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The Agreement On Privileges And Immunities of the International Criminal Court

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Phakiso Mochochoko

Abstract

The purpose of this Essay is to examine the provisions of the Agreement and provide the reader with hopefully useful background information on how compromises that enabled delegates to finalize the Agreement were reached. The hope is that this will augur well for a better understanding of the Agreement by filling some of the gaps that may be apparent from a cursory reading of the Agreement. The views expressed herein are those of the author and do not in anyway bind delegates that negotiated the Agreement.

THE AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL CRIMINAL COURT

*Phakiso Mochochoko**

INTRODUCTION

Resolution F¹ of the International Criminal Court ("ICC") Statute² ("Statute") left the responsibility for the preparation of certain documents necessary for the functioning of the Court to a Preparatory Commission. The work of the Preparatory Commission has been carried out through Working Groups established to deal with various documents mandated by Resolution F, amongst which is the Agreement on Privileges and Immunities of the Court ("Agreement"). At its sixth session held from November 27 to December 8, 2000, the Preparatory Commission established a Working Group to begin negotiations on the Agreement using a document prepared by the Secretariat as a basis for the discussions.³

These discussions continued during the seventh session held from February 26 to March 8, 2001, using a revised text proposed by the coordinator as a basis for discussions,⁴ and were

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1. Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF.183/10* (July 17, 1998), Resolution F.

2. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9* (1998), available at <http://www.un.org/law/icc/statute/romeфра.htm> [hereinafter Rome Statute].

3. *Draft Agreement on the Privileges and Immunities of the International Criminal Court, Prepared by the Secretariat*, U.N. Doc. PCNICC/2000/WGAPIC/L.1 (Aug. 9, 2000) [hereinafter *Draft Agreement Prepared by the Secretariat*].

4. *Draft Agreement on the Privileges and Immunities of the Court, Discussion Paper Pro-*

concluded during the Preparatory Commission's eighth session held from September 24 to October 5, 2001. At this session the coordinator's text was further refined, adopted, and recommended for approval and onward transmission to the Assembly of States Parties in accordance with the Statute.⁵

Agreements on privileges and immunities of most international organizations are normally rooted in the constitutions of such organizations.⁶ Similarly, the provisions of the Agreement on privileges and immunities of the ICC have their basis in the Statute itself. Article 4 of the Statute defines in general terms the legal status of the Court while article 48 entitles the Court to enjoy in the territory of each State Party to the Statute such privileges and immunities as are necessary for the fulfillment of its purposes.⁷ The Agreement thus seeks to give meaning to the provisions of article 48 by specifying what has been laid down in that article.

The drafters in Rome recognized that article 48 goes much further than simply stating the functional necessity of the privileges and immunities by providing a listing of some of the privileges and immunities. They nevertheless saw the elaboration of a comprehensive Agreement on such privileges and immunities as necessary. Amongst the reasons for this is the fact that unlike the *ad hoc* Tribunals for Yugoslavia⁸ and Rwanda,⁹ which are

posed by the Coordinator, U.N. Doc. PCNICC/2001/WGAPIC/RT.1 (Mar. 8, 2001) [hereinafter *Discussion Paper Proposed by the Coordinator*].

5. *Report of the Working Group, Draft Agreement on the Privileges and Immunities of the International Criminal Court*, U.N. Doc. PCNICC/2001/WGAPIC/L.1 (Oct. 3, 2001) [hereinafter *Draft Agreement on Privileges and Immunities*]. Unless otherwise indicated, references to the Agreement in this Essay refer to this document.

6. Constitutions of most international organizations merely state that the organization is entitled to the legal status and privileges and immunities, which it needs to function effectively. See, e.g., U.N. CHARTER arts. 104, 105; Constitution of the International Labour Organization, arts. 39, 40, available at <http://www.ilo.org/public/english/about/iloconst.htm>; Constitution of the Food and Agricultural Organization, art. XVI, available at <http://www.fao.org/Legal/default.htm>; Constitution of the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), art. XII, available at <http://www.unesco.org/general/eng/about/constitution/index.shtml>; Convention on International Civil Aviation, 61 Stat. 1180, Dec. 7, 1944, arts. 47, 60; Convention on the Law of the Sea, U.N. A/CONF.62/122, 21 I.L.M. 1261, Dec. 10, 1982, arts. 176-83.

7. Rome Statute, *supra* note 2, arts. 4, 48.

8. 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, U.N. Doc. S/RES/827 (1993), amended by U.N. Doc. S/RES/1166 (1998); U.N. Doc. S/RES/1329 (2000).

9. Statute of International Criminal Tribunal for the Prosecution of Persons Re-

creatures of the U.N., the ICC is an independent body and thus cannot rely on the privileges and immunities of the U.N. which have been well established in both treaties and practice over the last fifty years of the U.N.'s existence. The experiences of these Tribunals also revealed some of the inadequacies of the U.N. privileges and immunities.

It is also worth mentioning that like the two *ad hoc* Tribunals before it, one of the purposes of the ICC is to put an end to impunity by punishing those responsible for the most serious crimes. This puts investigators, experts on missions, and witnesses in the same precarious situation as U.N. peacekeepers,¹⁰ hence the need to guarantee the safety of persons serving the Court is even higher. Delegates negotiating the Agreement were thus fully cognizant of the need to elaborate a strong agreement to ensure that the Court will function in a fair, independent, and effective manner. The need for and importance of a strong Agreement was succinctly captured by the Registrar of the Rwanda Tribunal in his address to the Plenary of the Preparatory Commission at its eighth session when he said that the Agreement:

[W]ill prove to be a great asset to the future ICC. Negotiating Host Country agreements in various countries where the Court will need to operate can be a lengthy process, putting at risk evidence, staff and assets in the interim. This document will provide a pre-negotiated agreement. The agreement covers instances where staff of the Court as well as defense counsel, witnesses and other experts are undertaking work or merely passing through.¹¹

According to article 48, the Court shall enjoy necessary privileges and immunities in the territories of States Parties to the Statute.

sponsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states, between January 1, 1994 and December 31, 1994, U.N. Doc. S/RES/955 (1994), *amended by* U.N. Doc. S/RES/1165 (1998); U.N. Doc. S/RES/1329 (2000).

