and intent might be meaningless in some legal systems and that this fact should be taken in account when considering this draft.

THE CRIME OF AGGRESSION [131]

"The international legal community is on trial. War-making is illegal and must be curtailed by law. If none of the (…) options materialize, the world can, and probably will, continue as it has always done: sovereign states, with ever-increasing ferocity, will continue to slaughter innocent victims by the millions and those responsible for the aggressions and carnage will never be called to account before an international bar of justice. Is that the world we want? Decision-makers must decide."

Benjamin B. Ferencz

INTRODUCTION

The Crime of Aggression[132] is – in accordance with Art. 5 para. 1 of the Rome Statute of the International Criminal Court[133] (hereafter "Rome Statue") – one of the four core crimes within the jurisdiction of the International Criminal Court. While the definitions of the first three crimes can be found in Articles 6 – 8 of the Rome Statute, the delegations of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court[134], which took place in July 1998, were unable to reach an agreement with regard to the definition of the Crime of Aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction over this crime. Therefore, Resolution F of the Final Act of the 1998 UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court[135] mandates the Preparatory Commission to *"prepare proposals for a provision on aggression, including the definition and Elements of Crimes of aggression and the conditions under which the International Criminal Court shall exercise its jurisdiction with regard to this crime. The commission shall submit such proposals to the Assembly of States parties (Part 11, Article 112) at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in this Statute. The provision relating to the crime of aggression shall enter info force for the State Parties in accordance with the relevant provisions of this Statute."*[136]

List of documents	PD/ASP - 9th session
PCNICC/2002/WGCA/L.1	Historical review of developments relating to aggression – Prepared by the Secretariat
PCNICC/2002/WGCA/L.1/Add.1	Addendum
PCNICC/2002/WGCA/DP.1	Proposal by the Netherlands concerning PCNICC/2002/WGCA/RT.1
PCNICC/2002/WGCA/RT.1	Definition of the crime of aggression and conditions for the exercise of jurisdiction – Discussion paper proposed by the Coordinator

[131] submitted by Patrick Guidon (ELSA Switzerland, CICC Deputy Team Leader WGCA)

[132] Detailed information on this subject can be found in BENJAMIN B. FERENCZ, The Crime of Aggression, in: GABRIELLE KIRK MCDONALD / OLIVIA SWAAK-GOLDMAN, Substantive and Procedural Aspects of International Criminal Law, The Experience of International and National Courts, Commentary, Volume I, Kluwer Law International, The Hague – London – Boston, p. 37 – 62; see also ELSA Report on the 6th session of the Preparatory Commission for the International Criminal Court, 27 November to 08 December 2000, UN Headquarters, New York, p. 5 – 23.

[133] Art. 5 para. 1: *"(…) 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."* See http://www.un.org/law/iccc/statute/romefra.htm.

[134] See for detailed information the conference web site at http://www.un.org/icc/index.htm.

[135] http://www.un.org/law/icc/statue/final.htm#resolution_f.

[136] See also Art. 5 para. 2 of the Rome Statute which states that the Court *"shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with article 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."*

The Working Group on the Crime of Aggression was established at the 4th session of the Preparatory Commission under the leadership of TUVAKU MANONGI (United Republic of Tanzania). Since the 7th session, the Working Group has been meeting under the skilful chairmanship of SILVIA FERNANDEZ DE GURMENDI (Argentina).[137] During this time, several delegations introduced proposals with regard to the definition of the Crime of Aggression and the conditions under which the Court shall exercise its jurisdiction.[138] All this proposals are still on the table. Many of them are based on the different sources of international law touching upon aggression,[139] including;

a. Article 6 of the Charter of the International Military Tribunal for the European Axis (Nuremberg Tribunal);
b. Article 5 of the Charter of the International Military Tribunal for the Far East (Tokyo Tribunal);
c. Article II, 1 (a) of the Control Council for Germany Law No. 10;
d. the General Assembly resolution 3314 (XXXIX) of 14 December 1974: Definition of Aggression;
e. Principle VI of the Principles of International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal;[140]
f. Article 16 of the Draft Code of Crimes against the Peace and Security of Mankind.[141]

Like in previous sessions of the Commission the main questions to be resolved remained the same[142]:

g. whether the definition should include an illustrative or exclusive list of acts constituting aggression or should be more general (so-called *"generic approach"*)[143];
h. how to differentiate between individual criminal acts versus acts the state as a whole;
i. whether the Security Council under the Charter of the United Nations (especially with regard to Article 39) hold the primary or the exclusive role to determine whether there has been an act of aggression or not.

In addition, some delegates focused again[144] on the potential violation of the rights of the accused and also of the victims[145], since criminal procedural rules ensuring the due process rights of the accused would not be applicable in the Security Council nor, for that matter, in the General Assembly or the International Court of Justice. Finally, the Coordinator addressed, like indicated at the end of the 8th session of the Preparatory Commission,[146] the question of how negotiations on aggression will proceed if the Working Group of the Preparatory Commission is unable to finish its work before entry into force of the Rome Statute and the convening of the Assembly of States Parties. Despite of the clear call for the exploration of possible options, most of the delegations stated only their general readiness to continue the work on aggression.

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[137] Ms. Fernandez was previously the Coordinator for the Preparatory Commission's work on the "Rules of Procedure and Evidence".
[137] Prepared by the International Law Commission, Yearbook of the International Law Commission, 1950, vol. II, p. 376.
[138] See PCNICC/2001/L.2/Rev.1 Proceedings of the Preparatory Commission at its seventh session, Annex 1.
[139] See the reference document on the Crime of Aggression, prepared by the Secretariat in: PCNICC/2000/WGCA/INF/1.
[140] Prepared by the International Law Commission, Yearbook of the International Law Commission, 1950, vol. II, p. 376.
[141] Prepared by the International Law Commission, Yearbook of the International Law Commission, 1996, vol. II, Part 2, p. 42.
[142] See for example Coalition for an International Criminal Court (CICC), Draft Report on the Seventh Session of the Preparatory Commission, February 26 – March 9, 2001, New York; available at http://www.iccnow.org.
[143] However, only a few delegations raised this issue at the 9th session.
[144] See Coalition for an International Criminal Court (CICC), Draft Report on the Eighth Session of the Preparatory Commission, September 24 – October 5, 2001, New York, p. 9 and PCNICC/WGCA/2000/RT.1.
[145] See the statement of the delegation of the Philippines on Wednesday, April 17, 2002, in: CICC Aggression Team Report (4), April 17, 2002, p. 21 – 22.
[146] See Coalition for an International Criminal Court (CICC), Draft Report on the Eighth Session of the Preparatory Commission, September 24 – October 5, 2001, New York, p. 9 – 10.

PROCEEDINGS OF THE PREPCOM AT ITS 9TH SESSION

The Preparatory Commission held four formal and two informal meetings at its 9th session. At the first formal meeting on Monday, April 8, 2002, the Coordinator of the Working Group, SILVIA FERNANDEZ DE GURMENDI (Argentina), presented a discussion paper on the *"Definition of the crime of aggression and the conditions for the exercise of jurisdiction"*[147]. This document has been prepared in response to concerns consistently expressed in the Working Group on the Crime of Aggression, although the instructions by the representatives of the different national delegations at the 8th session of the Preparatory Commission had been very contradictory.[148] In light of these views, the Coordinator reconciled these objectives in a very short paper, which gives on one hand not only a compilation and on the other hand does not provide within itself substantive solutions.

Reflecting the methodological approach advocated orally by Belgium during the 7th session and formally introduced by the delegations of Bosnia and Herzegovina, Romania and New Zealand in their well received proposal[149] at the 8th session, the discussion paper separates in its paragraphs 1 and 2 – in the interests of clarity and precision – the concept of the Crime of Aggression (paragraph 2), for which there is individual responsibility, from the concept of aggression of a State (paragraph 1). The following paragraphs 3 and 4 refer to the conditions under which the International Criminal Court will exercise its jurisdiction over the Crime of Aggression. The main divergences within this context, i.e. whether the Security Council possesses the exclusive or only the primary responsibility[150] for determining whether an act of State aggression has occurred, are reflected in the options[151] contained in the discussion paper.

At the same meeting the Secretariat, represented by Mahnouch Arsanjani, introduced two rather lengthy papers, one of them being PCNICC/2002/WGCA/L.1, the other PCNICC/2002/WGCA/L.1/Add.1. The first paper was prepared in response to the request of the Working Group on the Crime of Aggression at the 8th session. Its purpose is *"to provide an objective, analytical overview of the history and major developments relating to aggression."*[152] The second paper PCNICC/2002/WGCA/L.1/Add. 1 contains the annexes with a series of tables which reproduce, paraphrase or summarize the general principles and the specific factors contained in the constituent instruments and the jurisprudence of the tribunals that tried individuals for crimes against peace after the Second World War.[153]

On Monday, April 15, 2002, the delegation of The Netherlands presented orally a possible option 5 to the Coordinators paper with regard to the conditions governing the exercise of the jurisdiction of the International Criminal Court. Later, a corresponding written proposal was formally introduced as PCNICC/2002/WGCA/DP.1. Furthermore, the delegations of Cameroon and France put forward two separate written proposals[154] on Wednesday, April 17, 2002. Finally, the delegation of Samoa presented at the informal meeting on Thursday, April 18, 2002, a so-called *"very informal Non-Paper"* on the elements of the Crime of Aggression.

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[147] See PCNICC/2002/WGCA/RT.1.
[148] There were calls that wanted not only a compiling paper, but also wanted a discussion paper which would go beyond the proposals. Other representatives highlighted the importance of no prejudicing.
[149] PCNICC/2001/WGCA/DP.2.
[150] See article 39 UN Charter.
[151] See PCNICC/2002/WGCA/RT.1, para. 4, opt. 1 – 4.
[152] PCNICC/2002/WGCA/L.1, p. 11.
[153] PCNICC/2002/WGCA/L.1/Add. 1, p. 2.
[154] No document number yet.

THE COORDINATOR'S DISCUSSION PAPER

PARAGRAPHS 1 AND 2 (PICNICC/2002/WGCA/RT.1) [155]

At the ninth session of the Preparatory Commission, the Coordinator of the Working Group on Crime of Aggression[156] presented a new discussion paper; PCNICC/2002/WGCA/RT.1.
This draft text included all proposals that had previously been presented to the working group by various countries. It was presented as a neutral paper that did not take any specific sides or any preference for any of the previous proposals. The paper was organised in a way that took into account some elements already considered; the definition of aggression (as an act), and the definition of crime of aggression were presented separately in paragraph 1 and 2, respectively. Paragraphs 3 and 4 were not dedicated to the definition itself, but to the preconditions that need to be respected and fulfilled by the court, before considering the crime of aggression. Some countries disagreed on the latter.[157]

Paragraph 1
There was a general consensus among the delegations on the separation of the definition of act and crime of aggression. Although the coordinator preferred the two paragraphs to contain definitions, most delegations disagreed with this position because paragraph 1 is seen not only as containing a definition (even an indirect definition made by are reference to Resolution 3314), but also, and mainly, as a prerequisite. About the reference to resolution 3314, many of the countries agreed that this definition should be taken as a starting point, basically because it is generally accepted and can be considered as firmly established customary international law. However, it was also stressed that this resolution is old and therefore probably no longer fully appropriate.

The other problem raised with regards to paragraph 1 refers to the end of the paragraph: *" - and subject to prior determination by the United Nations"*. It is not generally agreed by the PrepCom that there is a need for prior determination by the Security Council. According to a considerable number of delegations there is no exclusivity for the Security Council on this definition. Examples from jurisprudence and UN practise (GA resolutions) were referred to by delegates. Some of the delegations also suggested removing this part of the sentence, in order to make the paper more neutral. It should also added that this special part was not generally considered as consistent with some of the subparagraphs outlined in paragraph 4, where preconditions were considered.

Paragraph 2
Paragraph 2 relates to the definition of the crime of aggression, as such. Before analysing this definition, it should be emphasised that we are dealing with a crime that should be defined and cleared in all its elements, in order to respect the principle of legality. Some delegations further remarked that the crime should be committed by an individual, and not by a person, as presented in the proposal, in order to be consistent with language used in the Statute.

With regards to the reference "position to exercise control", most countries regarded it insufficient and preferred to add "effective control". It was argued that, even if aggression is a leadership crime, we need to assure that the material leader is punished, and not any formal leader. The reference to the mental element, intentionally and knowingly, was also questioned because it is already commonly agreed.
The same was repeated in what concerns planning, preparation, initiation or waging an act of aggression.
With regards to the options presented by the coordinator, some countries thought it was problematic that

[155] submitted by Paola Sofia Candeias, ELSA Lisbon/ ELSA Portugal
[156] Coordinator; Silvia Fernandez de Gurmendi
[157] For a better understanding of the article structure, and in order to understand the different positions sustained by some countries in relation to paragraphs 1 and 2, see the ELSA ICC Reports from PrepCom VII and VIII

all of them referred to crimes performed by States and not by individuals. As for option 1, it was pointed out as being too narrow. Some delegates also mentioned that one could think of a crime of aggression without having a war of aggression. The lack of a true legal basis was a remark made to options 1 and 3.

The use of the words "manifest violation" was considered a too wide a threshold. No consensus was reached on the definition, but the non-paper produced by the delegation of Samoa contained a constructive proposal about the criminal contents and elements that need to be discussed in order to have a true and consistent crime definition.

PARAGRAPHS 3 AND 4 (PICNICC/2002/WGCA/RT.1) [158]

The discussion paper presented by the Coordinator of the Working Group on Crime of Aggression, Silvia Fernandez de Gurmendi, proved to be a successful attempt to summarize the proposals presented by delegations at previous sessions.

Paragraphs 3 and 4 of this document are in fact a reflection of the proposal submitted by Bosnia and Herzegovina, Romania and New Zealand at the eight session of the Preparatory Commission, contained in PICNICC/2001/WGCA/DP.2 and PICNICC/2001/WGCA/DP.2 Add.1.
This very much welcomed proposal stated not only the distinction between the notion of an act of aggression committed by the State, and the crime of aggression committed by the individual for which only the ICC is competent, but also introduced a separate consideration on the conditions of exercise of jurisdiction through references to other bodies competent to decide whether aggression has occurred in case the Security Council fails to make a decision, *i.e.* the General Assembly and the International Court of Justice. Before going into the details on the provisions of paragraph 3 and 4, something should be said about the structure of the Coordinator's discussion paper.

Unlike the proposal by Bosnia and Herzegovina, Romania and New Zealand, which separated "the definition" from "the conditions for exercise of jurisdiction" in different provisions, the Coordinator's paper provide for them in the same text. Thought this structure has been considered sound in distinguishing different paragraphs, - the definition of the act, - the definition of the crime, - and the conditions of jurisdiction, there working group did not reach full consensus as some delegations urged for a full distinction of the definition and the conditions of jurisdictions in two different articles, and thereby recalling the provisions of the Statute regarding the other core crimes.

Paragraph 3 of the Coordinator text states: "*Where the Prosecutor intends to proceed with an investigation in respect of a crime of aggression, the Court shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned as provided for in parr.1 of this article. If no Security Council determination exists, the Court shall notify the Security Council of the Situation before the Court so that the Security Council may take action, as appropriate, under Article 39 of the Charter of the Unite Nations.*"

Delegations generally agreed on this paragraph. Only a few comments were made suggesting minor changes in the wording, *i.e.* "*initiating an investigation"* instead of "*proceeding with an investigation*".
As to the wording, the delegation of Netherlands raised the question of how the determination of an act of aggression should be made by the Security Council, asking whether this has to be mentioned as a part of a resolution or merely mentioned in a pre-amble paragraph.
The delegation of Austria suggested the inclusion of a sentence for the very simple case in which the Security Council has made a determination that an act of aggression has occurred, stating that "*If a determination has been made the Court shall proceed*".

[158] submitted by Paola Sacchi, ELSA Milan (Italy)

The delegation of Russian Federation questioned the artificiality of a procedure requiring the Court to inform the Security Council that there is a case of aggression before it, pointing out that it is difficult to imagine a situation where the prosecutor is aware of an aggression while the Security Council doesn't know anything about it.

Paragraph 4 of the Coordinator text is more complex, as it provides for four different options by saying;
"*Where the Security Council does not make a determination as to the existence of an act of aggression or invoke art.16 of the Statute within six months from the date of notification,*
(Option 1) - *the Court shall proceed with the case.*
(Option 2) - *the Court shall dismiss the case.*
(Option 3) - *the Court shall, with due regard to the provisions of art. 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation within [12] months. In the absence of such a recommendation, the Court may proceed with the case.*
(Option 4) - *the Court may request the General Assembly to seek an advisory opinion from the International Court of Justice, in accordance with art.96 of the Charter and art.65 of the Statute of the International Court, on the legal question whether or not an act of aggression has been committed by the State concerned. The Court may proceed with the case if the International Court of Justice either; gives an advisory opinion that an act of aggression has been committed by the State concerned; or makes a finding in proceedings brought under Chapter II of this Statute that an act of aggression has been committed by the state concerned.*

Favours for one option or another reflected the consideration of States on the role the Security Council has to play as to the exercise of jurisdiction of the Court. At this session, as in the others, the variety of positions as to the exclusivity or primary role, are the proof that consensus has not yet been achieved.
Those delegations considering the role of the Security Council were not exclusive in favour of option 1, and pointed out that practice indicated that other organs are competent to decide whether aggression has been exercised, like the ICJ or singular States too. Being a political body, the Security Council may not manage to determine the existence of aggression, because of political reasons. This is contrary to the spirit of the Statute, which aims at stopping impunity in the international community. Among these delegations, there were also some who were willing to accept option 3 and 4 in order to reach a compromise with other delegations, and others which in turn opted just for these last options, basically for the same reason, *i.e.* the security Council can't be considered the only organ to have competence in defining the existence of an act of aggression.

On the contrary those delegation that viewed it unacceptable to remove the role of the Security Council because they considered its decision a fundamental prerequisite for individual responsibility, supported option 2 of paragraph 4. This topic is strictly related to the inclusion of the "*prior determination by the United Nations Security Council"* in the definition of an act of aggression contained in para.1. Though it is not there to analyse the provision of this paragraph, it must be said that considerations made on the opportunity to include such a reference in the definition of „the act of aggression" in para.1, had consequences on parr.3 and 4 too, reflecting the opinion of States as to the role of the Security Council. In fact some delegations suggested to remove, or in certain cases to amend, these paragraphs when they viewed the suspicion of including a political body in what is supposed to be a merely judicial procedure, and consequently opted for an exclusion of the Security Council at each level.

As a way in the middle, the delegation of the Netherlands proposed a fifth option, based on considerations that options 1 and 3 bypass the Security Council too easily, that option 2 gives the Security Council exclusivity to establish whether an act of aggression is committed by a State, and option 4 because it gives no role to the Security Council in asking the ICJ for an advisory opinion. The proposal made by the Netherlands contained in PCNICC/2002/WGCA/DP.1 is somewhat similar to option 4 of para.4, but it provides for a request which the Court should make to the Security Council ("*acting on the vote of any nine members*") and

not to the General Assembly for an advisory opinion of the ICJ on the existence of an act of aggression. The Dutch delegation's emphasised that this proposal has two advantages. One of them in offering a way out if the Security Council is paralysed by the use of veto, but still considering this matter the exclusive prerogative of the Security Council, and the other being the fact that when defining the request for an advisory opinion in a procedural resolution, the veto would not apply. To make clear that this option should be considered as a procedural matter, PCNICC/2002/WGCA/DP.1 contains a footnote stating that "*this procedural precondition would have to be laid down in the Relationship Agreement between the Court and the United Nations"*.
This proposal has been welcomed by delegations that, like the Netherlands, were not satisfied with any of the options in paragraph 4.

OTHER RELEVANT DOCUMENTS ON AGGRESSION AT THE 9TH SESSION [159]

In order to response to the request of the Working Group on the Crime of Aggression at the 8th session of the Preparatory Commission, the Secretariat introduced two new documents[160]:

PCNICC/2002/WGCA/L.1 consists of four parts[161]: part I. The Nuremberg Tribunal; part II. Tribunals established pursuant the Control Council Law No. 10; part III. The Tokyo Tribunal; and part IV. The United Nations. The main purpose of the paper is *"to provide an objective, analytical overview of the history and major developments relating to aggression"*[162]. It covers therefore the developments prior to the adoption of the Charter of the United Nations, including the constituent instruments and the jurisprudence of the tribunals that considered the crimes against peace committed in Europe and the Far East during the Second World War,[163] and those subsequent to the adoption of the Charter, including the relevant provisions of the Charter which prohibit the threat or use of force and provide a role for some of its principal organs with respect to international peace and security.[164] However, the paper does not draw or suggest any conclusions with regard to the issues it covers, nor does it suggest *"whether the use of the word "aggression" with regard to a particular act by, for example, the Security Council or the General Assembly was or was not intended to be in the context of Article 39 of the Charter of the UN."*[165]

PCNICC/2002/WGCA/L.1/Add. 1 contains the annexes with a series of tables that reproduce, paraphrase or summarize the general principles and the specific factors contained in the constituent instruments, and the jurisprudence of the tribunals that tried individuals for crimes against peace after the Second World War.[166] While the tables 1 to 4 concerning aggression by a State are contained in annex I,[167] tables 5 to 9 concerning individual responsibility for crimes against peace are contained in annex II.[168]

All delegations warmly welcomed the two documents and expressed their *"gratitude and admiration for the very impressive work undertaken and brought to spectacular fruition by the Secretariat"*(Greece)[169] and appreciated the *"comprehensiveness and quality of the Secretariat's*

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[159] submitted by Patrick Guidon (ELSA Switzerland, CICC Deputy Team Leader WGCA)
[160] PCNICC/2002/WGCA/L.1 and PCNICC/2002/WGCA/L.1/Add. 1.
[161] See PCNICC/2002/WGCA/L.1, p. 11.
[162] PCNICC/2002/WGCA/L.1, p. 11.
[163] See PCNICC/2002/WGCA/L.1, p. 13 – 115.
[164] See PCNICC/2002/WGCA/L.1, p. 115 – 135.
[165] PCNICC/2002/WGCA/L.1, p. 12.
[166] PCNICC/2002/WGCA/L.1/Add. 1, p. 2.
[167] PCNICC/2002/WGCA/L.1/Add. 1, p. 3 – 30: table 1. Aggression by a State: Categories of aggression and war; table 2. Aggression by a State: Forms of aggression; table 3. Aggression by a State: Factors in determining the aggressive character of conduct by a State; table 4. Aggression by a State: Defence claims.
[168] PCNICC/2002/WGCA/L.1/Add. 1, p. 31 – 98: table 5. Individual criminal responsibility: High-level position; table 6. Individual criminal responsibility: Knowledge; table 7. Individual criminal responsibility: Intent; table 8. Individual criminal responsibility: Participation; table 9. Individual criminal responsibility: Defence claims.
[169] CICC Aggression Team Report (2), April 15, 2002, p. 6.

Paper" (Italy)[170]. Although almost every delegation regarded the two documents as an essential contribution *"to stimulate our thinking and provide a new focus for the discussion"* (New Zealand)[171], as an important help *"along the difficult road towards solutions to our problems with regard to aggression"* (Greece) and as extremely useful *"for an understanding of what customary international law is with regard to the elements and defences"* (United Kingdom)[172], unfortunately few delegations made concrete references to the papers.
On Monday, April 15, 2002, the delegation of The Netherlands presented orally a possible option 5 in addition to the Coordinator's paper. After encouraging statements by other delegations[173] a corresponding written proposal, which deals with the conditions governing the exercise of the jurisdiction of the International Criminal Court, was introduced formally as PCNICC/2002/WGCA/DP.1 on Wednesday, April 17, 2002.

The proposal tries to offer on the one hand a way out if the Security Council is paralysed by the use of the veto and underlines on the other hand that the request for an advisory opinion from the International Court of Justice is a procedural resolution, so that the veto of the five permanent member of the Security Council would not apply. However, the delegate of The Netherlands stressed himself that the main problem with the proposed option 5 is that *"it is for the Security Council to decide whether a resolution is procedural or substantive"* and that it is *"crucial that this option be considered as procedural matter"*.[174] It therefore seems necessary that this procedural precondition would have to be laid down. In the view of The Netherlands the best place seems to be the Relationship Agreement.

On Wednesday, April 17, 2002, the delegations of Cameroon and France put forward two separate written proposals[175].

a) The proposal submitted by France[176] tries to merger the paragraphs 1 and 2 of the Coordinator's paper PCNICC/2002/WGCA/RT.1. It does not take up the 3 options of paragraph 2 of the discussion paper submitted by the Coordinator and provides a (completely) new formulation with several changes[177] and new options. The delegate of France stressed that on the one hand the obvious distinction between Act of Aggression and Crime of Aggression must be drawn and that on the other hand the reference and the quote from resolution 3314 foreseen in the Coordinator's paper can be accepted only as long as the resolution is accepted as a whole.[178]

b) Also the proposal put forward by Cameroon tries to combine paragraph 1 and 2 of the Coordinator's paper in reformulating them. However, in contrast to the French proposal it avoids the reference to a *"prior determination by the United Nations Security Council"* as prerequisite for Court proceedings and adds the term *"effectively"* to the definition of the Crime of Aggression. Furthermore, the Cameroon proposals does not stop in merging paragraph 1 and

[170] CICC Aggression Team Report (2), April 15, 2002, p. 2.
[171] CICC Aggression Team Report (2), April 15, 2002, p. 15.
[172] CICC Aggression Team Report (3), April 16, 2002, p. 16.
[173] See for example statement of the delegation of the United Kingdom: CICC Aggression Team Report (3), April 16, 2002, p. 17.
[174] CICC Aggression Team Report (4), April 17, 2002, p. 21.
[175] No document number yet.
[176] The proposal reads as follows: *"For the purpose of this Statue, a crime of aggression means an act committed by a person, who, being in a position to exercise control over direct action of a State, intentionally and knowingly orders or participates actively in the planning, preparation, initiation or perpetration of an act of aggression which (option 1) is understood as the use of armed force by a state against the sovereignty, the territorial integrity or the political independence of a State (option 2) is understood as per Resolution 3314 (1974) or is any other manner incompatible with the charter of the United Nations and subject to prior determination by the United Nations Security Council."*
[177] The proposal does for example not contain the terms *"military and political"*.
[178] CICC Aggression Team Report (4), April 17, 2002, p. 6 – 7.

2, but provides also a slightly modified version[179] of the other paragraphs contained in the discussion paper submitted by the Coordinator.

Since both proposals had been submitted at the last formal meeting of the Working Group on the Crime of Aggression and only in English respectively in English and French, only a few delegations expressed some preliminary thoughts on these documents. The delegate of Italy highlighted that the proposals demand *"further reflection and study"*[180].

Finally, the delegation of Samoa presented at the informal meeting on Thursday, April 18, 2002, a so-called *"very informal Non-Paper"* on the elements of the Crime of Aggression. The paper is a *"very tentative first effort to think conceptually about the Elements of the Crime of Aggression"*[181]. It takes the first two paragraphs of the discussion paper proposed by the Coordinator and tries to apply the conceptual structure contained in articles 30 and 32 of the Rome Statute and utilized in the draft Element of Crimes[182]. Furthermore, it assumes that the Crime of Aggression can be conceptualised in terms of *"mental"* elements and *"material"* elements.

[179] The Cameroon proposal does for example not contain option 2 of paragraph 4 of the Coordinator's Paper.
[180] CICC Aggression Team Report (4), April 17, 2002, p. 21.
[181] See the very informal non-paper from the Delegation of Samoa, Elements of the Crime of Aggression, p. 1
[182] PCNICC/2000/1/Add.2.

BASIC PRINCIPLES GOVERNING A HEADQUARTERS AGREEMENT BETWEEN THE COURT AND THE HOST COUNTRY [183]

INTRODUCTION

In accordance with article 3 paragraph 1 of the Rome Statute, the seat of the International Criminal Court will be established at the Hague, the Netherlands. The Court shall enter into a headquarters agreement with the host State, which has to be approved by the Assembly of State Parties.

The Rome Conference, in its Resolution F, requested the Preparatory Commission to prepare a draft text containing the principles that should govern a headquarters agreement to be negotiated and concluded between the Netherlands ant the ICC. The draft text was first discussed at the eighth session[184] of the Preparatory Commission and almost finalised, leaving some points left to be completely finalised in the 9th sessions of the Preparatory Commission for an International Criminal Court 8-19 April 2002.

