

THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS

I. INTRODUCTORY REMARKS

1. The inauguration of the International Criminal Court (hereinafter the Court or ICC) on 11th March 2003 at The Hague, the Netherlands, is perhaps the most important development in international law since the creation of the United Nations in 1945. The establishment of the permanent Court is a historic achievement as it epitomizes the quest of international community for rule of law and is an important step forward towards the advancement of human rights and implementation of international humanitarian law. It represents a significant development of the international accountability for serious international crimes and makes individuals criminally responsible for their actions. The Court, it is hoped would prove to be a powerful deterrent to those who commit such atrocities.

2. This Secretariat report will briefly elucidate upon the AALCO's Work Programme on the ICC and the work of the Preparatory Commission of the ICC. It focuses on the work of the First Assembly of States Parties and its first resumed session, the Inauguration of the Court, consideration of the topic "Establishment of the International Criminal Court" at the 41st Session of AALCO (Abuja, 2002) and the UN General Assembly at its 57th Session (2002). Besides offering some general comments, it also highlights the issues relating to the impending work on the crime of aggression and the bilateral immunity agreements entered into by the United States of America with several countries. Finally, it attempts to identify some issues for focused deliberations at the forthcoming 42nd Session of the Organization at Seoul.

II. AALCO'S WORK PROGRAMME ON THE INTERNATIONAL CRIMINAL COURT

3. The AALCO has been following the developments relating to the establishment of the ICC since its 35th Session (Manila, 1996). The initial discussions in the AALCO relating to the establishment of the International Criminal Court were first held at two Special Meetings convened within the framework of the 35th (Manila, 1996) and 36th (Tehran, 1997) Sessions of the AALCO).

4. The Organization at its 37th Session (New Delhi, 1998) noting that a conference of Plenipotentiaries was to be held in Rome from 15 June to 17th July, 1998 directed the Secretariat to participate at the Conference and report on its outcome at the next session. Accordingly, the then Deputy Secretary General, Ambassador Dr. Wafik Zaher Kamil represented the AALCO at the said conference. Two meetings were organized by the AALCO parallel to the Rome Conference with the aim to collate the views of the AALCO's Member States on the contentious issues before the Conference. The views expressed at those two meetings were then forwarded to the Chairman of the Committee of the whole, Mr. Philip Kirsch.

5. At the 38th Session (Accra, 1999) the outcome of the Rome Conference was duly reported and the Secretariat was directed to monitor and report on the developments in the Preparatory Commission established pursuant to Resolution F adopted in the Rome Conference.¹

6. At the 39th Session (Cairo, 2000) the Secretariat reported on the developments in the First and Second sessions of the Preparatory Commission held during the year 1999. After detailed discussions the Organization in its resolution 39/71 requested the Secretariat to continue monitoring the work of the Preparatory Commission and report to the 40th Session.

7. At the 40th Session (New Delhi, HQ, 2001) the Secretariat reported on the developments in the Sixth and Seventh Sessions of the Preparatory Commission held during the years 2000 and 2001. After detailed deliberations, the Secretariat was directed to monitor the work of the Preparatory Commission vide RES. 40/7 and present a substantive report to its 41st Session.

8. At the 41st Session (Abuja, 2002) Deputy Secretary-General Amb. Dr. Ali Reza Deihim reported on the developments in the Eighth, Ninth and Tenth sessions of the Preparatory Commission, held during the years 2001 and 2002. After intensive deliberations, the Secretariat was directed to monitor the deliberations of the First Assembly of States Parties and in the subsequent meetings and present a substantive report on the developments at its 42nd Session.

¹The Preparatory Commission for the ICC was established in accordance with the resolution F adopted by the United Nations Diplomatic and Plenipotentiaries Conference on the Establishment of an International Criminal Court on 17 July 1998.

III. THE WORK OF THE PREPARATORY COMMISSION OF THE INTERNATIONAL CRIMINAL COURT (FIRST TO TENTH SESSIONS)

9. The work of the Preparatory Commission, could be divided in two stages: (1) Before the 30th June 2000 and (2) After the 30th June 2000. At the first stage the Preparatory Commission met five times at United Nations Headquarters from 16th to 26th February, 26th July to 13th August and 29th November to 17th December 1999, and from 13th to 31st March and 12th to 30th June 2000, in accordance with General Assembly resolutions 53/105 of 8 December 1998 and 54/105 of 9th December 1999.

10. It's work plan during this period focused on two essential instruments necessary for the functioning of the Court: the Rules of Procedure and Evidence, and the Elements of Crimes. The Commission was mandated to prepare finalized draft texts before 30th June 2000.

11. During the fifth session, on June 30th, 2000 the Preparatory Commission adopted its report containing finalized draft text of Rules of Procedure and Evidence and Elements of Crimes, as regards the jurisdiction of the Court over the crimes of genocide, crimes against humanity and war crimes. On the definition of crime of aggression, the Working Group could not make much progress. It continued its discussion of the various proposals² and views on the definitional aspects of the crime, as well as the conditions under which the Court could exercise jurisdiction over that crime. While the discussion had been useful and allowed for a broader and in-depth examination of specific issues, the Working Group had been slow in its progress.

12. It also recommended that further consideration should be given to the pending issues including its report containing finalized draft text of Rules of Procedure and Evidence and Elements of Crimes, as well as the other documents concerning making the Court functional. These included of six topics namely: (1) The Relationship Agreement between the Court and the United Nations; (ii) The Financial Regulations and Rules of the Court; (iii) The Agreement on the Privileges and Immunities of the Court; (iv) The Rules of Procedure of the Assembly of States Parties; (v) The basic principles of the headquarters agreement to be negotiated between the Court and the host country; and (vi) the first year budget.

13. At the second stage, during its sixth session, (27 November to 8 December 2000) the Preparatory Commission completed a first reading of draft agreements on three specific issues (i) Relationship Agreement between the United Nations and ICC; (ii) Financial Regulations for the ICC and (iii) Privileges and Immunities of the ICC. Work also continued in the working Group on the crime of aggression.

14. At its seventh session (26 February to 9 March 2001), the Preparatory Commission considered five items (i) the Relationship Agreement between the court and UN; (ii) Financial Regulations and Rules of the Court; (iii) the Agreement on Privileges and Immunities of the Court; (iv) the Rules of the Assembly of States Parties and (v) the Crime of aggression.

² See Doc.PCNICC/2000/WGCA/RT.

15. During the Eighth Session (24th September to 5th October 2001), the Preparatory Commission considered seven items: (i) The Relationship Agreement between the Court and the United Nations; (ii) The Financial Regulations and Rules of the Court; (iii) The Agreement on the Privileges and Immunities of the Court; (iv) The Rules of Procedure of the Assembly of States Parties; (v) The basic principles of the headquarters agreement to be negotiated between the Court and the host country; (vi) the first year budget; and (vii) The Crime of Aggression, the definition of the Crime and the condition under which the Court could exercise its jurisdiction over that crime. The Commission at this session also decided to establish working groups on item nos. (v) and (vi).

16. Four of the seven Working Groups of the Preparatory Commission completed their assignments during the eighth session. The four texts finalized by the various Working Groups were: (i) A relationship agreement between the Court and the United Nations; (ii) Financial Rules and Regulations of the Court; (iii) Privileges and Immunities of the court and, (iv) Rules of Procedure of the Assembly of States Parties.

17. The three other Working Groups continued their work at the next session with the following issues: (i) A relationship Agreement between the Court and the Host Country of its Headquarters; (ii) A first year budget for the Court; and, (iii) Definition of the crime of aggression.

18. At its Ninth Session (8th to 19th April 2002), the Preparatory Commission considered the following items namely: draft texts of the Basic Principles Governing a Headquarters Agreement and Financial Rules. Also adopted were two draft resolutions related to the Assembly of States Parties, on (i) Secretariat of the Assembly of States Parties and (ii) Crediting contributions to the United Nations Trust Fund to support the Establishment of the International Criminal Court. The Commission also dealt with arrangements for the nomination and election procedure for judges, the prosecutor and registrar, as well as their remuneration, and a trust fund for victims and witnesses. In addition, final details were worked out concerning the principles that should govern the Headquarters Agreement with the Host country of the Court, Netherlands. Discussion also continued in the Working Group on the crime of aggression

19. During the Tenth and the last session (1st to 12 July 2002) of the Preparatory Commission for the International Criminal Court the deliberations focused on the following: (i) Assembly of States Parties- Preparatory Documents; (ii) Draft Budget for the First Financial Period of the Court; (iii) Remuneration of Judges, the Prosecutor and the Registrar; (iv) Victim's Trust Fund; and, (v) Crime of Aggression.

20. Consensus was reached on many of these matters, though some of these topics remained outstanding issues for the meeting of the Assembly of States Parties. Negotiations for the Crime of Aggression will continue through a special Working Group with the goal of achieving a definition to be presented to a review conference in seven years for its adoption as an amendment by the Assembly of States Parties. Thus the Preparatory Commission completed its mandate in accordance with Resolution F adopted by the United Nations Diplomatic Conference of

Plenipotentiaries on the Establishment of an International Criminal Court on 17th July 1998 and General Assembly Resolution 56/85 of 12 December 2001.