10. The high risks related to working for international peace and justice led the U.N. to negotiate the Convention on the Safety of U.N. and Associated Personnel, G.A. Res. 49/59 (Dec. 9, 1994), *reprinted in* 34 I.L.M. 482 (1995) to supplement the Convention on the Privileges and Immunities of the U.N., G.A. Res. 22A, U.N. GAOR, U.N. Doc. A/64 (1946).

11. Adama Dieng, Registrar of the International Criminal Tribunal for Rwanda, Address to the Preparatory Commission for the ICC during its eighth session, New York (Oct. 1, 2001).

The fact that the document is referred to as an Agreement has sometimes been interpreted to mean that it will be an Agreement amongst the States Parties to the Statute rather than an act of the Assembly of States Parties to which the Preparatory Commission will present the document. The Agreement itself defines a State Party as a party to the Agreement.¹² Whilst it is hoped that all States Parties to the Statute will ratify the Agreement, difficulties could arise if one or more States Parties to the Statute do not ratify the Agreement. It can however be safely argued that the Statute sets out the basic parameters for the application of the Agreement and determines the legal status and privileges and immunities the Court needs to function effectively. Where a State not party to the Statute chooses to be a party to the Agreement, it will be bound by the provisions of the Agreement and not by the Statute.

Basically, the Agreement regulates the privileges, immunities, and facilities to be enjoyed by the Court as an independent entity as well as the privileges, immunities, and facilities to be accorded to staff and various other groups of individuals involved not only in the proceedings of the Court, but also in meetings of the Assembly of States Parties, its subsidiary organs, and its Bureau. The Agreement represents a major innovative departure from previous ones in that it recognizes the important role of, amongst others, experts, witnesses, victims, and other persons required to be present at the seat of the Court. Their participation before the Court is facilitated by providing them with appropriate privileges and immunities.

The underlying principle in all cases is that all privileges and immunities are granted in the interests of the good administration of justice and not for the personal benefit of the individuals. Accordingly, the Agreement contains corresponding provisions indicating by whom, when, and how these privileges and immunities can be waived.

The Working Group's discussions of the privileges and immunities of the Court was complicated by the fact that in addition to the Agreement, the Rome Conference also requested the Preparatory Commission to prepare a draft of the Basic Principles Governing the Headquarters Agreement to be negotiated between the Court and the Netherlands. While the Working

12. *Draft Agreement on Privileges and Immunities*, *supra* note 5, art. 1(c).

Group realized that overlaps and repetition would be inevitable, delegates were sometimes divided when it came to the level of details needed in the elaboration of the Agreement. According to one view, most of the privileges and immunities could be better dealt with in the Host Country Agreement. This position however failed to realize that these privileges and immunities were not only necessary in the Host country, but were also particularly relevant in all other States where cooperation with the Court was essential.

It should also be noted that it will take some time before the Court concludes the Headquarters Agreement and that in the meantime the relationship between the Court and the Host country will be governed by article 48 and perhaps the Agreement. It was in this context that a proposal for provisional application of the Agreement was made, but due to lack of time was never fully considered.¹³

Chairing the negotiations of the Agreement in both the Working Group and the informal consultations offered the author an opportunity to observe first hand the evolution of the Agreement from beginning to end. Like all negotiated documents, the Agreement represents a delicate balance of competing interests and considerations, which sometimes threatened its finalization. The purpose of this Essay is to examine the provisions of the Agreement and provide the reader with hopefully useful background information on how compromises that enabled delegates to finalize the Agreement were reached. The hope is that this will augur well for a better understanding of the Agreement by filling some of the gaps that may be apparent from a cursory reading of the Agreement. The views expressed herein are those of the author and do not in anyway bind delegates that negotiated the Agreement.

13. The proposal would have enabled a State that intends to ratify or accede to the Agreement to apply it provisionally pending such ratification or accession. It read: "[a] State which intends to ratify or accede to this agreement may at any time notify the depositary that it will apply this Agreement provisionally for a period not exceeding two years." Informal Proposal for Provisional Application (on file with author). A similar provision is to be found in the *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea*, U.N. Doc. SPLOS/25 (May 19-23, 1997), art. 31.

I. ARTICLE 2—LEGAL STATUS AND JURIDICAL PERSONALITY OF THE COURT

Even though under international law there are no definitive criteria for according legal personality and the capacities resulting therefrom to international organizations, it has nevertheless been rightly argued that legal personality is a *conditio sine qua non* for the participation of an entity in a legal system.¹⁴ A state-oriented view of legal personality of an international organization is that the rights and duties that the founding States of an organization give to it in its constitution are the determining factor in deciding whether legal personality on the international level exists. The functional theory and the objective approach appear to command wider acceptance.

The juridical personality of the Court derives from article 4 of the Statute, which not only endows international legal personality to the Court, but also gives the Court all necessary legal capacity in the exercise of its functions and fulfillment of its purposes. This latter addition may have been intended to clarify that such personality is not limited to the international level, but that it extends to the national level as well. Like other similar agreements,¹⁵ article 2 of the Agreement serves to further codify the recognition of the juridical personality of the Court. In order to leave no doubt about legal personality of the Court, in article 2 of the Relationship Agreement between the U.N. and the Court,¹⁶ the U.N. recognizes the Court "as an independent permanent institution which . . . has international legal personality and such legal capacity as may be necessary for the exercise of

14. A.S. MULLER, *INTERNATIONAL ORGANIZATIONS AND THEIR HOST STATES* 75 (1995).

15. See, e.g., 1946 Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 15, art. 1; Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission, July 1999, art. II, available at <http://www.caricom.org/ccj-priv.htm>; Agreement on the Privileges and Immunities of the International Atomic Energy Agency, July 26, 1967, IAEA Doc. INFCIRC/9/Rev.2, art. II; Protocol on the Privileges and Immunities of the International Seabed Authority, Aug. 1992, art. 3; *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea*, supra note 13.

16. *Draft Relationship Agreement Between the United Nations and the International Criminal Court, Prepared by the Secretariat*, U.N. Doc. PCNICC/2000/WGICC-UN/L.1 (Aug. 9, 2000). This Agreement is one of the documents mandated by Resolution F. Negotiations on it were also concluded during the eighth session of the Preparatory Commission.

its functions" and the fulfillment of its purposes.¹⁷

In light of the specific provisions of article 4 of the Statute, some delegates questioned the need to repeat the text in the Agreement. The general view was that while there is no harm in repeating the provisions of the Statute for purposes of emphasis, it was also necessary to further elaborate the text in the Statute by providing an indicative list of the capacities that result from such legal personality. This elaboration indicates that the Court will have capacity to contract, to acquire and to dispose of immovable and movable property, as well as to participate in legal proceedings.¹⁸ Without these capacities, the Court would not be able to acquire goods and services all of which are supplied on the basis of negotiations and contracts.