The working group on the Basic Principles governing a Headquarters agreement, coordinated by Zsolt Hetesy (Hungary) met in 2 formal sessions on the 11 and 12 of April and in three informal sessions. Most of the work had been done in the informal sessions and an input paper had been put forward by the Coordinator which was the basis for the work that needed to be completed.

List of documents	Headquarters Agreement - 9th session
PCNICC/2002/WGHQA/L.1	Report of the Working Group
PCNICC/2002/WGHQA/RT.1	Basic principles governing an agreement to be negotiated between the International Criminal Court and the kingdom of the Netherlands, regarding the headquarters of the Court-Discussion paper proposed by the Coordinator.
PCNICC/2002/WGHQA/RT.1/Rev.1	Revision

BACKGROUND

During the 8th session of the Preparatory Commission the first discussions on the Headquarters Agreement took place. A draft paper was put forward by the Coordinator, as the basis for the work in the working group. These basic principles would act as a form of guidelines, whereas the actual agreement would be drafted by the Assembly of State Parties. The headquarters agreement would reflect the specific relationship between the Court and the host country. It would also address those issues which are not covered or not sufficiently dealt with in the Statute, the rules of Procedure and the Evidence and the Agreement on the Privileges and Immunities of the Court, but that were necessary for the proper implementation of the provisions set forth in those instruments. The content of the

[183] Submitted by Jenny Piipponen, ELSA Sweden. [Ed. & update by Espen Rostrup Nakstad (ELSA International) April 2003.] Special thanks are due to ISC-ICC students for their assistance

[184] See ELSA report from 8th Session, 24 September- 5 October 2001

agreement would for example handle the Premises of the Court, Privileges and immunities of the Court, Privileges and immunities of the judges, Prosecutors etc, and the cooperation between the court and the host country.

The key issues of the working group at the 8th session were the Assembly of States Parties and the agreement, the role of the working group in the negotiations, the experience of the international tribunals, the privileges and immunities and the headquarters agreement.

The first issue raised during the negotiations of the last PrepCom concerned the inclusion of the Assembly of States Parties into the agreement. An agreement was made that the headquarters agreement if it was consistent with the Statute of the Court should be limited only to the relationship between the Court and the host country, and that the Assembly of States Parties if needed, should conclude arrangements with the host country, in terms of privileges and immunities, and transits etc.

The Chairman underlined the fact that the working group was supposed to draft the basic principles of the Headquarters agreement and not the agreement itself. This would in turn be done by the Assembly of State Parties. The principles included in the draft text cannot bind the hands of either party, but can only serve as a guideline, as a reference document. The Privileges and immunities agreement would be a legally binding document, but this would not be the case with the Headquarters agreement, since this would only act as a form of guideline.

The Secretariat, the chairman and several delegations were of the opinion that the experience of the ICTR and ICTY could be helpful in the drafting of the text that would be submitted to the Assembly of State Parties and should therefore be taken into account during the negotiations.

At the end of the session most of the principles concerning the Headquarters Agreement were generally accepted and a few needed to be redrafted. Changes also had to be made after the privileges and immunities agreement would be finished to ensure their compatibility. The chairman announced that he would put forward a revised version of the principles before the next session.

Most of the work with the Headquarters Agreement was done, leaving some issues to be finalised at the 9th session of the PrepCom. These issues will be outlined in the following.

PROCEEDINGS OF THE PREPCOM AT ITS 9TH SESSION

The basis for the working group was document PCNICC/2002/WGHQA/RT.1/Rev.1
Only four issues remained from the 8th session of the Preparatory Commission, namely:
1) Tax-exemption of the Court
2) Entry into the premises of the Court
3) Visa-related issues
4) General applicability of the agreement

1) Tax exemption of the Court:
The first issue on the agenda of the 9th session in the HQA working group was tax exemption of the Court. The document as a whole had been adopted in the first formal session of the working group the first day with the exception of subparagraph 15 B, concerning the taxation which was left for the second formal the day after. The original text prepared by the coordinator was as follows:
"The court shall be exempt from taxes for purchases, for official use, of property, goods or services"
The Netherlands requested that the word ***"major"*** would be inserted into the original text so it would read*: "The court is exempted from taxes for official use for* ***major*** *purchases of property, goods and services."*

France however strongly opposed this addition, after having received instruction from Paris, due to a concern that the establishment and maintenance of the Court would directly benefit the Dutch government—and taking away from the overall ICC budget—through local taxation. However, the delegate from Jordan raised the issue whether the Dutch government would be bound to renegotiate prior agreements with other international organizations, if the Court were to be completely exempt from taxation. A discussion was also held on the meaning of the word major. Austria said that the term major or considerable is interpreted in a way that amounts in more than 250 Euros per invoice. Thy were of the opinion that it did not seem to be a large amount and that all the relevant purchases would be included in this. The Hungarian delegation commented that in principle international organizations should be completely tax-exempt, but in practice the bureaucratic processes of ensuring the exemption may, in the end, be inefficient and more expensive.

The British delegation proposed a solution to the impasse by recommending that ***"at a minimum"*** should be inserted into the amended text, so as to read: *"The court is exempted from taxes for official use for* ***at a minimum*** *major purchases of property, goods and services."* This British proposal was adopted on April 12, during the second day of the formal discussions after many discussions on the meaning of the wording at a minimum. An agreement on the meaning was made and the proposal was adopted.

2) Entry into the premises of the Court:

The second issue discussed in the HQA formal sessions was the entry into the premises of the Court. In paragraph 28 d referring to the people taking part in proceedings before the court and their entry into the premises of the court, it reads: *"shall have the right of unimpeded entry into, exit from and movement within the host country, including unimpeded access to the premises of the Court, as appropriate and for the purposes of the Court, in accordance with the laws and regulations of the host country"*

France requested that the last segment of the paragraph 28 d in the amended agreement *"in accordance with the laws and regulations of the host country"* would be deleted out of the paragraph. The Dutch representative agreed to this deletion but with the understanding that it would read: *"in accordance with the laws and regulations of the Host country."* when read out. This was agreed by the working group.

3) Visa related issues:

The third issue on the agenda of the Basic Principles of the Headquarters Agreement was the visa related issues in paragraph 31 of the text. The text reads as follows, *"The headquarters agreement should provide that the applications for entry and exit visas for persons taking part in proceedings of the Court are dealt with as speedily as possible and granted free of charge. It should also provide that the host Government shall make adequate arrangements by which entry and exit visas for family of detained persons are processed speedily and, where appropriate, free of charge."*

The French delegation requested that the last five words in the paragraph were to be deleted, so as to allow visas for the entry and exit for families of persons detained by the Court *"free of charge",* even though this was not agreed to by the working group. Rather, the paragraph remained intact, with the issue remaining *"or for a reduced fee"* with an understanding that those families without the financial means to visit their loved-ones will receive remuneration. An issue that was not raised in this session was the visas for the victims' families.

4) General applicability of the agreement:

The final issue discussed referred to the general applicability of the agreement, in paragraph 40. Although it was mentioned that the Belgian delegation requested more time to deliberate on this provision in the informal session, no objections were actually raised during formal discussions. Thus, paragraph 40 was accepted.

The question on the Privileges and Immunities of the Assembly of States Parties in general, if they meet in The Hague, was also being discussed. (The statute clarifies that the Assembly of States Parties could meet either in the Hague or in the Headquarters of United Nations.) Spain raised their concern that the text did not address the privileges and immunities of the Assembly of States Parties or its subsidiary organ when meetings are held at the headquarters of the host state. The Spanish proposal was put forward at the eight session of the Preparatory Commission and the issue was thoroughly discussed in the making of the document for this session.

The chairman pointed out that a conclusion was made in the last session that such elements would not be advisable to put into the basic principles for the Headquarters Agreement. The Headquarters Agreement is an agreement between the host country and the Court. Relationships regarding state members should not be included in this document. Furthermore, it was pointed out by the Secretariat that the question of privileges and immunities would be regulated thoroughly in the Privileges and Immunities agreement. The chairman suggested that the Spanish recommendation reading as follows *"In connection with the discussion on the Basic Principles of the Headquarters Agreement the question was raised as the relevant principles on the privileges and immunities of the Assembly of States Parties, however the Working Group did not have time to resolve this issue. The Assembly of States Parties is therefore drawn to this issue with the recommendation that the Assembly of States Parties review it."* Would be a recommendation of the Preparatory Commission to the Assembly of States Parties. This recommendation was read out by the chairman of the working group in the plenary and so became part of the 9th session of the preparatory commission.

CONCLUSION

It was agreed that the mandate of the Preparatory Commission was to develop only a general agreement. The Assembly of State Parties would address the more detailed regulations. The text was adopted as a whole by the working group and the Headquarters agreement team finalised their work in this session. Several questions were not discussed but will hopefully remain open for future discussions. One of them being the visas for the families of the victims, which was not mentioned although the visa issue was discussed when it comes to families of detained people. Another matter left open, being the future of the NGOs working on a long-term basis, was not touched upon.

ANNEX: THE HEADQUARTERS AGREEMENT [185]

The Ministry of Foreign Affairs of the Kingdom of the Netherlands [186] has presented its compliments to the International Criminal Court. In order to facilitate the work of the Court and with reference to Article 3 of the Statute of the Court, for the period until the entry into force of the headquarters agreement between the Kingdom of the Netherlands and the Court, an interim headquarters agreement be concluded which shall read as follows:

Temporary Headquarters Agreement

Article 1
"The Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;
"The Court" means the International Criminal Court established by the Statute;
"The Tribunal" means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by the Security Council pursuant to its resolutions 808 (1993) and 827 (1993);
"The Tribunal headquarters agreement" means the Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the Tribunal, signed in New York on 29 July 1994);
"The General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

Article 2
Unless otherwise provided in this Agreement, the Tribunal headquarters agreement, attached in Annex 1, shall apply *mutatis mutandis* to the Court.

Article 3
State representatives not covered by Article 2 of this Agreement shall enjoy the same privileges and immunities as representatives of Members pursuant to Article IV of the General Convention.

Victims as referred to in Article 68 of the Statute shall, to the extent necessary for their presence at the seat of the Court, enjoy the same privileges and immunities as witnesses and experts pursuant to Article XVIII of the Tribunal headquarters agreement.
Legal representatives of victims shall, to the extent necessary for their presence at the seat of the Court, enjoy the same privileges and immunities as counsel pursuant to Article XIX of the Tribunal headquarters agreement.
Other persons mentioned in Article 48 of the Statute and not covered by Article 2 of this Agreement shall, to the extent necessary for their presence at the seat of the Court, enjoy the same privileges and immunities as witnesses and experts pursuant to Article XVIII of the Tribunal headquarters agreement.

[185] From website of the Dutch Ministry of Foreign Affairs
[186] The Ministry of Foreign Affairs coordinates and carries out Dutch foreign policy at its headquarters in The Hague and through its missions abroad. It is likewise the channel through which the Dutch Government communicates with foreign governments and international organisations.

Article 4
Privileges and immunities under this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with Article 48, paragraph 5 of the Statute and there is a duty to do so in any case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.
In addition to Article 48, paragraph 5 of the Statute, the following rules shall apply to the Court concerning waiver of privileges and immunities:
The privileges and immunities of personnel recruited locally and not otherwise covered by this Article may be waived by the head of the organ of the Court employing such personnel.
The privileges and immunities of counsel and persons assisting defence counsel, witnesses and victims, legal representatives of victims, and other persons required to be present at the seat of the Court, may be waived by the Presidency.
The privileges and immunities of experts may be waived by the head of the organ of the Court appointing the expert.

Article 5
The Parties to this Agreement agree to consult on further practical arrangements whenever necessary.

Article 6
This Agreement shall be in force for a period of six months. It shall automatically be prolonged by periods of one year, unless one Party informs the other Party by Diplomatic Note at least one month before its termination of its decision to denounce this Agreement.
Notwithstanding the previous paragraph, this Agreement shall cease to be in force at the date on which the headquarters agreement concluded between the Court and the Kingdom of the Netherlands shall enter into force.

If this proposal is acceptable to the International Criminal Court, the Ministry proposes that this note and the affirmative note of the International Criminal Court shall constitute an Agreement between the Kingdom of the Netherlands and the International Criminal Court, which shall enter into force on the date of receipt of the affirmative note of the International Criminal Court.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the International Criminal Court the assurances of its highest consideration.

The Hague, 19 November 2002

Annex 1

Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

[...]

FINANCIAL RULES[187]

FINANCIAL RULES (I)
REMUNERATION OF JUDGES (II)
VICTIMS TRUST FUND (III)

INTRODUCTION

The Working Group on the Budget for the first financial period of the Court (FYB) had already been established at the 8th PrepCom and continued its work at this session. The Financial Issues Working Group was divided into three Sub-Working Groups in accordance with the main issues that were still to be discussed after the 8th PrepCom; I - Financial Rules, II - the Remuneration of Judges, and III - the Victims Trust Fund. This report will first summarise the proceedings of the Sub-Working Groups and then the working group on the First Year Budget.

I – FINANCIAL RULES

The Working Group conducted 3 formal sessions and 4 informal meetings. In the first formal session on Tuesday 9 April the Coordinator, Mr Christian Much (Germany) introduced a discussion paper created after an inter-sessional meeting in The Hague in March.[188] The second formal meeting on Wednesday 10 April was turned into an informal session after the Coordinator had informed the Working Group that there was only a very limited number of rules on which there was no agreement yet. These were discussed and amended, especially by a proposal introduced by the Philippines,[189] during the following informal session and in another informal on Thursday 11 April. As an outcome of these consultations the Coordinator presented a discussion paper[190] that the Working Group adopted with some moderate changes. The Working Group report containing these financial rules[191] was adopted by the Plenary of the PrepCom on Friday 19 April.

List of documents	Financial Issues - 9th session; Financial Rules
PCNICC/2002/WGFI-FR/L.1	Report of the Working Group – Draft Financial Rules
PCNICC/2002/WGFI-FR/DP.1	Proposal submitted by the Philippines
PCNICC/2002/WGFI-FR/RT.1	Draft Financial Rules -Discussion Paper proposed by the Focal Point
PCNICC/2002/WGFI-FR/RT.1/Rev.1	Draft Financial Rules - Discussion Paper proposed by the Coordinator

[187] Report submitted by Meinhard Schröder, ELSA Munich. The author wishes to thank the delegates of ISC-ICC for their valuable help during the PrepCom. [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]
[188] PCNICC/2002/WGFI-FR/RT.1
[189] PCNICC/2002/WGFI-FR/DP.1
[190] PCNICC/2002/WGFI-FR/RT.1/Rev.1
[191] PCNICC/2002/WGFI-FR/L.1

PROCEEDINGS

As the Coordinator of this Working Group pointed out, good administration is based on rules. The rule of the rule makes an administration a good administration. The hierarchy of rules includes; regulations - rules, - and administrative instructions. In the financial structure of the ICC all three categories are needed. At the 8th Session of the Preparatory Commission the Financial Rules and Regulations Working Group had finalised the financial regulations. Administrative instructions were discussed at an inter-sessional meeting that took place in The Hague in March.
The middle level – the financial rules – was still missing so far. According to art. 114 of the Rome Statute the method of work will be to create a complete set of rules for the existing regulations. A proposal for this set of rules had been issued on 21 March 2002 as a discussion paper.[192]
This document is based on the exchange of impressions at the inter-sessional meeting in The Hague, therefore it contains some minor differences to the old draft that was presented there. Basically, the financial rules are inspired by those of other international institutions, such as the UN, the UNDP, the ICTY, ICTR and the International Tribunal for the Law of the Sea. The main purposes of the draft are;
- To reconcile flexibility with the integrity of a sound financial administration;
- To avoid parallel structures;
- To secure checks and balances between the different organs of the Court;
- Not to prejudge the final administrative structure of the Court.

A particularly interesting feature of the discussion paper is Rule 113 that delegates the authority to amend the rules from the Assembly of States Parties to the Court to ensure the necessary flexibility for changes. Another issue discussed was the issue of outsourcing procurement. Already in the first two informal meetings delegates reached an agreement on this issue. In the early stage of the existence of the Court procurement functions should be outsourced, since procurement needs considerable experience and is one of the areas where errors and scandals can occur very easily.
It would be hard to determine until when this outsourcing should last in terms of time, probably well into next summer and maybe longer. However, the Court would still need certain personal resources to identify the needs of procurements, and for quality control. An understanding was reached that outsourcing was particularly interesting, if it was possible to place Court officials in the other entity to gather knowledge for the Court.

During the informal meetings the Philippines introduced a proposal concerning rules 109.1 (b), 109.2, 109.3 (a), 109.4, 109.5 (a).[193] It mainly contained some clarifications and more detailed requirements for the recording of the investment of funds and of gains and losses. As the result of discussions and delegates' remarks on this proposal the Coordinator drafted the final report,[194] which mainly contained the changes suggested by the Philippines.
In the last formal meeting on Monday 15 April the Working Group adopted the financial rules. There was no big discussion except that the Philippines stated that they had concerns about rule 109.1 (b). This rule states that investments shall be made after "selecting reputable financial institutions that offer sufficient safeguards against any investment losses" The Philippines suggested to delete "against any investment losses" because the would restrict the investment of funds too much, since total security in investments is almost impossible. The rule remained unchanged, since the Philippines had no intention of blocking the consensus.
With respect to rules 110.10 and 110.11 (writing-off) the Philippines stated that there might be a possible conflict of interest for the Registrar since he was also responsible for the receiving of funds. They suggested to discuss this issue again in the First Year Budget Working Group.

[192] PCNICC/2002/WGFI-FR/RT.1
[193] PCNICC/2002/WGFI-FR/DP.1
[194] PCNICC/2002/WGFI-FR/L.1

CONCLUSION

The Working Group on financial rules has finished its work. The report of the Working Group will be passed on to the Assembly of States Parties for approval.

II - REMUNERATION OF JUDGES

The Working Group conducted 3 formal sessions and 2 informal meetings. In the first formal session on Friday 12 April the Coordinator, Mr John Holmes (Canada) introduced a discussion paper.[195] This was disused informally on Monday 15 April and Tuesday 16 April. In the next formal meeting on Thursday 18 April the Working Group failed to reach a consensus on parts of the Working Group report.[196] An additional formal session had to be scheduled on Friday 19 April to reach an agreement.
The final report[197] of the Working Group was adopted by the Plenary of the PrepCom on 19 April.

List of documents	Financial Issues - 9th session; Remuneration of Judges
PCNICC/2002/WGFI-RJ/L.1	WG report - Conditions of service of ICC judges
PCNICC/2002/WGFI-RJ/L.1/Rev.1	Revision
PCNICC/2002/WGFI-RJ/RT.1	Conditions of service of the judges of the ICC

PROCEEDINGS

The discussion paper concerning the conditions of service of the judges of the ICC introduced in the first formal meeting consisted of two parts: part A deals with fulltime judges, part B with non-fulltime judges. Whereas sections 1-3 on salaries and special allowances for the President and the Vice-Presidents were accepted without discussion, the Working Group discussions on the issue of non-salary benefits and allowances were controversial.
The discussions of para. 5 of the Report of the Working Group[198] (pension benefits) with the original reference to the systems of the ICJ and the International Tribunal for the Law of the Sea lead to the conclusion that Part B (the non-fulltime judges) needed redrafting. The special requirements for non-fulltime judges as regards pensions should be taken into consideration.
Speaking on para. 7 of the document, which deals with travel and relocation costs, the delegations of Cameroon, supported by Senegal, started a vehement discussion about whether the term "fulltime judge" implies an obligation for the judge to reside at the seat of the Court. In their opinion the residence was the only criterion to distinguish between fulltime judges and non-fulltime judges. On the other hand many delegations and the Coordinator expressed the opinion that – since the Rome Statute is silent on the issue of the judges' residence – it was not up to the Working Group to create such an obligation. Cameroon finally agreed not to block a consensus concerning part A of the document – on the fulltime judges – under the condition that a recommendation for the judges to have their residence in The Hague was put in a footnote and that all benefits for non-fulltime judges were removed from the document in order to create incentives for the judges to reside in The Hague.
A new document considering these aspects, which is the revised edition of the Report of the Working Group,[199] was adopted in the additional formal session of the Working Group on Friday 19 April. It only deals with the remuneration of fulltime judges and mentions in an annex that the issue of the remuneration of part-time judges has to be dealt with at the next PrepCom.

[195] PCNICC/2002/WGFI-RJ/RT.1
[196] PCNICC/2002/WGFI-RJ/L.1
[197] PCNICC/2002/WGFI-RJ/L.1/Rev.1
[198] PCNICC/2002/WGFI-RJ/L.1
[199] PCNICC/2002/WGFI-RJ/L.1/Rev.1

CONCLUSION

The Working Group on the Remuneration of judges will continue its work at the next PrepCom to finalise the conditions of service of non-fulltime judges. Then the whole document will be passed on to the Assembly of States Parties for approval.

III - VICTIMS TRUST FUND

The Working Group conducted only one formal session on Friday 11 April 2002. In this session France presented its proposal regarding the administration of the Fund.[200]
The Coordinator, Ms Gaile Ramoutar (Trinidad and Tobago) discussed the proposal in the following week in bilaterals. The issue of the Victims Trust Fund will be raised again at the next PrepCom where several formal and informal sessions have already been scheduled.

List of documents	Financial Issues - 9th session; Remuneration of Judges
PCNICC/2002/WGFI-VTF/DP.1	Proposal submitted by France on a trust fund for the benefit of victims

PROCEEDINGS

At the beginning of the formal session the French delegate took the floor to present his proposal.[201] He pointed out that the Victims Trust Fund has two major sources of income. In the first, which is decisions of the Court (under Art. 75 or 77 of the Rome Statute), it is the Court, which is competent to decide on the allocation. In this case the Victims Trust Fund is only the device through which the Court is operating, but the Court has the power to decide on the use of funds. As regards voluntary contributions on the other hand, the Court doesn't have full power over that, but the Victims Trust Fund would be independent in deciding on their allocation.
The administration of the Victims Trust Fund must reflect both these tasks. Earlier proposals had envisaged for this task either the Registry (which would be illogical, because one organ of the Court should not exercise powers that the Court as a whole doesn't have) or the Committee on Budget and Finance (which raised concerns because it consists of financial experts and not of experts on victims' issues). This is why France proposed to establish a Board of Directors as sub-organ of the Assembly of States Parties according to art. 112 paragraph 4 of the Rome Statute. It should consist of 12 members acting on a pro-bono basis. However, France indicated that the number was open to negotiation.
As administrative sub-body for the board of directors France proposed a special unit within the Registry. To maintain the consistency within the administration, the Registrar should have a consultative vote in the Board of Directors.
Delegations expressed their gratitude to France for the proposal. In the following discussion several points were raised. Apart from discussing the size of the board, delegates wished to obtain more information about the financial implications of France's proposal and there were concerns about the workload for the Board of Directors. Delegates agreed that flexible structures for the administration of the Fund were one of the paramount issues.
The CICC Financial Team generally welcomed the French proposal. However, there were concerns that not the whole administration should be within the Registry. The Team suggested to have an executive director for the day-to-day business of the Trust Fund, elected by and accountable to the Board of Directors.

[200] PCNICC/2002/WGFI-VTF/DP.1
[201] PCNICC/2002/WGFI-VTF/DP.1

CONCLUSION

The Issue of the Victims Trust fund will be discussed at the next PrepCom again; several sessions have already been scheduled. Since delegations expressed their intention not to create expensive and inflexible additional structures and since the PrepCom already agreed on the establishment of the new Victims Participation and Reparation Unit, it seems likely that the administrative sub-body of the Board of directors will be within this unit of the registry as proposed by France.

RULES OF PROCEDURE OF THE ASSEMBLY OF STATES PARTIES [202]

INTRODUCTION

Having already been under consideration at the seventh session of the Prepcom, the Rules of Procedure of the Assembly of States Parties (hereinafter "the Rules") were still on the agenda of the eighth session. The draft of the Rules proposed by the Coordinator at the end of the last session[43] served as a basis for discussions in the Working Group. The proposal submitted by Switzerland and 22 other countries[44] during the last session of the Prepcom concerning the participation of Observers had already been integrated in this draft. Another proposal regarding the same issue was submitted by France during the eighth session.[45]

The draft by the Coordinator included a revised version of rule 2, which extended the application of the Rules to Review Conferences, unless otherwise decided. This issue did not give rise to discussions any more. Likewise, many of the modifications contained in the new draft were not subject to controversies, because they were only meant to clarify the text.

As at the last session, the Working Group was chaired by Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran). It conducted one formal and three informal meetings. Unfortunately, these meetings were attended only by few delegations. It concluded its work at the formal meeting with the submission of the draft Rules to the Plenary, where they were later adopted[46]. Having been adopted by the Plenary, the Rules will be submitted to the Assembly of States Parties (ASP) once the latter comes into existence.

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[202] Submitted by Ketevan Khutsishvili (ELSA Georgia), Leonel Santos (ELSA Portugal) and Matthias Goldmann (ELSA Germany) [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]

[43] PCNICC/2001/WGRPASP/RT.1

[44] PCNICC/2001/WGRPASP/DP.1 Proposal submitted by Argentina, Australia, Belgium, Brazil, Canada, Denmark, Finland, Germany, Lesotho, Liechtenstein, Mali, New Zealand, the Philippines, Portugal, South Africa, Spain, the Sudan, Sweden, Switzerland, the Syrian Arabic Republic, Trinidad and Tobago, and the United Kingdom of Great Britain and Northern Ireland – rule 88.

[45] PCNICC/2001/WGRPASP/DP.3 Proposal submitted by France – rules 11, 88, 88 bis, 88 ter.

[46] The final text of the draft Rules has not yet been available in one document. Instead, the reader is asked to refer to documents PCNICC/2001/WGRPASP/RT.1/Rev.1 and Corr. 1 (cf. PCNICC/2001/WGRPASP/L.2).

The deliberations of the Working Group were focused on the following issues:

Establishment of the Secretariat (rule 36/37[47])

As rule 36/37 only describes the tasks of the Secretariat of the ASP and not how it should be established, the Bureau proposed to prepare a separate draft resolution on the establishment of the Secretariat, which would have to be adopted by the Assembly. The Road map,[48] which outlines the further work of the Prepcom, says in its para. 8 that recommendations concerning the Secretariat of the ASP should be prepared by the United Nations Secretariat, respectively by the Coordinator of the Working Group.

Meetings of Subsidiary Bodies (rule 41/42)

The draft prepared by the Secretariat stated in rule 41/42 that the meetings of subsidiary bodies of the ASP and of the Bureau should generally be held in private. In order to provide access for NGOs and other observers to meetings of subsidiary bodies, Switzerland proposed an additional para. 2 bis at the seventh session.[49] According to this proposal, a distinction should be made between formal and informal meetings of Subsidiary Bodies of the Assembly, the former ones being open to observers.

Yet this position could not find much support among the delegations. In the opinion of many of them, if some subsidiary bodies were not even open to all States Parties, there would be no reason to admit observers. Therefore it was not included in the Coordinator's draft.[50]

The Spanish delegation proposed in the informal meetings to make a distinction between subsidiary bodies of general composition and subsidiary bodies in which only a selected number of States Parties is represented. The meetings of the former ones should be held in public, whereas the meetings of the latter ones should be held in private, unless the body concerned decides otherwise.

This position was reflected in the revised draft which served as a basis for discussion in the formal meeting.[51] Rule 42 of this draft made a distinction between the Bureau and subsidiary bodies "with limited membership" (para. 2) on the one hand, the meetings of which should be generally held in private, and subsidiary bodies "which are open to all States Parties" (para. 3), which should hold their meetings in public, on the other.
This version of the text would have left some space for interpretation, due to the ambiguity of the term "which are open to all States Parties": If a body is "open" to all States Parties, it doesn't necessarily mean that they all have to have a vote there. Therefore this paragraph could have probably been applied to a body with limited membership as to the right to vote, but where all States Parties would be allowed to participate in the meetings.