21. A detailed report on the progress of discussions at the Preparatory Commission's 1st to 10th Meetings had been reported in earlier reports prepared by the AALCO Secretariat for the Accra (1999), Cairo (2000) New Delhi (2001) and Abuja Sessions.³

³ For a detailed report of Working Group in the 1st, 2nd and 3rd session of Preparatory Commission see Doc. No. AALCC/XXXIX/Cairo/2000/S.7, pp.12-20.

For details of work done in Fourth and Fifth Sessions of Preparatory Commission See Doc. No. AALCC/UNGA/LV/2000/1, pp.45-96.

For details of work done in the Sixth Session of the Preparatory Commission See AALCC/XL/HQ (New Delhi) 2001/S.7.

For details of the Seventh Session of the Preparatory Commission See Doc. No. AALCC/UNGA/LVI/2001.

For details of the Eighth and Ninth Sessions of the Preparatory Commission see Doc No. AALCO/XLI/ABUJA/2002/S.10. For details of discussion during the Tenth Session of the Preparatory Commission see Doc. No. AALCO/UNGA/LVII/2002, pp. 77-90.

IV. MEETING OF THE FIRST ASSEMBLY OF STATES PARTIES HELD IN NEW YORK (3 – 10 SEPTEMBER 2002)

22. UN General Assembly Resolution 56/85 vide para. 9 had requested the Secretary-General to undertake the preparations necessary to convene, in accordance with article 112, paragraph 1, of the Rome Statute, the meeting of the Assembly of States Parties to be held at the United Nations Headquarters upon entry into force of the Statute in accordance with articles 126, paragraph 1 of the Statute.

23. The First Session of the Assembly of States Parties was held at the UN Headquarters in New York from 3 – 10 September 2002. Mr. Philippe Kirsch (Canada), the Chairman of the Preparatory Commission, introduced the Commission's Report, prepared pursuant to resolution F that had mandated the Preparatory Commission to prepare proposals for practical arrangements for the establishment and coming into operation of the Court.

24. To assist delegations in considering the report, the Secretariat had prepared a guide.⁴ One of the Commission's major accomplishments was the adoption without a vote, of the Rules of Procedure and Evidence and Elements of Crime on 30 June 2000. The conclusion of the two sets of documents had impacted the pace of ratification and accession to the Statute.

25. The documents completed included:

- (i) Rules of Procedure and Evidence :PCNICC/2000/1/Add.1;
- (ii) Elements of Crime: PCNICC/2000/1/Add.2;
- (iii) A relationship agreement between; the Court and the United Nations: PCNICC/2001/1/Add.1;
- (iv) Basic principles governing a headquarters agreement to be negotiated between the Court and the host country: PCNICC/2002/1/Add.1;
- (v) Financial Regulations and Rules: PCNICC/2001/1/Add.2 and Corr.1 and PCNICC/2002/1/Add.2;
- (vi) An agreement of the Privileges and Immunities of the Court: PCNICC/2001/1/Add.2;
- (vii) A budget for the first financial year : PCNICC/2002/2/Add.1and
- (viii) Rules of Procedure of the Assembly of States Parties: PCNICC/2001/1/Add.4.

26. The Commission had also adopted a report on the Crime of Aggression (PCNICC/2002/2/Add.2), which included a discussion paper on the definition and elements of the crime of aggression and a draft resolution on recommending continued debate on the issue in the form of a special working group.

27. As it became clear that the Statute's entry into force would occur earlier than anticipated, the Commission had prepared proposals for practical arrangements. They included the:

- (a) Establishment of subsidiary bodies;
- (b) Procedures for nomination and for conduct of elections;

⁴ Document PC NICC/2002/3.

- (c) Financing for the Court; and
- (d) Budget for the first financial period.

28. While the procedure for the election of judges was still pending, the Chairman was confident that the Assembly would be able to reach agreement on outstanding issues.

29. Reporting on the work of the Advance team of experts located in The Hague, he said the team would consist of eight people including a coordinator, a legal adviser, and human rights, finance and public information officers.⁵ The advance team had also completed a review of the United Nations Staff Regulations and had made all necessary adaptations. The team had also completed the drafting of job descriptions for the first 60 posts created.

30. The Commission had adopted all the draft texts before it without a vote. Although some of the issues under consideration were technically complex and politically sensitive, yet general agreement had been possible on all matters. The Chairman hoped that the report would be adopted without reopening matters of substance on which the Commission had still to reach a compromise.

31. The Assembly of States Parties in their first session formally adopted the legal agreements that would enable the Court to function, and finalized the procedure for beginning the nomination and election process for the judges and prosecutor.

32. The Assembly elected H. R. H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) as President of the First Session of the Assembly of States Parties.

33. He recalled that “our achievements were only possible, because the position of the international community was unshakable in its support for the Court, anchored in the conviction that humanity will never truly advance, rest with its conscience, find comfort or peace, unless we do what we hitherto have been unable to do: provide a global juridical instrument to deter those persons seeking to commit the gravest of crimes, prosecute those accused of having already brought enormous suffering on the innocent, and offer truth and justice to the victims and ourselves collectively”.

34. The Assembly of States Parties elected its Bureau,⁶ chose its Credentials Committee,⁷ established a Budget and Finance Committee,⁸ and agreed on procedures to select its members. It also invited 27 countries to act as observers, decided on the seating arrangement and adopted its work programme.

⁵ Despite a number of obstacles in two months of hard work, the advance team had made substantial progress. It was working to assist the future common services division to make decisions on procurement matters and to ensure the smooth flow of information between the organs of the Court.

⁶ Mr. Allieu Ibrahim Kanu (Sierra Leone) and Felipe Paolillo (Uruguay) were elected as Vice Presidents. The other remaining 18 members of the Bureau elected were: Congo, Gabon, Namibia, Nigeria, Cyprus, Mongolia, Croatia, Romania, Yugoslavia, Ecuador, Peru, Trinidad and Tobago, Austria, Netherlands, Germany, New Zealand, Norway and the United Kingdom. Mr. Alexander Marschik (Austria) was elected Rapporteur. All the elected members would serve a three-year period.

⁷ Credentials Committee comprises: Benin, Fiji, France, Honduras, Ireland, Paraguay, Slovenia, Uganda and Yugoslavia.

⁸ The elections would take place in the Second Resumed Session of the Assembly in April 2003.

35. The Assembly adopted by consensus the Report of the Working Group of the Whole and adopted by consensus the following documents:

- i. Rules of Procedure and Evidence;
- ii. Elements of Crime;
- iii. A relationship agreement between; the Court and the United Nations: Basic principles governing a headquarters agreement to be negotiated between the Court and the host country;
- iv. Financial Regulations and Rules;
- v. An agreement of the Privileges and Immunities of the Court; and
- vi. A budget for the first financial year.

36. The Assembly on recommendation of the Working Group of the Whole, also adopted by consensus the following resolutions and decisions:

- i. Continuity of work in respect of the crime of aggression;⁹
- ii. Procedure for the nomination and election of Judges, the Prosecutor and Deputy Prosecutors of the ICC;¹⁰
- iii. Procedure for election of Judges for the ICC;¹¹
- iv. Establishment of a Fund for the benefit of victims of crimes within the jurisdiction of the Court, and of families of such victims;¹²
- v. Procedure for the nomination and election of members of the Board of Directors of the Trust Fund for the benefit of victims;¹³
- vi. Provisional arrangements for the Secretariat of the Assembly of States Parties;¹⁴
- vii. Permanent Secretariat of the Assembly of States Parties;¹⁵
- viii. Selection of the Staff of the ICC;¹⁶ and
- ix. Participation of the ICC in the United Nations Joint Pension Fund.¹⁷

37. In addition, the Assembly, on the recommendation of the Working Group of the Whole, decided to transmit the report of the inter-sessional meeting of the Experts held at The Hague from 11th to 15th March 2002.¹⁸

38. The Assembly was informed that the Bureau had created, pursuant to Assembly Resolution (ICC-ASP/1/Res.1) on the continuity of the work in respect of the crime of aggression, a subcommittee of the Bureau of the Assembly, under the Chairmanship of Mr. Allieu Ibrahim Kanu (Sierra Leone). The subcommittee was expected to report and make proposals to the Assembly during its resumed first session in February 2003.

⁹ ICC-ASP/1/Res.1.

¹⁰ ICC-ASP/1/Res.2.

¹¹ ICC-ASP/1/Res.3.

¹² ICC-ASP/1/Res.6.

¹³ ICC-ASP/1/Res.7. The Assembly postponed taking a decision concerning opening the nomination period for the Members of the Board of Directors until its second resumption of its first session in April 2003.

¹⁴ ICC-ASP/1/Res.8.

¹⁵ ICC-ASP/1/Res.9.

¹⁶ ICC-ASP/1/Res.10.

¹⁷ I ICC-ASP/1/Decision.3.

¹⁸ For details see AALCO/XLI/Abuja/2002/S.10, pp. 16-17.