II. ARTICLES 3, 4, 5, 8, 9, AND 10

The general provision (article 3) as well as the provisions concerning the inviolability of the Court premises (article 4), use of emblems and markings (article 5), and exemptions from restrictions, regulations, and reimbursement of duties (articles 8, 9, and 10) were not controversial. In most cases, the formulations proposed in the Secretariat document were retained sometimes with minor amendments.

Amongst the provisions that proved problematic, mention will be made of them in the subsequent sections.

III. ARTICLE 6(1)—IMMUNITY OF THE COURT, ITS PROPERTY, FUNDS, AND ASSETS

Debates on this article mainly focused on the second part dealing with execution of the Court's property. The Secretariat's original formulation of this part followed the precedent in the U.N. Convention and granted absolute immunity against execution.¹⁹ The arguments against this formulation were firstly, that it did not make sense for the Court to waive its immunity

17. *Id.* art. 2.

18. The Working Group preferred a combination of the so-called "model description" and "functional description" such as the one in article 104 of the U.N. Charter. For details of the differences between the two models, see MULLER, *supra* note 14, at 89.

19. See 1946 Convention on Privileges and Immunities of the U.N., *supra* note 15, art. II, sec. 2. *The Agreement on the Privileges and Immunities of the International Atomic Energy Agency*, U.N. Doc. INFCIRC/9/Rev.2 (July 26, 1967), art. III, also uses the same language.

against litigation if the same could not be done for execution. It would bring disrepute to the Court if after losing a case, it refused to honor the judgment, leaving plaintiffs helpless. Secondly, it was argued that the inability to execute against the Court was likely to hamper the Court's business dealings in that merchants would be reluctant to do business with the Court if they knew that they had no recourse to execution in case of default.

The counter-argument was that precedent showed that most international organizations enjoy absolute immunity against execution and there was no reason to depart from this practice, which is intended to protect such institutions. Allowing the Court to waive execution would put it under constant pressure from overzealous merchants.

During the sixth and seventh sessions, the majority view was against absolute immunity and the revised coordinator's text reflected that view. The concerns of those in favor of absolute immunity were captured by a footnote.²⁰ At the end of the seventh session, the proposal for absolute immunity was re-introduced into the text and retained in brackets.²¹

When the issue came up for discussion in the informals during the eighth session, delegates were equally divided between supporters of absolute immunity and those who preferred waiver of the immunity. The difficulties with this provision seem to have arisen from the fact that delegations were reading paragraph 1 of article 6 in isolation. Sensing that there would be no end to the impasse, the coordinator invited delegations to read paragraph 1 together with paragraph 2. A reading of paragraph 2 clearly shows that property, funds, and assets of the Court are immune from any form of interference "whether by executive,

20. The formulation read: "It is understood that any measure of execution shall require a separate express waiver of immunity." The footnote read: "A concern was raised as to whether funds, property and assets of the Court could be subject to execution." This footnote was retained until the final hours when the arguments in favor of absolute immunity prevailed. *Discussion Paper Proposed by the Coordinator, supra* note 4.

21. See *Draft Agreement on the Privileges and Immunities of the Court Discussion Paper Proposed by the Coordinator on articles 17 and 19 in PCNICC/2001/L.1/Rev.1/Add.3*, U.N. Doc. PCNICC/2001/WGAPIC/RT.2/Rev.1 (Sept. 26, 2001); *Draft Agreement on the Privileges and Immunities of the Court*, U.N. Doc. PCNICC/2001/WGAPIC/RT.2/Rev.2 (Oct. 2, 2001). The proposal was made by France, which insisted on retaining the original Secretariat's formulation in brackets. Despite many delegations' aversion to brackets, all agreed that for the time being, they were the best solution.

administrative, *judicial* or legislative action.”²² If all of the Court’s properties cannot be a subject of judicial action, there can be no doubt that such property could not be subject to judicial attachment/execution. Such a reading is in line with the first part of article 6 and the absolute immunity formulation in the second part merely buttresses the first part.

Faced with this reality, proponents of waiver sought to open discussions on paragraph 2. This paragraph had not been the subject of any debate and had been accepted *ad referendum* throughout all the sessions. Opening it for discussion would not only be a step backwards, but could lead to the reopening of other issues on which agreement had already been reached. Proponents of waiver reluctantly conceded on this issue. Thus, while the Court can waive its immunity for legal processes, it cannot do so in respect to execution.

IV. ARTICLE 7—INVIOABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE COURT

Invioability of documents is necessary for the Court’s protection against intrusive enquiries that could undermine its independence and integrity. This article, which is based on the Headquarters Agreements of the Yugoslavia and Rwanda Tribunals seeks to prevent States from impeding the work of the Court by seizing travel papers issued by the Court or evidence in the Court’s possession without waiver. This however does not prevent normal examination of travel documents by immigration officials; neither does it prevent the Court from cooperating with national Courts by sharing information and evidence.

Amongst the concerns that were raised during the discussions was the effect of the article on the disclosure provisions of articles 67(2) and 72 of the Statute. Discussions however clarified that the Prosecutor could not invoke these articles as a basis for refusing to disclose exculpatory or mitigating evidence, neither did it have any bearing on the disclosure provisions of articles 72 and 73 of the Statute. Documents or materials that are the subject of protective measures by the Court will not be affected by the termination or absence of inviolability.

During the discussions, concerns were raised that the word

22. *Discussion Paper Proposed by the Coordinator, supra* note 4 (emphasis added).

"archives" was old and no longer in line with new technologies to cover computer and other electronic data. The word "records" was suggested in its place. While the suggestion received general support, it was on the other hand felt that "documents" is broad enough to cover electronic records. It was therefore preferable to retain the wording as changing it might raise questions whether existing instruments such as the Convention on the Privileges and Immunities of the U.N. currently cover electronic records. In order to clarify that documents include electronic and any other form of data, the words "in whatever form" have been inserted after "documents."²³

V. ARTICLE 11—FACILITIES IN RESPECT OF COMMUNICATION

In addition to receiving and sending information, an important component of the Court's work will also entail outreach and public information programs to explain its work to the general public. There can thus be no doubt that the Court's work will be hampered by its inability to communicate freely using its own registered frequencies.