[47] Here and below, the first number refers to the draft PCNICC/2001/WGRPASP/RT.1, the second to PCNICC/2001/WGRPASP/RT.1/Rev.1.
[48] Road map leading to the early establishment of the International Criminal Court, PCNICC/2001/L.2.
[49] PCNICC/2001/WGRPASP/DP.2
[50] Cf. PCNICC/2001/WGRPASP/RT.1 – rule 41 para. 2.
[51] PCNICC/2001/WGRPASP/RT.1/Rev.1

However, some delegations felt uncomfortably with this version of the text. That's why the Philippines proposed in the formal meeting to change the term "bodies which are open to all States Parties" into "bodies with general membership". This version was finally accepted by all States Parties.[52]

By this it was made clear that observers such as NGOs would not be admitted to meetings of subsidiary bodies with limited membership as to the right to vote, regardless of the fact if other States Parties can participate in their meetings or not.

Disciplinary Measures (rule 65/81, 82)

On the issue of disciplinary measures for Judges and Prosecutors, the RT.1- draft of the Rules only provided their removal from office in its rule 65. Since removal from office should be only the last measure to be taken in disciplinary proceedings, Spain suggested that the Rules should provide less incisive measures. Therefore, a new rule was inserted after rule 65/81. This rule refers to rules 26, 27 and 30 para. 2 and 3 of the Rules of Procedure and Evidence. Thus, the disciplinary measures provided therein can be taken against the Prosecutor or Deputy Prosecutors upon decision of the Bureau of the ASP.

Election of Officers of the Assembly (rule 75/77)

Whereas rule 43 para. 2 requires an absolute majority of the States Parties as a quorum for elections, there is no explicit provision in the Rules on the majority required for elections. It is difficult to apply the distinction of the Rules between matters of substance and matters of procedure (rules 61/63, 62/64) on elections. Should elections be considered as procedural matters, an absolute majority would be required. Taking into account the quorum, the question was raised in the NGO team, if 25% plus one of all States Parties can be considered as sufficient for an election. However, the Working Group did not discuss this issue.

Election of Judges (rules 81/85, 82/86; art. 36, 37 SR)

One of the main issues remaining to be uncertain is the election of Judges to the Court. This topic is dealt with in the Rome Statute (Articles 36-37) and in the Draft Rules of Procedure of the Assembly of State Parties (Rules 81-82/85-86). The Rome Statute draws up a general frame of the procedure and does not specify the conditions of the nomination of the candidates by the States Parties and the selection of Judges by the Assembly.

Article 36 of the Rome Statute refers to the qualifications, nomination and election of judges.

Clause 6 (a) of this Article states that:

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

The only clarification regarding the conditions that are to be satisfied by a nominee is given in Article 36.3.b, according to which:

[52] Cf. PCNICC/ 2001/ WGRPASP/ RT.1/ Rev.1/ Corr.1; No. 3.

“Every candidate for election to the Court shall:

1. 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

2. 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.”

In addition, the last provision of Article 36.3 refers to the language abilities of the nominees, stating that:

“Each 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.”

Based on the Statute, each State Party is empowered to nominate only one candidate, who doesn’t necessarily have to be a national of that State but shall be a national of any of the State Parties. Art. 36.4.a further provides that the candidates should be selected either:

3. “By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question;

or

4. By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.”

The mentioned Article 36 contains one more general provision, according to which:

“Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirement of paragraph 3.” (Art. 36.4.a)

The Rome Statute also considers the establishment of an Advisory Committee on nominations, if appropriate.

As can be easily seen, the discussed provision does not specify;

5. whether there will be sufficient information available for the general public on the persons nominated for an election by the States Parties;

6. whether there are requirements that are to be met for drawing line between information on candidatures available or closed to public.

7. whether there is a sufficient time-period guaranteed to allow the States Parties and the public to evaluate the information provided on candidates.

In addition, the Rome statute does not clarify how much time should elapse between the creation of a list of nominees and their election.

The Draft Rules proposed by the Coordinator after the seventh session[1] refer *inter alia* to the election of Judges, of the prosecutor and of deputy prosecutors in rules 81-82. However, these rules simply refer to the relevant articles of the Rome Statute.

Therefore the response these provisions provide to the questions raised above is insufficient.

Despite the continued uncertainty with regard to this issue, the problem at hand was not discussed during the seventh session. Rules 81/85 and 82/86 were not subject to any changes.

This gives the Working Group more than enough reasons to continue the work at the next session of the Prepcom and to clarify a number of the key issues in this regard.
Along with the official documents, there are several other ones, dealing with the questions under discussion, more or less clarifying the issue. These papers are prepared by the CICC as well as by individual NGOs.

Participation of Observers (rule 88/92-95)

Rules concerning the participation of Observers naturally touch vital interests of NGOs. That is why the NGO-team paid particular attention to this issue. And not in vain, for the issue underwent some important developments at this session.

[1] PCNICC/2001/WGRPASP/RT.1.

Under rule 88 of the initial draft submitted by the Secretariat, regional intergovernmental organisations (para. 2), other international bodies (para. 3) and non-governmental organisations (NGOs, para.4) could be admitted to the ASP as observers, under the condition that they had already been invited to the Rome Conference in 1998[2]. However, quite a number of organisations which had not been in Rome in 1998, had meanwhile been invited to the sessions of the Prepcom. It seemed inappropriate to many delegations to exclude them from the work of the ASP.

Therefore, a proposal sponsored by Switzerland and 21 other countries was submitted at the seventh session of the Prepcom.[3] It provided that those regional intergovernmental organisations, NGOs and other organisations which had been accredited to the Prepcom would enjoy observer status with the ASP. Furthermore, it gave the ASP the right to invite new organisations. Likewise, NGOs in consultative status with the Economic and Social Council of the UN would automatically be allowed to participate in the work of the ASP. As this proposal was largely approved, it was included in the draft proposed by the Coordinator after the seventh session.[4]

This draft did still not satisfy in all respects. In particular, it lacked a rule allowing the participation of States others than Observer States: Under art. 112 para. 1 of the Statute of Rome, only states which have signed the Rome Statute or the Final Act of the Rome Conference have observer status with the ASP. Without any further provision in the Rules, all other states would be excluded from the ASP. This was originally meant as an incentive to make states sign the Statute or at least the Final Act. As the delays for signature have all expired, the provision in art. 112 para. 1 has lost its original sense. However, there are 20 states which have signed neither of these documents.[5]

France submitted a proposal concerning this issue.[6] Accordingly, three new rules should be inserted (rules 88, 88 bis and 88 ter), the first dealing with "Observers" (intergovernmental organisations and several other international bodies), the second with "Other participants" (non-governmental organisations and States) and the third with the participation of the UN. Under rule 88 bis para. 2 of the proposal, the ASP could invite a given State being neither State Party nor Observer State. The exclusion of the above-mentioned 20 states would have been avoided thereby. As for NGOs, their rights were not touched by the French proposal. This proposal gave rise to discussions in the informal consultations.

The outcome of these discussions is reflected in the revised draft proposed by the Coordinator.[7] Rule 88 ter of the French proposal, dealing with the UN, became the new rule 35. Section XX., which contains rules 92 to 95, deals with the issue of Observers:

Rule 92 provides that "entities, intergovernmental organisations and other entities" (para.1) as well as "regional intergovernmental organisations or other international bodies" have the right to participate in the work of the ASP. As explained by the Secretariat, "entities" stands for international bodies that have a territory but are not a state, like Palestine, and "other entities" refers to international bodies that are neither considered as international organisations nor have a territory, like the International Committee of the Red Cross. This rule is based on rule 88 of the French proposal and covers all possible international bodies of whatever kind.

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[2] The Rome Diplomatic Conference took place from 06/../1998 to 06/23/1998. ELSA was among the NGOs invited.
[3] PCNICC/2001/WGRPASP/DP.1.
[4] PCNICC/2001/WGRPASP/RT.1.
[5] These are the following states: Buthan, Equatorial Guinea, Granada, Lao Peoples' Dem. Rep., Lebanon, Malaysia, Maldives, Mauritania, Micronesia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Somalia, Suriname, Swaziland, Tonga, Turkmenistan, Tuvalu, Vanuatu.
[6] PCNICC/2001/WGRPASP/DP.3.
[7] PCNICC/2001/WGRPASP/RT.1/Rev.1 from 1 October 2001.

Rule 93 only deals with NGOs, although it has the heading "Other participants". The conditions under which NGOs can be accredited to the meetings of the ASP have remained unchanged since the proposal DP.1 (cf. supra). Regarding the rights which the accredited NGOs may enjoy, the text has been modified in the informal consultations: instead of "may make a limited number of oral statements at the opening and closing meetings of the Assembly" (rule 88 bis para.1 lit. c of the French proposal), the final text reads "may make oral statements through a limited number of representatives" (rule 93 para. 1 lit. c of the draft RT.1/Rev.1). The difference is that, whereas under the former version each invited NGO could have made a limited number of oral statements upon invitation of the President, under the latter version only a few representatives can make statements for all NGOs. This shows that the delegations prefer that NGOs form coalitions like the CICC (Coalition for an International Criminal Court).

Rule 94 of the final text has the heading "States not having observer status" and corresponds to rule 88 bis para. 2 of the French proposal (cf. supra). Finally, rule 95 concerns the distribution of written statements submitted by the organisations and bodies mentioned in rules 92 to 94.
Thus, the Working Group has tackled the issue of observers in a comprehensive and satisfactory manner.

CONCLUSION

From the point of view of the NGOs, the outcome of this Working Group can be considered as satisfactory. In particular, the rules concerning the status of Observers are now much more favourable than they used to be in the first draft of the Rules.

Still, issues like the procedure for the election of Judges or the establishment of the Bureau and the Secretariat of the ASP will need further consideration on the next session of the Prepcom. As is outlined in para. 8 of the Road map,[8] a separate agreement will be drafted by the Prepcom for each of these issues. For that purpose, a new working group called "ASP-PD", which stands for "Assembly of States Parties – Preparatory Documents", will be set up for the next session of the Prepcom. Mr. Saeid Mirzaee-Yengejeh of the Islamic Republic of Iran, who already conducted the business of the Working Group on the Rules, was appointed to be its Coordinator.

List of Documents

*PCNICC/ 2001/ WGRPASP/ L.1 Draft Rules of Procedure of the Assembly of States Parties, prepared by the Secretariat

*PCNICC/ 2001/ WGRPASP/ DP.1 Proposal submitted by Argentina, Australia, Belgium, Brazil, Canada, Denmark, Finland, Germany, Lesotho, Liechtenstein, Mali, New Zealand, the Philippines, Portugal, South Africa, Spain, the Sudan, Sweden, Switzerland, the Syrian Arabic Republic, Trinidad and Tobago, and the United Kingdom of Great Britain and Northern Ireland – rule 88

*PCNICC/ 2001/ WGRPASP/ DP.2 Proposal submitted by Switzerland – rule 41

*PCNICC/ 2001/ WGRPASP/ RT.1 Draft Rules of Procedure of the Assembly of States Parties, Discussion paper proposed by the Coordinator

*PCNICC/ 2001/ WGRPASP/ DP.3 Proposal submitted by France – rules 11, 88, 88 bis, 88 ter

* PCNICC/ 2001/ WGRPASP/ RT.1/ Rev.1 Draft Rules of Procedure of the Assembly of States Parties, Discussion paper proposed by the Coordinator

*PCNICC/ 2001/ WGRPASP/ RT.1/ Rev.1/ Corr.1 Draft Rules of Procedure of the Assembly of States Parties, Discussion paper proposed y the Coordinator – Corrigendum

*PCNICC/ 2001/ WGRPASP/ L.2 Report of the Working Group on Rules of Procedure of the Assembly of States Parties

[8] Road map leading to the early establishment of the International Criminal Court, PCNICC/2001/L.2.

THE AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE COURT [203]

I. INTRODUCTION

As the Court is not an organ of the United Nations Organisation, the Preparatory Commission was called in to draft a specific agreement for the purpose of providing the requisite privileges and immunities for the effective functioning of the Court.

The official working group on the APIC had three formal sessions and seven informal sessions during the 8th PrepCom. The working group was again chaired by Phakiso Mochochoko of Lesotho, the Official UN Coordinator. The CICC team was led by Maria Fariello Laux (Center for the Development of International Law) and Christopher Hall (Amnesty International). The ELSA members on the APIC team consisted of Isabelle Walther from Germany (deputy team leader), Andrej Kristan from Slovenia and Mette Christin Eriksen from Norway. The team followed all formal meetings, took minutes, wrote reports and spent time collecting information from the delegates, contacts were in particular made with the Norwegian, German and Swiss delegation.

Starting point for the discussions in the formal sessions was document PCNICC/2001/WGAPIC/L.1/Rev.1/Add.3, a discussion paper proposed by the Co-ordinator. All in all five formal proposals were made on behalf of the delegations. The delegates focused especially on PCNICC/2001/WGAPIC/RT.2 a discussion paper proposed by the Coordinator on Articles 17 and 19, being concerned with witnesses, victims, experts and waiver. These articles were extended and split up into different parts to take account of the different privileges and immunities needed in order to testify or work on cases.

At the end of the 8th Session of the United Nations' Preparatory Commission for the International Criminal Court the APIC was finalized. This final Draft APIC is contained in document PCNICC/2001/WGAPIC/L.1. It was adopted in accordance with paragraph 5 of resolution F of the Final Act of the United Nations' Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and will be recommended to the Assembly of States Parties at its first session.

[203] The ELSA members on the APIC team consisted of Isabelle Walther from Germany (deputy team leader), Andrej Kristan from Slovenia and Mette Christin Eriksen from Norway.
[Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]

II. REPORT ON THE FINAL PROVISIONS

The considerations and achievements of the APIC Working Group made during the two weeks of the 8th Session of the PrepCom are reported below. This report introduces the proposals and changes made to document PCNICC/2001/L.1/Rev.1/Add.3 as a starting-point of this Session. It does not mention modifications in language or wording that were made for better understanding and clarity. Thus, the primary focus is on provisions of which the meaning was changed as well as those that were added.

a) Definitions of terms (Article 1)

Article 1. Use of terms; Three paragraphs - (l), (n) and (p) - were added:

(l) "Counsel" means defence counsel and the legal representatives of victims;

The insertion of this paragraph is based on the proposal submitted by France in document PCNICC/2001/WGAPIC/DP.4*. Its attempt was to solve definition problems with regard to the term "counsel" in present Art. 18.

Explanation: Rule 22 of the Rules of Procedure and Evidence talks about qualifications of the counsel for the defence. The counsel, in the Rules of Procedure and Evidence, is not necessarily a lawyer in the various countries concerned, but may be a judge, a prosecutor, or a lawyer. "Defence counsel" and "legal representatives of victims" are put together because the Rules of Procedure and Evidence mention them together as they have the same requirements. When you talk about "advocat" in the French text, one uses "counsel" in the English text, this refers to "defence counsel and representatives of victims". The code of conduct applies to all counsel, including the prosecution and the defence counsel and the representatives of the victims. This provision solves definition problems in Art. 18 - Counsel and persons assisting defence counsel - and keeps the terminology consistent.

(n) "Representatives of intergovernmental organizations" means the executive heads of intergovernmental organizations, including any official acting on his or her behalf;

(p) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

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b) Privileges and immunities of the Court as an institution with its own legal personality; (Art. 2 - 12)

Articles 2 to 5, 8 and 12 were not changed. There was also no discussion on these articles.

Article 6. Immunity of the Court, its property, funds and assets; The main issue was related to measures of execution, and the question was raised whether the property, funds and assets of the Court could be subject to execution; should the Court be granted absolute immunity or should it be entitled to waive its immunity - and that even for the purposes of execution - or not. One change was made. The last sentence of paragraph 1: "It is understood that any measure of execution shall require a separate express waiver of immunity."

was replaced with:

"It is, however, understood that no waiver of immunity shall extend to any measure of execution."

The replacement derives from the French proposal in document PCNICC/2001/WGAPIC/DP.4. Its aim was to provide for absolute immunity of execution, which

is common in agreements regarding international organisations (i.e. the Convention on the Privileges and Immunities of the United Nations, the Agreement on the Privileges and Immunities of the ITLOS, the Headquarters Agreement for the ICTY).

Explanation: Discussing immunity, there are two options: one is to provide absolute immunity, the other is to entitle the Court to waive its immunity. It is common that international organizations are granted absolute immunity. Without having absolute immunity pressure could be put on the Court to waive its immunity. In certain cases, the Court could waive its immunity for specific reasons. The possible execution could damage property, funds and assets of the Court and there is no need to emphasize what effects it has on the Court's independence. The new text still entitles the Court to expressly waive its immunity in any particular case but no waiver can extent to any measure of execution. Questions reflecting from the previous text have been raised - such as "What is the point of having a sentence if you cannot execute it?". "Why waiving the immunity in the respect of proceedings if you cannot waive the same immunity with respect to execution?" Nevertheless, the final text provides the ICC with absolute immunity of execution, which is in line with protection granted to other international organizations.

Article 7. Inviolability of archives and documents; There is one significant change in wording that has been made consistent throughout the whole document:

The phrase "documents and materials" was changed to

"papers and documents in whatever form, and materials".

This new phrase derives from the UK proposal that priorly said: "documents, papers and materials in whatever form".

Explanation: delegates tried to find a phrase that includes every kind of materials in paper or other form such as e.g. records, files, body parts and would be more in line with other provisions. The term materials refer to evidence.

In Article 9; Reimbursement of duties and/or taxes; only the wording in the body was changed consistently with the heading: "duties and /or taxes".

Article 10. Funds and freedom from currency restrictions; paragraph 1 (d). Two basic changes were made:

"the most favourably treated" was changed and "foreign mission" was specified in the wording:

"not less favourable than [□] any intergovernmental organization or diplomatic mission"

The changes were made based on the wording in Article 11 (1).

Explanation: The idea is that if there are any favourable facilities relating to exchanges, then those should equally be granted to the Court. Such facilities need not to be created, but the Court should be treated as any other international organization and the Court should not receive worse treatment than any other diplomatic mission. The term "not less favourable" fits all these concerns under one heading and thus adopts to the situation in the particular country concerned. There was also a question of which rate would be accorded to the Court in the scenario where different rates are accorded to different foreign missions. There are various kinds of foreign missions, bilateral and multilateral missions, missions to intergovernmental organizations, diplomatic missions etc.

Article 11. Facilities in respect of communications; paragraph 5

The old version reads: "registered frequencies and those allocated to it, in accordance with their national procedure, by the States Parties concerned". This was changed to:

The Court shall have the right to operate radio and other telecommunication equipment on any frequencies allocated to it by the States Parties in accordance with their national procedure. The States

Parties shall endeavour to allocate to the Court, to extent possible, frequencies for which it has applied.

Explanation: "Registered frequencies" were a reason for confusion. "Does this mean frequencies registered by the UN or by the state government?" As different states allocate frequencies on different grounds. Moreover, "can the ICC directly apply for frequencies at the International Telecommunications Union (ITU) or not?" The problem is, for instance, that the ICTR would not be able to communicate if it was not for the UN satellite link to NY which provides the Tribunal with a telephone line. Delegations agreed on the following: The Court in the normal course of its business will need access to frequencies. The Court will need to apply in the way that everyone else applies for frequencies in that country, and will have to follow the procedures in that country. This is necessary for the Court's use of modern technologies in outreach activities.

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c) Privileges and immunities of the officials and personnel of the Court, and others executing their functions for the purposes of the Court (Articles 13 - 22)

Privileges and Immunities in the Agreement on the Privileges and Immunities of the Court are namely:

a) Immunity from personal arrest or detention;
b) Immunity from seizure of personal baggage;
c) Immunity from legal process of every kind;
d) Inviolability for all official papers and documents in whatever form and materials;
e) Exemption from taxation on the salaries, emoluments and allowances paid to one by the Court;
f) Exemption from national service obligations;
g) Exemption from immigration restrictions or alien registration;
h) Exemption form inspection of personal baggage;
i) Privileges in respect of currency and exchange facilities;
j) Repatriation facilities in time of international crisis;
k) Duty and tax free imports;
l) Receive and send materials;
m) Other facilities necessary for the exercise of their functions;

The categories covered by separate articles are:

- Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organisations; (Article 13)
- Representatives of States participating in the proceedings of the Court; (Article 14)
- Judges, Prosecutor, Deputy Prosecutor and Registrar; (Article 15)
- Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry; (Article 16)
- Personnel recruited locally and not otherwise covered by the present Agreement; (Article 17)
- Counsel and persons assisting defence counsel; (Article 18)
- Witnesses; (Article 19)
- Victims; (Article 20)
- Experts; (Article 21)
- Other persons required to be present at the seat of the Court; (Article 22)

Articles 13 to 16 were not changed significantly.

Article 17. Personnel recruited locally and not otherwise covered by the present Agreement; The final provision is similar to previous Article 15 bis which covered personnel recruited locally and "assigned to hourly rates". Evidently, this last phrase was changed to:

"not otherwise covered by the present Agreement"

Explanation: The question was who is actually "recruited locally and assigned to hourly rates". There are also other arrangements than hourly rates, in practice no one is actually assigned to hourly rates anymore, with the exception of maybe gardeners. It is e.g. common practice at the ICTY that locally recruited personnel enjoys UN staff immunities (although no privileges) and persons on hourly rates are not regular staff and normally do not enjoy UN immunity. Therefore, it was better to not pinpoint it down to hourly rates but to those persons otherwise not covered by the present Agreement. This also evades the term "temporary recruited personnel", as this was proposed but would have caused the same definition and immunity problems. A specific problem arising, if personnel locally recruited would not be accorded functional immunity, would have been that bag-carriers, short-time translators, truck drivers and the like would not be willing to cooperate with the Court as they might fear for their life and safety. The final wording seems to be the right answer in avoiding any problems and according immunity to all those not belonging to the regular staff of the Court and not fitting under any of the other Articles.

Article 18. Counsel and persons assisting defence counsel; For the introduction and explanation of changes made to this Article refer to Article 1 (1) (l).

Articles 19 - 22 are new. Prior to this, the issue of witnesses, victims, experts and other persons was covered within one Article.

Article 19. Witnesses and Article 20. Victims; These categories of persons were split up into different Articles, as their needs of P&I differ greatly from experts and officials of the Court. As a distinction to victims, witnesses are in addition to the general P&I also granted inviolability of papers, documents in whatever form and materials, communication privileges and repatriation facilities. Since they might also carry evidence and give specific information, that might lead to problems in their home country or a state they are traveling through. In case a witness is at the same time a victim it can enjoy the additional immunities. On the other hand persons falsely claiming victim hood cannot smuggle materials or documents, but victims are still protected to the extent necessary.

Article 21. Experts performing functions for the Court; A wide variety of P&I was granted to experts to order to enable them to effectively and in the best way possible carry out their functions. Firstly, victims, witnesses, experts and other persons were all dealt with in one Article (Art. 17, see Add.3) and needed to be present at the seat of the Court to be covered. This general requirement fell away and with regard to the issue of experts two Articles evolved, namely Art. 18 dealing with experts and other persons required to be present at the Court and Art. 19 dealing with experts on mission. The distinction between experts and experts on mission was omitted, whereas the proposal of referring to experts before the Court was refused due to ambiguity. The final draft Art. 21 now covers all kinds of experts under the term performing functions for the Court. This also to some extent defines the issue of experts as this term is not included in the Rules of Procedure and Evidence.

Article 22. Other persons required to be present at the seat of the Court; This Article covers unforeseen categories of persons. It is important to include those as all persons called upon to assist the Court need to be covered in order to carry out their function without impediments.

Articles 24 and 25 are also new. Formerly, there was only one article on waiver (Art. 19). It is repeated in both Articles that P&I are granted in the interest of the good administration of justice and

not for the personal benefit of the individuals themselves. The former article on waiver did not include the Representatives of State Parties.

Article 24. Waiver of privileges and immunities provided for in articles 13 and 14; This Article covers the waiver of privileges and immunities provided for Representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organizations (Article 13) and for Representatives of States participating in the proceedings of the Court (Article 14). In cases where P&I would impede the course of justice States are according to this Article under the duty to waive all respective P&I of their representatives.

Article 25. Waiver of privileges and immunities provided for in articles 15 to 22; This article is based on previous Article 19 on waiver. However, quite a few changes were made, as there were various unanswered questions concerning the previous text, in particular with regard to the question which organ of the Court can waive which P&I of the persons concerned. Especially with regard to counsel the discussion proved to be extensive. The final Article covers the waiver of privileges and immunities provided for and waived by:

a) In the case of a judge or the Prosecutor (Art. 15), by an absolute majority of the judges;
b) In the case of the Registrar (Art. 15), by the Presidency;
c) In the case of the Deputy Prosecutor and the staff of the Office of the Prosecutor (Art. 15 and 16), by the Prosecutor;
d) In the case of the Deputy Registrar and the staff of the Registry (Art. 16), by the Registrar;
e) In the case of personnel recruited locally and not otherwise covered by the present Agreement (Art. 17), by the head of the organ of the Court employing such personnel;
f) In the case of counsel and persons assisting defence counsel (Art. 18), by the Presidency;
g) In the case of witnesses and victims (Art. 19 and 20), by the Presidency;
h) In the case of experts (Art. 21), by the head of the organ of the Court appointing the expert;
i) In the case of other persons required to be present at the seat of the Court (Art. 22), by the Presidency.

There is a duty to waive privileges and immunities in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

Article 26. Social security; This Article is new and was included in order to avoid that there will be double contributions in that officers of the Court will be forced to pay social security contributions in the State in which they operate as well as in their home country. The ICTY agreement also provides for a social security contribution exemption It goes back to a proposal of the UK in DP.6.
From the date on which the Court establishes a social security scheme, the persons referred to in articles 15, 16 and 17, namely

- judges, prosecutor, deputy prosecutor and registrar (Article 15),
- deputy registrar, staff of the office of the prosecutor and staff of the registry (Article 16) and
- personnel recruited locally and not otherwise covered by APIC (Article 17)

shall, with respect to services rendered for the Court, be exempt from all compulsory contributions to national social security schemes.

Article 28. Laissez-passer; Besides the United Nations laissez-passer the Court may now issue its own travel document to the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, the Deputy Registrar, the staff of the Office of the prosecutor and the staff of the Registry. According to this provision, either of them shall be recognized by the States Parties as valid travel documents. Thus, the person concerned may chose which it will use to travel depending on which might give more comfort to use. The UN or the Court might be differently regarded in different countries, the ICC might not be accepted but the UN or the other way around depending on the specific political situation. Also, some states e.g. are happy as soon as some sort of stamp appears on a piece of paper and do not ask any

more questions, others such as France do not even recognize the official UN laissez-passer but ask for a passport. All these issues are also important concerning needed visas. The final Draft of the Relationship Agreement between the UN and the ICC now provides for the recognition of the laissez-passer as long as it is recognized by the State Party concerned, thus already including the possibility of refusal.

Article 30. Settlement of disputes with third parties;
The Court shall, without prejudice to the powers and responsibilities of the Assembly under the Statute, make provisions for the appropriate modes of settlement of:

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

The wording "without prejudice to the powers and responsibilities of the Assembly under the Statute" in the first sentence of this article is new. The previous expression was "on the basis of general guidelines to be approved by the Assembly".

Article 31. Settlement of differences on the interpretation or application of the present agreement; There is no significant difference. Although, in paragraph 3, should the first two members "fail to agree upon the appointment of the chairman of the tribunal within two months" [instead of: three] following their appointment, "either party may invite" [instead of: the chairman shall be chosen by] "the President of the International Court of Justice" to choose the chairman. As the APIC cannot dictate under what circumstances the ICJ shall make a decision on something.

Article 32. Applicability of the present agreement; This Article is the result of extensive discussions on previous Article 12 bis, titled Crimes under the jurisdiction of the Court. It was revised numerous times. The final version reads:
The present agreement is without prejudice to relevant rules of international law, including international humanitarian law.
It is important that it was finally decided to include this Article as the sanctity of the Rome Statute needed to be ensured. The Article is a clear statement that there exist no P&I for crimes under international law including those under the jurisdiction of the Court.

Article 35. Amendments; This article is totally new and is based on the proposal DP.7 by the UK and Northern Ireland. It reads:

1. Any State Party may, by written communication addressed to the Secretary-General, propose amendments to the present Agreement. The Secretary-General shall circulate such communication to all States Parties and the Bureau of the Assembly with request that States Parties notify the Secretary-General whether the favour a Review Conference of States Parties to discuss the proposal.
2. If, within three months from the date of circulation by the Secretary-General, a majority of States Parties notify the Secretary-General that they favour a Review Conference, the Secretary-General shall request the Bureau of the Assembly to convene such a Conference in connection with the next regular or special session of the Assembly.
3. The adoption of an amendment on which consensus cannot be reached shall require a two-thirds majority of States Parties present and voting, provided that a majority of States Parties is present.
4. The Secretary-General shall circulate to all States Parties and signatory States any amendment adopted at the Review Conference.