39. **Agreement on the Privileges and Immunities of the ICC:** The Agreement on the Privileges and Immunities of the International Criminal Court was opened for signature by all States at the UN Headquarters in New York on 10th September 2002. It will remain open for signature until 30th June 2004.¹⁹

40. **Budget:** The resolutions covered the budget's appropriations and the means for assessing them; the scale of assessments for the apportionment of the expenses of the Court (modeled after the scales used at the United Nations); and the ability for States to offset their contributions to the Trust Fund to Support the Establishment of the ICC against their assessed contributions to the budget of the Court.

41. Other resolutions adopted established a Working Capital Fund of Euro 1,915,700 to cover the short-term liquidity requirements of the Court while it awaited assessed contributions; and, requested the Secretary-General to inform States Parties of their commitments to their assessed contributions for the first financial period and the Working Capital Fund.

42. The Assembly also adopted a resolution that provided that the Court's Registrar would accept voluntary contributions from States to the ICC only if these contributions would not affect the Court's independence. By another decision concerning interim arrangements for the exercise of authority pending the assumption of office by the Registrar, the Assembly decided that the Director of Common Services would perform the functions in the meantime.

43. The Assembly decided to convene its next sessions as follows:

- i. Resumed first session, New York, 3 to 7 February 2003;
- ii. Second resumption of the first session, New York, 21 to 23 April 2003;
- iii. Second session, New York, 8 to 12 September 2003.

It also decided that the Committee on Budget and Finance would meet in New York from 4 to 8 August 2003.

¹⁹ During the treaty event organized on 10 September 2002, the Agreement was signed by the following countries: Austria, Benin, Finland, France, Iceland, Italy, Luxembourg, Namibia, Norway, Peru, Switzerland, Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland. On the same day, Norway also deposited its instrument of ratification.

V. FIRST RESUMED SESSION OF THE FIRST ASSEMBLY OF STATES PARTIES HELD IN NEW YORK (3 - 7 FEBRUARY 2003)

44. The first resumed meeting of the first session of the Assembly of States Parties (AOSP) to the Rome Statute of the International Criminal Court took place from 3 to 7 February 2003 at New York.

45. **The Election Process:** In the first election of the Judges, 85 States Parties to the Rome Statute had the right to vote in the election process. Forty-five countries had submitted nominations, two of which had withdrawn them.²⁰

46. The rules for nomination and election required minimum voting for ensuring fair, regional and gender representation. In addition to professional qualifications under the Rome Statute, nominations of judges must fulfill gender criteria, with no fewer than 10 male and 10 female candidates, as well as regional criteria. States parties have submitted the names of 33 male candidates and 10 female candidates. The female candidates were from Brazil, Costa Rica, Ghana, Hungary, Ireland, Latvia, Mali, Poland, South Africa and Switzerland. States voted for a minimum number of candidates per region: three for Africa, two for Asia, two for Eastern Europe, three for Latin America and three for Western Europe. Ten nominations were submitted by the Group of African States, seven by the Group of Eastern European States, eight by the Group of Latin American and Caribbean States, and 12 by the Group of Western European and Other States. The completion of the election process required thirty-three round of ballots spread over a period of four days.²¹

47. After the elections, the Assembly's President drew lots to determine which nine judges would serve the full term of nine years, which nine a term of six-years and which a term of three years. Only those serving a three-year term would be allowed to run for re-election, one time. This is in order to renew the judges regularly every three years.

²⁰ Nomination for judges were received from Argentina, Belgium, Benin, Bolivia, Brazil, Bulgaria, Cambodia, Canada, Colombia, Costa Rica, Croatia, **Cyprus**, Democratic Republic of Congo, **Gambia**, Fiji, Finland, France, Germany, **Ghana**, Greece, Hungary, Ireland, Italy, Latvia, Mali, **Mongolia**, Niger, **Nigeria**, Paraguay, Peru, Poland, Portugal, **Republic of Korea**, Romania, Samoa, **Senegal**, Slovenia, South Africa, Spain, Switzerland, Trinidad and Tobago, United Kingdom, **United Republic of Tanzania**, **Uganda** and Venezuela. There were reports from Morocco, the Philippines and Fiji that the United States was discouraging them from nominating judges and participating. However, these efforts did not succeed. {AALCO Member States names have been mentioned in bold-eight AALCO Member States participated in the election process of the Judges.} The nominations received from Benin and Paraguay was subsequently withdrawn. For names of candidates on the basis of list, regional group, and gender see International Criminal Court-Assembly of States Parties, "Election of judges of the International Criminal Court: Note by the Secretariat", ICC-ASP/1/4 dated 17 December 2002.

²¹ For details pertaining to the ballots see Press Releases L/3021 to L/3025 of 4 to 7 February.

48. **Election of Judges:** The highlight of the first resumed meeting of the first session of the Assembly of States Parties was election of 18 Judges to the Court from among candidates nominated by 43 countries. All these eighteen judges²² are permanent members of the Court and were elected by secret ballot at the Meeting of the Assembly of States Parties.

The list of newly elected judges, with their name, nationality, gender and term of office is mentioned in the table below:²³

List A: Includes Judges with established competence in criminal law and procedures, and the necessary relevant experience, whether as judge, prosecutor, advocate, or in other similar capacity in criminal proceedings.

The judges elected from this List are:

S. No	Name	Nationality	Gender	Term of Office
1.	CLARK, Maureen Harding	Ireland	Female	9 years
2.	DIARRA, Fatoumata Dembele	Mali	Female	9 years
3.	FULFORD, Adrian	United Kingdom	Male	9 years
4.	HUDOSN-PHILIPS, Karl T.	Trinidad and Tobago	Male	9 years
5.	JORDA, Claude	France	Male	6 years
6.	ODIO BENITO, Elizabeth	Costa Rica	Female	9 years
7.	PIKIS, Gheorghios M.	Cyprus	Male	6 years
8.	SLADE, Tuiloma Neroni	Samoa	Male	3 years
9.	SONG, Sang-hyun	Republic of Korea	Male	3 years
10.	STEINER, Sylvia H. de Figueredo	Brazil	Female	9 years

List B: includes Judges 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. The judges elected from this List are:

²² The eighteen judges of the Court are elected by the AOSP from persons of high moral character, impartiality and integrity who possess the qualifications required in the respective States for appointment to the highest judicial office. The representation of the principal legal systems of the world, the equitable geographical representation, and a fair representation of male and female judges is taken into consideration by the Assembly of States Parties during the elections. All the judges are national 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 for by the Rome Statute. The judges elected for a term of three years are eligible for re-election for full term. They will serve on a full-time basis or on a part-time basis in accordance with the decisions of the Presidency.

²³ The new list of the judges elected to the ICC is taken from the website: http://www.un.org/law/icc/elections/results/judges_results.htm

S. No	Name	Nationality	Gender	Term of office
1.	BLATTMANN, Rene	Bolivia	Male	6 years
2.	KAUL, Hans-Peter	Germany	Male	3 years
3.	KIRSCH, Philippe	Canada	Male	6 years
4.	KOURULA, Erkki	Finland	Male	3 years
5.	KUENYEHIA, Akua	Ghana	Female	3 years
6.	PILLAY, Navanethem	South Africa	Female	6 years
7.	POLITI, Mauro	Italy	Male	6 years
8.	USACKA, Anita	Latvia	Female	3 years

The names indicated in bold are of judges from the AALCO Member States. Thus, there are three judges in the total eighteen judges in the newly established ICC from the AALCO Member States.

49. Election of Prosecutor: The election of the Prosecutor was postponed until the second resumed meeting from 21 to 23 April. The AOSP President is overseeing the process of nominations and it is hoped that the Prosecutor can be chosen by consensus. Possible candidates include Reginald Blanch, chief judge at the New South Wales District Court in Australia and Carla Del Ponte of Switzerland, the chief prosecutor at the Yugoslav War Crimes Tribunal and Argentinian lawyer Luis Moreno.²⁴

²⁴ It seems an informal consensus has been arrived at the First Session of the Assembly of States Parties on the name of Mr. Luis Moreno.

VI. INAUGURATION OF THE ICC AND THE SWEARING IN CEREMONY OF THE JUDGES

50. The Swearing in Ceremony of the newly elected Judges took place in the Knight's Hall of Dutch Parliament at The Hague, the seat of the Court, on 11 March 2003. Queen Beatrix of the Netherlands and the UN Secretary-General Mr. Kofi Annan amongst others attended the Swearing-in ceremony of the judges. Mr. Kofi Annan administered the oath of the office to judges.²⁵

51. UN Secretary-General in his statement on the occasion inter alia hoped that the judgments of the Court would be such that it would command "universal respect for international justice and the force of law." Although it had taken the international community fifty years to agree upon the form and the extent of powers of the Court, he hoped that the Court's implications would be such that "the delicate process of dismantling tyrannies and replacing them with more democratic regimes, committed to uphold human rights" would commence.

52. **Election of the Presidency:** The Inauguration of the Court was followed by the first organizational meeting of the judges to elect the Presidency. The Presidency is composed of the President and First and Second Vice-Presidents all of whom are elected by an absolute majority of Judges for a three year renewable term. It is responsible for 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.

53. Canadian Ambassador Mr. Philippe Kirsch was elected president of the newly inaugurated ICC by fellow judges.²⁶ **Ms. Akua Kuenyehia of Ghana** and Ms. Elizabeth Odio Benito of Costa Rica were installed as Vice-presidents.