It would have been preferable for the Court to be entitled to undertake such public information programs using any media, including print, radio, and television in any State Party without any interference.²⁴ The insertion of the words "in accordance with their national procedures"²⁵ was criticized by some delegations on the grounds that this could allow some States to obstruct the Court's activities. However, national security concerns normally force States to require organizations not only to comply with relevant conventions of the International Telecommunication Union ("ITU"), but also to consult with national authorities on technical matters such as frequencies to be used.²⁶

23. The phrase used throughout the text is "papers and documents in whatever form, and materials." See *Draft Agreement on Privileges and Immunities*, *supra* note 5, arts. 16, 18, 19, 22.

24. The *ad hoc* Tribunals for Yugoslavia and Rwanda have successfully undertaken such programs in Yugoslavia and Rwanda using U.N. registered frequencies.

25. *Draft Agreement on Privileges and Immunities*, *supra* note 5, art. 11(5).

26. On host States requiring prior consent for the use of wireless transmitters, see the Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes of 1961, Apr. 18, 1961, art. 27, 23 U.S.T. 3227, 500 U.N.T.S. 95, and Vienna Convention on Consular Relations and Optional Protocol on Disputes of 1963, Apr. 24, 1963, art. 35, 21 U.S.T. 77, 596 U.N.T.S. 261.

It can only be hoped that States will have in place adequate laws that will allow the Court to communicate freely.

The current system of registration of frequencies with the ITU only allows States to register frequencies. Intergovernmental organizations require a special dispensation for them to register frequencies and unlike the *ad hoc* Tribunals, the Court will not be able to use U.N. registered frequencies.²⁷ This situation was brought to the Working Group's attention very late in the discussions, leaving little time for in-depth consideration. Faced with this dilemma, the Working Group decided to recommend that the Commission draw the attention of the Assembly of States Parties to the situation with a recommendation that the Assembly authorize the Court to seek a special dispensation with the ITU that would enable the Court to be allocated its own frequencies. The alternative suggestion by the Working Group was for the Assembly to consider including a provision in the relationship agreement with the U.N., which would allow the Court to operate its radio and telecommunications equipment on U.N. registered frequencies.

While the two recommendations are not mutually exclusive, those opposed to the Court are likely to refuse its use of the U.N. frequencies even if that is only a temporary measure while the Court registers its own frequencies. This issue will be more appropriately dealt with in the context of the Host country agreement and it can only be hoped that the Host country will adequately consult with the Court to facilitate the establishment of a communications network that is as independent as possible from the Host State while taking reasonable measures to protect its national security. The provisions of Section 12 of the Specialized Agencies Convention will be instructive in this regard.

VI. *ARTICLE 12—EXERCISE OF THE FUNCTIONS OF THE COURT OUTSIDE THE HEADQUARTERS*

Situations will undoubtedly arise when the Court will decide to sit elsewhere than at The Hague notwithstanding the high costs that this would entail. No price can be too big for justice and the strengthening of reconciliation in regions torn by conflict when the benefits of bringing the Court closer to the people

27. The U.N. has been granted this dispensation and has registered frequencies with the ITU.

will far outweigh the costs. As the experience of the two *ad hoc* Tribunals has shown, the possibility for the Court to establish regional and national offices for research, securing evidence and archives, as well as for liaison with national authorities cannot be ruled out. Allowing the Court to conclude arrangements concerning the provision of appropriate facilities for its functions guarantees its protection especially in States which have not yet ratified the Statute but which have ratified the Agreement.

Some delegations questioned the need for this article given that the Court is already endowed with this power under article 4 of the Statute as well as article 2, paragraph 2 of the Agreement. It was however found useful to emphasize this point in connection with the Court sitting or trying cases outside the Host State.

VII. ARTICLE 14—PRIVILEGES AND IMMUNITIES OF THE
REPRESENTATIVES OF STATES PARTICIPATING IN
THE ASSEMBLY AND ITS
SUBSIDIARY ORGANS

In dealing with this issue, article 13 of the Secretariat document²⁸ referred to “Representatives of States Parties to the Statute” which seemed to suggest that privileges and immunities would be granted to States Parties to the Statute but not to the Agreement. The situation was further complicated by the fact that the definition section of the Agreement defined States Parties to mean States Parties to the present agreement. A question that preoccupied the Working Group was whom the term “States Parties” referred to: Is it States Parties to the Statute or to the Agreement?²⁹

Those who believed that the term only referred to States Parties to the Statute assumed that all such States would also ratify the Agreement, but the question was what would happen if one or more States Parties to the Statute failed to ratify the Agreement. Presumably, the privileges and immunities would not extend to them. On the other hand, if the reference only covered States Parties to the Agreement, could the privileges and immunities be extended to States which have not ratified the Agreement including parties to the Statute?

28. *Draft Agreement Prepared by the Secretariat*, *supra* note 3.

29. The issue was reflected in a footnote to article 13. See *Discussion Paper Proposed by the Coordinator*, *supra* note 4.

Article IV, Section II of the U.N. Convention, on which this provision is based, covers representatives of U.N. Member States as well as its principal subsidiary bodies when attending meetings convened by the U.N. In the case of the ICC, representatives will be required to attend meetings of the Assembly as well as its subsidiary organs. While there was no doubt amongst delegates that representatives of States Parties to the Statute would attend meetings of the Assembly and would therefore be covered, the question for some delegations was whether States Parties to the Agreement which were not parties to the Statute could attend meetings. The answer to this question was to be found in article 112(1) of the Statute, which allows observers to participate in meetings of both the Assembly of States Parties and its subsidiary bodies upon invitation.

A proposal for amending the article to reflect the understanding that all representatives of States attending meetings of the Assembly and its subsidiary organs would be covered entailed changing the title of the article from "Privileges and Immunities of the Representatives of States Parties" to "Privileges and Immunities of the Representatives of States Participating in the Assembly and its Subsidiary Organs;"³⁰ the insertion of the reference to article 112(1); the deletion of the word "party" or "parties" throughout the text; as well as the deletion of the word "Court" in paragraph 2. The introduction of all these changes assured coverage for parties to the Statute, observer States, and intergovernmental organizations that participate in the meetings of the Assembly and its subsidiary bodies.