5. An amendment shall enter into force for States Parties which have ratified or accepted the amendment sixty days after two thirds of the States which were Parties at the date of adoption of the amendment have deposited instruments of ratification or acceptance with the Secretary-General.
6. For each State Party ratifying or accepting an amendment after the deposit of the required number of the instruments of ratification or acceptance, the amendment shall enter into force on the sixtieth day following the deposit of its instrument of ratification or acceptance.
7. A State which becomes a Party to the present Agreement after the entry into force of an amendment in accordance with paragraph 5 shall, failing an expression of different intention by that State:
    a) be considered a party to the present Agreement as so amended; and
    b) be considered a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

III. CONCLUSION

All in all, the work done at this PrepCom has been very sufficient, delegations spend long evenings in the meeting rooms in order to sort out differences and ambiguities and to solve problems. It can be stated that this document strikes a balance between the different standpoints of the delegations.
The overall goal of the ICC is “to put an end to impunity for the perpetrators of these crimes and to contribute to the prevention of crimes”. The APIC is surely a step towards ensuring the effective functioning of this Court and define the legal status of the Court and its staff. The APIC serves to provide for the smooth functioning of the Court without impediments - in order for officials of the Court to carry out their work as envisioned, both at the seat of the Court as well as for the time spend on journeys. A wide variety of P&I were granted to ensure the safety of persons - working in a high risk environment such as experts or officials of the Court or being in vulnerable positions like victims, witnesses or locally recruited staff - from arbitrary arrest or danger to life. There has never been drafted a legal instrument that could have been called perfect. But it is clear that this Agreement serves its purposes well and includes all concerns as well as practical knowledge communicated by experts of the ICTs.

THE RELATIONSHIP AGREEMENT BETWEEN THE COURT AND THE UN [204]

Introduction

As stated in article 2 of the Rome Statute « The Court shall be brought into relationship with the United Nations through an agreement» The Relationship Agreement will regulate the working relationship between the Court and the UN and make sure the Court is independent in order to guarantee it's effectiveness.

In the Eighth Session of the Preporatory Commission the work with the Relationship Agreement was to be finished and an adoption of a finalised version of the agreement was going to occur.

As basis for the working group was used the draft Relationship Agreement discussion paper as proposed by the Coordinator Christian Maquieira from Chile, at the end of the 6th PrepCom (27 november –8 december 2000) also used in the 7th session. Annex II (*A draft relationship agreement between the Court and the United Nations)*[26] This later resulted in a revised version at the end of the 8th PrepCom.[27]

The working group held two formal meetings on the 25th of September and the 4th of October and three informal meetings on the 26th, 27th September and on the 2nd of October. The delegations also met in a number of «informal informals».

The CICC working group was led by Bruce Broomhall (Lawyers Committee) and Pam Spees(Women's Caucus for Gender Justice) and held meetings on a daily basis. The Team paid particular attention to the concerns raised by Amnesty International in its paper titled *Concerns at the Eighth Session of the Preparatory Committee*[28]. Several controversial issues in respect to the Relationship Agreement were identified. The main focus of the working group became article 19 [8] in the draft agreement which deals with the cooperation between the Court in cases of exercise of the Court of its jurisdiction over persons enjoying priviliges and immunities in connection with their work for the United Nations. This article was not discussed att he 7th Prep.Com due to the coordinators wish to deal with it in the Eighth session instead. This article provoked a lot of controversy from the beginning when it was proposed and continued to do so at this Prep.Com, also among the NGO's. This will be outlined in further detail in this paper. Also article [13] which concerns the request for an advisory opinion from the International court of Justice was something that of greater focus although there were proposals to the draft, the article was completely dropped at the end. A further outline of these issues will follow in this paper.

Historical Background
The idea of writing a short summary of what has happened in the realtionship agreement previous to this Prep.Com is simply to give the chance to those reading the paper who have not been present at the Prep.Comms to have an idea and a clue of what is dealt with. From personal experience I know it is difficult to sometimes understand issues without knowing the background. As a basis I've used old ELSA reports from the 6th and 7th PrepCom and I apologize if i won't get everything right.

[204] Submitted by: Gonçalo Matias (ELSA Portugal); Inês Marinho (ELSA Portugal); Jenny Pipponen (ELSA Sweden); Paola Sachi (ELSA Italy). [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]
[26] PCNICC/2001/L.1/REV.1/Add
[27] PCNICC/2001/WGICC-UN/RT.2
[28] Concerns at the Eighth Session of the Preparatory Committee (by Amnesty International)

As already mentioned the Coordinator of the working group Christian Maquieira from Chile was at the end of the 6th PrepCom to propose a discussion paper on the Relationship Agreement between the ICC and UN to be used in the further work at the 7th and 8th Sessions of the PrepCom. It is thought that the ICC will be an independent institution and will not be a UN organ but at the same time there is a need for close realtionship with other UN institutions. Therefore this Relationship Agreement is of great importance.

The main concern of the 6th PrepCom seemed to have been the US position. Due to the fact that the Relationship Agreement is a very political issue it has been very influenced by the «US issue»- *the hypothetical potential for the ICC to prosecute US nationals even while the US remained outside the treaty*,[29] as explained in the ELSA report from the 6th PrepCom. US was on of the countries that voted against the ICC Treaty in Rome on July 1998. Since the establishment of the treaty the US has been trying to find a legal way to protect its own nationals from prosecutions by the ICC. At the end of the Rome conference the US made final proposal : «*the request of consent of the State of the Nationality of the accused will only be necessary if that state claimed that the alleged crimes were committed in the course of official duties»*[30] Need I say that the US has still not ratified the Rome Statute, whilst 43 countries now have. [31]

In general the draft Relationship Agreement proposed was by many delegates found to cointain unneccessary repetition of the Rome Statute and came with many proposals to shorten the text. This with respect to the integrity of the Statute. This was one of the issues discussed in the 7th Prep.Com and there were some significant changes in language proposed. Pointing out that the wording is of course of great importance. Further article 8 (the new article 19) was postponed to the Eighth session due to its great consumtion of time in the 6th PrepComm. Although the issue was not discussed in the formals the working group did some analysing during team meetings and came to the conclusion that the reference tot he wording» waive the immunities» (Norways proposal –PCNICC/2001/WGICC-UN/DP.2) could lead to an interpretation of possible existence of immunties over the crimes covered by the Statute and «relevant norms of international law» (PCNICC/2001/WGICC-UN/DP.7)[32] is thought to potentially reduce the UN's actuation range on this matter.

I will not go into further detail about the proposals since you can read these in the previous ELSA reports..[33]

Article [13]

Article 13 was one of the most important and discussed issues during the 8th Prepcom. Problems concerning it were addressed both at the two formals[34] held and also in the last plenary.

This article was discussed previously in the 6th and 7th Prepcoms[35]. During the last one, two proposals were made and were included in the appendix of the draft[36]; one by Bahrain (proposal A)[37] and another one by Brazil, Colombia, Mexico and Spain (Proposal B)[38].

Proposal A stipulated that:

[29] ELSA report from the 6th PrepCom (27 nov-8 dec 2000) RA-ICC-UN
[30] ELSA report of the 6th ICC prepCom (27 nov-8 dec 2000)
[31] now, being 13 october 2001
[32] ELSA report of the 7th ICC prepCom
[33] ELSA report of the 6th and 7th PrepCom
[34] The first formal was held on the 25th of September and the second on the 4th October
[35] As it is reported in the ELSA Report of the VI Prepcom and the CICC´s report of the VII Prepcom
[36] PCNICC/2001/L.1/Rev.1/Add.1
[37] PCNICC/2001/WGICC-UN/DP.6.
[38] PCNICC/2001/WGICC-UN/DP.8.

The United Nations and the Court agree that a recommendation by the Assembly of States Parties under paragraph 2 of article 119 of the Statute or an initiative by the Court to refer to the International Court of Justice a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter.

Proposal B, on the other hand, stipulated that:

The General Assembly of the United Nations, in accordance with Article 96 of the Charter, shall take the necessary steps to enable the Assembly of States Parties to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of its activities, with the exception of a question that concerns the exercise by the International Criminal Court of its judicial competence or the mutual relationship between the Court and the United Nations.

The main concerns caused by these proposals were related with their compatibility with the Rome Statute and the UN Charter. This was made clear during the first formal meeting, by several delegates; even tough some delegates favoured and were willing to accept proposal A.

Concerning proposal A, it was stated that, because the ICJ is not meant to deal with criminal proceedings, its proceedings were structurally different from the ICC's. Furthermore, it was argued that the possibility that is given to the ICC to ask for an advisory opinion to the ICJ was not in accordance with article 119, para.2 of the Rome Statute, that states that it is the Assembly of Parties that has the power to referral to the ICJ.

With respect to proposal B, similar remarks were made. Again, the compatibility of the proposal with the Rome Statute and the UN Charter was the main issue discussed by the delegates. Some delegates even stated that the text of the proposal was an amendment to article 119 of the Statute.

Proposal B is more restricted than Proposal A, as it only gives initiative to the Assembly of States Parties and not also to the ICC.

This proposal also raised some interpretation problems, specially in what concerns the scope of its last part[39]. The question was if it extended to aggression. It was clarified that the crime of aggression was not within the scope of proposal B.

Both proposals ended up being very controversial and the article was completely deleted from the text adopted in the Plenary, on the 5th of October. Presently, any disputes over the Statute's interpretation or application is resolved by the mechanism set under article 119 of the Rome Statute[40].

Article 10 [16]

In the first formal meeting it was discussed the proposal made by France during the previous PrepCom.
Several delegations(specifically: Belgium, Cuba, Germany and Chile) agreed in mainteining the third paragraph of the Coordinator's text additionally to the three paragraphs of the French proposal.
The delegation of Austria suggested to replace the word "Organisation" with "UN", this delegation was supported by others.
(During the discussion the Chairman, on demand, specified the difference between the term "agreement" (contained in art.16) and "arrangement"(contained in art.18).

[39] "... with exception of a question that concerns the exercise by the International Criminal Court of its judicial competence or the mutual relationship between the Court and the United Nations."

[40] Which states that – "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 trough 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, including referral to the International Court of Justice in conformity with the Statute of that Court."

He underlined that an "agreement" is a more formal agreement between the UN and other organisations while "arrangements" are secondary arrangements concluded by UN programmes which cover more techincal issues.)

Article 13 [18]
This article concerns the financial matters. The proposal on this article from France woke some questions from different countries. In particular the second sentence of proposed para 1. This was believed to be intended to implement Article 115 of the statute , which states that the provision of funds by the UN is subject to approval by the GA. Since article 18 deals with this, it was believed that what is said in the proposal that it should be submitted to both ASP and GA was very "cumbersome". Another question was whether the proposal´s intention was to "separate voluntary contributions from the UN funds, why is 116 not covered"[41] After this the chairman closed the subject. An agreement must have been reached since there was no more mention of this article.

Article 19 [8]

Article 19, previous article 8, is one of the most controversial in the present agreement. During the last PrepComs some delegations questioned the existence of this rule. In acordance with article 27 of the Rome Statute, no immunities are considered under the jurisdiction of the Court.

Article 19 states as follows:

Rules concerning United Nations privilieges and imunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, acording to the relevant rules of international law, any priviliegies and imunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and imunities.

On the first formal session of the 8Th PrepCom, held on 25th September 2001, the discussion among delegates was about the French proposal presented on document PCNICC/2001/WGICC-UN/DP6. This proposal was to add two new paragraphs to the previous text of article 8. As follows:

Paragraph 2

If the court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the Organization undertakes to cooperate with the Court and, if necessary, will waive that person´s obligation of confidentiality. The Secretary-General may request the Court to take all necessary measures to ensure the person´s protection, guarantee the confidentiality of any information and documents which he or she may transmit to the Court, and safeguard the security of any operation or activity of the United Nations concerning which the person might testify before the Court.

Paragraph 3

The Secretary-General may be authorized by the Court to appoint a representative to assist any official of the United Nations who is summoned to appear as a witness in proceedings conducted by the Court.

In general, the delegates agreed with this proposal but Austria remarked that it should be placed in a separate article as it concerns confidentiality and not immunities.

[41] Page 5.minutes from Plenary, Relatonship Agreement, Septemer 25th 2001

During informals, the coordinator, Mr. Maquieira, urged the delegates to finalize the agreement during the present session of the PrepCom. As so, they decided to drop the French proposal as the Portuguese proposal to include, in the body of the text, a reference to article 27 of the Rome statute. The outcome was, then, to aprove the text as it was.

The NGO working group worked hard to alert delegates about the risks of such a solution. As mentioned in several reports, namely the one from Amnesty International[42], this article could lead to a practice of imunities granted by States and possible arrangements between a State and United Nations to establish such imunities. This NGO position was stated in a non-paper presented to delegates where the working group sugested a reference to the question in the preamble. This solution was not considered by delegates. They argued that the reference "relevant rules of international law" was suficient.
Finaly, at the last formal session, the whole text was adopted as it was previous article 8, new article 19. Nontheless Portugal and other five delegations stated for the records that they interpret article 19 without prejudice to article 27 of the statute, therefore " the UN cannot waive immunities that do not exist". This same statement was made by Portugal at the final Plenary held on 6th October 2001.
The article was adopted as it was previously considered, having, on the records, the remark from several delegations to aticle 27 of the Rome Statute.

Conclusions

The Relationship Agreement between the Court and the UN was adopted at the 8th session of the PrepCom. Mainly it was possible due to the effort of delegates and the Coordinator Mr. Maquieira. Even though, some questions seemed not to have been solved. Article 13 has been deleted and presumably needs to be worked by the Assembly of States. That is the most undefined question postponed for future discussions as it was secificaly mentioned by Mr Maquieira. Article 8 was adopted with some remarks from several delegations.
However we have to underline the outstandig results achieved by delegates during 8th Prepcom, another great step towards the implementation of the Court.

[42] *Concerns at the Eighth Session of the Preparatory Committee* (by Amnesty International)

ELEMENTS OF CRIMES [205]

Introduction

The UN Preparatory Commission for the International Criminal Court (PrepCom), established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at UN Headquarters in New York from 12 to 30 June 2000, in accordance with General Assembly resolutions 53/105 of 8 December 1998 and 54/105 of 9 December 1999. Resolution F mandated the PrepCom to finalize the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes before 30 June 2000. This is why this session was particularly important and the matters discussed were very sensitive. The main tasks of the NGO team during the meeting were to monitor discussions in the EC working group; prepare daily reports about the proceedings of the EC working group; and prepare draft statements, rolling texts, opinions, studies or other comments about "burning questions" for the distribution among country representatives as well as among CICC member groups.

The PrepCom working group on Elements of Crimes was co-ordinated by Herman von Hebel (Netherlands). In the following, the main issues facing the working group will be shortly presented and some changes in the opinions and alternative proposals will be further presented. The draft text of the EC as adopted by the PrepCom will also be presented.

Outstanding issues

The work concentrated purely on the part of crimes against humanity, as the crime of genocide and war crimes were extensively discussed in previous meetings. During the June meeting many delegates were concerned about the interpretation of the words "a policy to commit such attack" in the Rome Statute, article 7, chapter 2(a). The chapeaux in the EC, Crimes against Humanity described such a policy as requiring "that the State or organization *actively promote or encourage* such conduct as an attack against a civilian population." Many delegates were afraid that this language was narrower than the language in the Statute and that it would unnecessarily restrict the Court's ability to prosecute crimes, which resulted from deliberate negligence or acquiescence by a State or organization.

On the crime of extermination, 7 (1) (b), there was a disagreement whether this crime *required death* as a result or not. On the crime of enslavement, 7 (1) (c), the debate began on whether the *list of examples* of enslavement in the footnote 11 should be altered or deleted. In the crime of deportation or forcible transfer of population, 7 (1) (d), the need to include condition, that the perpetrator deported or forcibly transferred one or more persons *"without grounds permitted under international law"* was outlined. There were also concerns expressed that the word "forcibly" should not be restricted only to physical force.

On the crime of torture, 7 (1) (f), the problem was raised whether the *element of purpose* is needed here.
On the crimes of rape, 7 (1) (g)-1, sexual slavery, 7 (1) (g)-2, enforced prostitution, 7 (1) (g)-3, forced pregnancy, 7 (1) (g)-4, enforced sterilization, 7 (1) (g)-5, and sexual violence, 7 (1) (g)-6, the need to ensure their *consistency with similar crimes under war crimes* was expressed.
On the crime of persecution, 7 (1) (h), some delegates expressed their concerns, that "fundamental rights" should be "universally recognized" in order to narrow the scope of possible actions. In the alternative

[205] Report submitted by Giedrius Sabaliauskas. [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.] The term "team" is used to describe group of people *within* CICC who were working on the certain topics the PrepComm was working on. The term "working group" is used to describe meetings of the country representatives (not the CICC people) on certain PrepComm topics. There was a team working on the Elements of Crimes as well as a working group.

some countries proposed to broaden the meaning of this element by replacing the word “fundamental” with “any”. Some delegates also proposed the *inclusion of the targeting groups* for this crime.

On the crime of enforced disappearances, 7 (1) (i), many delegates wanted to ensure that, given that this crime is often carried out by several persons as part of a common criminal purpose, *each person participating in the commission of this crime could be held responsible* for his/her actions. Another important issue concerned the *temporal jurisdiction (ratione temporis)* of the Court over this crime. Various delegations as well as the coordinator of the working group during the first two meeting days mentioned these issues. Most of the compromise work was done during informal consultations, which were closed to observers. Nevertheless all the official documents and proposals were available for everyone.

Work of the team and the outcome of the working group

To make the observational work more efficient, the CICC teams were preparing reports for daily CICC strategy meetings. Most of these reports were oral, but at the same time the team prepared several written reports. [206]

1. One of the most sensitive issues was in the Chapeaux, the “actively promote or encourage” phrase. Most countries initially agreed that this wording had to be modified. But due to a strong Islamic group opposition, the delegations could not reach the common solution. Countries presented many alternative proposals. The Canadian proposal suggested changing these words with “direct, instigate or encourage” or “deliberate failure to prevent crimes”. Thailand proposed to change the mentioned phrase with "encourages or directs". The EC team has prepared an extensive study of these proposals according to the dictionary meaning and also from the point of ICTY and ICTR jurisprudence. There was also a suggestion from the delegates to add the last sentence to the first paragraph of the article 7 that, “the term ‘policy to commit such attack’ requires that the state or organization *consciously adop*t, whether formally or not, a definite policy to commit an attack against a civilian population”. The EC team prepared a written comment on this proposal as well. At the end of the discussions the "actively promote or encourage" language was retained, but a footnote was added which indicates that "such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action."

On the crime of extermination, it was decided that this crime required death as a result. Three footnotes were retained to further clarify 1) that the killing could be carried out directly or indirectly; 2) that the infliction of conditions could include the deprivation of access to food and medicine; and 3) that the term "as part of" in the context of the language "the conduct constituted, or took place as part of, a mass killing of members of a civilian population", includes the initial conduct in mass killing.

3. On the crime of enslavement, the list of examples was not altered and the clarifying footnote was maintained, with one addition. The footnote to this element, with the recent addition, now reads: "It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labor or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children." This footnote was also added to the crime of humanity of sexual slavery, and the war crimes of slavery and sexual slavery.

[206] The survey of initial government proposals of 15 June 2000; Crimes against humanity Chapeaux issue on “actively promote or encourage”, survey on alternative proposals of 21 June, 2000; The survey on alternative proposal to add new final sentence in article 7, para 1.

4. On the crime of deportation or forcible transfer of population, it was decided to include the wording "the perpetrator deported or forcibly transferred, *without grounds permitted under international la*w, one or more persons to another State or location, by expulsion or other coercive act". A footnote was also attached to the term “forcibly” here and in other parts of the Elements. It reads "The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."

5. On the crime of torture, while the war crime of torture requires that the conduct be committed with a purpose, it was determined that for the crime of humanity of torture "that no specific purpose need be proved for this crime."

6. A footnote was added to sexual slavery to indicate that "Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose." One footnote to enforced sterilization was changed to indicate that this particular deprivation "is not intended to include birth control measures which have a non-permanent effect in practice" (as opposed to a "short-term effect"); another to indicate that "genuine consent" for this crime does not include consent obtained through deception.

7. On the crime of persecution, as with other crimes, it was decided that the term fundamental rights need not be modified in the elements by "universally recognized" or any other formulation, given the compromise worked out in the chapeau regarding universal recognition of crimes against humanity. There were no targeting groups specified in these elements as well.

8. Finally, on the crime of enforced disappearances, the text underwent significant redrafting and it was ensured that each person participating in the commission of this crime could be held responsible for his/her actions. Concerned the temporal jurisdiction of the Court over this crime, it was decided, that this “crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute."

All the work of the EC team was coordinated by Christopher Hall (Amnesty International) and Helen Duffy (Human Rights Watch). They were assisted by co-deputies Barbara Bedont and Brigita Suhr (Human Rights Watch).

RULES OF PROCEDURE AND EVIDENCE [207]

Rules of Procedure - Parts 2, 9, 10 and Paragraph 4 30

This report summarizes activities and outcomes relating to the team mandate, dealing first with Article 98 (the lead issue in Part 9) and Paragraph 4, and then with Part 2, the remaining issues in Part 9, Part 10 and Part 13. A number of people contributed to this team, including Richard Dicker and Bruce Broomhall (co-leaders), Jeanne Sulzer, Indira Rosenthal, Lars van Troost, 'the ELSA team', John Washburn and a number of others.

Article 98 (Part 9) and Paragraph 4

Documents:
PCNICC/2000/WGRPE(9)/DP.4* (13 June 2000) (United States)
PCNICC/2000/WGRPE(9)/RT.2 (28 June 2000) (Coordinator's text)

At the March PrepCom, the United States circulated a two part proposal intended to prevent the surrender of US nationals to the ICC. The proposal aimed, first, to insert into the Rules of Procedure and Evidence a provision to allow the Court – and not only States, as contemplated by Article 98 of the Statute – to enter into agreements preventing surrender to the ICC. The proposal would then, second, insert text into the Relationship Agreement between the UN and the ICC that would require the approval of the government of a non-State Party before the Court could seek surrender or receive custody of an individual acting under that government's direction. The proposal was never formally addressed at the March session, although a footnote was introduced in Part 9 to allow the US to propose a rule to Article 98 at the June session. NGOs produced a 'non-paper' criticizing the US proposal on both formal and substantive grounds.

To appreciate debates that took place at the March and June PrepComs, it is important to understand Article 98(2). Article 98(2) provides an exception to the general duty of States Parties to cooperate with the ICC. The article allows certain international agreements to take priority over surrender requests from the ICC, with the result that an individual is returned to a 'Sending State' rather than transferred to the ICC (unless the Sending State consents otherwise). The provision was included in the Statute primarily at US urging, in order to give it the option of using Status of Forces Agreements ('SOFAs') to bypass the ICC. The provision therefore encompasses agreements such as those between individual States (bilateral SOFAs) or those between individual States and NATO (NATO SOFAs). In order to use the provision as the basis for a more general attempt to win an exemption from ICC jurisdiction, the US required a broader interpretation that would allow the ICC itself to enter into agreements encompassed by Art. 98(2). The US proposal for such a rule in March, like its proposal DP.4* in June, was aimed to entrench such an interpretation in order to open the door to the negotiation of a later agreement between the ICC and the UN. The work of NGOs and leading Like-Minded States was aimed at ensuring that any rule for Article 98(2) respected the limits of the Statute, which does not encompass agreements entered into by the Court. Between the March and June PrepComs, the NGO Coalition and individual members of the Coalition sent letters to capitals around the world asking governments to resist the adoption of the proposed US rule of procedure, and to express their objection to the substance of the US proposal (see http://www.iccnow.org/html/cicc200005.html, and http://www.lchr.org/media/iccus52500.htm). At the same time US officials, including Secretary of State Madeline Albright, put pressure on governments to support their proposal.

[207] Report submitted by Jochen Prinsen. [Edited and updated by Espen Rostrup Nakstad (ELSA International) April 2003.]
Rules of Procedure and Evidence; PCNICC/2000/1/add.1 - Elements of Crimes; PCNICC/2000/1/add.2

At the beginning of the June PrepCom, it was clear that the United States would rely upon the 30 June deadline for adoption of the Rules of Procedure and Evidence to seek the first part of its proposal (the rule for Article 98). It was unclear whether the US would also seek agreement in principle on the second, substantive part of its proposal (the Relationship Agreement text). It was evident that negotiation of the US proposal would take place in the context of an overriding desire on the part of the Bureau to have the Rules of Procedure and Elements of Crimes adopted by consensus. Many delegates also wished to keep the United States engaged in the PrepCom process and, despite having serious reservations about the content of the US proposal, were concerned that outright rejection of the US initiative would make such engagement impossible. These two factors were important in setting the tone at the session. The United States made a lengthy statement in introducing DP.4*, its proposed rule for Article 98, in the Working Group on the Rules of Evidence and Procedure on Part 9 on Monday, 19 June 2000. In his statement, Ambassador Scheffer repeatedly emphasized that the rule should be examined "on its own merits" and that its adoption did not entail acceptance of any particular language in any other international agreement (such as the Relationship Agreement text proposed in March). In order to delay criticism and to allow negotiations to move ahead on another track, the Coordinator ensured that there was no discussion at that meeting of the Working Group.[208]

However, a Working Group debate took place on the afternoon of Friday, 23 June. Out of 45 countries that expressed views on the US proposed rule for Article 98(2), 87% (39 countries) raised concerns about the compatibility of the rule with the Rome Statute. A number of countries also expressed skepticism about the absence of a link to another (e.g. Relationship Agreement) text. Delegates and NGOs recognized that the US statement, by claiming to separate the Article 98 rule from the Relationship Agreement text, was a clear sign that the second, substantive part of the proposal would not make its appearance until the next PrepCom session in November. Over the weekend of 24-25 June negotiations took place on alternative text that both the United States and the Like-Minded group of countries might be able to accept. [209]

After several days of consultations, the Coordinator (Phakiso Mochochoko, Lesotho) produced a text acceptable to the US that the European Union considered at its meeting on Wednesday 28 June. The EU agreed that the text would be acceptable, provided that a proviso were adopted in the Report on the proceedings of the PrepCom indicating that the rule should not be interpreted as requiring the negotiation of provisions in any particular international agreement. The Like-Minded group adopted the same position the next day. Following this agreement, the Coordinator approached delegations that had not been involved in the negotiations to this point to ensure that they would not oppose the compromise when the text came up for discussion in the Working Group that afternoon, 29 June. The Coordinator's apparent aim was to have the compromise text for the rule with the 'proviso' text for the PrepCom Report adopted without discussion, with any statements being made only after adoption. This plan was obstructed by one delegate's desire to object to the adoption of the Rule. However, this delegate (of Cote d'Ivoire) was eventually dissuaded from speaking, and the Rule was adopted with the 'proviso'.

At the Plenary session of the following day, 30 June, the PrepCom adopted the Report of the Working Group on the Rules of Procedure and Evidence with the Rule and 'proviso'. This adoption did not proceed smoothly, however. The delegate of Cote d'Ivoire again took the floor to ask for a vote (specifically on Rule 9.19 to Article 98), objecting that the Rule was an amendment to the Statute. The Chair suspended the meeting, giving delegates time to coordinate their response to the call for a vote, as well as time to dissuade the delegate of Cote d'Ivoire. The latter effort succeeded, and when the meeting resumed, the delegate withdrew his request for a vote while asking that his statement objecting to the Rule be included in the Report of the Session.

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[208] Before the US introduction of DP.4* on 16 June, NGOs distributed to delegates a 'non-paper' outlining the incompatibility of the proposed Rule with Art. 98(2) (http://www.iccnow.org/html/cicc20000616.html); this document was sent with a letter to Like Minded Foreign Ministers the same week (http://www.iccnow.org/html/cicc20000621.html).

[209] On 26 June, the CICC alerted Foreign Ministers to the need to respect the integrity of the Statute in the drafting of any such Rule (http://www.iccnow.org/html/cicc20000626.html).

