
Table of contents

PREAMBLE

PART 1. – ESTABLISHMENT OF THE COURT

Art. 1. The Court

Art. 2. Relationship of the Court with the United Nations

Art. 3. Seat of the Court

Art. 4. Legal status and powers of the Court

PART 2. – JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Art. 5. Crimes within the jurisdiction of the Court

Art. 6. Genocide

Art. 7. Crimes against humanity

Art. 8. War crimes

Art. 8bis. Crime of aggression

Art. 9. Elements of Crimes

Art. 10.

Art. 11. Jurisdiction ratione temporis
### Art. 12. Preconditions to the exercise of jurisdiction

- Page 94

### Art. 13. Exercise of jurisdiction

- Page 101

### Art. 14. Referral of a situation by a State Party

- Page 104

### Art. 15. Prosecutor

- Page 108

### Art. 15bis. Exercise of jurisdiction over the crime of aggression

- Page 111

### Art. 15ter. Exercise of jurisdiction over the crime of aggression (Security Council referral)

- Page 122

### Art. 16. Deferral of investigation or prosecution

- Page 125

### Art. 17. Issues of admissibility

- Page 134

### Art. 18. Preliminary rulings regarding admissibility

- Page 142

### Art. 19. Challenges to the jurisdiction of the Court or the admissibility of a case

- Page 146

### Art. 20. Ne bis in idem

- Page 155

### Art. 21. Applicable law

- Page 158

### PART 3. – GENERAL PRINCIPLES OF CRIMINAL LAW

### Art. 22. Nullum crimen sine lege

- Page 162

### Art. 23. Nulla poena sine lege

- Page 162

### Art. 24. Non-retroactivity ratione personae

- Page 169

### Art. 25. Individual criminal responsibility

- Page 172

### Art. 26. Exclusion of jurisdiction over persons under eighteen

- Page 175

### Art. 27. Irrelevance of official capacity

- Page 192

### Art. 28. Responsibility of commanders and other superiors

- Page 195

### Art. 29. Non-applicability of statute of limitations

- Page 201

### Art. 30. Mental element

- Page 206

### Art. 31. Grounds for excluding criminal responsibility

- Page 208
Art. 32. Mistake of fact or mistake of law

Art. 33. Superior orders and prescription of law

PART 4. – COMPOSITION AND ADMINISTRATION OF THE COURT

Art. 34. Organs of the Court

Art. 35. Service of judges

Art. 36. Qualifications, nomination and election of judges

Art. 37. Judicial vacancies

Art. 38. The Presidency

Art. 39. Chambers

Art. 40. Independence of the judges

Art. 41. Excusing and disqualification of judges

Art. 42. The Office of the Prosecutor

Art. 43. The Registry

Art. 44. Staff

Art. 45. Solemn undertaking

Art. 46. Removal from office

Art. 47. Disciplinary measures

Art. 48. Privileges and immunities

Art. 49. Salaries, allowances and expenses

Art. 50. Official and working languages

Art. 51. Rules of Procedure and Evidence

Art. 52. Regulations of the Court

PART 5. – INVESTIGATION AND PROSECUTION
International Criminal Law and Procedure
Rome Statute of the International Criminal Court

Art. 53. Initiation of an investigation

Art. 54. Duties and powers of the Prosecutor with respect to investigations

Art. 55. Rights of persons during an investigation

Art. 56. Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

Art. 57. Functions and powers of the Pre-Trial Chamber

Art. 58. Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

Art. 59. Arrest proceedings in the custodial State

Art. 60. Initial proceedings before the Court

Art. 61. Confirmation of the charges before trial

PART 6. – THE TRIAL

Art. 62. Place of trial

Art. 63. Trial in the presence of the accused

Art. 64. Functions and powers of the Trial Chamber

Art. 65. Proceedings on an admission of guilt

Art. 66. Presumption of innocence

Art. 67. Rights of the accused

Art. 68. Protection of the victims and witnesses and their participation in the proceedings