54. The second resumed meeting of the Assembly of States Parties would take place at New York from 21 to 23 April 2003. The focus of this meeting would be on the Election of Prosecutor to the ICC.

²⁵ They gave a solemn undertaking to perform their duties honorably, faithfully, impartially and conscientiously. They also promised to respect the confidentiality of investigations and prosecutions, and the secrecy of deliberations.

²⁶ Mr. Kirsch had earlier served as Chairman of the main Negotiating Committee at the Rome Conference and was also Chairman of the Preparatory Commission (1999-2002).

VII. CONSIDERATION OF THE ITEM DURING AALCO'S 41ST SESSION

55. At the AALCO's 41st Session (15 to 19 July 2002) held in Abuja, Nigeria, views were expressed by AALCO member states on the work of the Preparatory Commission concerning some aspects of Rome Statute establishing the ICC.

56. During deliberations of this item delegates from Member States, namely **Arab Republic of Egypt, Republic of Korea, Peoples' Republic of China, Islamic Republic of Iran, India, Japan, Thailand, Indonesia, Federal Republic of Nigeria, and Uganda and Observer State of Germany and a Member of International Law Commission Prof. Bruno Simma** participated in the discussion. An overview of the discussion is as follows:

57. The delegates generally welcomed the entry into force of the Rome Statute of the International Criminal Court on 1 July 2002. This date marked the beginning of actual operation of the ICC as a permanent international judicial institution. A delegate described the ratification of the Rome Statute in less than four years time as a historic milestone achieved in the international justice system. Another delegate saw it as a major achievement in the long march of mankind toward the establishment of the rule of law in the international community. A delegate hoped that with the permanent international criminal court, finally coming into being perpetrators of the most serious international crimes would be brought to justice and this would also deter potential perpetrators from committing such crimes.

58. Delegates expressed concern in relation to two issues of vital concern to the Rome Statute, i.e. the definition of aggression and the principle of complementarity.

59. It was noted that one of the major tasks remaining before the last session of the Preparatory Commission was the definition of the "crime of aggression". Though the Rome Statute is supposed to cover aggression, the subject has thus far defied a consensus definition. Some of the delegates expressed their concern about the delay in the definition of aggression being agreed upon.

60. A delegate suggested that the definition of the crime of aggression could be based on the UNGA resolution No. 3314 of 1974. However, caution was also needed to avoid controversial principles like the right to humanitarian intervention, a matter that could hamper further ratifications of the Statute. Another delegate stated that his country in association with three other countries had jointly submitted a new proposal on a definition of the crime of aggression. The proposal sought to incorporate the effective leadership within the crime of aggression. It was therefore important to reflect this "effective" notion in the definition of Crime of Aggression, otherwise it might be subsequently diluted among other things by the application of Article 10 of the Rome Statute. This could be simply achieved by adding the word "effectively" before the words "exercise control".

61. A delegate stated that the Working Group on Crime of Aggression deliberated on the role of the United Nations Security Council in determination of an act of aggression, definition of the crime and possible role of the Prosecutor once an act of aggression was committed by a State. It also scrutinized the possible remedies when

the Security Council did not make a determination as to the existence of an act of aggression.

62. Another delegate stated that the definition should be specific so as not to give rise to contentious interpretation and difficulties in proving the elements of the offence. He favored the maintaining of an illustrative or definitive list of acts of aggression as opposed to a generic approach to ensure certainty in the elements of the crime to be proven. In this regard, the idea of adopting the listing approach which finds its precedent in General Assembly Resolution 3314 (XXIX) could be the basis of the definition of aggression.

63. As regards the principle of complementarity, it was generally observed that the role of the ICC was to complement rather than to supersede the national judicial institutions of States and it should not prejudice the exercise of jurisdiction by States within their domestic judicial systems over persons who had committed a most serious international offence.

64. Prof. Bruno Simma Member of the International Law Commission, referred to the concern of some countries as regards the provisions of the Rome Statute, pointed out that first of all jurisdiction of the Court was based on a complementarity principle, namely if governments were not willing or unable to put the perpetrators on trial then the Court would exercise its jurisdiction.

65. Another delegate said that it was very clear that the future development of the International Criminal Court would be determined by quite a number of factors. He believed that, in order to establish its authority, to build states' confidence and trust in the Court and to achieve its universality, the Court should *inter alia* operate in strict accordance with the following: one, the jurisdiction of the ICC should be confined to the most serious international crimes as provided in the Rome Statute; two, the activities of the ICC should not contravene the provisions of the Charter of the United Nations; three, the ICC should perform its functions in an objective and just manner and should be free of political prejudice and double standards, thus saving it from being a forum of politically-motivated allegations or prosecutions. He hoped that there would be universal support for the ICC and co-operation with the Court as a result of its just and effective operation which would be conducive to the development of international law.

66. A delegate hoped that by thorough preparations, for making the court operational at The Hague from next year, it should be ensured that the Court could carry out its work fairly and effectively.

67. Another delegate called upon as many AALCO member states as possible to join the Court at an early date so that the Court may be a universal, fair and effective institution. He stated that there was a precious opportunity for action, which would help bring a brave new world of peace, security, and justice to future generations. He was of the view that Asian and African countries should be part of the major players in the pursuit of a universal and effective International Criminal Court.

68. A delegate stated that in view of the fact that only some member countries of AALCO had ratified the Rome Statute, it was timely to give a serious thought and

support to a proposal made at the 39th session of AALCO to convene a meeting to study legal and constitutional points required for the ratification of the Statute. Such a meeting in his opinion, would provide a useful forum for AALCO's member countries which had ratified the Statute and those which had not yet done so to benefit from each other's experiences and technical difficulties and obstacles or otherwise which they were facing in their countries in the process of ratification.

69. A delegate cautioned that the entry into force of the Statute should not be considered as the end of the road. The universality of the Court was so essential to its future functioning. This should be viewed as regard to the number of States members and the composition of the future bench and Secretariat of the Court. Therefore, it was necessary to have as many states as possible from all regions and legal systems. The geographical distribution and representation of the different legal systems should be also taken into consideration in the future composition and Secretariat of the Court.

70. He further stated that considering the achievements of the Commission in its previous nine sessions, it could be asserted that the rule-setting function that had been entrusted to the Commission by the Rome Conference had been largely realized.

71. A delegate cautioned that in the administration of criminal jurisdiction in the court to avoid confusion on acts, which at present were not discernible as clear acts of crime against humanity or acts classified as acts of terrorism when in actual fact they were in pursuit of self-determination.

72. Regarding, the politically motivated accusation against military, Prof. Bruno Simma emphasized that in the Statute there were a number of safeguards which prevented any politically motivated accusations. Therefore, military commanders or political leaders were not subjected to any unfounded acquisitions and there was no domain for being afraid of malicious or frivolous persecution. Concerning the crime of terrorism, he pointed out that jurisdiction of the court could be triggered over that crime in conjunction with the crimes against humanity according to Article 7 of the Statute.

73. The delegate from an Observer State offered to lend whole hearted support to those countries who were desirous of formulating their national legislations in line with the Statute of the ICC and hoped that as many states as possible would ratify the Rome Statute. A delegate welcomed the offer of this support.

74. Another delegate stated that AALCO had a role to play in the election of members of the Court in ensuring that the interests of its member states were represented in the administration of criminal justice. It is only with that participation that a true and fair application of criminal justice could be assured.

75. Another delegate was of the opinion that it would be more prudent to first observe the implementation of the Rome Statute and the operations of the ICC. Further, in case his country chooses to allow the ICC to exercise its jurisdiction in respect of a particular offence, pursuant to its powers under the Rome Statute, it was at liberty to invoke Article 4.2 of the Rome Statute, which allows non-State Parties and sign a special agreement with the ICC for that specific purpose.

76. The President commended all the Member States for having lent their whole hearted support to the Rome Statute of the ICC and requested as many states as possible from the Asian-African region to ratify the Statute as soon as possible as this alone could take care of the interests of these regions and help in achieving global support for the ICC.

VIII. CONSIDERATION OF THE ITEM AT THE 57TH SESSION OF THE GENERAL ASSEMBLY

77. The item “Establishment of the International Criminal Court” was considered by the Sixth Committee²⁷ during the 57th Session of the General Assembly. Most speakers welcomed the entry into force of the Rome Statute and recognized its significance for international law and maintenance of international peace and security. They welcomed the timely completion of the mandate of the Preparatory Commission for the ICC and successful conclusion of the first session of the Assembly of States Parties to the Rome Statute. They also welcomed the adoption of the various instruments by consensus, signaling out the elements of crimes and the rules of procedures and evidence as well as underscored the importance of early entry into force of the Agreement on Privileges and Immunities of the ICC. Others welcomed the adoption of responsible budget, expressing hope that future budgets will take into account similar considerations. They also stressed the importance of securing the financing of the Court.