It was also suggested that the question of waiver be dealt with in a separate article, which is the current article 24 (former article 19). A new paragraph 13*bis* (now article 14) would deal with representatives of States participating in the proceedings of the Court.³¹

The substantive provisions of the article were adopted with-

30. See *Proposal Submitted by Canada on Article 13 of the Draft Agreement contained in PCNICC/2000/WGAPIC/L.1*, U.N. Doc. PCNICC/2000/WGAPIC/DP.9 (Dec. 4, 2000).

31. See *Informal Conference Room Paper ("CRP"), Revised Text of Article 13 of the Draft Agreement on the Privileges and Immunities of the Court and other consequential amendments submitted by Canada, as they emerge from footnote i of the document, PCNICC/2000/L.4/Rev.1/Add.3*, U.N. Doc. PCNICC/2001/WGAPIC/CRP.1 (Feb. 27, 2001), which was later incorporated as current articles 13 and 14 of the *Draft Agreement on Privileges and Immunities*, *supra* note 5.

out major changes. Privileges and immunities are extended to the representatives while exercising their official functions and during their journeys to and from the places of meetings. They include immunity from personal arrest or detention, immunity from legal process, inviolability of their papers, and immunity from immigration and currency restrictions.

VIII. OTHER CATEGORIES OF PERSONS TO BE ACCORDED PRIVILEGES AND IMMUNITIES

Following the structure of the Statute, the Secretariat document categorized other persons into various classes and attempted to give to each category necessary privileges and immunities for the fulfillment of their functions. The privileges and immunities were not uniform and they were all subject to various limitations. The first category was that of judges, the Prosecutor, the Deputy Prosecutor, and the Registrar. The second category consisted of the officials of the Court who, according to the definition, meant Deputy Registrar and the staff of the Prosecutor and the Registry. The third category was counsel while the fourth consisted of experts, witnesses, and other persons required to be present at the seat of the Court.

IX. ARTICLE 15—JUDGES, PROSECUTOR, DEPUTY PROSECUTORS, AND REGISTRAR

This category presented no major problems. When engaged in the business of the Court, this class enjoys privileges, immunities, and prerogatives normally accorded to heads of diplomatic missions on the basis of the Vienna Convention even though the reference to the Convention was found to be unnecessary. The legal status of this class is thus the same as that of judges of the International Court of Justice as approved by General Assembly Resolution 90 of December 11, 1946. This status will allow the judges, the Prosecutor, and the Registrar, all of whom are the highest officers of the Court, complete freedom of speech and independence in the discharge of their functions. Amongst the changes introduced to the Secretariat document was the dropping of paragraph 6,³² which was found to be un-

32. The paragraph, which was based on article IV, section 12 of the Convention on Privileges and Immunities of the U.N., *supra* note 15, read as follows:

In order to secure for the judges, the Prosecutor, the Deputy Prosecutors and

necessary as its contents were fully covered in paragraph 1. In terms of a new paragraph 7, States have no obligation to exempt from income tax either pensions or annuities paid to former judges, the Prosecutor, and the Registrar, or their dependents.

A question that arises with regard to this class is whether it was necessary to limit the privileges and immunities of these high officials to when they are engaged on or with the business of the Court. Even though this appears to be an erosion of the traditional diplomatic privileges and immunities of heads of diplomatic missions, what is clear is that the immunities and privileges as granted should allow these officials to fulfill their professional obligations and carry out their activities in an expedient and independent manner. In our view, article 15 adequately provides for the independent discharge of the functions by the judges, the Prosecutor, Deputy Prosecutors, and the Registrar.

X. ARTICLE 16—OFFICIALS OF THE COURT (THE DEPUTY REGISTRAR, STAFF OF THE OFFICE OF THE PROSECUTOR, AND STAFF OF THE REGISTRY)

As already indicated, the heading of the provision in the Secretariat document merely referred to officials of the Court and included a definition of who this referred to in the definition section. This was found to be vague and unsatisfactory and the preference was to be more specific by mentioning who these officials are, namely the Deputy Registrar, staff of the Office of the Prosecutor, and staff of the Registry.

Except for the introduction of a new paragraph 2,³³ in terms of which States are not obligated to exempt this class from income tax pensions or annuities, the content of the provision remained largely unchanged. In general, all staff is accorded privileges, immunities, and facilities that are necessary for the

the Registrar complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer occupying these positions or performing those functions.

Draft Agreement Prepared by the Secretariat, supra note 3.

33. In both this case and that of judges and the others, the proposal for the inclusion of this additional paragraph was introduced by the United Kingdom. *See Proposal Submitted by the United Kingdom of Great Britain and Northern Ireland on articles 14 and 15 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1, U.N. Doc. PCNICC/2000/WGAPIC/DP.4 (Dec. 1, 2000).*

independent performance of their functions, details of which are enumerated in paragraphs (a) through (j). The addition of the phrase “documents in whatever form” in paragraph (c) helps clarify that the protection extends to electronic data and thus protects the officials from intrusive enquiries by States.

An issue of concern with regard to paragraph (g) is whether this provision which merely permits an inspection of personal baggage where necessary, to be carried out in the presence of the official concerned, is protection enough. While it can be safely assumed that such searches will only take place if there is reasonable belief that the baggage contains illegal materials, it would have been better to put this beyond doubt by explicitly saying so as well as requiring that the search takes place not only in the presence of the owner, but also in the presence of other officials of the Court. A determination that the baggage does not contain anything illegal should be enough to stop further searches.

XI. ARTICLE 17—LOCALLY RECRUITED PERSONNEL

This provision, which is based on the Yugoslav Tribunal Headquarters Agreement, was introduced by the United Kingdom and it referred to personnel recruited locally and “assigned to hourly rates.”³⁴ Local staff is amongst the most vulnerable group of persons who will require protection and there was agreement on the need to protect this group. However, it took some time for the Working Group to understand exactly who was being protected and the nature of the protection that was required. Debates centered on the reference to hourly rates, which many delegations found to be limiting in that it failed to account for other arrangements the Court may make for recruiting personnel locally. Even though it is used in other U.N. documents, the phrase was found to be out of date as locally recruited staff is usually paid on some other basis.