Following the adoption of Rule 9.19, a number of delegations took the floor to reaffirm their commitment to the integrity of the Rome Statute. These delegations included Angola, New Zealand, Nigeria and Portugal (on behalf of the EU). Rule 9.19 reads: The Court may not proceed with a request for the surrender of a person without the consent of a sending State if, under article 98, paragraph 2, such a request would be inconsistent with obligations under an international agreement pursuant to which the consent of a sending State is required prior to the surrender of a person of that State to the Court.
The related "Understanding in connection with Rule 9.19 for incorporation into the proceedings of the Preparatory Commission" reads (from notes): It is generally understood that Rule 9.19 should not be interpreted as requiring or in any way calling for the negotiation of provisions in any particular international agreement by the Court or by any other international organization or State. Ambassador Scheffer made clear (in particular, through a 30 June story in the New York Times) that he considered the adoption of the compromise rule on Art. 98(2) to be a 'green light' for the US to seek the second, substantive part of its proposal in the negotiation of the Relationship Agreement between the ICC and the UN at the November-December session. The explicit reference in Rule 9.19 to Article 98(2) (which does not encompass agreements entered into by the Court itself) leads NGOs and Like-Minded countries to a different view, but renewed US efforts to secure an exemption are certain to arise.

Part 2

Documents
PCNICC/2000/WGRPE/L.1/Rev.1/Add.1
PCNICC/2000/WGRPE/L.3 (27 June 2000) (Chapter 3: Jurisdiction and Admissibility)
PCNICC/2000/WGRPE/L.3/Corr.1 (28 June 2000) (Chapter 3: Jurisdiction and Admissibility)
PCNICC/2000/WGRPE/INF/1 (11 May 2000) (Mont Tremblant)

During the PrepCom's first Working Group discussion on the Rules of Procedure and Evidence on 12 June 2000, five outstanding issues relating to Rules 2.4, 2.7, 2.11, 2.14 and 2.15 were addressed. All five issues were resolved and the report, PCNICC/2000/WGRPE/L.3, was adopted by the Working Group on 27 June 2000.

Austria suggested amending Rule 2.4(2), regarding testimony under article 15 (2), to bring it more in line with the text of article 56(4) of the Statute. This proposal was discussed in informal meetings and the last sentence of the second paragraph was slightly amended. The current wording, contained in WGRPE/L.3, now states that if "testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber."

Concerns were raised regarding Rule 2.7, relating to information provided under article 17. Pakistan and Nigeria wanted to delete the language "international standards" and replace it with an expression similar to that in article 17(2) of the Statute, which refers to "the principles of due process recognized by international law". The Coordinator suggested using the "internationally recognized norms and standards" formulation of article 21(1)(c). The final text provides that a State referred to in article 17(1) may present to the Court information showing that its courts meet "internationally recognized norms and standards" for independent and impartial prosecution. China proposed the inclusion of a new paragraph (d) in Rule 2.11, which relates to proceedings under article 18(2), stating that "the Pre-trial Chamber may hold a hearing". China's proposed language was inserted as a new final sentence in Rule 2.11(1), which now reads, "the Pre-trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing."

With regards to Rule 2.14, South Africa proposed opening up the language in 2.14(c) to give the Court more flexibility in deciding the order in which to resolve issues of jurisdiction and admissibility. However, both the United Kingdom and France wanted to retain the original wording, which stated, "The Court shall rule on any issue of jurisdiction first and then on any issue of admissibility". The final wording of Rule 2.14 reflects this with a slight amendment providing that "The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility."

France proposed the addition of a new paragraph (4) to Rule 2.15: "The present rule is applicable to procedures as stipulated in 2.11 and 2.12 whenever an issue of jurisdiction or admissibility is involved." This proposal was incorporated in WGRPE/L.3 on 27 June, but was subsequently deleted on 28 June (WGRPE/L.3/Corr.1).
The proposed definition of victims contained in Rule Q was moved to Chapter 4 (see Victims Team report).

Part 9: Other Outstanding Issues

Documents
PCNICC/2000/WGRPE/L.14 (21 June 2000) (Chapter 14: International Cooperation and Judicial Assistance)
PCNICC/2000/WGRPE/L.14/Corr.1 (23 June 2000)
PCNICC/2000/WGRPE/L.14/Add.1 (23 June 2000) (Rule 9.9 *bi*s)

On 19 June, the Working Group on the Rules of Procedure and Evidence discussed outstanding issues pertaining to Part 9. The Chair identified one substantive issue relating to Rule YY (9.9 *bis* in the Mont Tremblant Report) and minor changes to Rules 9.14 and 9.16.

The Coordinator of the informal consultation group on Rule 9.*9 bi*s, paragraph 1 (Mont Tremblant), which pertains to arrangements made by the Court regarding the release of a person from custody other than upon the completion of sentence, recommended to the Working Group of 23 June that the current text be amended. That suggestion was incorporated in the final text (L.14/Add.1), and the phrase "the court may make arrangements" was replaced by "the court shall make arrangements". As a result of this change, footnote 83 was deleted.

With regards to Rule 9.16, the second sentence beginning, "if the chamber considers it appropriate", was deleted. Footnote 1 in Rule 9.14 was also deleted.

Part 10

Documents
PCNICC/2000/L.1/Rev.1/Add.1
PCNICC/2000/WGRPE/L.15 (21 June 2000) (Chapter 15: Enforcement)
PCNICC/2000/WGRPE/L.15/Corr.1 (23 June 2000) (Chapter 15: Enforcement)
PCNICC/2000/WGRPE(10)/DP.4 (12 June 2000) (German/Swedish proposal on Rule 10.23 *bi*s)

At the first Working Group on the Rules of Procedure and Evidence for Part 10, 19 June 2000, the Chairman, Phakiso Mochochocko (Lesotho), noted that the only outstanding issues for discussion were Rules 10.16, 10.17 *bis,* 10.18 with 10.19, 10.23 *bis,* 10.26(2) with 10.28, 10.27 and 10.31.

It was agreed that the footnote to Rule 10.16 could be deleted as there was general agreement that the issue of pre-trial regulations concerning custody in a prison facility of a host State needed to be discussed in connection with the Host State Agreement. The Chair agreed to mention this agreement in order to aid a future working group in charge of elaborating that agreement. There were no substantive issues regarding Rules 10.17 *bi*s, 10.18 and 10.26(2). Germany and Sweden submitted a proposal, PCNICC/2000/WGRPE(10)/DP.4, regarding Rule 10.23 *bis* (Orders for forfeiture and reparations), which was reflected in WGRPE/L.15 (but subsequently amended in L.15/Corr.1).

Footnote 91 in Rule 10.31, criteria for review concerning reduction of sentence, noted that two options had resulted from informal consultations at the March PrepCom, to be discussed in June. After informal discussions on those options, subrule (c) was reworded as follows: "Whether the early release of the sentenced person would give rise to significant social instability."

After two weeks of informal discussions document PCNICC/2000/WGRPE/L.15 was adopted by the Working Group on 23 June 2000, together with two minor amendments contained in GRPE/L.15/Corr.1.

First, Rule 10.15 was deleted and its contents incorporated into Rule 8.12 in Chapter 12. Second, the language of Rule 10.23 *bi*s, subrule 1(c) was replaced with the following: "That if the State Party is unable to give effect to the order for forfeiture in relation to the specified proceeds, property or assets, it shall take measures to recover the value of the same."

Part 13

Documents
PCNICC/2000/WGRPE(13)/DP.1 (8 June 2000)
PCNICC/2000/WGRPE(13)/RT.1 (28 June 2000)
PCNICC/2000/WGRPE(13)/RT.2 (28 June 2000)

The United State proposal regarding article 121 of the Rome Statute (PCNICC/2000/WGRPE(13)/DP.1) was introduced orally in the Working Group on Rules of Procedure and Evidence on 16 June 2000. The description and explanation given by the delegate of the United States did not go further than the commentary to the written proposal. With regard to paragraph (b)(ii), the delegate focused on the distinction between the date of deposit of a State's instrument ratifying an amendment and the date on which the amendment enters into force. She did not mention the implication of the rule on the Court's jurisdiction over crimes added by amendment after the Statute's entry into force.

NGOs produced a non-paper on 20 June pointing out that the proposed rule contained provisions which would narrow the Court's jurisdiction over non-party nationals as set out in the Statute. The non-paper asserted that the proposal aimed to amend key provisions of the Court's exercise of jurisdiction, in particular through proposed Rule 13.1(b)(ii). This proposal provides that the Court would exercise its jurisdiction over a crime added to the Statute in accordance with article 121(5) only if the amendment had entered into force for *both* the State of nationality of the alleged perpetrator *and* the State in whose territory the crime was committed. This would be contrary to the ordinary application of Art. 12 of the Statute, which gives the Court jurisdiction when *either* the State of nationality of the accused *or* the State on the territory of which the alleged crime was committed are party to the Statute (or consents *ad ho*c).

The underlying US concern in this case is thought to be the crime of aggression. In the Working Group on Part 13 on 22 June, several delegations expressed concerns regarding the timeliness of dealing with the US proposal for Article 121 at this stage of the Rules of Evidence and Procedure discussion. The Working Group on Part 13 met on 29 June to discuss two documents, RT.1, pertaining to the proposed rule on Article 121(PCNICC/2000/WGRPE(13)/DP.1), and RT.2, which was the result of informal discussions held during the preceding week. The Coordinator of Part 13 explained that it had generally been agreed that DP.1 would be considered at a later stage of the PrepCom because there was disagreement as to whether it fell within the ambit of the Rules of Procedure and Evidence. It was decided that it would be more appropriate to consider this proposal in the context of the Rules of Procedure of the Assembly of States Parties. It was also decided that RT.2 would be considered in the context of the Relationship Agreement with the UN.

US PROPOSAL ON ART. 98 PAR. 2 [210]

Rules of Procedure and Evidence, particularly with regard to the submitted Rules of Procedure of the USA concerning Art. 98 Par. 2 of the ICC-Statute: (UN Doc. PCNICC/INF/3/Add.1; http://www.un.org/law/icc/statute/rules/rulefra.htm)

The Rules of Procedure and Evidence have been implemented at due time and without particular resistance despite lengthy and partly tenacious negotiations (among other things about the definition, the condition and the compensation of the victims).

[210] Report submitted by Pascal Arnold.

Thereby the experiences with the codes of procedure of the ad hoc tribunals for the former Yugoslavia resp. for Ruanda were of great help. The Rules of Procedure and Evidence of the ICC contain elements of the Anglosaxon Common Law tradition as well as from the European Civil Law tradition.

An important issue in the code of procedure is the suggested rule concerning Art. 98 para. 2 of the ICC-Statute (UN Doc. PCNICC/2000/WGRPE(9)/DP4*) that has been submitted by the USA and which represented one of the main issues in the discussions resp. negotiations during the session. Although the USA voted against the Statute in Rome, they are still participating, similar to other states that have voted against the Statute, in the sessions of the PrepCom.

The US suggestion of rule concerning Art. 98 Abs.2 of the ICC-Statute provides for the surrender of an accused only in the case where the surrender of the person accords with the international treaties concerning the surrender of an individual. Although the aforementioned rule is formulated in a very general manner and, standing for itself, is looking rather unproblematic, all parties concerned were aware, that the USA aspired to obtain an exceptional rule for certain states concerning their duty to surrender their national subjects, for instance by means of a special treaty between the ICC and a particular state.

Before the PrepCom session, the USA had declared in different statements that they aspired to implement a rule, which would allow them to detract their nationals from the power of jurisdiction of the ICC unless the USA give their assertive permission. Among others, they justify their position with the argument, that numerous US soldiers deployed in foreign states could be subjected to politically motivated accusations at the ICC. With respect to the limited material power of jurisdiction of the ICC as well as to the principle of complementarity (Art. 17 ICC-Statute), after what the ICC is responsible only in the case where the national court is not willing or not able to judge the correspondent crime, this attitude of the USA is, with regard to purely legal principles, quite uncomprehensible. States with a functioning judicial system should not reckon having their national subjects summoned to the ICC. It can be suggested that the only actual superpower has serious problems to put up with the fact, that an independent and international judicial organ may judge on actions of their nationals.

Referring to the aforementioned contentious issue, a compromise could finally be found during the last days of negotiation. In addition to that rule, an “assistance of interpretation” was incorporated into the minutes of the task force. This assistance determined, that the rule could not be interpreted in a way, that the ICC would have the chance to enter into a special contract with a single state regarding the surrender of their nationals. Nevertheless some of the pronouncements of the US ambassador and chief of delegation Scheffer opposite to the press on the interpretation of the aforementioned rule indicated, that some more ardent discussions and negotiations will be expected on that subject at the coming PrepCom session in November. Despite such disputes most of the states seem to prefer keeping the USA integrated into the process of establishment of the ICC, although the statute will not be ratified by them in the near future. Nevertheless, the attitude seems to predominate even in the USA for the time being, that it would be reasonable to look, at least to some extent, for more or less constructive solutions and to avoid a break down. Doubtlessly the latter can be explained not at last with the fact, that most European states, Canada and Australia are eager to establish an efficient court of justice. In the following context the positive echoes of many African states are also worth mentioning.

The future position of the USA will very much depend on the American Presidential Elections in November, not at last because the Republican party is working against the establishment of the ICC. Republican Senator Jesse Helms, who is trying to impede the establishment of the ICC by hook or by crook, can be mentioned as the protagonist in this race. In the aforementioned context he tried to implement a law during the PrepCom that would prohibit all US authorities to collaborate with the ICC in any way. As an assault against the ICC, the aforementioned law proposal provides for all the collaborating states an American cancellation of military assistance. Although this law does not have any prospect of being implemented, the intended intimidating effect on different states could be clearly noticed during the PrepCom.

ANNEX I

The European Law Students' Association

An Introductory Report to the Preparatory Commission for the International Criminal Court (ICC PrepCom)

UN Headquarters, New York City 2001

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Introductory report to the ICC Preparatory Commission for the International Criminal Court[211]

THE INTERNATIONAL CRIMINAL COURT

The proposed International Criminal Court (ICC) is the world's first permanent international court with jurisdiction to prosecute individuals accused of the most serious crimes of concern to international community, namely *genocide, war crimes, and crimes against humanity.*[212] Unlike the International Court of Justice[213] (ICJ) in the Hague, whose jurisdiction is restricted to States, the ICC will have the capacity to investigate, indict, and bring to justice *individuals.* As a permanent and global court, the ICC will likewise differ from the special International Criminal Tribunals created by the UN Security Council for atrocities in the Former Yugoslavia and Rwanda[214]. It will not become another ad hoc tribunal but a *permanent institution.* The Court's jurisdiction will not be chronologically limited, although when the ICC takes effect, it will not be retroactive. The International Criminal Court will be complementary to national criminal jurisdiction (Art.1 of the Rome Statute).

THE ROME STATUTE[215]

The Rome Statute defines the crimes within the jurisdiction of the ICC, how the Court[216] will work and what states must do to co-operate with it. The Rome Statute enters into force once 60 states have ratified the treaty, and the Court will come into existence following an Assembly of States Parties that have ratified the Statute.

THE ROME CONFERENCE[217]

The ICC treaty was negotiated and the Rome Statute adopted at *the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court* 17 July 1998.
NGO conferences in recent years: - *The Hague Appeal for Peace* (CICC), a major end-of-century campaign and conference dedicated to the delegimitation of war, and concurrent with the 100 year anniversary of the first Hague Peace Conference in 1899. - *The "Power of Peace" Conference* was the capping stone of ELSA's 1997-99 IFP[218] theme, and took place parallel to the Hague conference.

THE PREPARATORY COMMISSION

The Preparatory Commission (PrepCom) for the International Criminal Court was established by the United Nations General Assembly pursuant to a mandate, embodied in Resolution F[219] of the Final Act of the Rome Diplomatic Conference which adopted the Rome Statute of the International Criminal Court on 17 July 1998.

MANDATE OF THE PREPCOM[220]

The mandate of the Commission (PrepCom) is *to prepare proposals for practical arrangements for the establishment and coming into operation of the Court.* The PrepCom drafts annexes to the Rome Statute and develops documents that will enhance a swift and fast change into action once the Court is established, like the draft texts on "The Elements of Crimes"[221] and "The Rules of Procedure and Evidence" that were approved the PrepCom on 30 June 2000. The *United Nations General Assembly*, in resolution 53/105 of 8 December 1998,[222] requested the Secretary-General to convene the Preparatory Commission to carry out the mandate of the resolution and, in that connection, also to *discuss ways to*

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[211] By Espen Rostrup Nakstad, ELSA Norway (espenn@gmx.net) - updated version; April 2002
[212] Article 5 par. 2 of the Rome Statute.
[213] The International Court of Justice - http://www.icj-cij.org/
[214] The International Criminal Tribunal for the former Yugoslavia (ICTY) - http://www.un.org/icty/index.html;
The International Tribunal for Rwanda (ICTR) - http://www.ictr.org/
[215] The Rome Statute of the International Criminal Court, 17 July 1998: http://www.un.org/law/icc/statute/romefra.htm
[216] The Court = The [International Criminal] Court
[217] See "UN Diplomatic Conference of Plenipotentiaries on the Establishment of ICC July1998 www.un.org/icc/index.htm
[218] IFP - ELSA's "International Focus Programme" - see www.elsa.org
[219] UN Resolution F - See ANNEX I - or http://www.un.org/law/icc/statute/final.htm#resolution_f
[220] Mandate of the Preparatory Commission - See ANNEX I - or http://www.un.org/law/icc/prepcomm/prepfra.htm
[221] The Elements of Crimes are not binding guidelines, but shall assist judges in the interpretation and application of art 6,7, 8.
[222] Most relevant General Assembly Resolutions, see ANNEX II. Other relevant Resolutions www.un.org/law/icc/gares/garesfra.htm

enhance the effectiveness and acceptance of the Court. The Assembly of States Parties shall consider and adopt, as appropriate, recommendations of the Preparatory Commission. (Art.112.2.a)

THE COURT'S JURISDICTION

Part 2 of the Rome Statute concerns crimes within the Court's jurisdiction (Art.5), the role of the Security Council, the admissibility of cases and the applicable law for cases coming before the Court. The Court initially will have jurisdiction over war crimes, genocide and crimes against humanity[223] (Art. 6,7, and 8). Additionally, the Court will exercise jurisdiction over *the crime of aggression* once agreement can be reached on its definition at some point in the future. The Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute (Jurisdiction ratione tempori's - Art. 11).

PRECONDITIONS TO THE EXERCISE OF JURISDICTION

In accordance with Article 12 of the Rome Statute the Court may exercise its jurisdiction only if:

1. the crime has been committed in the territory of a state party to the Rome Statute (including crimes committed aboard a vessel/aircraft when the state of registration is of the above mentioned), or
2. the accused person is a national citizen of a State Party to the Statute, or
3. a state which has not ratified the Statute makes a declaration accepting the Court's jurisdiction over the crime, or
4. when crimes have been committed in a situation which threatens or breaches international peace and security and the UN Security Council has referred the situation to the Court pursuant to Chapter 7 of the UN Charter.[224]

TRIGGER MECHANISMS[225]

The Rome Statute provides that cases can originate in the Court three different ways:

1.The Court's Prosecutor can initiate an investigation into a situation where one or more of the crimes have been committed, based on information from any source, including the victim or the victim's family, but only if the Court has jurisdiction over the crime and individual. (Art 15.1)

2. Situation referred by a State Party: States that have ratified the Statute may ask the Prosecutor to investigate a situation where one or more of the crimes have been committed, but only if the Court has jurisdiction. (Art 13.a)

3. Situation referred by the UN Security Council: The UN Security Council, acting under Chapter VII of the UN Charter, can ask the Prosecutor to investigate a situation where one or more of the crimes have been committed. Unlike methods 1 and 2, the ICC will have jurisdiction when the UN Security Council refers the situation to the Prosecutor, *even if the crimes occurred in the territory of a state that has not ratified the Rome Statute or was committed by the national of such a state*. (Art. 13.b)

In each of these situations it is up to the Prosecutor, not the states or the Security Council, to decide whether to open an investigation and, based on that investigation, whether to prosecute subject to judicial approval. *The Court can only investigate and prosecute cases which national governments are unable or unwilling to prosecute (Art. 17 - "Issues of admissibility").*

ICC HISTORY[226]

The history of the ICC initiative begins with the unsuccessful efforts to establish an international tribunal after World War I. After World War II, the Nuremberg and Tokyo military war crime tribunals set the stage for efforts to create a permanent court. Though called for in the 1948 Genocide Convention, efforts to establish a permanent court were delayed for decades by the cold war and refusal of governments to accept an international legal jurisdiction. The establishment of a temporary ad hoc tribunal for Bonsnia-Herzegovina in 1993 strengthened the discussions for a permanent Court. In 1994 the Rwanda war made the Security Council establish a second ad hoc tribunal for Rwanda. In 1994 the International Law

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[223] The Court will have jurisdiction over crimes occurring both in international and internal armed conflicts and over *crimes against humanity* such as disappearances that occur in the absence of conflict.

[224] The UN Charter is available at http://www.un.org/Overview/Charter/contents.html

[225] Trigger mechanisms: Art 13-16 of The Rome Statute

[226] See "History of the International Criminal Court" or "The Rome Conference Report (ELSA)", E. Nakstad, Dec 2000.

Commission (ILC)[227] presented a final draft Statute on the ICC to the General Assembly and recommended that a conference of plenipotentiaries were convened to negotiate a treaty to enact the Statute. Through resolution 49/73 of 9 December 1994 the General Assembly decided to establish an ad hoc committee on the ICC to review the draft Statute presented by ILC. This committee was open to all State Members of the United Nations or members of specialised agencies.
From 1996-98 the General Assembly convened six Preparatory Committee meetings to continue drafting the ICC Statute, leading up to "the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court"[228] in Rome June-July 1998, in which 160 countries participated. Member states overwhelmingly voted in favour of the Rome Statute for the ICC (120 in favour/ 7 against/ 21 abstentions). In February 1999 Senegal became the first State Party to ratify the Rome Statute, followed by Trinidad and Tobago, San Marino and Italy. **As for April 2002 the Rome Statute has a total of 139 Signatories and 66 Ratifications**.[229]
The globalisation of justice, led largely by the historic ICC process, marks a decade of rapid changes of international affairs. However, UN Secretary General Kofi Annan was more careful when he described the establishment of the Court at the 1998 Diplomatic Conference as "a gift of hope to future generations, and a march forward towards universal Human Rights and the rule of law".

PREPCOM WORK
The Preparatory Commission gathers representatives from UN member states world-wide, mostly Diplomats, to carry out the work of the Preparatory Commission under its mandate established by resolution F of the Final Act of the UN Diplomatic Conference in Rome July 1998.[230] The Commission's work is divided into separate working groups, with co-ordinators for each working group, and meet in formal meetings (open to NGOs) and informal meetings (closed meetings, no translation services, not open to NGOs). The Commission's work is often based on draft texts prepared by the UN Secretariat.
Provisional Work Plans are available at http://www.igc.org/icc/html/.[231]
The Bureau of the PrepCom has continued its work with the following composition; as Chairman; Mr. Philippe Kirsch (Canada), Vice-Chairmen; Mr. George Winston (Trinidad and Tobago), Mr. Medard R. Rwelamira (South Africa), and Mr. Muhamed Sacirbey (Bosnia and Herzegovina). Rapporteur: Mr. Salah Suheimat (Jordan).

CICC/ ELSA WORK AT THE PREPCOMS
The NGO Coalition for an International Criminal Court (CICC)[232] brings together a broad network representing over 1,000 NGOs, international law experts and other civil society groups. ELSA is member of the CICC Steering Committee[233] and has been represented at Preparatory Committee meetings from 1996 to 1998[234], at the Rome Conference in 1998, and at all sessions of the Preparatory Commission (1998-2002). The main purpose of the CICC is to advocate for the creation of an effective, just and independent International Criminal Court. CICC convenor is William R. Pace and the Secretariat is located on 1st avenue, 777 UN Plaza.

In between Preparatory Commissions the Coalition works on education campaigns to raise awareness and increase understanding of the ICC. Many governments use CICC as a provider of information, and as a consultant when it comes to legal questions and implementation of legislation. However, the Coalition has a consultative role, and is not a negotiator.
During Preparatory Commissions the CICC monitor the work of the PrepCom working groups, breaking down the draft texts and working in teams corresponding to the official working groups of the commission. The Coalition has daily strategy meetings and team meetings where various legal issues are

[227] The International Law Commission - http://www.un.org/law/ilc/index.htm
[228] See "UN Diplomatic Conference of Plenipotentiaries on the Establishment of ICC July1998 www.un.org/icc/index.htm
[229] Ratification Status, constantly updated web page: http://www.un.org/law/icc/statute/status.htm
[230] Mandate of the Preparatory Commission - See ANNEX I - or http://www.un.org/law/icc/prepcomm/prepfra.htm
[231] 7th PrepCom Working Plans - Soon to come: http://www.igc.org/icc/html/ [scroll down to www.igc.org/icc/html/2001...]
[232] Website of the NGO Coalition for an International Criminal Court (CICC): www.iccnow.org
More info: ELSA Synergy Magazine No 2/2000, Previous PrepCom reports, or www.elsa.org
[233] Members of the CICC Steering Committee; See ANNEX VI - or http://www.iccnow.org/html/coalition.htm
[234] See the ELSA Report from the 5th PrepCom Session www.elsa.org

being discussed. The teams follow all formal meetings of the PrepCom and give daily reports from the sessions to the NGO Coalition and its network.
ICC ratifications and signatures: The Coalition also works to promote signatures and ratifications of the Rome Statute. On 17 July 2000 the CICC launched a two-year ratification campaign. A primary goal is to make sure that countries from all regions of the world are represented in the Assembly of States Parties when the Court comes into existence.

RATIFICATION OF THE ROME STATUTE[235]
Is it essential for the success of the ICC that an overwhelming number of States ratify the Rome Statute. The Prosecutor can only initiate an investigation where the crime has been committed in the territory of a state party to the Statute or the accused person is a national citizen of a state party to the Statute, unless the Security Council refers a situation to the Court.[236] The reluctance of the Security Council to establish ad hoc tribunals over the past fifty years suggests that it is not likely to refer many situations to the Court. Therefore, to a great extent the Court's effectiveness will be measured by how many and which states ratify the Statute.

IMPLEMENTATION OF THE ROME STATUTE
A state which ratifies the Statute will, in most cases, have to enact implementing legislation in order to fulfil its obligations under the treaty. *States which become parties must undertake two fundamental obligations:*
1. Complementarity: In accordance with the principle of Complementarity in the Preamble, Article 1 and Article 17 of the Rome Statute state that parties recognise that *states*, not the International Criminal Court, *have the primary responsibility for bringing those responsible for genocide, crimes against humanity and war crimes to justice.*
2. Full co-operation: Once the Court has determined that it may exercise jurisdiction in accordance with the principle of complementarity, states parties agree under Article 86 to *"Co-operate fully with the Court in the investigation and prosecution of crimes within the jurisdiction of the Court".*

THE COURT'S STRENGTH
The Court will not come into existence before 60 states have ratified the treaty (Art.11) and its strength will, to some extent, be measured by geographical representation and by how many larger states finally ratify. Moreover, the ICC has certain limitations to its jurisdiction. It is based on a treaty that gives the Court "Territorial, Personal and Universal jurisdiction" (Art.12 3a & b of the Rome Statute), which means that the Court will have jurisdiction only when a conduction occurs on the territory of a state that has ratified the treaty or accepted the jurisdiction of the court, or when the accused is of such nationality, regardless of where the crime is committed. This means that, unless a situation is referred by the Security Council acting under Chapter VII of the UN Charter[237], non-signatories who neither ratify the treaty nor accept the Court's jurisdiction can – to a large extent - act unaffected by the ICC and the rule of International Law within their national borders.

A JUST AND NON-POLITICAL COURT [238]
The Rome Statute has many safeguards to ensure that investigations and prosecutions are pursued solely in the interest of justice, not politics. Although the Security Council and States can refer situations to the ICC Prosecutor, it will be up to the Prosecutor to decide whether to seek authorisation to open an investigation. Moreover, the Prosecutor will not be dependent on Security Council or state referrals, but will be able to open investigations based on information from any source. The Prosecutor must naturally be of high moral character and be highly competent and have extensive practical experience in the prosecution or trial of criminal cases. *The Prosecutor is required to act independently and must request*

[235] More information on ICC ratifications; see Amnesty fact sheets, link from www.iccnow.org
[236] Trigger mechanisms: Art 13-16 of The Rome Statute.
[237] The UN Charter is available at http://www.un.org/Overview/Charter/contents.html
[238] More info: Amnesty International Fact sheets (www.iccnow.org) and "The Rome Conference Report" (Nakstad, Dec 2000)

authorisation from the Pre-Trial Chamber both to open an investigation and to begin a prosecution, whereby both requests can be challenged by states.