Art. 69. Evidence

Art. 70. Offences against the administration of justice

Art. 71. Sanctions for misconduct before the Court

Art. 72. Protection of national security information

Art. 73. Third-party information or documents

Art. 74. Requirements for the decision

Art. 75. Reparations to victims

Art. 76. Sentencing

PART 7. – PENALTIES

Art. 77. Applicable penalties

Art. 78. Determination of the sentence

Art. 79. Trust Fund

Art. 80. Non-prejudice to national application of penalties and national laws

PART 8. – APPEAL AND REVISION

Art. 81. Appeal against decision of acquittal or conviction or against sentence

Art. 82. Appeal against other decisions

Art. 83. Proceedings on appeal

Art. 84. Revision of conviction or sentence

Art. 85. Compensation to an arrested or convicted person

PART 9. – INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Art. 86. General obligation to cooperate

Art. 87. Requests for cooperation: general provisions

Art. 88. Availability of procedures under national law

Art. 89. Surrender of persons to the Court

Art. 90. Competing requests

Art. 91. Contents of request for arrest and surrender

Art. 92. Provisional arrest

Art. 93. Other forms of cooperation
Art. 94. Postponement of execution of a request in respect of ongoing investigation or prosecution

Art. 95. Postponement of execution of a request in respect of an admissibility challenge

Art. 96. Contents of request for other forms of assistance under article 93

Art. 97. Consultations

Art. 98. Cooperation with respect to waiver of immunity and consent to surrender

Art. 99. Execution of requests under articles 93 and 96

Art. 100. Costs

Art. 101. Rule of speciality

Art. 102. Use of terms

PART 10. – ENFORCEMENT

Art. 103. Role of States in enforcement of sentences of imprisonment

Art. 104. Change in designation of State of enforcement

Art. 105. Enforcement of the sentence

Art. 106. Supervision of enforcement of sentences and conditions of imprisonment

Art. 107. Transfer of the person upon completion of sentence

Art. 108. Limitation on the prosecution or punishment of other offences

Art. 109. Enforcement of fines and forfeiture measures

Art. 110. Review by the Court concerning reduction of sentence

Art. 111. Escape

PART 11. – ASSEMBLY OF STATES PARTIES

Art. 112. Assembly of States Parties
PART 12. – FINANCING

Art. 113. Financial Regulations

Art. 114. Payment of expenses

Art. 115. Funds of the Court and of the Assembly of States Parties

Art. 116. Voluntary contributions

Art. 117. Assessment of contributions

Art. 118. Annual audit

PART 13. – FINAL CLAUSES

Art. 119. Settlement of disputes

Art. 120. Reservations

Art. 121. Amendments

Art. 122. Amendments to provisions of an institutional nature

Art. 123. Review of the Statute

Art. 124. Transitional Provision

Art. 125. Signature, ratification, acceptance, approval or accession

Art. 126. Entry into force

Art. 127. Withdrawal

Art. 128. Authentic texts
The States Parties to this Statute,

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

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

1. The preamble has not been much debated during the sessions of the Preparatory Committee on the establishment of the ICC. The ILC had prepared, in its 1994 draft 'Statute of an International Criminal Court' a preamble with three paragraphs which:

   – encouraged international co-operation to improve efficiency of the suppression of international crimes;

   – limited the ratione materiae competence of the Court to 'the most serious crimes...';

   – established the complementary character of the Court towards domestic courts in cases when internal proceedings would not exist or would not be sufficient.