78. Resolution 57/23 entitled “Establishment of the International Criminal Court”, adopted by the General Assembly on 19 November 2002 reiterated the historic significance of the adoption of the Rome Statute of the ICC. It called upon all States that are not yet Parties to the Rome Statute of the ICC to consider ratifying it or acceding to it without delay. It also called upon all States to consider becoming Parties to the Agreement on the Privileges and Immunities of the ICC without delay. The Resolution also welcomed the important work accomplished by the ICC in the completion of its mandate in accordance with Resolution F of the Rome Conference. It also welcomed the holding of the First Session of the Assembly of States Parties from 3 to 10 September 2002 and the adoption of the number of instruments by the Assembly. It requested the Secretary General to expand the mandate of the Trust Fund established pursuant to GA Res. 57/207 for voluntary contributions towards meeting the costs of participation of the least developed countries in the work of the Assembly of States Parties. It also requested the Secretary-General to report to the General Assembly at its Fifty-eighth session on the implementation of the present resolution.

²⁷ The Committee considered the item at its 13th to 15th and 20th meetings, held on 14th, 15th and 28th October 2002 respectively.

IX. GENERAL COMMENTS

79. The inauguration of the International Criminal Court on 11th March 2003 at The Hague is an achievement of paramount importance for international community. It is the latest and most important development in the field of international law.

80. It is heartening to note that seven women have been elected as Judge to this prestigious permanent international criminal tribunal. Three of these judges are from developing countries. In the history of international judicial tribunals this is for the first time that such a large number of women had been elected. However, this number should not be treated as the maximum number of women but as the true minimum, especially in the light of the fact there are many highly qualified women candidates remaining. This gender mainstreaming attempted by the Rome Statute and its supplemental texts is a positive development, which needs to be taken up by other international judicial tribunals as well.²⁸

81. One of the most notable conferences held during the fag end of 20th century was the UN Conference of Plenipotentiaries on the establishment of an International Criminal Court (ICC). ICC is the symbol and vital part of an emerging humanitarian law system. The challenges posed for the international community by the impunity of the perpetrators of genocide, crimes against humanity and war crimes, and the inescapable need to have an instrument to discourage the commission of such crimes strengthened the international communities conviction about the need for the establishment of an International Criminal Court that is universal in its vocation.

82. Since no international criminal justice system exists to interpret and enforce international criminal law, confronted with flagrant human rights violations in the former Yugoslavia and Rwanda, the Security Council set up two Ad hoc tribunals. However, these tribunals face logistic difficulties and time and space limitations. The Security Council had reached a point of “tribunal fatigue”²⁹ after the establishment of the Rwandan Tribunal. The logistics of setting up ad hoc tribunals have strained the capabilities and resources of the United Nations leading to this exhaustive stage. This confirms the need for a permanent system of international criminal justice, which would eliminate the necessity of establishing ad hoc tribunals every time the need arises.

83. The twentieth century witnessed the worst violence in the history of humankind. According to the United Nations, more than 250 conflicts have erupted around the world in the past fifty years; more than 86 million civilians, mostly women and children have died; and over 170 million people were deprived of their fundamental rights, their property and their dignity. Most of these victims have been simply forgotten and only a handful of perpetrators have been brought to justice.³⁰

²⁸ Currently, there is only one women serving as a permanent judge of the International Court of Justice (ICJ), and the International Criminal Tribunal for Former Yugoslavia (ICTY). Three women are serving on the International Criminal Tribunal for Rwanda (ICTR) and no women are serving on the twenty-one members International Tribunal for the Law of the Sea (ITLOS). Further, the recently released list of candidates for election to the ICJ does not even contain one women candidate.

²⁹ A quotation from a speech at the 1994 International Law weekend at the New York City Association of the Bar, in M. Cherif Bassiouni Note 42, pp.49-63.

³⁰ Rome Statute of the ICC, some questions and answers.

84. In spite of rules and laws defining and forbidding war crimes, crimes against humanity and genocide, there has been no credible international system so far enforcing these norms and for holding individual violators criminally responsible. The crimes against humanity continue to be committed during the last fifty years.

85. The International Criminal Court is therefore, required to deter future war criminals, to end impunity, and to secure justice for all by prosecuting and punishing persons responsible for crimes under its jurisdiction.

86. On 11 April 2002 when the Rome Statute received its 60th ratification, it was said that, the momentous achievement was a victory of the new diplomacy model of developing international law, and one of the best examples of what could be achieved through the co-operation between governments, international organizations and NGO's working together. Mr. Kirsch, Chairman of the Preparation Commission said, "it is truly historic". The entry into force of the Statute had occurred a lot earlier than anyone had expected. That was due to the real determination of the international community and civil society to finally put an end to that prevalent culture of impunity and replace it with a culture of accountability for the crimes described in the Statute.

87. Also worth mentioning, he said, was that the Rome Statute was better understood now as a legal instrument and not a political one. It was full of legal safeguards, which ensured due process, including the principle of complementarity. The court would only step in if a national system was unable or unwilling to do so. The primary responsibility for the punishment of crimes was with States, not with the international community. The Preparatory Commission would continue to work to ensure that the Court, which would probably be operational early next year, would operate under best conditions.

88. Although the entry into force of the Rome Statute took place in a record time, yet the number of 89 State Parties to the Rome Statute of the International Criminal Court, reflects that it is far from the desired goal of universal participation. In this context, it may be recalled that presently 191 countries are members of the United Nations Organization. There are several reasons behind non-participation by the States, prominent among them being³¹:

- a. role of the Security Council, the principal organ of the UN entrusted with the responsibility of maintenance of international peace and security, in determining that aggression has been committed;
- b. subordination of the Court to the Security Council renders it ineffective;
- c. grant of *proprio motu* powers to the Prosecutor;
- d. non-acceptance of universal jurisdiction over core crimes;
- e. exclusion of weapons of mass destruction-nuclear, chemical and biological weapons, drug-trafficking and terrorism from the Rome Statute;
- f. disagreement on the definition of the crime of aggression;
- g. clearer definition of the principle of complementarity lacking;

³¹ For details see "UN Diplomatic Conference Concludes in Rome with Decision to Establish Permanent International Criminal Court: Statute of Court Adopted by Non-Recorded Vote of 120 in Favour, 7 Against, 21 Abstentions", *UN Press Release L/ROM/22* dated 17 July 1998.

It may be noted that the most populous countries of the world, namely China, India, United States of America, Russia, Indonesia are not parties to the Rome Statute. Arguing for universal participation in the ICC, one of the newly elected Vice-Presidents of the Court Judge Elizabeth Odio³² observes:

For the ICC to be truly universal, all countries must accept its jurisdiction. The fact that many have not adhered to the Rome Statute shows that there is work to do rectify that. ... With a little patience, the ICC will become universal.

89. The ICC has criminalized acts that were already crimes in international law, yet it has several distinctions, among them were its emphasis on individual criminal responsibility, a provision for an independent prosecutor, victims participation, and the unprecedented level of gender integration throughout the Statute.

90. There is a general jurisdictional threshold over war crimes in the Rome Statute. Article 8(I) states that ‘the Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large scale commission of such crimes. An amendment to list nuclear weapons among those weapons whose use is banned for the purposes of the Statute, tabled by an AALCO Member State was not accepted. According to it, the message this sends is that, at the level of plenipotentiaries, the international community has decided that the use of nuclear weapons is not a crime. What is worse, the Statute does not list any weapon of mass destruction among those whose use is banned as war crime. Several countries have also expressed serious concern over the exclusion of weapons of mass destruction, in particular the use of nuclear weapons.

91. Article 124 of the Statute for the ICC permits states at the time of ratification to make a declaration that they do not want to accept the court’s jurisdiction over war crimes for a period of seven years. Having recognized that war crimes are one of the three categories of crimes under the Court’s jurisdiction, this seven-year opt-out provision effectively places those states that avail of it beyond the Court’s jurisdiction.

92. There were different opinions at the Rome Conference on the need to include the crimes of terrorism and drug trafficking. Regretting that no acceptable definition could be agreed upon for these serious crimes, which destabilize the political, social, and economic order in States and threaten international peace and security, Resolution E of the Final Act of the Rome Conference recommends that a Review Conference consider these crimes with a view to including them in the Court’s jurisdiction.

93. The principle of complementarity constitutes the basic edifice on which the exercise of jurisdiction of the Court is based. The ICC established under the Rome Statute is complementary to the national jurisdictions, but does not replace national courts, this creates a presumption that the prosecutor will be precluded from taking any action when a State has a functioning judicial system. In this respect, it appears that the ICC is much weaker than the International Criminal Tribunal for Yugoslavia and International Criminal Tribunal for Rwanda, both of which have concurrent

³² “International Court Could Try Iraq War Crimes”, Interview with Judge Elizabeth Odio, Vice-President, ICC, *Inter Press Service*, 26 March 2003.

jurisdiction with national courts and may choose to exercise primacy over national courts by requesting deferral to their competence.

94. Even though the Rome Statute is a compromise instrument drawn from the legal systems of many countries, it is surely a giant leap forward in the evolution of the international criminal justice system, which might require improvements to make it more effective.

95. Nevertheless, the UN Secretary General, H.E. Kofi Annan, terms the International Criminal Court as a ‘gift of hope to future generations’ and ‘a giant step forward in the march towards universal human rights and the rule of law’. According to him, it is a new instrument of peace and international justice for the UN Security Council and the World community. Mr. M. Cherif Bassiouni, President of International Human Rights Law Institute and Chairman of the Drafting Committee of the Rome Diplomatic Conference has said, “The ICC will not be a panacea for all the ills of humankind. It will not eliminate conflicts, nor return victims to life, or restore victims to their prior conditions of well being and it will not bring all perpetrated to justice. But it can help avoid some victimization and bring to justice some of the perpetrations of these crimes. In so doing, the ICC will strengthen world order and contribute to world peace and security. As such, the ICC, like other international and national legal institutions, will add its contribution to the humanization of our civilization”.