A distinction had to be drawn between internationally recruited personnel and locally recruited personnel. The methods of recruitment are different and so are the terms of service. A person engaged by the Court will either be an international re-

34. *Proposal Submitted by the United Kingdom of Great Britain and Northern Ireland on Article 15 of the Draft Agreement Contained in Document PCNICC/2000/WGAPIC/L.1, U.N. Doc. PCNICC/2000/WGAPIC/DP.6 (Dec. 1, 2000).*

cruit, in which case the person falls within the category of staff covered by article 16, or will be recruited locally. Some of the people in the latter category will be engaged for fairly short periods to perform specific functions and are thus not entitled to a full range of privileges and immunities. Accordingly, article 17 covers all locally recruited persons who are otherwise not covered elsewhere in the Agreement. Their protection is limited to being immune from legal process in respect to anything they say or write in the performance of their duties. Anything they do or say outside their normal duties with the Court is not protected.

XII. *ARTICLE 18—COUNSEL AND PERSONS ASSISTING COUNSEL*

Article 48 of the Statute stipulates that counsel should be accorded such treatment as is necessary for the proper functioning of the Court. What this entails is that counsel is performing duties for the Court and this seems to equate counsel with other officials of the Court such as the Registrar and, in particular, the Prosecutor. In considering the extent of the privileges and immunities to be accorded counsel, the issue of equality of arms between the defense team and its counterpart in the prosecution reigned high on the minds of delegations; with some delegations strongly arguing for equal powers, privileges, immunities, and facilities in respect to both.

Notwithstanding arguments in favor of equality of arms, the Statute itself grants the Prosecutor and his deputies privileges and immunities normally accorded heads of diplomatic missions while prosecutorial staff is given privileges, immunities, and facilities necessary for the performance of their functions. In contrast, counsel is entitled to treatment necessary for the proper functioning of the Court and this does not extend to staff.

Thus, while the Prosecutor and Deputy Prosecutors' protections are clearly defined under international law, protection for counsel was left to be defined by the Agreement. It was therefore left to the Working Group to give sufficient protections for counsel to carry out their functions and the choice for the Working Group was what interpretation was to be given to the phrase "such treatment as is necessary for the proper functioning of the

Court.”³⁵ A narrow interpretation would lead to limited privileges and immunities while a broad interpretation would expand the range of privileges, immunities, and facilities to be accorded counsel.

Having opted for a broader interpretation, the more difficult question was whether to give counsel exactly the same privileges and immunities as the Prosecutor in accordance with the principle of equality of arms. Nowhere did this prove to be more difficult than when it came to the issue of a *laissez-passer* as well as the issue of whether the provision should also cover all persons assisting counsel. A further question raised in this context was where to draw the line in extending privileges and immunities to persons assisting counsel, i.e., should this be limited to associate counsel or does it extend to counsel’s driver, secretary, interpreter, and/or investigator. While the provision has been expanded to include persons assisting counsel, the question of who this refers to has been left open. A related question of whether the provision should cover defense counsel as well as legal representatives of victims was resolved by agreeing to include a definition of counsel which is defined as defense counsel and the legal representatives of victims.

Counsel’s ability to travel freely including the right to be exempted from immigration restrictions and alien registration will be key for the performance of their functions. While officials of the Court will be issued either a *laissez-passer* or similar Court document, counsel will be issued a certificate similar to a *laissez-passer*, which will adequately protect counsel’s rights. Strong arguments had been advanced for giving counsel a *laissez-passer* or the Court’s travel document, but the dominant view was that a *laissez-passer* is normally reserved for officials of the United Nations. It must also be pointed out that since it is not within counsel’s powers to conduct investigations on the territory of States, some of the problems associated with free movement for purposes of investigations are unlikely to be encountered. Except for the fact that counsel’s document is referred to as a certificate, it provides the same protections as those contained in a *laissez-passer* and it is the content rather than the name that will be important for States to facilitate counsel’s travel.

In other respects, counsel is provided with adequate and ap-

35. Rome Statute, *supra* note 2, art. 48(4).

propriate privileges and immunities to enable them to represent clients in Court, to maintain confidential files, and to communicate with the accused and witnesses in confidence. Inviolability of papers and documents is an important part of these protections. While face to face communications of counsel with witnesses and accused is not specifically mentioned, the Agreement should be interpreted to entitle counsel to meet with the accused and the witnesses at all reasonable times and places and in confidence, taking into account the security needs of the meeting place.

The right to use sealed bags and courier was deliberately left out as it was generally agreed to be more applicable to States. Should the Court sit in the territory of a State not party to the Statute and the Agreement, counsel, like all other groups, will be protected by the provisions of a Special Agreement that the Court will conclude with such a non-State party.

Like in all other cases, counsel's privileges and immunities are not intended to benefit them personally but are granted in the interests of the good administration of justice. They can thus be waived in case of abuse. The major concern in dealing with waiver of counsel's privileges and immunities was to ensure that the waiver did not extend to disclosure of client confidences and confidential documents. In deciding where to place the authority to waive,³⁶ delegates were divided between those who preferred to equate counsel with the Prosecutor by placing such authority in the absolute majority of judges and those who preferred a different authority. In order to preserve the independence of counsel and enhance the confidence of clients in them, it was decided to give the authority to the Presidency and not the judges before whom counsel will normally appear.