2. During the Diplomatic Conference in Rome (15 June – 17 July 1998), the preamble was developed and became the current text which consists of 11 paragraphs. For the most, this text resulted from informal consultations held by the coordinator, Tuiloma Neroni Slade (Samoa). Presented in the Plenary Commission, on 10 July 1998, T. N. Slade's text (Les Etats Parties au présent Statut, Conscients que tous les peuples sont unis par des liens communs et que leurs cultures mêlées forment un patrimoine commun, une tapisserie délicate qui risque à tout moment d'être déchirée par des atrocités inimaginables menaçant la paix, la sécurité et le bien-être du monde, Ayant à l'esprit qu'au cours du siècle écouté des millions d'enfants, de femmes et d'hommes ont été victimes de graves crimes qui heurtent profondément la conscience de l'humanité, Affirmant que des crimes d'une telle gravité qui interpellent l'ensemble de la communauté internationale ne sauraient rester impunis, ce pour quoi leur répression doit être assurée de façon efficace, tant par des mesures prises au niveau national que par le renforcement de la coopération internationale, Soulevant que la Cour criminelle internationale créée en vertu du présent Statut sera complémentaire des juridictions pénales nationales [, sur lesquelles elle n'aura pas d'incidence], Rappelant qu'il est du devoir de chaque Etat d'exercer sa juridiction pénale à l'encontre des responsables de crimes internationaux, Déterminés à mettre un terme à l'impunité de ces crimes et à contribuer ainsi à leur prévention, Réaffirmant les buts et principes de la Charte des Nations Unies, Déterminés, a ces fins et dans l'intérêt des générations présentes et futures, à instituer une cour criminelle internationale...
permanentely lié au [en relation avec le] système des Nations Unies, qui ait compétence pour connaitre des crimes les plus graves préoccupant l'ensemble de la communauté internationale. Résolu à garantir durablement le respect de la justice internationale et l'exécution de ses décisions, Sont convenus de ce qui suit’ in DOC A/CONF.183/C.1/L.61, 11 July 1998) had only been subject to very minor amendments.

In the following pages, we will examine in turn the legal significance of the preamble (I.), the provisions which can be considered as optional (II.) and the ones which are normative (III.).

1. The Legal Significance of the Preamble

3. It is often said that the preamble of a treaty has no compulsory legal significance (cf. Avis jurid. choisis du Secrétariat de l'OIT, Ann.jur.NU 2004, p. 399). According to A. Pellet, P. Daillier et M. Forteau: ‘Dans l'ordre international, le préambule d'un traité ne possède pas de force obligatoire’ (P. DAILLIER, M. FORTEAU and A. PELLET, Droit International Public, Paris, Librairie Générale de Droit et de Jurisprudence, 2009, 8th ed., p. 146-147, para. 73). The writers refer to this classic excerpt of the South West African case (2nd phase) when the ICJ says:

‘Humanitarian considerations may constitute the inspirational basis for rules of law, just as, for instance, the preambular parts of the United Nations Charter constitute the moral and political basis for the specific legal provisions thereafter set out. Such considerations do not, however, in themselves amount to rules of law.’ (South West Africa Cases, 2nd Phase, ICJ Reports 1966, p. 34, para. 50).

It is true that provisions which state that ‘the peoples of the United Nations’ say they are ‘determined to save succeeding generations from the scourge of war’, ‘to promote social progress’, ‘to practice tolerance’, etc, can seem to be moral and political commitments. However, this does not necessarily imply that a preamble would be, by definition, optional.

4. Furthermore, the same authors also mention the Rights of Nationals of the U.S. in Morocco case when the Court had observed that the preamble of the 1906 Algesiras General Act referred to three principles (sovereignty and independence of the Sultan, integrity of States, equal economic liberty), that these three principles had already been accepted by France and Morocco in 1905 and that one of those principles amounted to an obligation:

‘Considered in the light of these circumstances, it seems clear that the principle [of economic liberty without any inequality] was intended to be of a binding character and not merely an empty phrase’ (ICJ Reports 1952, p. 184).

5. In other words, a preamble can be as binding as the operative provisions of a treaty; such is the case if these provisions only reflect rules already admitted by the contracting parties: they keep their binding character. Such is also the case if the preamble or some of its paragraphs are stated in a normative way. The preamble is a part of the treaty as its annexes; Article 31, para. 2, of the Vienna Convention (VC) on the law of treaties mentions the preamble as an element of the ‘context’ for the purpose of the interpretation of the treaty (Art. 31, para. 2. ‘The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes [...]’ (emphasis added). For an example of recourse to the ICC preamble in order to determine the Prosecutor policy, see Policy Paper on Preliminary Examinations, S04101, October 2010, paras. 21, 93, 95), but in its commentary, the ILC observes that the preamble is indeed a part of the treaty:

‘That the preamble forms part of a treaty for purposes of interpretation is too well settled to require comment’ (Yearbook of the International Law Commission 1966, II, p. 221).