X. FOLLOW-UP OF DEVELOPMENTS ON THE CRIME OF AGGRESSION

96. Article 5(2) of the Rome Statute stipulates that the Court cannot exercise jurisdiction over the crime of aggression until the treaty is amended to define the crime and establish the conditions under which the Court shall exercise jurisdiction. According to Article 121(1) of the Rome Statute, no amendments, will be considered until seven years after the treaty's entry into force. Paragraphs 3 and 4 of Article 121 further stipulates that the amendments must be approved by two-thirds vote of the Assembly of States Parties and ratified by seven-eighths of States Parties. With such a difficult amendment process and given the differences among states over the definition of the Crime of aggression and over the role of the Security Council in determining whether aggression has occurred, the ICC would not be able to exercise jurisdiction over this crime for a long time to come. It is also important to bear in mind that the ICC must be able to spell out its jurisdiction and competence in determining the crime of aggression.

97. The Working Group on the Crime of Aggression was established at the third session of the Preparatory Commission (29th November to 17th December 1999). It has since then received several proposals. Determining the future and the continuity of the work was the priority issue at the tenth session (1st to 12th July 2002).

98. At its First Session, the Assembly of States Parties (3 to 10 September 2002) was informed that the Bureau had created, pursuant to Assembly Resolution (ICC-ASP/1/Res.1) on the continuity of the work in respect of the crime of aggression, a subcommittee of the Bureau of the Assembly, under the Chairmanship of Mr. Allieu Ibrahim Kanu (Sierra Leone). The subcommittee was expected to report and make proposals to the Assembly during its resumed first session in February 2003.

99. In this context, it would be useful to recall the latest Discussion Paper of the Coordinator Working Group on the Crime of Aggression.³³ This discussion paper dealt with the Definition of the Crime of aggression and conditions for exercise of jurisdiction over the crime of aggression. Important aspects extracted from this discussion paper are enumerated herein below:

Discussion paper proposed by the Coordinator

i. Definition of the crime of aggression and conditions for the exercise of jurisdiction

1. For the purpose of the present Statute, a person commits a "crime of aggression" when, being in a position effectively to exercise control over or to direct the political or military action of a State, that person intentionally and knowingly orders or participates actively in the planning, preparation, initiation or execution of an act of aggression which, by its character, gravity and scale, constitutes a flagrant violation of the Charter of the United Nations.

³³ PCNICC/2002/2/Add.2, dated 24 July 2002.

Option 1: Add “such as, in particular, a war of aggression or an act which has the object or result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 2: Add “and amounts to a war of aggression or constitutes an act which has the object or the result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 3: Neither of the above.

2. For the purpose of paragraph 1, “act of aggression” means an act referred to in United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, which is determined to have been committed by the State concerned,

Option 1: Add “in accordance with paragraphs 4 and 5”.

Option 2: Add “subject to a prior determination by the Security Council of the United Nations”.

3. The provisions of articles 25 paragraph 3, 28 and 33 of the Statute do not apply to the crime of aggression.

4. 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. 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:

Option 1: under Article 39 of the Charter of the United Nations.

Option 2: in accordance with the relevant provisions of the Charter of the United Nations.

5. Where the Security Council does not make a determination as to the existence of an act of aggression by a State:

Variant (a) or invoke article 16 of the Statute within six months from the date of notification.

Variant (b) [Remove variant a.]

Option 1: the Court may proceed with the case.

Option 2: the Court shall dismiss the case.

Option 3: the Court shall, with due regard to the provisions of Articles 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

Variant (a) the General Assembly

Variant (b) the Security Council, acting on the vote of any nine members, to seek an advisory opinion from the International Court of Justice, in accordance with Article 96 of the Charter and Article 65 of the Statute of the International Court, on the legal question of 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 gives an advisory opinion that an act of aggression has been committed by the State concerned.

Option 5: the Court may proceed if it ascertains that the International Court of Justice has made a finding in proceedings brought under Chapter II of its Statute that an act of aggression has been committed by the State concerned.

ii. Elements of the crime of aggression (as defined in the Rome Statute of the International Criminal Court)³⁴

Precondition

In addition to the general preconditions contained in article 12 of the present Statute, it is a precondition that an appropriate organ³⁵ has determined the existence of the act of aggression required by element 5 of the following Elements.

Elements

1: The perpetrator was in a position effectively to exercise control over or to direct the political or military action of the State, which committed an act of aggression as defined in element 5 of these Elements.

2: The perpetrator was knowingly in that position.

3: The perpetrator ordered or participated actively in the planning, preparation or execution of the act of aggression.

4: The perpetrator committed element 3 with intent and knowledge.

5: An “act of aggression”, that is to say, an act referred to in United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, was committed by a State.

6: The perpetrator knew that the actions of the State amounted to an act of aggression.

7: The act of aggression, by its character, gravity and scale, constituted a flagrant violation of the Charter of the United Nations,

Option 1: Add “such as a war of aggression or an aggression which had the object or result of establishing a military occupation of, or annexing the territory of another State or part thereof”.

Option 2: Add “and amounts to a war of aggression or constitutes an act which has the object or the result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 3: Neither of the above.

8: The perpetrator had intent and knowledge with respect to element 7.

Note:

Elements 2, 4, 6 and 8 are included out of an abundance of caution. The “default rule” of article 30 of the Statute would supply them if nothing were said. The dogmatic requirement of some legal systems that there be both intent and knowledge is not meaningful in other systems. The drafting reflects these, perhaps insoluble, tensions.

100. It may also be recalled that during discussions on the topic in the Sixth Committee at the Fifty-seventh session of the General Assembly several speakers reiterated the importance of continued work on reaching an acceptable definition of

³⁴ The elements in Part II are drawn from a proposal by Samoa and were not thoroughly discussed.

³⁵ See options 1 and 2 of paragraph 2 of Part I. The right of the accused should be considered in connection with this precondition.

the crime of aggression as well as agreement on the conditions for the exercise of jurisdiction. Others reiterated their continuing interest in the inclusion of serious drug trafficking and other transboundary criminal activities within the jurisdiction of the Court at a review conference.

XI. BILATERAL AGREEMENTS OF THE UNITED STATES OF AMERICA GRANTING IMMUNITY TO US CITIZENS FROM PROSECUTION BEFORE INTERNATIONAL COURTS

101. It may be recalled that after the assumption of the office of the President of the United States of America, President George Bush withdrew the American signature to the Rome Statute of the International Criminal Court. On 6 May 2002, Bush administration sent a notice to the United Nations Secretary-General (the depository) that the “United States does not intend to become a Party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31st 2000.”³⁶

102. A senior US State Department Official elaborating on the reasons of the United States for not joining the ICC, stated: (i) it undermined the role of the UN Security Council in maintaining international peace and security; (ii) it created a prosecutorial system that is an unchecked power; (iii) it purports to assert jurisdiction over nationals of states that have not ratified the treaty; and (iv) it is therefore built on a “flawed foundation”. He stated that “the United States respects the decision of those nations who have chosen to join the ICC, but they in turn must respect our decision not to join the ICC or place our citizens under the jurisdiction of the Court”³⁷.

103. Following the United States action, Israel also withdrew its signature.

104. It may be mentioned that on 12th July 2002, the UN Security Council unanimously adopted resolution 1422, consistent with Article 16 of the Rome Statute, which requested the International Criminal Court not to commence a case against any personnel in a United Nations Peacekeeping operations from a State not Party to the Statute for a twelve month period beginning 1st July 2002. The Council also expressed its intent to renew its requests for further twelve month periods for as long as might be necessary and decided that Member States should take no action inconsistent with the above mentioned provision and with their international obligations. The objective behind this resolution was primarily to meet the concerns of the United States of America.

105. Further, the USA after adoption of the above mentioned Security Council resolution has embarked on a worldwide campaign to sign bilateral agreements with individual States ensuring immunity for American citizens and those who worked under contract for the US Government.

106. Such “bilateral immunity agreements” commonly referred to as “Article 98” Agreements have been concluded with Afghanistan, Azerbaijan, Bahrain, Djibouti, the Dominican Republic, East Timor, El Salvador, Gambia, Georgia, Honduras, India, Israel, the Marshall Islands, Mauritania, Micronesia, Nepal, Palau, Romania, Rwanda, Sri Lanka, Tajikistan, Tuvalu and Uzbekistan.

³⁶ Sean D. Murphy (ed.), “Contemporary Practice of the United States Relating to International Law”, (section on International Criminal Law), *American Journal of International Law*, vol. 96 (2002), pp. 724-29 at p. 724.

³⁷ Statement by Mr. Marc Grossman, US Under Secretary of State for Political Affairs, American Foreign Policy and International Criminal Court, remarks to the Centre for Strategic and International Studies (6 May 2002); *ibid*.