CHALLENGES

The International Criminal Court is based on an extremely detailed and supplemented Rome Statute. It has complicated ties to domestic legislation and a disputed territorial, personal and universal jurisdiction. One of the core crimes of the court, "the crime of aggression", has yet to be defined. Moreover, the ICC will be complementary to one hundred different sets of national criminal legislation, and many states already face problems with the implementation of the Rome Statute. One could argue that history doesn't give much credit to the project either, after 50 years of unsuccessful attempts to create something like an international, independent court. However, ever since the successful work on the "Elements of Crimes"[239] and "Rules of Procedure and Evidence", finalised 30 June 2000 by consensus in the Preparatory Commission, the International Criminal Court has been well on its way to The Hague with an accelerated pace of ratifications. The momentum for the ICC has been beyond comparison in recent years. Whereas delegates to the Rome Conference in 1998 estimated entry into force after approximately 20-25 years, the 60th instrument of ratification was deposited on 11 April 2002, less than four years after the adoption of the Rome Statute.

ELSA AND THE ICC[240]

The European Law Students' Association [241] has taken part in the process towards the establishment of an International Criminal Court from the first drafting commissions began their work eight years ago. ELSA has received gratitude for its work in various meetings over the past years and its participation in the PrepComs is highly appreciated by other NGOs. ELSA currently has a special consultative status[242] with the Economic and Social Council (ECOSOC)[243] of the United Nations, a status based on Article 71 of the UN charter and ECOSOC resolution 1996/31, and is also member of the steering committee of the Coalition for an International Criminal Court (CICC). The CICC Steering Committee consists of 13 NGOs[244], among these are Amnesty International, Human Rights Watch, and No Peace Without Justice[245]. In accordance with paragraph 6 of resolution 54/105, non-governmental organisations (NGOs) may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, and in accordance with the rules of procedure of the Commission, receive copies of the official documents and make available their materials to delegates.

ITEMS OF THE PREPCOM AGENDA [246]

ROPE	The Rules of Procedure and Evidence	(finalised June 2000)
EoC	The Elements of Crimes	(finalised June 2000)
ICC-UN	A relationship agreement between the Court and the UN	(finalised Oct 2001)
APIC	An Agreement on Privileges and Immunities of the Court	(finalised Oct 2001)
RP/ASP	The Rules of Procedure of the Assembly of States Parties	(finalised Oct 2001)
FRR	Financial Regulations and Rules	(finalised Oct 2001)
HQA	Basic principles governing a headquarters agreement	(finalised April 2002)
FYB	Budget for the first year of the Court's operation	(10th session item, 2002)
CA	Proposals for a provision on Aggression, including its definition, elements and the conditions under which ICC shall exercise jurisdiction with respect to the crime.	(10th session item, 2002)
ASP-PD	Assembly of States Parties - Preparatory Documents	(10th session item, 2002)
RFI	Remaining Financial Issues (Rem.of judges, Prosecutor, Registrar, victims trust fund)	(10th ses.)

[239] The Elements of Crimes are not binding guidelines, but shall assist judges in the interpretation and application of art 6,7, 8.
[240] More info: Synergy Magazine No 2/2000, Previous PrepCom reports, or www.elsa.org
[241] ELSA International web site: www.elsa.org
[242] NGOs in consultative status with ECOSOC; http://www.un.org/esa/coordination/ngo/faq.htm
[243] ECOSOC Resolution 1996/31: http://www.un.org/esa/coordination/ngo/Resolution_1996_31/index.htm
[244] Members of the CICC Steering Committee; See ANNEX VI - or http://www.iccnow.org/html/coalition.htm
[245] NPWJ - No Peace Without Justice - was organiser of the 2nd-anniversary Rome Conference 16-18 July 2000
[246] Documents are available at http://www.un.org/law/icc/prepcomm/

GUIDE TO

The Rome Statute of The International Criminal Court [247]

The Rome Statute defines the crimes within the jurisdiction of the International Criminal Court, how the Court will work and what states must do to co-operate with it. The Statute enters into force once 60 states have ratified the treaty, and the Court will come into existence following an Assembly of States Parties which have ratified the Statute. [248]

Part 1: Establishment of the Court
Part 1 of the Statute concerns the establishment of the court and its relationship with the United nations. The Court is to be established by a treaty and based in the Hague, The Netherlands. The relationship between the Court and the UN is determined by an agreement negotiated by the Preparatory Commission.

Part 2: Jurisdiction, Admissibility and Applicable Law
Part 2 concerns crimes within the Court's jurisdiction (Art.5), the role of the Security Council, the admissibility of cases, and the applicable law for cases coming before the Court. The Court initially will have jurisdiction over *war crimes, genocide*, and *crimes against humanity*. Additionally, the Court will exercise jurisdiction over *the crime of aggression* once an agreement can be reached on a definition of this crime at some point in the future. Part 2 defines the crimes within the Court's jurisdiction (and, notably, includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or other forms of sexual violence).

Part 3: General Principles of Criminal Law
Part 3 involves principles of criminal law drawn from different legal systems. This section upholds *the principle of non-retroactivity*, whereby the Court will not have jurisdiction over conduct committed prior to the Statute's entry into force. It recognises *the principle of individual criminal responsibility*, which makes it possible to prosecute individuals for serious violations of international law. Part 3 also addresses the responsibility of leaders for actions of subordinates, the age of responsibility, the statute of limitations, and an individual's responsibility for both an act and an omission.

Part 4: Composition and Administration of the court
Part 4 details the structure of the Court and the qualifications and independence of judges.

Part 5: Investigation and Prosecution
Part 5 addresses the investigation of alleged crimes and the process by which the Prosecutor can initiate and carry out investigations. Part 5 also defines the rights of individuals suspected of a crime.

Part 6: The trial
Part 6 deals with trial proceedings, the question of a trial in the absence of the accused or following an admission of guilt and the rights and protection of the accused. The Statute states that *everyone shall be presumed innocent until proved guilty in accordance with law*. This section also details the rights of victims and witnesses and the ability of the court to order a guilty person to make reparation and to determine the extent of damages.

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[247] Updated by Espen R. Nakstad, The European Law Student's Association, December 2000
Sources; The Coalition for an International Criminal Court (CICC) - www.iccnow.org, The ELSA Report from the Inter-Governmental Conference on the Rome Statute and the ICC, July 2000 (E. Nakstad), The Rome Statute of the International Criminal Court - http://www.un.org/law/icc/statute/romefra.htm
[248] Article 126 of the Rome Statute

Part 7: Penalties
Part 7 covers applicable penalties for persons convicted of a crime, which include: life imprisonment, imprisonment for a designated number of years and fines, among other sentences. The death penalty is not a sentence of the court. Part 7 also establishes a trust fund for the benefit of victims of crimes within the jurisdiction of the court, and of the families of victims.

Part 8: Appeal and Review
Part 8 includes appeal against judgement or sentence, appeal proceedings, the revision of conviction or sentence, and the compensation to a suspect, accused, or convicted person. A person or the Prosecutor may bring an appeal before the Court on grounds that the fairness of the proceedings was affected. The Statute states that anyone wrongfully arrested, detained or convicted is entitled to compensation from the Court.

Part 9: International Cooperation and Judicial assistance
Part 9 addresses international co-operation and judicial assistance between States and the Court. It involves the surrender of persons to the court, the Court's ability to make provisional arrests, and State responsibility to cover costs associated with requests from the Court.

Part 10: Enforcement
Part 10 includes the recognition of judgements, the role of States in enforcement of sentences, the transfer of the person upon completion of a sentence, parole and commutation of sentences.

Part 11: Assembly of States Parties [249]
Part 11 establishes an Assembly of States Parties, formed by one representative for each State Party, to oversee the various organs of the Court, its budget, reports and activities of the Bureau of the Assembly. Representatives would have one vote and decisions would be reached either by consensus or some form of a majority vote.

Part 12: Financing of the court
Part 12 states that funding for the Court shall be provided by three sources: (a) assessed contributions from States Parties [250] (b) funds provided by the United Nations; and (c) voluntary contributions from governments, international organisations, individuals, corporations and other entities.

Part 13: Final Clauses
Part 13 addresses the settlements of disputes, reservations and amendments of the Statute, and its ratification. Part 13 states that no reservations may be made to the Statute. However, seven years after the Court has entered into force, any State Party may propose amendments to the Statute. This Part calls for the Statute to be open for signature by all States in Rome, at the Food and Agricultural Organisation premises, on July 17, 1998 and to remain open for signature until December 31, 2000. The Statute allows for a State Party to withdraw from the statute by notifying the Secretary-general of the United Nations in writing.

Rome Statute of the International Criminal Court	http://www.un.org/law/icc/statute/romefra.htm
United Nations Resolution F -	http://www.un.org/law/icc/statute/final.htm#resolution_f
Other relevant General Assembly resolutions	http://www.un.org/law/icc/gares/garesfra.htm
The UN Charter is available at;	http://www.un.org/Overview/Charter/contents.html - and http://www.un.org/aboutun/charter/

[249] The Assembly of States Parties shall consider and adopt, as appropriate, recommendations of the Preparatory Commission, - Art.112.2.a of the Rome Statute
[250] (a) is likely to be the major source of income (see report from the FRR team at the 6th Session)

HISTORY- The International Criminal Court

SUMMARY[251]: The history of the ICC initiative begins with the unsuccessful efforts to establish an international tribunal after World War I. After World War II, the Nuremberg and Tokyo military war crime tribunals set the stage for efforts to create a permanent court. Though called for in the 1948 Genocide Convention, efforts to establish a permanent court were delayed for decades by the cold war and refusal of governments to accept an international legal jurisdiction. However, the establishment of a temporary ad hoc tribunal for Bonsnia-Herzegovina in 1993 strengthened the discussions for a permanent Court, and in 1998 governments from all over the world approved a Statute to establish a permanent International Criminal Court.

The "road to Rome" was a long and often contentious one.[252] While the Court has roots in the early 19th Century, the story begins in 1872, when Gustav Moynier, one of the founders of the International Committee of the Red Cross, proposed a permanent court in response to the crimes of the Franco-Prussian War. The next serious call came after World War I, with the 1919 Treaty of Versailles. Framers of the Treaty envisaged an ad hoc international court to try the Kaiser and German war criminals. Then, after World War II, the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals. The world, reflecting on the Holocaust, cried "never again". The call for an international institution to try individuals for the most heinous crimes resonated throughout the world - and many thought the founding of the United Nations would bring the world closer to a permanent Court. Yet more than 50 years would pass before the world's leaders would meet to prepare a treaty establishing a permanent International Criminal Court.

The ICC chronology - some highlights [253]

October 1946 - Soon after the Nuremberg Judgement, an international congress meets in Paris and calls for the adoption of an international criminal code prohibiting crimes against humanity and the prompt establishment of an international criminal court (ICC).

9 December 1948 - The UN General Assembly (GA) adopts the *Convention on the Prevention and Punishment of the Crime of Genocide.* It calls for criminals to be tried "by such international penal tribunals as may have jurisdiction" Separately, members ask the International Law Commission (ILC) to study the possibility of establishing an ICC.

10 December 1948 - The GA adopts *the Universal Declaration of Human Rights*, detailing human rights and fundamental freedoms.

1949 - 1954 - The ILC drafts statutes for an ICC, but opposition from powerful states on both sides of the Cold War stymies the effort and the GA effectively abandons the effort pending agreement on a definition of the crime of aggression and an international *Code of Crimes*.

1974 - The UN General Assembly agrees on a definition of aggression, *UN Resolution 3314 (1974)*

Dec 1981 - The General Assembly asks the ILC to return to the questions of establishing a *Code of Crimes*.

1989 - The end of the Cold War brings a dramatic increase in the number of UN peace keeping operations and a world where the idea of establishing an International Criminal Court is more viable.

June 1989 - Motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrect the proposal for an ICC. The GA asks the ILC to prepare a draft statute.

1992 - The GA requests the ILC to complete a draft statute for an International Criminal Court.

1993 - War in Bosnia-Herzegovina, clear violations of the *Genocide* and *Geneva Conventions*, and the establishment of a temporary *ad hoc tribunal* for Bosnia-Herzegovina (in1993) strengthens the discussions for a permanent Court.

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[251] Ed. Espen R. Nakstad April 2003. Based on the ELSA Report from the July 2000 Rome Inter-Governmental Conference on the Rome Statute and the ICC (E. Nakstad) - and the CICC fact sheet on the Rome Statute (December 2000) provided by Amnesty International

[252] See web links from the Coalition for an International Criminal Court (CICC) homepage; www.iccnow.org

June 1993 - *Vienna Declaration and Programme* of Action expresses support for the Establishment of an ICC.

1994 - War in Rwanda leads the Security Council to establish *a second ad hoc tribunal for Rwanda*.

1994 - The International Law Commission (ILC) presents a final draft Statute on the ICC to the General Assembly and recommends that a conference of plenipotentiaries was convened to negotiate a treaty to enact the Statute. Through resolution 49/73 of 9 December 1994 the General Assembly decides to establish an ad hoc committee on the ICC to review the draft Statute presented by ILC. This committee is open to all States Members of the United Nations or members of specialised agencies held three 2-week meetings at UN headquarters in December 1995.

December 1995 - The General Assembly establishes a Preparatory Committee (PrepCom) to finalise a text to be presented at a convention of plenipotentiaries.

September 1997 - The 14 nations of the South African development Community (SADC) set out 10 basic principles to be included in forming the ICC Statute.

December 1997 - The UK defects from the position of another permanent Security Council members and backs the *Singapore Compromise* proposal to limit Security Council authority over the Court.

From 1996-98 - The General Assembly convene six Preparatory Committee meetings to continue to draft the ICC Statute, leading up to "the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court" **[18]** in Rome June-July 1998.

January 1998 - Chairs of working groups and co-ordinators of the PrepCom meet in Zutphen, The Netherlands "to facilitate the work of the last PrepCom". *The Zutphen Report* consolidates the various draft texts produced over two years of PrepCom meetings.

February 5 - 6, 1998 - In Dakar, Senegal, representatives of 25 African governments meet to discuss the establishment of an ICC. They adopt *the Dakar Declaration* calling for an effective and independent Court.

March 26, 1998 - In a letter to Secretary of State, Madeleine Albright, US Foreign Relations Committee Chairman Jesse Helms declares any ICC Statute "dead on arrival" in the US Senate unless the US has veto control over the court.

17 July 1998 - 160 countries participate at the UN Diplomatic Conference of Plenipotentiaries. Member states overwhelmingly vote in favour of the Rome Statute for the ICC (120 in favour/ 7 against/ 21 abstentions). In February 1999 Senegal becomes the first State Party to ratify the Rome Statute, followed by Trinidad and Tobago, San Marino, and Italy.

1999-2001 - The General Assembly convenes a series of additional PrepCom meetings to address outstanding issues of the Rome Statute.[254]

11 April 2001 – ten instruments of raticication are deposited simultaneously during a special UN ceremony in New York, taking the number of state parties of the treaty above the required 60.

1 July 2002 - The Rome Statute enters into force.

3 September 2002 - First Annual Meeting of the Assembly of States Parties to the Rome Statute of the International Criminal Court

February 2003 - Election of ICC Judges

11 March 2003 - Inauguration of ICC Judges, swearing-in ceremony (The Hague)

April 2003 - Election of ICC Prosecutor

16 June 2003- Swearing in Ceremony (The Hague). ICC Prosecutor takes office.

June 2003 – Election of the Court's Registrar

[254] For more information on ICC History; see homepage of Prof. Benjamin B. Ferencz; http://www.benferencz.com , and the ELSA report from the 6th ICC PrepCom - "The Crime of Aggression".

Annex II - Further reading

ICC WEB LINKS

GENERAL INFORMATION – ICC

Main provider of ICC documents and web links -	http://www.un.org/law/icc/index.html
Overview on the ICC -	http://www.un.org/law/icc/general/overview.htm
UN Public Information on ICC -	http://www.un.org/law/icc/general/public.htm
UN Website for the ICC -	http://www.un.org/law/icc/index.html
International Criminal Court fact sheet (prepared by DPI) -	http://www.un.org/News/facts/iccfact.htm
ICC Ratification Status (constantly updated web page) -	http://www.un.org/law/icc/statute/status.htm

CICC (the NGO Coalition for an International Criminal Court)

CICC web page (ICC information) -	http://www.iccnow.org
CICC Composition and Steering Committee -	http://www.iccnow.org/html/coalition.htm
Country-by-country ratification status report -	http://www.iccnow.org/html/country.html
INDEX of /icc/html	http://www.igc.org/icc/html/

DOCUMENTS

The Rome Statute of the International Criminal Court -	http://www.un.org/law/icc/statute/romefra.htm
United Nations Resolution F -	http://www.un.org/law/icc/statute/final.htm#resolution_f
Other relevant General Assembly Resolutions -	http://www.un.org/law/icc/gares/garesfra.htm
The UN Charter -	http://www.un.org/Overview/Charter/contents.html
UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome 1998	http://www.un.org/icc/index.htm
Documents issued at the 1998 UN Diplomatic Conference -	http://www.un.org/law/icc/docs.htm
Final Act of the 1998 UN Diplomatic Conference -	http://www.un.org/law/icc/statute/finalfra.htm

PREPARATORY COMMISSIONS

Homepage of the Preparatory Commission	http://www.un.org/law/icc/prepcomm/prepfra.htm
Documents of the tenth session of the Preparatory Commission	http://www.un.org/law/icc/prepcomm/tenth.htm
Preparatory Commission documents (1999 ->)	http://www.un.org/law/icc/prepcomm/docs.htm

UN ECOSOC AND HIGH COMMISSIONER FOR HUMAN RIGHTS

UN Web page on the Economic & Social Council (ECOSOC)	http://www.un.org/esa/
ECOSOC Resolution 1996/31:	http://www.un.org/esa/coordination/ngo/Resolution_1996_31/index.htm
NGOs in consultative status with ECOSOC:	http://www.un.org/esa/coordination/ngo/faq.htm
High Commissioner for Human Rights: Position Paper on the Establishment of a Permanent International Criminal Court	http://www.unhchr.ch/html/menu2/2/iccpp.htm

ICC RELATED SITES

The International Law Commission	http://www.un.org/law/ilc/index.htm
The International Court of Justice	http://www.icj-cij.org/
International Criminal Tribunal for the former Yugoslavia	http://www.un.org/icty/index.html
International Tribunal for Rwanda	http://www.ictr.org/
UN web site on International Law	http://www.un.org/law/
United Nations homepage	http://www.un.org/
On-line virtual tour through UN Headquarters, New York	http://www.un.org/pubs/cyberschoolbus/untour/untour.htm
Website of Prof. Benjamin B. Ferencz (ICC Articles/ Lectures)	http://members.aol.com/benferen

ELSA LINKS

ELSA's involvement in Human Rights	http://www.elsa.org/humanrights.asp
ELSA Human Right news	http://www.elsa.org/news/index.asp?Category=6
ELSA International web site	http://www.elsa.org
ELSA Report from the 5th Session of the ICC PrepCom	http://www.lns.nl/elsa/Ib/index.html
ELSA Report from the 9th Session of the ICC PrepCom	http://www.iccnow.org/html/ELSAprepcom9.pdf
ELSA Legal Research on Nomination and Election of Judges to International Courts	http://www.iccnow.org/html/ELSAprepcom9annex.pdf

EUROPEAN INSTITUTIONS WEB SITES

Council of Europe ICC webpage
http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Transnational_criminal_justice/International_Criminal_Court/
Statements of the European Union http://europa-eu-un.org/articleslist.asp?section=14

OTHER NGO'S WEB SITES

International Criminal Court (major ICC web site of the NGO Coalition for an International Criminal Court (CICC)) http://www.iccnow.org/

The Rome Statute of the International Criminal Court (done at Rome, 17 July 1998; A/CONF.183/C.1/L.76 and Addendums 1 through 14) http://www.igc.org/icc/rome/html/ratify.html

International Criminal Court Campaign (Lawyers Committee for Human Rights (LCHR)) http://www.lchr.org/lchr/feature/50th/main.htm

International Justice: International Criminal Court *(*Human Rights Watch (HRW) Campaign to Establish an International Criminal Court/ICC campaign page) http://www.hrw.org/worldreport99/special/icc.html

International Criminal Court (United Nations Association of the United States of America (UNA-USA)) http://www.unausa.org/programs/icc.htm

Washington Working Group on the International Criminal Court (WWGICC) http://www.wfa.org/issues/wicc/wicc.html

Campaign for the Establishment of the International Criminal Court (Agora links) http://www.politicalresources.net/c-criminal-court.htm

CICC-DE (Koalition für einen internationalen Strafgerichtshof - Deutsches Komitee (CICC-DE) - Coalition for an International Criminal Court - German Committee; see also the Komitee für ein effektives Völkerstrafrecht or Committee for an Effective International Criminal Law (CoeICL)) http://www.cicc.de/start.html

The International Criminal Court (World Federalist Association WFA's ICC page; includes link to the WFA Campaign to End Genocide which "will work with members of the International Coalition for the International Criminal Court and with the Washington Working Group on the International Criminal Court to establish a strong and effective ICC, to support efforts to achieve the necessary ratifications and to encourage U.S. signature and ratification") http://www.wfa.org/issues/icc.html

Women's Caucus for Gender Justice (site contains information about the Women's Caucus and its work on the International Criminal Court (ICC) and the Optional Protocol to CEDAW; includes recent papers and publications, such as position papers distributed at the Preparatory Commissions at the ICC, reports, articles, newsletter and their recent document on the ICC for the Beijing+5 review)(Women's Caucus) http://www.iccwomen.org/icc/index.htm

International Criminal Court (No Peace Without Justice ICC page; NPWJ; inlcudes PrepCom Reports/post-Rome documents) http://www.npwj.org/iccrome/index.htm

International Criminal Court=Corte Penal Internacional (ICC/CPI); English- and Spanish-language ICC information and links pages by Derechos and Equipo Nizkor) http://www.derechos.org/nizkor/impu/tpi/

Books, Journal Articles, and Other Resources

Heiko Ahlbrecht, Geschichte der völkerrechtlichen Strafgerichtsbarkeit im 20. Jahrhundert: Unter besonderer Berücksichtigung der völkerrechtlichen Straftatbestände und der Bemühungen um einen Ständigen Internationalen Strafgerichtshof (Baden-Baden: Nomos, 1999)(Juristische Zeitgeschichte, Abteilung I: Allgemeine Reihe, Bd.2). 502p. ISBN 3-7890-6047-X.

Rosanne van Alebeek, "From Rome to the Hague: Recent Developments on Immunity Issues in the ICC Statute", 13 Leiden Journal of International Law 485 (2000).

K. Ambos, "Der neue Internationale Strafgerichtshof - ein Überblick", 51 Neue Juristische Wochenschrift 3743-3746 (no. 51, December 16, 1998).

K. Ambos, "Establishing an International Criminal Court and International Criminal Code: Observations from an International Criminal Law Viewpoint", 7 European Journal of International Law 519-544 (1996).

Kai Ambos, "Les fondements juridiques de la Cour penale internationale," 10 Revue trimestrielle des droits de l'homme 739-772 (1999).

Kai Ambos, "General Principles of Criminal Law in the Rome Statute," 10 Criminal Law Forum 1-32 (1999).

Kai Ambos, "Der neue Internationale Strafgerichtshof: Funktion und vorlaufige Bewertung," 2000 Jahrbuch Menschenrechte 122-139.

Kai Ambos, "Zur Rechtsgrundlage des Internationalen Strafgerichtshofs: Eine Analyse des Rom-Statuts", 111 Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 175-211 (Heft 1, 1999).

Kai Ambos & Oscar Julian Guerrero, El Estatuto de Roma de la Corte Penal Internacional (Bogotáá: Editor Antonio Milla, Universidad Externado de Colombia, dept. de Publicaciones, Aptdo. 034141, (00571) 3424948, 2826066 ext. 3151; fax: 2869676; 1999). 512p.

Scott W. Andreasen, "The International Criminal Court: Does the Constitution Preclude Its Ratification By the United States?", 85 Iowa Law Review 697 (January 2000, no. 2).

Aref Mohamed Aref, "La Cour pénale internationale: une nouvelle perspective pour le continent africain", 1 International Law FORUM du droit international 30 (1999).

Mahnoush H. Arsanjani, "The Rome Statute of the International Criminal Court", 93 American Journal of International Law 22-43 (1999).

J. Holmes Armstead, Jr., "The International Criminal Court: History, Development and Status", 38 Santa Clara Law Review 745-835 (Summer 1998).

Karen Austin & Nell Stewart, "Courting Justice in Rome", 5 Human Rights Tribune 6-12 (September 1998)(includes coverage of children's rights and gender).

Julio Barboza, "International Criminal Law", 278 Recueil des cours 9-200 (1999-2000).

Gary Jonathan Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (Princeton: Princeton University Press, 2000)(Princeton Studies in International History and Politics). 402p. ISBN 069104922X.

M. Cherif Bassiouni, A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal ([2nd rev. & updated ed.], Dordrecht ; Boston : M. Nijhoff, 1987). 492p.

M. Cherif Bassiouni, Draft Statute, International Tribunal = Projet de statut du Tribunal Pénal International = Proyecto de estatuto del Tribunal Penal Internacional ([Pau, France] : [Toulouse?] : Association Internationale de Droit Pénal ; Érès, 1993)(Nouvelles Études Pénales ; 10)(First published in 1992 under title: Draft Statute, International Criminal Tribunal; English text called 2nd ed., Nouvelles Études Pénales ; 9). 369p.

M. Cherif Bassiouni, "Enforcing Human Rights through International Criminal Law and through an International Criminal Tribunal," in Human Rights: An Agenda for the Next Century (Louis Henkin & John Lawrence Hargrove eds., Washington, D.C.: American Society of International Law, 1994)(Studies in Transnational Legal Policy, no. 26, ISSN: 1057-0551). 524p.

M. Cherif Bassiouni, "From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court", 10 Harvard Human Rights Journal 11-62 (1997).

M. Cherif Bassiouni, "Ha llegado la hora del Tribunal Penal Internacional", 14 Curso de Derecho Internacional 131-166 (1992, Comité Jurídico Interamericano; Washington, D.C.: Secretaría General, Subsecretaría de Asuntos Jurídicos, Organización de los Estados Americanos; Ediciones Jurídicas de las Américas, 1996).

M. Cherif Bassiouni, The International Criminal Court : Observations and Issues before the 1997-98 Preparatory Committee, and Administrative and Financial Implications (Toulouse: Chicago: Érès; International Human Rights Institute, DePaul University, 1997) (Nouvelles Études Pénales; 13) (Joint project of: International Association of Penal Law, International Human Rights Law Institute, DePaul University, International Institute of Higher Studies in Criminal Sciences, International Law Association, American Branch, Committee on ICC)(ISBN 1889001023). 290p.

M. Cherif Bassiouni, "Policy Perspectives Favoring the Establishment of the International Criminal Court", 52 Journal of International Affairs 795-810 (No.2, Spring 1999). Part of "Opposing Views on the International Criminal Court" section at 781-810.

M. Cherif Bassiouni, The Statute of the International Criminal Court and Related Instruments: Legislative History, 1994-2000 (Ardsley, NY: Transnational Publishers, forthcoming 2001). ISBN 1-57105-148-1. Approx. 1400-1500p. 2v.

M. Cherif Bassiouni, "The Time Has Come for an International Criminal Court", 1 Indiana International and Comparative Law Review 1-43 (1991).

M. Cherif Bassiouni & Christopher L. Blakesley, "The Need for an International Criminal Court in the New International World Order", 25 Vanderbilt Journal of Transnational Law 151-182 (1992).

Barbara Bedont, "Gender-Specific Provisions in the Statute of the International Criminal Court", in Essays on the Rome Statute of the International Criminal Court (Flavia Lattanzi & William A. Schabas eds., Ripa Fagnano Alto: Editrice il Sirente, 2000)(v.1; v.2 forthcoming). 481p.