Pacta sunt servanda (VC, Art. 26) applies to the preamble as to the rest of the treaty. It follows that the provisions of the preamble worded in a normative way or expressing international rules already agreed upon by the States parties to the treaty are compulsory.

6. As to the moral, political or ideological provisions, they are optional only if they do not comprise commitments or prescriptive character formulae.

Yet, even limited to moral or philosophical statements, these provisions play a role in the interpretation and the implementation of the treaty as provided for by the VC on the Law of Treaties: it is
not a hazard if it is often stated as a 'principe de droit parlementaire' the fact that 'le législateur ne parle pas pour ne rien dire' (M. AUGER, Radio-Canada on www.vigile.net).

Therefore, we shall distinguish, the optional clauses of the preamble and the prescriptive ones.

### 2. Optional Provisions

7. The three first paragraphs of the Preamble can be considered as optional because they do not set out prescriptive rules; they merely state facts: the discourse is constative; these facts are only intellectual or psychological realities; the first words of each paragraph confine themselves to observe those facts. The States parties say they are 'conscious' (1st para.), or 'mindful' (2nd para.) or 'recognising that' (3rd para.).

In other words, the discourse does not prescribe; it informs; however, as any information establishes reality and can become normative, it is better to say that these paragraphs are more 'constative' than 'performative' (these words are drawn from J.L. AUSTIN, *How to Do Things With Words*, Oxford, Clarendon, 1962; in this regard, see E. DAVID, 'Le Performatif dans l'Énonciation et le Fondement du Droit International', *Mélanges Chaumont*, Paris, Pedone, 1984, p. 240-261), more declaratory than normative instead of saying they are constative or declaratory and not performative or normative.

8. The first paragraph refers to

- the bonds which unite the people;
- the belonging of their culture to a shared heritage;
- the fragility of these bonds.

The text is clearly constative; it enunciates no rule, no goal to reach as did the draft preamble prepared by the ILC in 1994 for the draft ICC Statute (*Yearbook of the International Law Commission 1994*, II, Part 2, p. 26-27).

9. However, the affirmation in this paragraph that the cultures of the people belong to a 'shared heritage' goes beyond a mere cliché of the reality; this is also a way to stress the importance of the cultures and the gravity of the infringement to the culture; this reinforces the incriminations of the Statute which affect the culture, more especially the 'persecution against any identifiable group on [...] cultural [...] grounds' as a crime against humanity (Statute, Art. 7, para. 1, h) and the attacks directed 'against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments [...] as war crimes (Statute, Art. 8, para. 2, a, ix, and e, iv).

Thus, the constative character of the paragraph does not deprive it of any normative size.


10. The second paragraph affirms that 'during this century millions of children, women and men have been victims of unimaginable atrocities': the text remains chiefly informative but it insists on the fact that these atrocities hurt everyone.

11. The third paragraph states that those crimes 'threaten the peace, security and well-being of the world'. The paragraph only recalls a qualification that the Security Council does not hesitate to use to establish its competence in case of 'systematic, flagrant and widespread violations of international humanitarian and human rights law' (e.g. 5/RES/1296, 19 April 2000, para. 5; 1674, 28 April 2006, para. 26). The text however is not normative; it only confirms, indirectly, a well-known practice.

12. The ninth paragraph has no real prescriptive significance because it is confined to state a pledge – to establish an international criminal court – which has been respected and which became a reality on 1st July 2002, after the deposit of the 60th instrument of ratification. Neverthe-
less, by insisting on the limitation of the jurisdiction of the Court ‘over the most serious crimes of concern to the international community as a whole’, this paragraph which is, in part, the mirror of Article 1 of the Statute allows to conclude that the crimes over which the Court has jurisdiction are indeed the most serious ones and, for this very reason, they concern all States.


13. Paragraphs 4 to 6 of the Statute are fundamental because they enunciate the principle of the fight against impunity (paras. 4-5) and the individual obligation of each State to ensure the punishment of these crimes. These provisions are normative because they oblige States and the international community as a whole.

These paragraphs did not appear in the draft preamble of the ILC (above); added by States during the diplomatic Conference in Rome, they show that the obligation to fight against impunity is not only a wish of the civil society; it is also a legal obligation which bind States.