107. It may be recalled that in June 2002, the US threatened to veto all UN peacekeeping operations unless the Security Council adopted a resolution to override the court's jurisdiction and provide immunity to any citizens of non-ratifying countries engaged in UN authorized operations. The Security Council Resolution 1422 gives its such power with the limitation of the immunity to a one-year period, when it will lapse unless a further resolution is approved.

108. Dispelling American and Israeli's fear that the Court could be misused by their political enemies the President of Assembly of States Parties Prince Zeid Raaad Zeid Al-Hussein, Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations at the Inauguration of the Court observed that the Court will apply the law equally to all and "is not the world's crucible for vengeance" but a "court of last resort". Its Statute dictates that it must defer to national court first.

109. At the recently concluded Conference of the Head of States or Government of the Non Aligned at Kula Lumpur, Malaysia the Declaration adopted, in this context states:

The Heads of States or Governments ... stressed the importance of safeguarding the integrity of the (Rome) Statute and the need to ensure that the (International Criminal) Court remains impartial and fully independent of political organs of the United Nations, which should direct or hinder the functions of the Court nor assume a parallel or superior role to the Court. They observed with concern actions geared at establishing process to grant immunity to the members of the United Nations established or authorized peacekeeping operations. These actions seriously affect treaty law, are not consistent with the provisions of the Rome Statute and severely damage the Court's credibility and independence.³⁸

³⁸ Final Document of the XIII Conference of Heads of States of Government of the Non-Aligned Movement, Kuala Lumpur, 24-25 February 2003.

XII. ISSUES FOR FOCUSED DELIBERATIONS DURING THE 42ND SESSION OF AALCO (SEOUL, 2003)

110. Resolution RES/41/10 adopted at the Abuja Session of AALCO encouraged the “Member States to consider ratifying/acceding to the (Rome) Statute”. In the light of this mandate, the reasons for lesser participation of the AALCO Member States in the ICC may be considered as one of the issues for focused deliberation at the 42nd Session of AALCO.

111. During the preceding AALCO sessions, it has been suggested by certain delegations that in view of the fact that only some member countries of AALCO had ratified the Rome Statute, it was timely to give a serious thought to convene a meeting to study legal and constitutional points required for the ratification of the Statute. Such a meeting would provide a useful forum for AALCO’s member countries which had ratified the Statute and those which had not yet done so to benefit from each other’s experiences and technical difficulties and obstacles or otherwise which they were facing in their countries in the process of ratification.

112. Arriving at a consensus on the definition of the mother of international crimes i.e. the “crime of aggression” has eluded the international community so far. This remains one of the primary reasons for non-participation by many States. Formulating a consensus definition on the crime of aggression has been entrusted to a Subcommittee of the Bureau of the Assembly of States Parties under the Chairmanship of Mr. Allieu Ibrahim Kanu (Sierra Leone). At the 42nd Session, AALCO may consider convening an inter-sessional meeting of experts of international criminal law from the Asian-African region that could put together an agreeable definition, which could be later on presented to the Subcommittee for consideration. However, any amendment to the Rome Statute would be considered seven years after its entry into force i.e. in 2009. This means that the international community has a period of seven years to arrive at a consensus on this issue. In this interregnum of seven years, it is hoped that the ICC would be able to attain universal participation.

113. The US practice of entering into bilateral agreements to secure immunity for its citizens undermines effectively the jurisdiction of the ICC and could be examined.

Annex

Table I
Status of the ratification of Rome Statute of the International Criminal Court by AALCO Member States*

S. No	Member State	Status	
		Signature	Ratification Acceptance (A) Approval (AA) Accession (a)
1.	Arab Republic of Egypt	26 December 2000	—
2.	Bahrain	11 December 2000	—
3.	Bangladesh	16 September 1999	—
4.	Botswana	8 September 2000	8 September 2000
5.	Cyprus	15 October 1998	7 March 2002
6.	Democratic Peoples' Republic of Korea	—	—
7.	Federal Republic of Nigeria	1 June 2000	27 September 2001
8.	Gambia	4 December 1998	28 June 2002
9.	Ghana	18 July 1998	15 May 2002
10.	Hashemite Kingdom of Jordan	7 October 1998	11 April 2002
11.	India	—	—
12.	Indonesia	—	—
13.	Islamic Republic of Iran	31 December 2000	—
14.	Japan	—	—
15.	Kenya	11 August 1999	—
16.	Lebanon	—	—
17.	Libyan Arab Jamahriya	—	—
18.	Malaysia	—	—
19.	Mauritius	11 November 1998	5 March 2002
20.	Mongolian Peoples' Republic	29 December 2000	11 April 2002
21.	Myanmar	—	—
22.	Nepal	—	—
23.	Pakistan	—	—
24.	Palestine	—	—
25.	Peoples' Republic of China	—	—
26.	Philippines	28 December 2000	—

* The information stated in the above table is compiled from the following website: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>, visited on 4 March 2003. Also see States Parties at the website of the International Criminal Court: <http://www.icc-cpi.int>. Reference was also made to the *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2001* (UN, New York, 2002).

27.	Republic of Iraq		
28.	Republic of Korea	8 March 2000	13 November 2002
29.	Republic of Singapore	—	—
30.	Republic of Uganda	17 March 1999	14 June 2002
31.	Republic of Yemen	28 December 2000	—
32.	Saudi Arabia		—
33.	Senegal	18 July 1998	2 February 1999
34.	Sierra Leone	17 October 1998	15 September 2000
35.	Somalia	—	—
36.	Sri Lanka	—	—
37.	State of Kuwait	8 September 2000	—
38.	State of Qatar	—	—
39.	Sudan	8 September 2000	—
40.	Sultanate of Oman	—	—
41.	Syrian Arab Republic	29 November 2000	—
42.	Thailand	2 October 2000	—
43.	Turkey	—	—
44.	United Arab Emirates	27 November 2000	—
45.	United Republic of Tanzania	29 December 2000	20 August 2002

Inferences from the above table: Following inferences as regards the participation of the AALCO Member States in the International Criminal Court may be drawn:

- ❖ Twenty-five AALCO Member States are Signatories to the Rome Statute.
- ❖ Thirteen Member States have ratified the Statute. Thus, less than one-third AALCO Member States have ratified the Rome Statute.
- ❖ Out of these thirteen Member States, nine Member States, namely Botswana, Federal Republic of Nigeria, Gambia, Ghana, Mauritius, Republic of Uganda, Senegal, Sierra Leone and United Republic of Tanzania are from Africa. The four Member States from Asia are: Cyprus, Hashemite Kingdom of Jordan, Mongolian People's Republic and Republic of Yemen.
- ❖ Arab Republic of Egypt had made upon signature a Declaration.
- ❖ Blank column indicates that the concerned Member State has not taken the requisite treaty action (i.e. signature or ratification).
- ❖ Resolution RES/41/10 adopted at the Abuja Session of AALCO encouraged the "Member States to consider ratifying/acceding to the Statute". In the light of this mandate, the reasons for lesser participation of the AALCO Member States in the ICC may be considered as one of the issues for focused deliberation at the 42nd Session of AALCO.

Table II
Status of the ratification of the Rome Statute of the International Criminal Court*

S. No.	Member State	Status	
		Signature	Ratification Acceptance (A) Approval (AA) Accession (a)
1	Afghanistan		10 Feb 2003 a
2	Albania	18 July 1998	
3	Algeria	28 Dec 2000	
4	Andorra	18 July 1998	30 Apr 2001
5	Angola	7 Oct 1998	
6	Antigua and Barbuda	23 Oct 1998	18 June 2001
7	Argentina	8 Jan 1999	8 Feb 2001
8	Armenia	1 Oct 1999	
9	Australia	9 Dec 1998	1 July 2002
10	Austria	7 Oct 1998	28 Dec 2000
11	Bahamas	29 Dec 2000	
12	Bahrain	11 Dec 2000	
13	Bangladesh	16 Sep 1999	
14	Barbados	8 sep 1999	10 Dec 2002
15	Belgium	10 Sep 1998	28 June 2000
16	Belize	5Apr 2000	5 Apr 2000
17	Benin	24 Sep 1999	22 Jan 2002
18	Bolivia	17 Jul 1998	27 Jun 2002
19	Bosnia and Herzegovina	17 Jul 2000	11 Apr 2002
20	Botswana	8 Sep 2000	8 Sep 2000
21	Brazil	7 Feb 2000	20 Jun 2002
22	Bulgaria	11 Feb 1999	11 Apr 2002
23	Burkina Faso	30 Nov 1998	
24	Burundi	13 Jan1999	
25	Cambodia	23 Oct 2000	11 Apr2002
26	Cameroon	17 Jul1998	
27	Canada	18 Dec 1998	7 Jul 2000
28	Cape Verde	28 Dec 2000	
29	Central African Republic	7 Dec 1999	3 Oct 2001
30	Chad	20 Oct 1999	
31	Chile	11 Sep 1998	
32	Colombia	10 Dec 1998	5 Aug 2002
33	Comoros	22 Sep 2000	
34	Congo	17 Jul 1998	
35	Costa Rica	7 Oct 1998	7 Jun 2001
36	Cote d'Ivoire	30 Nov 1998	
37	Croatia	12 Oct1998	21 May 2001

* Article 126 in para 13 of the Statute deals with Entry into force. It states that the Statute shall enter into force on the first day of the month after the 60th day following the deposit of the 60th instrument of ratifications, acceptance, approval or accession with the Secretary General of the United Nations. The Statute entered into force on 1 July 2002. As at 3 March 2003, the number of States Parties to the Rome Statute is 89.