XIII. ARTICLES 19, 20, 21, AND 22 (FORMER ARTICLE 17)— EXPERTS, WITNESSES, VICTIMS, AND OTHER PERSONS REQUIRED TO BE PRESENT AT THE SEAT OF THE COURT

The grouping of various classes of people into one category

36. The Draft Agreement Prepared by the Secretariat, *supra* note 3, placed the authority to waive in the Court in accordance with the regulations, meaning that the Court would have to come up with regulations. Part of the writer's current duties as a focal point for human resources and administration include drafting a code of conduct for defense counsel. See *Road Map Leading to the Early Establishment of the International Criminal Court*, U.N. Doc. PCNICC/2001/L.2 (Sept. 26, 2001).

and according to them the same privileges and immunities presented a lot of problems. If it is accepted that the basis of privileges and immunities is functional, all personnel had to be given privileges and immunities in accordance with their functions and the Working Group struggled with the issue of how to separate the personnel under this category and determine appropriate privileges and immunities for each. To begin with, it was not entirely clear which individuals were covered under "experts." Were these experts on mission, experts for the Court, or expert witnesses? Did witnesses also include victims and what was the justification for equating this broad category consisting of different classes of people to Counsel and giving them almost the same privileges and immunities?³⁷

The complications surrounding these issues were covered in a footnote to the coordinator's text on article 17.³⁸ Concerns raised included the need to expand the scope of the article to cover other persons involved in the proceedings but not necessarily required to be present at the seat of the Court as well as persons assisting the Court in one way or the other; differentiating the scope of privileges, immunities, and facilities for experts and other persons referred to in the article; and appropriateness of coverage for victims insofar as they are not expressly referred to in article 48 of the Statute. All these issues remained unresolved at the end of the seventh session even though delegates agreed that the negotiations on the Agreement should be concluded during the eighth session.

Experience has shown that the Working Group format as well as informal consultations during the sessions of the Preparatory Commission do not always lend themselves to resolving difficult issues. The large number of participants and the pressures of time can constrain analysis and understanding of the issues and can thus delay resolution of problems. Experience has shown, in such cases, that discussions in smaller groups in between sessions (intersessional meetings) are much more effective. These meetings, which are normally attended by a smaller number of most interested delegations, focus on pending issues and propose solutions to the larger body.

37. All but two of the privileges and immunities of counsel were similar to those given to this group.

38. *Discussion Paper Proposed by the Coordinator*, *supra* note 4.

It was in this context that the NGO Coalition for the International Criminal Court ("CICC") organized informal consultations on privileges and immunities and in particular on article 17 on July 3, 2001. This forum provided an important opportunity for valuable exchanges of views and sharing of expertise and experience between government delegates on the one hand and experts from both *ad hoc* Tribunals for Yugoslavia and Rwanda on the other hand. At the end of the discussions useful suggestions were made on how to resolve what appeared to be an intractable problem. In short, all agreed on the need to sub-divide the category into different classes and accord to each class privileges and immunities in accordance with its functions. Three categories were identified: (1) experts and other persons required to be present at the seat of the Court; (2) witnesses and victims; and (3) experts on mission.

The meeting did not have time to elaborate on the privileges, immunities, and facilities to be accorded to each category and this task was left to the coordinator who was also mandated to circulate his proposal to all participants for comments. Once all comments were received and incorporated, the coordinator's text would be circulated as a proposal to all delegates. This would be without prejudice to delegates' rights to raise any issues of concern as the process was mainly intended to facilitate further discussions and resolution of the problems.

Following the meeting, the coordinator e-mailed a proposal for article 17 which subdivided the article into three articles: article 17 covered witnesses and victims, article 18 dealt with experts and other persons required to be present at the seat of the Court, and article 19 dealt with experts on mission. While positive comments were received on the new structure, there were still problems with the categorization, especially as it related to witnesses and victims.

The *chapeau* to the coordinator's revised article 17 on witnesses and victims read as follows:

Witnesses and victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary *for their appearance before the Court for purpose of giving evidence*, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to

in paragraph 2 of this article.³⁹

During the informal consultations it had been stressed that all privileges and immunities were purely functional and that this had to be made clear in the text. The coordinator had therefore inserted the words in italics in order to clarify the functional nature of what was being granted, but this proved to be a problem. While the phrase was appropriate for witnesses whose functions before the Court is to give evidence, Rule 89(1) of the Rules of Procedure and Evidence allows victims to make general opening or closing statements which strictly speaking is not giving evidence or testimony. Similarly, under Rule 144, victims have the right to assist in the delivery of judgment, which again is not giving evidence or testimony. Exchanges of e-mails failed to resolve the issue and it was decided to capture the concerns in a footnote so that the issue could be discussed during the eighth session.⁴⁰

The main issue that arose in the discussions was whether references to giving evidence or testimony should be deleted and replaced with words "for their appearance before the Court" without specifying the purposes for such appearance. This would cover both witnesses who are victims and those who are not, as well as victims who are not necessarily witnesses. A more fundamental problem however was whether it was appropriate to give the same privileges and immunities to witnesses and victims even though both have different functions before the Court. It thus became obvious that while witnesses required more elaborate privileges and immunities, most of these were neither necessary nor appropriate for victims. The solution was thus to further subdivide the group and accord each class appropriate privileges, immunities, and facilities for the performance of their functions.

While article 19 covers all witnesses including witnesses who are also victims, article 20 focuses on victims who participate in the proceedings in accordance with Rules 89 to 91 of the Rules of Procedure and Evidence. Witnesses have been granted more elaborate protections and facilities as listed in paragraphs 1(a) to

39. *Draft Agreement on the Privileges and Immunities of the Court, Discussion Paper Proposed by the Coordinator for Articles 17 and 19*, U.N. Doc PCNICC/2001/WGAPIC/RT.2 (Aug. 17, 2001).

40. *See id.*

(g) of article 19. These should give adequate security to witnesses to freely travel across countries to and from The Hague to give essential evidence that will be required for the conviction of accused persons.

The participation of victims in Court proceedings is one of the major achievements of the Rome Conference and it would have been a step backwards if the Agreement had failed to facilitate such participation. In both cases a certificate issued by the Court specifying, in the case of witnesses, that they are required at the seat of the Court, and in the case of the victims that they are participating in the proceedings, as well as the duration of such requirement or participation, should be enough evidence for governments to extend the necessary privileges and immunities to these classes of persons.

XIV. ARTICLE 21—EXPERTS

It will be recalled that the coordinator's discussion paper further subdivided the groupings into experts and other persons required to be present at the seat of Court into one group and experts on mission into another group. The basis for this was that in addition to experts who will be giving evidence (expert witnesses) the Court would make use of other experts such as information technology experts who would also require protections. The discussions however clarified that expert witnesses are covered under the provision on witnesses and any other expert that performs functions for the Court should be given the same treatment irrespective of whether the functions are performed at the seat or elsewhere.