Fanny Benedetti & John L. Washburn, "Drafting the International Criminal Court Treaty : Two Years to Rome and an Afterword on the Rome Diplomatic Conference", 5 Global Governance : a Review of Multilateralism and International Organizations 1-37 (No. 1, 1999).

Audrey I. Benison, "War Crimes: A Human Rights Approach to a Humanitarian Law Problem at the International Criminal Court", 88 Georgetown Law Journal 141-176 (1999).

Stuart Beresford & Hafida Lahiouel, "The Right to be Defended in Person or Through Legal Assistance and the International Criminal Court", 13 Leiden Journal of International Law 949 (2000).

Bradley E. Berg, "The 1994 I.L.C. Draft Statute for an International Criminal Court: A Principled Appraisal of Jurisdictional Structure", 28 Case Western Reserve Journal of International Law 221 (Spring 1996).

Morten Bergsmo, "Occasional Remarks on Certain State Concerns about the Jurisdictional Reach of the International Criminal Court, and Their Possible Implications for the Relationship between the Court and the Security Council", 69 Nordic Journal of International Law 87-113 (no.1, 2000).

Christopher L. Blakesley, "Introduction au Projet de Convention Portant Création d'un Tribunal Pénal International, 62 Revue Internationale de Droit Pénal 345 (1992).

Christopher L. Blakesley, "Obstacles to the Creation of a Permanent War Crimes Tribunal", 18 Fletcher Forum of World Affairs 77-102 (1994).

Jeffrey L. Bleich, "The International Criminal Court: Report of the ILA Working Group On Complementarity", 25 Denver Journal of International Law and Policy 281 (1997).

Jeffrey L. Bleich, "The International Criminal Court: Report of the ILA Working Group On Cooperation With National Systems", 25 Denver Journal of International Law and Policy 293 (1997).

Jeffrey L. Bleich, "Problems Facing The War Crimes Tribunal And The Need For A Permanent International Criminal Court", 16 Whittier Law Review 404 (1995).

Gideon Boas, "Comparing the ICTY and the ICC: Some Procedural and Substantive Issues", 47 Netherlands International Law Review 267-292 (2000).

Neil Boister, "The Exclusion of Treaty Crimes from the Jurisdiction of the Proposed International Criminal Court: Law, Pragmatism, Politics", 3 Journal of Armed Conflict Law 27-43 (No.1, June 1998).

John R. Bolton, "Courting Danger: What's Wrong with the International Court", The National Interest, No. 54, Winter 1998, at 60-71.

Adriaan Bos, "Dedicated to the Adoption of the Rome Statute of the International Criminal Court 1948-1998: The Universal Declaration of Human Rights and the Statute of the International Criminal Court", 22 Fordham International Law Journal 229 (December 1998).

William Bourdon, La Cour pénale internationale: le statut de Rome (collab. Emmanuelle Robineau-Duverger; préf. Robert Badinter, Paris: Seuil, 2000)(Points; 426)(ISBN: 2-02-037194-4). 368p.

Theodoor C. van Boven, "The European Union and the International Criminal Court", 5 Maastricht Journal of European and Comparative Law 325-327 (no.4, 1998)(M.J.).

Bartram S. Brown, "Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals", 23 Yale Journal of International Law 383 (Summer 1998).

Bartram S. Brown, "U.S. Objections to the Statute of the International Criminal Court: A Brief Response", 31 New York University Journal of International Law and Politics 855-891 (1999).

Daniel J. Brown, "The International Criminal Court and Trial in Absentia", 24 Brooklyn Journal of International Law 763 (1999).

Fabio Buonomo, "Sull'istituzione di un tribunale penale internazionale permanente", Nuovi studi politici 9 (no. 2, 1998).

Christine Byron & David Turns, "The Preparatory Commission for the International Criminal Court", 50 International and Comparative Law Quarterly 420-435 (No. 2, April 2001)(in the "Current Developments: Public International Law" column edited by Colin Warbrick and Dominic McGoldrick)

Lucius Caflisch, "Das Ringen um den ständigen Strafgerichtshof: Dringend benötigte Instanz zur Ahndung von Kriegsverbrechen", Neue Zürcher Zeitung, 8/8/1998.

Lucius Caflisch, "Toward the Establishment of a Permanent International Criminal Jurisdiction", 4 International Peacekeeping Newsletter 110-115 (No. 5, 1998).

Juan Antonio Carrillo Salcedo, "La Cour pénale internationale : l'humanité trouve une place dans le droit international", 103 Revue générale de droit international public 23-28 (No. 1, 1999).

Lee A. Casey & David R. Rivkin, Jr., "The International Criminal Court vs. the American People (Heritage Foundation Paper; No. 1249, February 5, 1999).

Antonio Cassese, "The Statute of the International Criminal Court: Some Preliminary Reflections", 10 European Journal of International Law 144-171 (No. 1, 1999).

David Donat-Cattin, Dai Tribunali Penali Internazionali ad hoc alla Corte Penale Internazionale permanente: alcune riflessioni sul processo decisionale nella Comunità Internazionale, in EX-JUGOSLAVIA E TRIBUNALE INTERNAZIONALE PENALE, G.M. CALVETTI (ed.), Milano (CUEM), 2001.

David Donat-Cattin, The Rights of Victims and International Criminal Justice, in INTERNATIONAL LAW AS WE ENTER THE 21ST CENTURY, M. MAIN (ed.), Univ. di Bochum-Bochumer Schriften zur Friedenssicherung und zum Humanitären Volkerrecht (Berlin Verlag), 2001.

David Donat-Cattin, A general definition of crimes against humanity under International Law: the contribution of the Rome Statute of the International Criminal Court, in L'ASTRÉE–REVUE DE DROIT PÉNAL ET DES DROITS DE L'HOMME, No. 8, 1999, Univ. Paris Panthéon-Sorbonne (p. 83).

David Donat-Cattin, The Role of Victims in ICC Proceedings, in COLLECTION OF ESSAYS ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT - VOLUME I, F. LATTANZI & W. SCHABAS (eds.), Ripa di Fangano Alto (Il Sirente), 1999.

David Donat-Cattin, Article 68: Protection of Victims and Witnesses and their Participation in the Proceedings, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT– OBSERVERS' NOTES, ARTICLE BY ARTICLE, O. TRIFFTERER (ed.), Baden-Baden (Nomos Verlagsgesellschaft), 1999.

David Donat-Cattin, Article 75: Reparations to Victims, in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT– OBSERVERS' NOTES, ARTICLE BY ARTICLE, O. TRIFFTERER (ed.), Baden-Baden (Nomos Verlagsgesellschaft), 1999.

David Donat-Cattin, Lo Statuto di Roma della Corte Penale Internazionale: riflessioni a margine della Conferenza Diplomatica dell'ONU, in LA COMUNITÀ INTERNAZIONALE, Roma, 1998 (4).

David Donat-Cattin, Crimes against Humanity, in THE INTERNATIONAL CRIMINAL COURT: COMMENTS TO THE DRAFT STATUTE, F. LATTANZI (ed.), Napoli (Ed. Scientifica), 1998.

David Donat-Cattin, The Role of Victims in the Proceedings before the ICC, in THE INTERNATIONAL CRIMINAL COURT: COMMENTS TO THE DRAFT STATUTE, F. LATTANZI (ed.), Napoli (Ed. Scientifica), 1998.

David Donat-Cattin, The Enforcement of Human Rights Law through International Criminal Tribunals, in PROCEEDINGS OF THE INTERNATIONAL SEMINAR "HUMAN RIGHTS: THE PROMISE OF THE XXI CENTURY", Universidade Portucalense, Oporto, 1997.

David Donat-Cattin, The Right of Victims of Serious Violations of Human Rights and International Crimes to Participate in Proceedings: a Standard for International Jurisdictions? (co-author: ELSA Non-Paper), Siracusa (Istituto Superiore Internazionale di Scienze Criminali), 1997.

David Donat-Cattin, (ED.) HANDBOOK ON THE INTERNATIONAL CRIMINAL COURT, THE EUROPEAN LAW STUDENTS' ASSOCIATION Brussels, 1997 (contributor to the I edition: section on "Historical Background of International Criminal Jurisdiction"). Roma, 1998 (contributor to the II edition: sections on penalties, victims' rights, and ibid.).

David Donat-Cattin, Decision-making in the International Criminal Court: the Assembly of the States Parties and the Independence of the Court's Judicial Organs in ESSAYS ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT- VOLUME II, F. LATTANZI & W. SCHABAS (eds), Ripa di Fagnano Alto (Il Sirente), 2001/2002.

David Donat-Cattin, Review of the book "The Rome Statute of the International Criminal Court: a Challenge to Impunity" (M. Politi & G. Nesi, eds.), in ITALIAN YEARBOOK OF INTERNATIONAL LAW, Rome, 2001.

Jonathan I. Charney, "International Criminal Law and the Role of Domestic Courts", 95 American Journal of International Law 120-124 (no. 1, January 2001).

Roger S. Clark, The Mental Element in International Criminal Law: The Rome Statute of the International Criminal court and the Elements of Offences, 12 Criminal Law Forum (2001), p. 291-334.

Jacob Katz Cogan, "The Problem of Obtaining Evidence for International Criminal Courts", 22 Human Rights Quarterly 404-427 (No. 2, 2000). Need to be a Project Muse subscriber for electronic access.

Luigi Condorelli, "La Cour pénale internationale : un pas de giant (pourvu qu'il soit accompli...)", 103 Revue générale de droit international public 7-21 (No. 1, 1999).

Consejo General del Poder Judicial, La Criminalización de la barbarie: La Corte penal internacional (Juan Antonio Carrillo Salcedo (Coord.)/Petit/Pelaez/Yanez/etc., Madrid: Dykinson, 2000). 504p. Available from Marcial Pons.

La Corte penal internacional: Justicia versus Impunidad (Isabel Lirola Delgado & Magdalena Martin Martinez, Madrid: Dykinson; ed. ARIEL, 2001). 308p.

La Cour pénale internationale (Colloque de l'association Droit et démocratie, 20 oct. 1998, Palais de justice de Paris; Paris: Documentation franççaise, 1999)(ISBN 2-11-004296-6). 98p.

La Cour pénale internationale: du projet de loi constitutionnelle relatif à la Cour pénale internationale, Paris, 11 mars 1999, à son adoption par le Congrès du Parlement, Versailles, 28 juin 1999 (Tristan Mage ed., Paris: Mage, 1999)(ISBN 2-87891-328-0). 2v.(392p.).

La Cour pénale internationale: le statut de Rome (Introduit et commenté par William Bourdon avec Emmanuelle Duverger; préface de Robert Badinter; Paris: Éd. du Seuil, 2000). 290p.

James Crawford, "The ILC's Draft Statute for an International Criminal Tribunal", 88 American Journal of International Law 140-152 (1994).

La Criminalizacíon de la barbarie: la Corte penal internacional (Publicaciones del Consejo General del Poder Judicial, Madrid, 2000). 504p.

Crimini internazionali tra diritto e giustizia: dai Tribunali penali internazionali alle Commissioni Verità e riconciliazione (Giulio Illuminati, Luigi Stortoni, & Maria Virgilio eds., Torino: Giappichelli, 2000).

Robert Cryer, "Commentary on the Rome Statute for an International Criminal Court: A Cadenza for the Song of Those Who Died in Vain?", 3 Journal of Armed Conflict Law 271-286 (no.2, December 1998).

Nicholas S. Curabba, The Rome Statute of the International Criminal Court: Selected Legal and Constitutional Issues (Washington, D.C.: American Law Division, Congressional Research Service, Februrary 22, 1999). 22p.

Dai tribunali penali internazionali ad hoc a una corte permanente (Flavia Lattanzi & Elena Sciso eds., Napoli: Editoriale scientifica, 1996). ISBN 8885370675. 363p. Proceedings.

Eric David, "La Cour pénale internationale: une Cour en liberté surveillée", 1 International Law FORUM du droit internationale 20 (1999).

Marcella David, "Grotius Repudiated: The American Objections to the International Criminal Court and the Commitment to International Law", 20 Michigan Journal of International Law 337-412 (No.2, Winter 1999).

Grant M. Dawson, "Defining Substantive Crimes within the Subject Matter Jurisdiction of the International Criminal Court: What Is the Crime of Aggression?", 19 New York Law School Journal of International and Comparative Law 413-452 (2000).

Margaret McAuliffe deGuzman, "The Road from Rome: The Developing Law of Crimes Against Humanity", 22 Human Rights Quarterly 335-403 (No.2, 2000). Need to be a Project Muse subscriber for electronic access.

Stuart H. Deming, "War Crimes and International Criminal Law", 28 Akron Law Review 421 (1995)(covering the Draft Statute).

Daniel H. Derby, "An International Criminal Court for the Future", 5 Transnational Law & Contemporary Problems 307 (1995)(Symposium: International Criminal Law, Fall 1995).

"Developments in International Criminal Law", 93 American Journal of International Law 1-123 (No. 1, January 1999)(includes articles on the International Criminal Court by Kirsch & Holmes, Scheffer, Arsanjani, & Robinson)

Draft Statute for an International Criminal Court (Annex to the Report of the Committee on International Criminal Jurisdiction), 7 U.N. GAOR Supp. No. 11, U.N. Doc. A/2136 (1952), p. 21.

Droit international pénal (Hervé Ascension, Emmanuel Decaux, & Alain Pellet eds., Paris: Editions A. Pedone, 2000).

Helen Duffy, "National Constitutional Compatibility and the International Criminal Court", 11 Duke Journal of Comparative & International Law 5-38 (Fall/Winter 2001).

Helen Durham, "The International Criminal Court and State Sovereignty", in Rewriting Rights in Europe 169-190 (Linda Hancock & Carolyn O'Brien eds., Aldershot [Hants, England] ; Burlington [Vt.]: Ashgate, 2000). ISBN 0754620026.

Nicole Eva Erb, "Gender-Based Crimes under the Draft Statute for the Permanent International Criminal Court", 29 Columbia Human Rights Law Review 401-435 (Spring 1998).

Concepcion Escobar Hernandez, Creacion de una jurisdiccion penal internacional (Madrid: Escuela Diplomatica, 2000). 391p. ISBN: 7415762432.

Essays on the Rome Statute of the International Criminal Court (Flavia Lattanzi & William A. Schabas eds., Ripa Fagnano Alto: Editrice il Sirente; Nomos, 2000)(v.1)(v.2 forthcoming). 481p.

Establishing an International Criminal Court : Major Unresolved Issues in the Draft Statute : a Position Paper of the Lawyers Committee for Human Rights ([Updated ed.], New York, N.Y. : Lawyers Committee for Human Rights, August 1996). 23p.

European Journal of Crime, Criminal Law, and Criminal Justice (v.6, no.4, 1998 issue devoted to articles on the International Criminal Court)

El Estatuto de Roma de la Corte Penal Internacional (Kai Ambos & Oscar Julian Guerrero comps., Bogotá: Editor Antonio Milla, Universidad Externado de Colombia, 1999). 512p.

European Commission for Democracy Through Law, Report on Constitutional Issues Raised By the Ratification of the Rome Statute of the International Criminal Court (Venice Commission, Council of Europe, 15 January 2001, CDL-INF (2001) 1) = Rapport sur les questions constitutionnelles soulevées par la ratification du Statut de Rome instituant la Cour pénale internationale (Commission de Venise, Conseil de l'Europe, 15 janvier 2001)(Report of the European Commission for Democracy through Law)

European Law Students' Association International; "report from the sixth session of the ICC Preparatory Commission" (Cornelia Schneider, Sofia Candeias, Espen Rostrup Nakstad et al.) 2001; www.elsa.org

European Law Students' Association International; "report from the eight session of the ICC Preparatory Commission" (Sofia Candeias, Espen Rostrup Nakstad et al.) September 2001; www.elsa.org

European Law Students' Association International; "report from the ninth session of the ICC Preparatory Commission" (Matthias Goldmann, Espen Rostrup Nakstad et al.) 2001 – 2002; www.elsa.org

European Law Students' Association International; "report from the tenth session of the ICC Preparatory Commission" (Cornelia Schneider, Ann Swampil, Matthias Goldmann, Espen Rostrup Nakstad et al.) 1-12 July 2002; www.elsa.org

Ulrich Fastenrath, "Der internationale Strafgerichtshof", 1999 Juristische Schulung (JuS) 632.

Benjamin B. Ferencz: Writings and Lectures on the International Criminal Court & World Peace (includes links to a brief biography, documents, and resource pages)

Benjamin B. Ferencz, "An International Criminal Code and Court: Where They Stand and Where They're Going", 30 Columbia Journal of Transnational Law 375-399 (1992).

Benjamin B. Ferencz, An International Criminal Court: A Step Toward World Peace: A Documentary History and Analysis (Dobbs Ferry, NY: Oceana Publications, Inc., 1990).

Benjamin B. Ferencz, "International Criminal Courts: The Legacy of Nuremberg", 10 Pace International Law Review 203 (Summer 1998)(Blaine Sloan Lecture).

Benjamin B. Ferencz, "A Prosecutor's Personal Account: From Nuremberg to Rome", 52 Journal of International Affairs 455-469 (No.2, Spring 1999).

Benjamin B. Ferencz, "UN Observer Report", ASIL Newsletter, January-February 1998, at 9 (covers the UN Preparatory Committee on an International Criminal Court).

Benjamin B. Ferencz, "UN Observer Report: Toward an International Criminal Court: An Historical Perspective", ASIL Newsletter, March-April 1998, at 9.

Benjamin B. Ferencz, "Von Nürnberg nach Rom: Auf dem Weg zu einem Internationalen Strafgerichtshof", Humanitäres Völkerrecht, Heft 2/1998, 80-90. See also online texts: From Nuremberg to Rome: Towards an International Criminal Court (Policy Paper 8)(Stiftung Entwicklung und Frieden (SEF - Development and Peace Foundation, Bonn, Germany; available also in full text in German as Von Nürnberg nach Rom: Auf dem Weg zu einem Internationalen Strafgerichtshof).

Rolf Einar Fife, "The International Criminal Court: Whence It Came, Where It Goes", 69 Nordic Journal of International Law 63-85 (no.1, 2000).

Horst Fischer, "The Jurisdiction of the International Criminal Court for War Crimes: Some Observations Concerning Differences between the Statute of the Court and War Crimes Provisions of Other Treaties", in Brücken Bauen und Begehen: Festschrift für Knut Ipsen zum 65. Geburtstag 77-101 (Volker Epping, Horst Fischer, & Wolff Heintschel von Heinegg eds., München: Verlag C.H. Beck, 2000).

Horst Fischer & Sascha Rolf Lüder, Völkerrechtliche Verbrechen vor dem Jugoslawien-Tribunal, nationalen Gerichten und dem Internationalen Strafgerichtshof: Beiträge zur Entwicklung einer effektiven internationalen Strafgerichtsbarkeit (Berlin: Verlag Arno Spitz GmbH, 1999)

(Bochumer Schriften zur Friedenssicherung und zum Humanitären Völkerrecht: Bd. 35) (ISBN 3-87061-844-2). Includes a bibliography and the texts of the Statute and Rules of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in German, Germany's ICTY implementing legislation, plus the Rome Statute of the International Criminal Court in English).

France. Senat. Commission des affaires étrangères, de la défense et des forces armées. La cour penale internationale: quel nouvel equilibre entre souveraineté, securité et justice penale internationale? (présentation André Dulait (Paris: Senat, 1999)(Les rapports du Senat; 313)(ISBN 2-11-102577-1). 94p.

"Freiburg Declaration on the Position of the Prosecutor of a Permanent International Criminal Court", 6 European Journal of Crime, Criminal Law and Criminal Justice 301-303 (no.3, 1998).

Shuichi Furuya, "Legal Effect of Rules of the International Criminal Tribunals and Court Upon Individuals: Emerging International Law of Direct Effect", 47 Netherlands International Law Review 111-145 (no.2, 2000).

Paola Gaeta, "The Defence of Superior Orders: The Statute of the International Criminal Court Versus Customary International Law", 10 European Journal of International Law 172-191 (1999).

Kenneth S. Gallant, "Individual Human Rights in A New International Organization: The Rome Statute of the International Criminal Court," in 3 International Criminal Law 693-722 (2d ed., M. Cherif Bassiouni, ed., Dobbs Ferry, NY, USA: Transnational Publishers, 1999)("Enforcement" volume). ISBN 1-57105-019-1.

Kenneth S. Gallant, "The Role and Powers of Defense Counsel in the ICC Statute," 34 The International Lawyer 21 (2000).

Kenneth S. Gallant, "Sovereignty, Judicial Assistance and Protection of Human Rights in International Criminal Tribunals," 9 National Law School Law Review 20 (1997) (publication of National Law School of India University, Bangalore, India).

William N. Gianais, "The New World Order and the Need for an International Criminal Court", 16 Fordham International Law Journal 88-119 (1993).

William C. Gilmore, "The Proposed International Criminal Court: Recent Developments", 5 Transnational Law & Contemporary Problems 263 (1995)(Symposium: International Criminal Law, Fall 1995).

Matthias Goldmann, Neil Falzon, Ketevan Khutsishvili et al. "Nomination and Election of Judges to International Courts - A Comparative Study" Report of April 2002, The European Law Students' Association International (www.elsa.org).

Richard J. Goldstone & Nicole Fritz, "'In the Interests of Justice' and the Independent Referral: The Internation Criminal Court Prosecutor's Unprecedented Power", 13 Leiden Journal of International Law 655 (2000).

Vera Gowlland-Debbas, "The Relationship Between the Security Council and the Projected International Criminal Court", 3 Journal of Armed Conflict Law 97-119 (No.1, June 1998).

Bernhard Graefrath, "Universal Criminal Jurisdiction and an International Criminal Court", 1 European Journal of International Law 67-88 (1990).

Bernhard Graefrath, "Die Verhandlungen der UN-Völkerrechtskommission zur Schaffung eines Internationalen Strafgerichtshofs", 104 Zeitschrift für die gesamte Strafrechtswissenschaft 190-200 (1992).

Michael D. Greenberg, "Creating an International Criminal Court", 10 Boston University International Law Journal 119 (1992).

John Blount Griffin, "A Predictive Framework for the Effectiveness of International Criminal Tribunals", 34 Vanderbilt Journal of Transnational Law (no.2, March 2001).

Ellen Grigoria, The International Criminal Court Treaty: Description, Policy Issues, and Congressional Concerns (Washington, D.C.: Foreign Affairs and National Defense Division, Congressional Research Service, January 6, 1999). 46p.

Carrie Gustafson, "International Criminal Courts: Some Dissident Views on the Continuation of War by Penal Means", 21 Houston Journal of International Law 51 (Fall 1998).

J. de D. Gutierrez Baylon, "El proyecto de Estatuto de un Tribunal Penal Internacional en el contexto de las tendencias recientes en materia de arreglo pacífico de las controversias internacionales", in Un homenaje a Don Cesar Sepulveda: escritos jurídicos 227-244 (Mexico: Universidad Nacional Autonoma de Mexico, 1995).

Gerhard Hafner, Kristen Boon, Anne Rübesame & Jonathan Huston, "A Response to the American View as Presented by Ruth Wedgwood", 10 European Journal of International Law 108-123 (No. 1, 1999).

Christopher Keith Hall, "The First Five Sessions of the UN Preparatory Commission for the International Criminal Court", 94 American Journal of International Law 773 (2000).

Christopher Keith Hall, "The First Proposal for a Permanent International Criminal Court", International Review of the Red Cross, No. 322, March 1998, at 57-74.

Christopher Keith Hall, "The Sixth Session of the UN Preparatory Committee on the Establishment of an International Criminal Court", 92 American Journal of International Law 548-556 (July 1998).

Christopher Keith Hall, "The Fifth Session of the UN Preparatory Committee on the Establishment of an International Criminal Court", 92 American Journal of International Law 331-339 (1998).

Katherine Hall-Martinez & Barbara Bedont, "Ending Impunity for Gender Crimes under the International Criminal Court", 6 Brown Journal of World Affairs 65-85 (1999).

Morton Halperin & Gary Dempsey, "Is the Permanent War-Crimes Tribunal Worthy of U.S. Support?", 14 Insight on the News, September 7, 1998, at 24.

David Harris, "Progress and Problems in Establishing an International Criminal Court", 3 Journal of Armed Conflict Law 1-7 (No.1, June 1998).

Eve La Haye, "The Jurisdiction of the International Criminal Court: Controversies over the Preconditions for Exercising Its Jurisdiction", 46 Netherlands International Law Review 1-25 (No. 1, 1999).

Herman von Hebel, "Putting an End to Impunity: From the Hague to Rome", 1998-1999 Hague Yearbook of International Law 83-90.

Frank Hoffmeister & Sebastian Knoke, "Das Vorermittlungsverfahren vor dem Internationalen Strafgerichtshof - Prüfstein für die Effektivität der neuen Gerichtsbarkeit im Völkerstrafrecht", 59 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 785-808 (ZaöRV, No.3, 1999).

J. Hogan-Doran & B.T. Van Ginkel, "Aggression as a Crime under International Law and the Prosecution of Individuals by the Proposed International Criminal Court", 43 Netherlands International Law Review 321-351 (1996).

Constantine P. Hortatos, Individual Criminal Responsibility for Human Rights Atrocities in International Criminal Law and the Creation of a Permanent International Criminal Court (Athens : Ant. N.Sakkoulas Publishers, 1999). ISBN: 960-15-0135-5. 197p.

Robert J. Howard, "An Economic Paradigm for the Debate Concerning the Jurisdictional Extent of the International Criminal Court", 8 Touro International Law Review 117-128 (Spring 1998).

Phyllis Hwang, "Dedicated to the Adoption of the Rome Statute of the International Criminal Court: Defining Crimes Against Humanity: The Rome Statute of the International Criminal Court", 22 Fordham International Law Journal 457 (December 1998).

ICC Ratification and National Implementing Legislation; CPI Ratification et L#233gislation Nationale d'Application; CPI Ratificación y Legislación Nacional de Actuación (M. Cherif Bassiouni ed., Association Internationale de Droit Pénal, with support of the International Human Rights Law Institute (IHRLI) of the DePaul University College of Law; [Toulouse]: Éditions Érès, 1999) (Nouvelles Études Pénales; 13 quater) (ISBN 1-889001-04-X). 159p. 170p. 167p.

An Independent Defence Before the International Criminal Court: Proceedings of the Conference held in The Hague, 1-2 November 1999 (J.A.C. Bevers & C.M. Joubert eds., Amsterdam: Thela Thesis, 2000).

International Crimes, Peace, and Human Rights: The Role of the International Criminal Court (Dinah Shelton ed., Ardsley, NY: Transnational Publishers, 2000). ISBN 1-57105-138-4. 370p.

"The International Criminal Court", in Jeffrey S. Morton, The International Law Commission of the United Nations (Columbia, SC: University of South Carolina Press, 2000). ISBN 1570031703. 225p.

"International Criminal Court", in Geoffrey Robertson, Crimes Against Humanity : The Struggle for Global Justice 324-367 (London: Allen Lane, 1999)(ISBN 0713991976). 472p.

The International Criminal Court: Comments on the Draft Statute (Flavia Lattanzi ed., Napoli: Editoriale scientifica, 1998) (Studi e documenti di diritto internazionale e comunitario). ISBN 8887293058. 492p.

The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (Roy S. Lee ed., Ardsley, NY: Transnational Publishers, 2001). ISBN 1-57105-209-7. Approx. 1000p.

The International Criminal Court: Hearings Before the Committee on International Relations, House of Representatives (106th Congress, 2d Session, No. 106-176, July 25-26, 2000). 110p.

The International Criminal Court - The Making of the Rome Statute: Issues, Negotiations, Results (Roy S. Lee ed., Hague: The Netherlands: Kluwer Law International, 1999) (ISBN 904111212X). 657p.

International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute (joint project of Rights & Democracy and the International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, May 2000)

International Criminal Law (M. Cherif Bassiouni ed., 2d ed., Ardsley, NY: Transnational Publishers, Inc., 1999). 3v. ISBN 1-57105-016-7.

International Criminal Law: A Commentary on the Rome Statute for an International Criminal Court (Antonio Cassese, Albin Eser, Giorgio Gaja, Philip Kirsch, Alain Pellet, & Bert Swart eds., Oxford University Press, forthcoming April 2001) (ISBN: 0-19-829862-5). 800p. Alternate title is The Rome Statute for an International Criminal Court: A Commentary.