38	Cyprus	15 Oct 1998	7 Mar 2002
39	Czech Republic	13 Apr 1999	
40	Democratic Republic of the Congo	8 Sep 2000	11 Apr 2002
41	Denmark	25 Sep 1998	21 Jun 2001
42	Djibouti	7 Oct 1998	5 Nov 2002
43	Dominica		12 Feb 2001 a
44	Dominican Republic	8 Sep 2000	
45	Ecuador	7 Oct 1998	5 Feb 2002
46	Egypt	26 Dec 2000	
47	Eritrea	7 Oct 1998	
48	Estonia	27 Dec 1999	30 Jan 2002
49	Fiji	29 Nov 1999	29 Nov 1999
50	Finland	7 Oct 1998	29 Dec 2000
51	France	18 Jul 1998	9 Jun 2000
52	Gabon	22 Dec 1998	20 Sep 2000
53	Gambia	4 Dec 1998	28 Jun 2002
54	Georgia	18 Jul 1998	
56	Germany	10 Dec 1998	11 Dec 2000
57	Ghana	18 Jul 1998	20 Dec 1999
58	Greece	18 Jul 1998	15 May 2002
59	Guinea	7 Sep 2000	
60	Guinea-Bissau	12 Sep 2000	
61	Guyana	28 Dec 2000	
62	Haiti	26 Feb 1999	
63	Honduras	7 Oct 1998	1 Jul 2002
64	Hungary	15 Jan 1999	30 Nov 2001
65	Iceland	26 Aug 1998	25 May 2000
66	Iran (Islamic Republic of)	31 Dec 2000	
67	Ireland	7 Oct 1998	11 Apr 2002
68	Israel	31 Dec 2000	
69	Italy	18 Jul 1998	26 Jul 1999
70	Jamaica	8 Sep 2000	
71	Jordan	7 Oct 1998	11 Apr 2002
72	Kenya	11 Aug 1999	
73	Kuwait	8 Sep 2000	
74	Kyrgyzstan	8 Dec 1998	
75	Latvia	22 Apr 1999	28 Jun 2002
76	Lesotho	30 Nov 1998	6 Sep 2000
77	Liberia	17 Jul 1998	
78	Liechtenstein	18 Jul 1998	2 Oct 2001
79	Lithuania	10 Dec 1998	
80	Luxembourg	13 Oct 1998	8 Sep 2000
81	Madagascar	18 Jul 1998	
82	Malawi	2 Mar 1999	19 Sep 2002
83	Mali	17 Jul 1998	16 Aug 2000
84	Malta	17 Jul 1998	29 Nov 2002
85	Marshall Islands	6 Sep 2000	7 Dec 2000
86	Mauritius	11 Nov 1998	5 Mar 2002
87	Mexico	7 Sep 2000	
88	Monaco	18 Jul 1998	
89	Mongolia	29 Dec 2000	11 Apr 2002
90	Morocco	8 Sep 2000	
91	Mozambique	28 Dec 2000	

92	Namibia	27 Oct 1998	25 Jun 2002
93	Nauru	13 Dec 2000	12 Nov 2001
94	Netherlands	18 Jul 1998	17 Jul 2001 A
95	New Zealand	7 Oct 1998	7 Sep 2000
96	Niger	17 July 1998	11 Apr 2002
97	Nigeria	1 Jun 2000	27 Sep 2001
98	Norway	28 Aug 1998	16 Feb 2000
99	Oman	20 Dec 2000	
100	Panama	18 Jul 1998	21 Mar 2002
101	Paraguay	7 Oct 1998	14 May 2001
102	Peru	7 Dec 2000	10 Nov 2001
103	Philippines	28 Dec 2000	
104	Poland	9 Apr 1999	12 Nov 2001
105	Portugal	7 Oct 1998	5 Feb 2002
106	Republic of Korea	8 Mar 2000	13 Nov 2002
107	Republic of Moldova	8 Sep 2000	
108	Romania	7 Jul 1999	11 Apr 2002
109	Russian Federation	13 Sep 2000	
110	Saint Lucia	27 Aug 1999	
111	Saint Vincent and the Grenadines		3 Dec 2002 a
112	Samoa	17 Jul 1998	16 Sep 2002
113	San Marino	18 Jul 1998	13 May 1999
114	Sao Tome and Principe	28 Dec 2000	
115	Senegal	18 Jul 1998	2 Feb1999
116	Seychelles	28 Dec 2000	
117	Sierra Leone	17 Oct 1998	15 Sep 2000
118	Slovakia	23 Dec 1998	11 Apr 2002
119	Slovenia	7 Oct 1998	31 Dec 2001
120	Solomon Islands	3 Dec 1998	
121	South Africa	17 Jul 1998	27 Nov 2002
122	Spain	18 Jul 1998	24 Oct 2000
123	Sudan	8 Sep 2000	
124	Sweden	7 Oct 1998	28 Jun 2001
125	Switzerland	18 Jul 1998	12 Oct 2001
126	Syrian Arab Republic	29 Nov 2000	
127	Tajikistan	30 Nov 1998	5 May 2000
128	Thailand	2 Oct 2000	
129	The Former Yugoslav Republic of Macedonia	7 Oct 1998	6 Mar 2002
130	Timor-Leste		6 Sep 2002 a
131	Trinidad and Tobago	23 Mar 1999	6 Apr 1999
132	Uganda	17 Mar 1999	14 Jun 2002
133	Ukraine	20 Jan 2000	
134	United Arab Emirates	27 Nov 2000	
135	United Kingdom of Great Britain and Northern Ireland	30 Nov 1998	4 Oct 2001
136	United Republic of Tanzania	29 Dec 2000	20 Aug 2002
137	United States of America	31 Dec 2000	
138	Uruguay	19 Dec 2000	28 Jun 2002
139	Uzbekistan	29 Dec 2000	
140	Venezuela	14 Oct 1998	7 Jun 2000
141	Yemen	28 Dec 2000	
142	Yugoslavia	19 Dec 2000	6 Sep 2001

143	Zambia	17 Jul 1998	13 Nov 2002
134	Zimbabwe	17 Jul 1998	

INTERNATIONAL CRIMINAL COURT: BASIC FACTS

Introduction

The International Criminal Court (ICC) is a permanent tribunal that will investigate and try individuals-not States for the most serious international crimes: genocide, crimes against humanity and war crimes. The Court was established by the Rome Statute of the International Criminal Court on 17 July 1998, when 120 States participating in the “United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court” adopted the Statute. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The Statute sets out the Court's jurisdiction, structure, and functions and it provides for its entry into force 60 days after 60 States have ratified or acceded to it. The 60th instrument of ratification was deposited with the UN Secretary-General on 11 April 2002. Accordingly, the Statute entered into force on 1 July 2002. As of now, there are 139 signatories and 89 Parties to the Rome Statute. The ICC has jurisdiction over crimes committed in the territories of States Parties and over crimes committed by nationals of States Parties. States that do not ratify the Statute can, however, choose to accept the Court's jurisdiction in particular cases. This means that crimes committed before this date cannot be brought to the Court –this is known as non-retroactivity.

Invoking of Jurisdiction

Cases can be brought to the ICC in three ways. Both a State Party and the Security Council of the United Nations can refer a situation to the Court for investigation. In addition, the ICC Prosecutor can start an investigation based on information that is received from victims, non-governmental organizations, or any other reliable source. The ICC will rely on State co-operation in its investigation and prosecution of cases. The ICC will not have its own police force and will work side by side with national authorities.

Seat

The seat of the Court is The Hague in The Netherlands. The Court was inaugurated on 11 March 2003 at its seat.

Organs of the Court

The Court is composed of the Presidency; the Chambers; the Office of the Prosecutor; the Registry.

Eighteen judges are permanent members of the Court and are elected by secret ballot at a Meeting of the Assembly of the States Parties. Only the nationals of States Parties can be nominated and elected for the position of Judges and Prosecutor.

The Presidency composed of the President (Mr. Philippe Kirsch) First (Ms. Elizabeth Odio Benito) and the Second (Ms. Akua Kuenyehia) Vice-Presidents is elected by the Judges.

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 Office of the Prosecutor acts independently as a separate organ of the Court. It is headed by the Prosecutor, who is elected by secret ballot by an absolute majority of the Assembly of the States Parties.

The Registry 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 elected by an absolute majority of the judges.

The Presidency

The Presidency is composed of the President and First and 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.

Chambers

The judiciary of the Court is composed of three divisions: (i) Appeals Division; (ii) Trial Division; and (iii) 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 Division and the Pre-Trial Divisions of not less than six judges each.

The Office of the Prosecutor

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.

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, after a preliminary examination of the material received and following an authorization by the Pre-Trial Chamber, may start investigations.

The Registry

The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court. 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 the judges in plenary session, taking into account any recommendation by the Assembly of the States Parties.