Accordingly, a separate provision for experts⁴¹ has been introduced in article 21 and its content is similar to provisions of other instruments dealing with experts on mission.⁴²

41. The International Court of Justice ("ICJ") clarified the status of experts on mission in the 1989 case of *Mazilu* when it concluded that experts on mission are entitled to enjoy the privileges and immunities provided for under the U.N. Convention with a view to the independent performance of their functions, not only during the period of their missions, but also when they traveled. See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, I.C.J. Advisory Opinion of December 15, 1989 ("Mazilu Opinion"), available at <http://www.icj-cij.org/icjwww/idecisions/isummaries/iecosocsummary891215.htm>.

42. The article is based on, amongst others: 1946 Convention on the Privileges and Immunities of the United Nations, *supra* note 15, art. VI, §§ 22-23; the Protocol on the Privileges and Immunities of the International Seabed Authority, U.N. Doc. LOS/

*XV. ARTICLE 22—OTHER PERSONS REQUIRED TO BE
PRESENT AT THE SEAT OF THE COURT*

Having covered all categories of persons, the question for the Working Group was to determine who “other persons required to be at the seat of the Court” are and why they will be required to be present at the seat of the Court. The Statute does not specify who these persons are and the Working Group could only assume that they include persons who accompany victims and/or witnesses. Should the Court see the need for such persons to be present at the seat, it shall issue a certificate to that effect and this will assist in their travel. The protections which they are given are similar to those given to victims.

*XVI. ARTICLE 23—COOPERATION WITH THE AUTHORITIES
OF STATES PARTIES*

Under international law, immunities are only granted from local jurisdiction and not from local laws. The need for cooperation between the Court and national authorities in enforcement of national laws and in preventing incidents of abuse thus cannot be overemphasized hence this need is underscored in article 23. Those granted privileges and immunities will have to understand that they are under a duty to respect national laws and refrain from interfering in the internal affairs of States in which they conduct the business of the Court or through which they pass on such business.

XVII. WAIVER OF THE PRIVILEGES AND IMMUNITIES

An issue that arose in connection with the discussions on waiver was determining the competent authority to waive the privileges and immunities of each category. In the case of the immunities of representatives of States and intergovernmental organizations, the competent State authority has a right and a duty to waive the immunities if they impede the course of justice and they can be waived without prejudice to the administration of justice.

As we have already seen, the authority to waive immunities of counsel is vested in the Presidency, which also has authority

PCN/WP.49/Rev.2 (July 28, 1992), art. 9; and the *Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea*, *supra* note 13, arts. 15, 17.

over the Registrar, witnesses, victims, and other persons required to be present at the seat of the Court. For the judges and the Prosecutor, the majority of the judges is the competent authority. Since the Prosecutor is responsible for all prosecutorial staff and the Registrar is responsible for the registry staff, they are respectively the competent authorities for their staff as well as for their respective deputies. For locally recruited personnel, the head of the organ that employs them bears the responsibility while for experts the responsibility lies with the organ of the Court appointing the expert.

XVIII. *ARTICLE 27—NOTIFICATION*

In order to facilitate States' cooperation with the Court in extending the necessary facilities to its officials, the Registrar is required to communicate the names of all officials who are entitled to the privileges and immunities. In its original formulation, the list included experts, witnesses, and victims. The major concern with this formulation was that given the nature of the crimes for which witnesses will be required to testify, revealing their identity would put them in a dangerous situation where they could be attacked and killed to prevent them from giving testimony. In the course of the discussions, the article was amended to provide that the names of experts, witnesses, and victims could only be disclosed after the Court had considered and decided on such disclosure.⁴³ This was however not found to be adequate protection and it was agreed to limit the disclosure to officials of the Court.

XIX. *DISPUTE SETTLEMENT*

Compared with the original formulation that had combined the different types of legal disputes in one article and which was found to be too long and confusing, the current formulation⁴⁴ separates the settlement of disputes into two articles: one covering disputes with third parties, and the other covering disputes arising out of interpretation of the Agreement. In the case of

43. The sentence read: "Notification regarding experts and witnesses shall be subject to any decisions taken by the Court regarding the protection of witnesses, experts and victims." *Draft Agreement Prepared by the Secretariat*, *supra* note 3.

44. The basis for the current text was a proposal by Spain which later incorporated into the *Discussion Paper Proposed by the Coordinator*, *supra* note 4.

the former, the dispute resolution mechanism will be drafted by the Court and approved by the Assembly while in the latter provision is made for a three-member arbitral tribunal.

CONCLUSION

Delegates negotiating the Agreement were fully aware of the special nature of the Court as a permanent international criminal judicial institution and thus faced the daunting challenge of producing a comprehensive legal instrument that would facilitate the independent fulfillment of the Court's functions. The provisions of the Agreement have thus been carefully prepared, taking into account existing legal instruments relating to other international courts or tribunals, diplomatic missions, or international organizations that have codified the general principles of international law and customary law while at the same time realizing the special character of the Court and the different requirements for its operations.

The Agreement should thus be seen as yet another milestone in the codification of international law of criminal tribunals and as yet another step in defining the privileges and immunities that are necessary for a permanent Criminal Court as well as for persons connected with it to carry out their functions effectively and without interference.

For the Court itself, giving it legal personality and the capacity to contract, own property, and to sue will be essential for its functions. In the same way, inviolability of its property, assets, archives, and communications will protect it against intrusive inquiries by some States. Amongst other important privileges and immunities conferred on the Court, mention can be made of immunity from execution, exemption from direct taxes and from customs duties on goods imported or exported by the Court for its official use as well as exemption from currency restrictions.

Privileges and immunities equivalent to those of a head of a diplomatic mission under international law are conferred on the high officials of the Court such as judges, the Prosecutor, and his deputies, as well as the Registrar. Staff of the Court, on the other hand, enjoy a range of privileges and immunities of a lesser scope, but adequate for the fulfillment of their duties. Other personnel including counsel, witnesses, victims, and ex-

perts would also enjoy a range of limited privileges and immunities.

All persons enjoying privileges and immunities by virtue of their connection with the Court remain under a duty to respect the laws of any State Party in whose territory they may be on the business of the Court. There is thus provision for waiver of the privileges and immunities in appropriate circumstances.

Universal ratification and early entry into force of the Agreement will be as important as ratification of the Statute itself. The need to obviate delays and/or obstructions in the operations of the Court, especially its first years, makes early entry into force of the Agreement urgent and imperative. It can only be hoped that States will ratify and/or accede to the Agreement as soon as possible and faithfully apply its provisions.