International Criminal Law: Cases and Materials (Jordan J. Paust, Michael P. Scharf, Leila Sadat, M. Cherif Bassiouni, Jimmy Gurulé, Bruce Zagaris, & Sharon A. Williams eds., 2d ed., Durham, NC: Carolina Academic Press, September 2000)(ISBN 0-89089-642-9). 1140p. Includes a new "Documents Supplement" volume.

International Criminal Law: Cases and Materials (Jordan J. Paust, M. Cherif Bassiouni, Sharon A. Williams, Michael Scharf, Jimmy Gurulé, & Bruce Zagaris eds., Durham, NC: Carolina Academic Press, 1996)(Carolina Academic Press Law Casebook Series)(ISBN: 0890898944). 1438p.

"International Support for International Criminal Tribunals and an International Criminal Court", 13 American University International Law Review 1413-1439 (November 1, 1998).

Der Internationale Strafgerichtshof (IStGH): Eine Einführung (Internationalen Gesellschaft für Menschenrechte; Frankfurt a.M.: IGFM, 2000). 119p.

Frank Jarasch, "Errichtung, Organisation und Finanzierung des Internationalen Strafgerichtshofs und die Schlußßbestimmungen des Statuts", 12 Humanitäres Völkerrecht-Informationsschriften (HuV-I) 10 (1999).

Hans-Heinrich Jeschek, "Der Internationale Strafgerichtshof: Vorgeschichte, Entwurfsarbeiten, Statut," in Strafrecht-Freiheit-Rechtsstaat: Festschrift G.-A. Mangakis 483-499 (G. Bemmann & D. Spinellis eds., Athens: Ant. N. Sakkoulas, 1999)(ISBN 960-15-0103-7). 875p.

Robert C. Johansen, U.S. Opposition to the International Criminal Court: Unfounded Fears (Policy Briefs, No. 7, June 2001, The Joan B. Kroc Institute for International Peace Studies, University of Notre Dame)

Justice in the Balance: Recommendations for an Independent and Effective International Criminal Court (New York, NY: Human Rights Watch, 1998) (ISBN 1-56432-184-3). 166p.

K. Karski, "Realizacja idei utworzenia miedzynarodowego sadownictwa karnego", 48 Panstwó i Prawo 65-76 (1993)(No.7).

Hans-Peter Kaul, "Auf dem Weg zum Weltstrafgerichtshof: Verhandlungsstand und Perspektiven", Vereinte Nationen, 5/1997, p. 177.

Hans-Peter Kaul, "Durchbruch in Rom: Der Vertrag über den Internationalen Strafgerichtshof", Vereinte Nationen, 4/1998, p. 125-130.

Hans-Peter Kaul, "Towards a Permanent International Criminal Court: Some Observations of a Negotiator", 18 Human Rights Law Journal 169-174 (November 28, 1997).

Hans-Peter Kaul, Der Aufbau des Internationalen Strafgerichtshofs, Schwierigkeiten und Fortschritte, 6 Vereinte Nationen (2001), p. 215.

Henry T. King & Theodore C. Theofrastous, "From Nuremberg to Rome: A Step Backward for U.S. Foreign Policy", 31 Case Western Reserve Journal of International Law 47-106 (No.1, Winter 1999).

Philippe Kirsch & John T. Holmes, "The Rome Conference on an International Criminal Court: The Negotiating Process", 93 American Journal of International Law 2-12 (1999).

Geert-Jan G.J. Knoops, Defenses in Contemporary International Criminal Law (Ardsley, NY: Transnational Publishers, forthcoming Spring 2001). ISBN 1-57105-151-1. 326p.

Claus Kreß, "Die Kristallisation eines Allgemeinen Teils des Völkerstrafrechts: Die Allgemeinen Prinzipien des Strafrechts im Statut des Internationalen Strafgerichtshofs", 12 Humanitäres Völkerrecht-Informationsschriften (HuV-I) 4 (1999).

Eve La Haye, "The Jurisdiction of the International Criminal Court: Controversies over the Preconditions for Exercising Its Jurisdiction", 46 Netherlands International Law Review 1-25 (No. 1, 1999).

Flavia Lattanzi, "Compétence de la Cour pénale internationale et consentement des états", 103 Revue générale de droit international public 425-444 (No.2, 1999).

Flavia Lattanzi & Elena Sciso eds., Dai tribunali penali internazionali ad hoc a una corte permanente (Napoli: Editoriale scientifica, 1996). ISBN 8885370675. 363p. Proceedings.

Monroe Leigh, "The United States and the Statute of Rome", 95 American Journal of International Law 124-131 (no.1, January 2001).

Matthew Lippman, "The Evolution and Scope of Command Responsibility", 13 Leiden Journal of International Law 139 (2000).

Bryan F. MacPherson, "Building an International Criminal Court for the 21st Century", 13 Connecticut Journal of International Law 1-60 (Winter 1998).

Adel Maged, [The International Criminal Court and National Sovereignty] (in Arabic)(Egypt: Center for Political and Strategic Studies, Al-Ahram Foundation; available from the Al-Ahram Distribution Agency, Al-Ahram Newspaper, New Building, 3d Floor, El-Galaa St., Cairo, Egypt; Tel: 002 02 578 6100; Fax: 002 02 575 9388)(ISBN 977-227-167-2).

Paul D. Marquardt, "Law Without Borders: The Constitutionality of an International Criminal Court," 33 Columbia Journal of Transnational Law 73 (1995).

Hilaire McCoubrey, "From Nuremberg to Rome: Restoring the Defence of Superior Orders", 50 International and Comparative Law Quarterly 386-394 (No. 2, April 2001).

Hilaire McCoubrey, "War Crimes Jurisdiction and a Permanent International Criminal Court: Advantages and Difficulties", 3 Journal of Armed Conflict Law 9-26 (No.1, June 1998).

Patricia A. McKeon, "An International Criminal Court: Balancing the Principle of Sovereignty Against the Demands for International Justice", 12 St. John's Journal of Legal Commentary 535 (1997).

Frédéric Mégret, "Epilogue to an Endless Debate: The International Criminal Court's Third Party Jurisdiction and the Looming Revolution of International Law", 12 European Journal of International Law 247-268 (no.2, April 2001).

Frédéric Mégret, "The International Criminal Court and State Sovereignty: The `Problem of an International Criminal Law' Re-examined," in International Humanitarian Law: Challenges Ahead (J. Carey, J. Pritchard & W. Dunlop eds., forthcoming).

Theodor Meron, "The Court We Want", Washington Post, October 13, 1998, at A15.

Kristina Miskowiak, The International Criminal Court: Consent, Complementarity and Cooperation (Copenhagen: DJOF Publishing, 2000). 127p. ISBN 8757403252.

Brook Sari Moshan, "Women, War, and Words: The Gender Component in the Permanent International Criminal Court's Definition of Crimes Against Humanity", 22 Fordham International Law Journal 154-184 (November 1998)(Ninth Annual Philip D. Reed Memorial Issue).

Espen Rostrup Nakstad, “The ICC Preparatory Commission: an introductory report” The European Law Students’ Association International 2001 (Brussels, Belgium, www.elsa.org)

Espen Rostrup Nakstad, “The International Criminal Court: final negotiations at UN headquarters”, - Blunc (Explorer) Magazine (no 1, June 2002, The European Law Students’ Association Norway).

Ved P. Nanda, "The Establishment of a Permanent International Criminal Court: Challenges Ahead," 20 Human Rights Quarterly 413.

Aryeh Neier, "Waiting for Justice: The United States and the International Criminal Court", 15 World Policy Journal 33 (Fall 1998).

Joanna Nowakowska-Malusecka, "Prosecuting War Crimes by the ad hoc Tribunals and by the Future Permanent International Criminal Court", in Legal Convergence in the Enlarged Europe of the New Millenium 191-204 (Paul L. C. Torremans ed., The Hague; Boston; London: Kluwer Law International, 2000). 356p. ISBN 9041113371.

Valerie L. Oosterveld, "The Making of a Gender - Sensitive International Criminal Court", 1 International Law FORUM du droit international 38 (1999).

Grabriel H. Oosthuizen, "Some Preliminary Remarks on the Relationship Between the Envisaged International Criminal Court and the UN Security Council", 46 Netherlands International Law Review 313-342 (1999)(no.3).

Jordan J. Paust, "The Reach of ICC Jurisdiction Over Non-Signatory Nationals", 33 Vanderbilt Journal of Transnational Law (January 2000).

Jelena Pejic, "Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness", 29 Columbia Human Rights Law Review 291-354 (Spring 1998).

Matthew Peter, "The Proposed International Criminal Court: A Commentary on the Legal and Political Debates Regarding Jurisdiction that Threaten the Establishment of an Effective Court", 24 Syracuse Journal of International Law and Commerce 177-197 (Fall 1997).

Ryszard Piotrowicz, "Crime and Punishment, or the Establishment of a True International Court of Justice", 72 Australian Law Journal 844-850 (November 1, 1998).

James Podgers, "War Crimes Court Under Fire: The World Says, 'Book 'em,' But the U.S. Is Debating What to Do Next", ABA Journal, September 1998, at 64-69 (American Bar Association).

Vesselin Popovski, "The International Criminal Court: A Necessary Step Towards Global Justice", 31 Security Dialogue 405-419 (No. 4, December 1, 2000).

Princeton Principles on Universal Jurisdiction (with a foreword by the Hon. Mary Robinson; Princeton, NJ : Program in Law and Public Affairs, Princeton University, 2001). 67p. (July 23, 2001; PDF file; publication of the Princeton Project on Universal Jurisdiction of the Program in Law and Public Affairs of Princeton University's Woodrow Wilson School of Public and International Affairs; Professor Stephen Macedo, Chairman of the Princeton Project; per LAPA press release, leading jurists and legal experts intended these principles as a:

- guide the prosecution of war crimes and other serious crimes under
- international law when there are no traditional jurisdictional
- links to the victims or perpetrators...

The Prosecutor of a Permanent International Criminal Court/Le Procureur d'une Cour pénale internationale permanente/El Fiscal de una Corte Penal Internacional: International Workshop in co-operation with the Office of the Prosecutor of the International Criminal Tribunals (ICTY and ICTR), Freiburg im Breisgau, May 1998 (Louise Arbour, Albin Eser, Kai Ambos, & Andrew Sanders eds., Max-Planck-Institut für ausländisches und internationales Strafrecht: Freiburg i.Br., 2000) (Iuscrim; No. 81). 708p. ISBN 3-86113-939-1.

Reflections on the International Criminal Court: Essays in Honour of Adriaan Bos (Herman von Hebel, Johan G. Lammers & Jolien Schukking eds., The Hague: T.M.C. Asser Press, 1999). 230p. ISBN 90-6704-111-4.

"Report of the International Law Association - American Branch: Committee on a Permanent International Criminal Court", 25 Denver Journal of International Law and Policy 219-421 (1997)(Issue No.2, Winter 1997; report published jointly with the Association Internationale de Droit Pénal, 13 Nouvelles Études Pénales 1997; includes articles by Leila Sadat Wexler, Christopher L. Blakesley, Jeffrey L. Bleich, Michael P. Scharf, Edward M. Wise, Jordan J. Paust, Thomas S. Warwick, and M. Cherif Bassiouni)

Revised Draft Statute for an International Criminal Court (Annex to the Report of the Committee on International Criminal Jurisdiction, 7 U.N. GAOR Supp. No. 11, U.N. Doc. A/2645 (1954), p. 21.

Marie-Claude Roberge, "The New International Criminal Court : a Preliminary Assessment", 38 International Review of the Red Cross 671-683 (no. 325, 1998).

Ken Roberts, "Aspects of the ICTY Contribution to the Criminal Procedure of the ICC", in Essays on ICTY Procedure and Evidence: In Honour of Gabrielle Kirk McDonald 559-573 (Richard May et al. eds., The Hague; Boston: Kluwer Law International, 2001)(International Humanitarian Law Series; v. 3). 579p. ISBN 9041114823.

Darryl Robinson, "Defining `Crimes against Humanity' at the Rome Conference", 93 American Journal of International Law 43-57 (1999).

Herwig Roggemann, Die Internationalen Strafgerichtshöfe: Einführung, Rechtsgrundlagen, Dokumente (Berlin: Arno Spitz, 1998, 1999)(Quellen zur Rechtsvergleichung; 51, 51a)(ISBN 3870615311). 420p.

Naomi Roht-Arriaza, "Institutions of International Justice", 52 Journal of International Affairs 473-491 (No.2, Spring 1999).

The Rome Statute and Domestic Legal Orders, Volume I: General Aspects and Constitutional Issues (Claus Kreßß & Flavia Lattanzi eds., Ripa Fagnano Alto, Rome: Editrice Il Sirente; Baden Baden: Nomos, 2000)(ISBN 88-87847-00-2). 240p.

The Rome Statute of the International Criminal Court: A Challenge to Impunity (Mauro Politi & Giuseppe Nesi eds., Ashgate, May 2001)(ISBN 0 7546 2154 5). 348p.

Charles Rominger, La Cour pénale internationale: état des lieux et prospective de la future jurisdiction pénale internationale permanente (Paris: Université de Paris Panthéon Assas, 1999). 157p.

Kenneth Roth, "The Court the U.S. Doesn't Want", The New York Review of Books (November 19, 1998; a lengthy article describing the Clinton administration's opposition to the ICC).

Alfred P. Rubin, "A Critical View of the Proposed International Criminal Court", 23 The Fletcher Forum of World Affairs 139 (No.2, Fall 1999).

Alfred P. Rubin, "Challenging the Conventional Wisdom: Another View of the International Criminal Court", 52 Journal of International Affairs 783-793 (No.2, Spring 1999). Part of the "Opposing Views on the International Criminal Court" section at 781-810.

Guido Ruegenberg, "The Independence and Accountability of Prosecutor of a Permanent International Criminal Court", 1999 Zeitschrift für Rechtspolitik (ZRP) 68 (1999).

Leila Nadya Sadat & S. Richard Carden, "The New International Criminal Court: An Uneasy Revolution", 88 Georgetown Law Journal 381-474 (?) (March 2000).

Leila Sadat, The International Criminal Court and the Transformation of International Law: Justice for the New Millenium (Ardsley, NY: Transnational Publishers, forthcoming Summer 2001). ISBN 1-57105-133-3. Approx. 250p.

Danesh Sarooshi, "The Statute of the International Criminal Court", 48 International & Comparative Law Quarterly 387-404 (No.2, April 1999).

William A. Schabas, Introduction to the International Criminal Court (Cambridge, UK ; New York, NY : Cambridge University Press, forthcoming August 2001). 336p. ISBN 0-521-80457-4 (hardback); ISBN 0-521-01149-3 (paperback).

William A. Schabas, "Montreal Follow up to Rome: Preparing for Entry into Force of the International Criminal Court Statute", 20 Human Rights Law Journal, No.4-6, 157-166 (October 29, 1999).

Brett D. Schaefer, "The International Criminal Court: Threatening U.S. Sovereignty and Security" (The Heritage Foundation, Executive Memorandum, No. 537, July 2, 1998)

Michael P. Scharf, "The Draft Statute for an International Criminal Court", in 3 International Criminal Law 637-53 ("Enforcement" volume)(2d ed., M. Cherif Bassiouni, ed., Dobbs Ferry, NY, USA: Transnational Publishers 1999). ISBN 1-57105-019-1.

Michael P. Scharf, "From Nuremberg to Bosnia", in Balkan Justice: The Story Behind the First International War Crimes Trial Since Nuremberg 13-17 (Durham, North Carolina: Carolina Academic Press, 1997)(includes a brief history of efforts to create an international criminal tribunal).

Michael P. Scharf, "Getting Serious About an International Criminal Court", 6 Pace International Law Review 103-119 (1994).

Michael P. Scharf, "The Jury is Still Out on the Need for an International Criminal Court", 1 Duke Journal of International and Comparative Law 135-168 (1991).

Michael P. Scharf, "The Politics Behind the U.S. Opposition to the International Criminal Court", 1999 New England International and Comparative Law Annual.

Michael P. Scharf, "The Politics of Establishing an International Criminal Court", 6 Duke Journal of International and Comparative Law 167-173 (1995).

David J. Scheffer, "Challenges Confronting International Justice Issues", 4 New England International and Comparative Law Annual (1998). Note that this is a PDF file.

David J. Scheffer, "The United States and the International Criminal Court", 93 American Journal of International Law 12-22 (1999).

Minna Schrag, "Observations on the Rome Statute", 1 International Law FORUM du droit international 34 (1999).

"Seeking International Justice: The Role of Institutions" (special topical issue of the Columbia Journal of International Affairs (v.52 no.2, Spring 1999, covering the international criminal courts).

Gerd Seidel & Carsten Stahn, "Das Statut des Weltstrafgerichtshofs: Ein Überblick über Entstehung, Inhalt und Bedeutung", 1999 Jura 14.

Sarah Sewall & Carl Kaysen, "The United States and the International Criminal Court: The Choices Ahead (2000; Committee on International Security Studies, Current Projects and Activities, American Academy of Arts and Sciences)

Malcolm N. Shaw, "The International Criminal Court - Some Procedural and Evidential Issues", 3 Journal of Armed Conflict Law 65-96 (No.1, June 1998).

Craig Silverman, "An Appeal to the United Nations: Terrorism Must Come within the Jurisdiction of an International Criminal Court", 4 New England International and Comparative Law Annual (1998).

G. Sluiter, "An International Criminal Court Is Hereby Established", 3 Netherlands Quarterly of Human Rights 413-420 (1998).

Heike Spieker, "The International Criminal Court and Non-International Armed Conflicts", 13 Leiden Journal of International Law 395 (2000).

Carsten Stahn, "Gute Nachbarschaft um jeden Preis? Einige Anmerkungen zur Anbindung der USA an das Statut des Internationalen Strafgerichtshofs", 36 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 631-658 (2000)(includes English summary at pages 659-662: "Good Neighbours at any Price? Some Comments on the U.S. Objections towards the Statute of the International Criminal Court").

"Statute of the International Criminal Court", 6 International Human Rights Reports 232-284 (January 1999)(A/CONF.183/9, 17 July 1998).

The Statute of the International Criminal Court: A Documentary History (M. Cherif Bassiouni ed., Ardsley, NY: Transnational Publishers, Inc., 1998). 700p. ISBN 1-57105-095-7.

The Statute of the International Criminal Court and Related Instruments: Legislative History, 1994-2000 (M. Cherif Bassiouni ed., Ardsley, NY: Transnational Publishers, forthcoming 2001). ISBN 1-57105-148-1. Approx. 1400-1500p. 2v.

Lyn L. Stevens, "Towards a Permanent International Criminal Court", 6 European Journal of Crime, Criminal Law and Criminal Justice 236-251 (no.3, 1998).

David Stoelting, "Status Report on the International Criminal Court", 3 Hofstra Law & Policy Symposium 233-285 (1999)(symposium papers on "War Crimes and War Crimes Tribunals: Past, Present, and Future").

Lyal S. Sunga, The Emerging System of International Criminal Law: Developments in Codification and Implementation (The Hague; Cambridge: Kluwer Law International, 1997)(ISBN: 9041104720). 508p.

Shannon K. Supple, "Global Responsibility and the United States: The Constitutionality of the International Criminal Court", 27 Hastings Constitutional Law Quarterly 181 (1999).

Serge Sur, "Vers une Cour pénale internationale : la Convention de Rome entre les ONG et le Conseil de sécurité", 103 Revue générale de droit international public 29-45 (No. 1, 1999).

Symposium, "International Criminal Court", 10 European Journal of International Law (1999):

Symposium, "The International Criminal Court", 34 International Lawyer 7-84 (no.1, Spring 2000).

Symposium, "Should There Be an International Tribunal for Crimes Against Humanity?", 6 Pace International Law Review 1-197 (1994).

Immi Tallgren, "Completing the `International Criminal Order': the Rhetoric of International Repression and the Notion of Complementarity in the Draft Statute for an International Criminal Court", 67 Nordic journal of international law 107-137 (No. 2, 1998).

Le Temps est l'allié des bourreaux (November 1999, Report on the International Criminal Court by the FIDH/International Federation of Human Rights Leagues). Report No. 283.

Milan Tepavac, "Establishment of a Permanent International Criminal Court", 49 Review of International Affairs 25-26 (1068/1069, 15 May/15 June 1998).

Vladimir Tochilovsky, "Rules of Procedure for the International Criminal Court: Problems to Address in Light of the Experience of the Ad Hoc Tribunals", 46 Netherlands International Law Review 343-360 (1999)(no.3).

Christian Tomuschat, "Das Statut von Rom für den Internationalen Strafgerichtshof", 73 Die Friedens-Warte 335-414 (No. 3, 1998).

Christian Tomuschat, "A System of International Criminal Prosecution is Taking Shape", 50 The Review (International Commission of Jurists) 56-70 (1993).

Toward an International Criminal Court?: Three Options Presented As Presidential Speeches (Alton Frye, Project Director; John R. Bolton, Ruth Wedgwood, Anne-Marie Slaughter, & Kenneth Roth, New York, NY: Council on Foreign Relations, 1999)(A Council Policy Initiative). ISBN 0-87609-261-X. 94p.

"Toward the Permanent International Criminal Court", in Steven R. Ratner & Jason S. Abrams, Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy 206-225 (2d ed., Oxford; New York: Oxford University Press, 2001). 435p. ISBN 0-19-924833-8 (hardcover); 0-19-829871-4 (paperback).

Towards a Procedural Regime for the International Criminal Court (Livingston & Ambos eds., in press, Max-Planck-Institut für ausländisches und internationales Strafrecht - Freiburg)

Otto Triffterer, Commentary on the Rome Statute of the International Criminal Court - Observers' Notes, Article by Article (Baden-Baden: Nomos, 1999)(Nomos site includes selected chapters in PDF format). 1295p. ISBN 3-7890-6173-5.

L. van Troost, "Een international strafhof: het Statuut van Rome in vogelvlucht", 47 Ars Aequi: Juridisch Studentblad 882-887 (1998).

L. van Troost, "Internationale rechtshulp onder het ontwerp-statuut voor een permanent internationaal strafhof", 47 Ars Aequi: Juridisch Studentblad 30-34 (1998).

L. van Troost, "Naar een Permanent Internationaal Strafhof: Twee Stappen Voorwaarts en een Grote Achterwaarts?", 45 Ars Aequi: Juridisch Studentblad 690-693 (1996).

The UN Security Council and the International Criminal Court : How Should They Relate? : Report of the Twenty-Ninth United Nations Issues Conference ([Muscatine, Iowa] : The Stanley Foundation, 1998)(ISSN 0743-9180). 42p.

United Nations General Assembly Preparatory Committee on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court (New York : United Nations, 1996)("Official records, Fifty-first session, Supplement no. 22 [and no. 22A] (A/51/22)). 2v.

The United States and the International Criminal Court (Symposium in 64 Law and Contemporary Problems, Issue Number 1, Winter 2001, Madeline Morris, general editor:

The United States and the International Criminal Court : National Security and International Law (Sarah B. Sewall & Carl Kaysen eds., Lanham, MD : Rowman & Littlefield Publishers, August 2000). ISBN: 0742501345 (alk. paper) 0742501353 (pbk. : alk. paper). 288p.

Giuliano Vassali, "Statuto di Roma: note sull'istituzione di una corte penale internazionale", 66 Rivista di studi politici internazionali 9-95 (No.1, genn./mar. 1999).

Daniel L. Wade, "A Basic Guide to the Sources of International Criminal Law", in Contemporary Practice of Public International Law 189-220 (Ellen G. Schaffer & Randall J. Snyder eds., Dobbs Ferry, New York: Oceana Publications, Inc., 1997; sponsored by the American Association of Law Libraries). 297p.

Colin Warbrick, "International Criminal Courts and Fair Trial", 3 Journal of Armed Conflict Law 45-64 (No.1, June 1998).

Colin Warbrick, "The United Nations System: A Place for Criminal Courts?", 5 Transnational Law & Contemporary Problems 237 (1995)(Symposium: International Criminal Law, Fall 1995).

Philippe Weckel, "La cour penale internationale : présentation générale", 102 Revue générale de droit international public 983-993 (No. 4, 1998).

Ruth Wedgwood, "Fiddling in Rome: America and the International Criminal Court", 77 Foreign Affairs 20 (no.6, 1998).

Ruth Wedgwood, "The International Criminal Court: An American View", 10 European Journal of International Law 93-107 (1999).

Leila Sadat, The International Criminal Court and the Transformation of International Law: Justice for the New Millenium (Ardsley, NY: Transnational Publishers, forthcoming Summer 2001). ISBN 1-57105-133-3. Approx. 250p.

Leila Sadat Wexler, "Committee Report on Jurisdiction, Definition of Crimes, and Complementarity", 25 Denver Journal of International Law and Policy 221 (1997).

Leila Sadat Wexler, "A First Look at the 1998 Rome Statute for a Permanent International Criminal Court: Jurisdiction, Definition of Crimes, Structure, and Referrals to the Court", in 3 International Criminal Law 655-91 ("Enforcement" volume) (2d ed., M. Cherif Bassiouni, ed., Dobbs Ferry, NY, USA: Transnational Publishers, 1999). ISBN 1-57105-019-1.

Leila Sadat Wexler, Observations on the Consolidated ICC Text Before the Final Session of the Preparatory Committee ([Toulouse]: Association Internationale de Droit Pénal : Érès, 1998)(Nouvelles Études Pénales ; 13bis). 249p.

Leila Sadat Wexler, "The Proposed Permanent International Criminal Court: An Appraisal", 29 Cornell International Law Journal 665 (1996).

David Wippman, "Can an International Criminal Court Prevent and Punish Genocide?", in Protection Against Genocide: Mission Impossible? 85-104 (Neal Riemer ed., Westport, CT: Praeger Publishers, 2000). ISBN 0-275-96515-5. 193p.

Steffen Wirth, Immunity *Ratione Materiae* for Core Crimes? The ICJ's Arrest Warrant-Judgement in the *Yerodia* Case, 13 European Journal of International Law (2002)

Steffen Wirth, Immunities, Related Problems, and Article 98 of the Rome Statute, 12 Criminal Law Forum (2001)

Daniel V. Wright, Strategic Implications of U.S. Non-Support for the International Criminal Court (Carlisle Barracks, Pa. : U.S. Army War College, 1999)(USAWC strategy research project) (Report No: AD-A364 130). 50p.

Andreas Zimmermann, "The Creation of a Permanent International Criminal Court", 1998 Max Planck Yearbook of United Nations Law 169-237.

Andreas Zimmermann, "Die Schaffung eines ständigen internationalen Strafgerichtshofs: Perspektiven und Probleme vor der Staatenkonferenz in Rom", 58 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 47-108 (1998).

Marten Zwanenburg, "The Statute for an International Criminal Court and the United States: Peacekeepers under Fire?", 10 European Journal of International Law 124-143 (1999).

Marten Zwanenburg, "The Statute of an International Criminal Court and the United States : Peace without Justice?", 12 Leiden Journal of International Law 1-8 (no. 1, 1999).

Recommendations of the ELSA delegation to fifth session of the ICC Preparatory Commisssion;

A. Cassese (ed.), *International Criminal Law. A Commentary on the Rome Statute for an International Criminal Cour*t, Oxford: Oxford University Press, 2000.

H.A.M. von Hebel, J.G. Lammers and A. Bos (ed.), *Reflections on the International Criminal Court. Essays in honour of Adriaan Bo*s, The Hague: T.M.C. Asser Press, 1999.

R.S. Lee, *The International Criminal Court. The making of the Rome Statut*e, The Hague: Kluwer Law International, 1999.

O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Cour*t, Baden-Baden: Nomos Verlag, 1999

P. Arnold, *Der UNO-Sicherheitsrat und die strafrechtliche Verfolgung von Individuen: die ad hoc Tribunale zur Verfolgung von Kriegsverbrechen im ehemaligen Jugoslawien und in Ruanda sowie das Statut des Internationalen Strafgerichtshof*s, Basel/Genf /München: Helbing & Lichtenhahn , 1999.

Special ICC-issues of law journals:

-American Journal of International Law, Vol. 93 (1999), no. 2.

-European Journal of International Law, Vol. 10 (1999), no. 1.

-Cornell Journal of International Law, Vol. 32 (1999), no. 3.