14. The normative character of these clauses comes from their wording and their content:

– The fourth paragraph ‘affirms’ a prohibition: ‘the most serious crimes of concern to the international community as a whole must not go unpunished’; as the text refers to the Statute, it means that the crimes provided for by the Statute are ‘the most serious’; the seriousness of the crimes matters more than the importance of the perpetrators ICC, Situation in DRC, ICC-01/04-169, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58,’ 13 July 2006, para. 79; comp. however Sep. op. Pikis, ibid., para. 16, 73 et seq.).

– The obligation to punish these crimes is underlined by the use of the word ‘must’;

– The obligation is repeated with different words but with the same prescriptive significance in the 5th paragraph which expresses a formal commitment: the States parties to the Statute are ‘determined’ not to accept impunity any longer; the case law of the ICC often stressed this objective (e.g. ICC, Prosecutor v. Katanga, ICC-01/04-01/07-474, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, 13 May 2008, para. 40; ICC, Prosecutor v. Al Bashir, ICC-02/05-01/09-3, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 42; ICC, Prosecutor v. Katanga, ICC-01/04-01/07-1497, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, paras. 85-86; ICC, Prosecutor v. Lubanga, ICC-01/04-01-06-1497, Prosecutor’s Provision of Further Information on Undisclosed Items pursuant to Trial Chamber’s Orders at 29 October 2008 Ex Parte Hearing, 12 November 2008, para. 33; ibid., 8 January 2010, para. 10; ICC, Prosecutor v. Bemba, ICC-01/05-01/08, 24 June 2010, para. 240).

– A repetition of the same obligation appears in the 6th paragraph as this paragraph ‘recalls that it is the duty of every State to exercise its criminal jurisdiction’ in its domestic legal order (ICC, Situation in DRC, ICC-01/04-169, 13 July 2006, Sep.op. Pikis, para. 31).

The triple assertion of the rule to fight against impunity stresses its normative character.

15. The obligation of punishment towards the States parties to the Statute is not a new rule. It represents their opinio juris since it already appears

– for the punishment of genocide;

– in Articles III-VIII of the 1948 Genocide Convention;

– in Article I-IV of the 1968 Convention preventing any statute of limitations for war crimes and crimes against humanity;

– in Article 9 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind;

– for the punishment of crimes against humanity;

— in resolutions of the UNGA 3 (I) of 13 February 1946, 2840 (XXVI) of 18 December 1971, 3074 (XXVIII) of 3 December 1973;

— in the provisions quoted here above of the 1968 Convention and the 1996 Draft Code of crimes against the Peace and Security of Mankind;

— for the punishment of war crimes;

— in common Articles 49/50/129/146 of the 4th Geneva Conventions on the Protection of the Victims of War;


These paragraphs merely refer to conventional and customary norms which already bind State Parties.

16. The customary character of these rules is confirmed by the numerous UN calls to fight against impunity. A quick look at the practice – a look which does not pretend to be exhaustive – shows that from 1995 to 2011, the Security Council requested States, more than 70 times, to fight against impunity and to prosecute perpetrators of crimes, mainly IHL crimes (for a detailed list, E. DAVID, Éléments de Droit Pénal International et Européen, Brussels, Bruylant, 2009, para. 13.2.19). The same statistical exercise could be made with the UNGA (e.g, see ibid., Trial Chamber II, Oral decision, ICC-01/04-01/07-T-67-FRA and WT 12-06-2009 1/9 NB T, Bemba, 12 June 2009, p. 7).

The former Commission of Human Rights and the HR Committee reach the same conclusion when they conclude that amnesty and the lack of criminal prosecution against the presumed perpetrators of IHL crimes are HR violations, especially violations of Articles 2 and 3 of the Covenant on Civil and Political Rights (obligation of States parties to the act to ensure by judicial, administrative or legislative means the respect of rights and freedoms provided for by the Covenant) (see General Comment n° 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004, paras. 15 and 18, doc. ONU HRI/GEN/1/Rev.9 (Vol. I); also see: declaration of the H. R. Commission, doc. ONU E/CN.4/2002/L.11Add.7, Res. 2003/72, 25 April 2003 (adopted without a vote)).

17. Paragraphs 7 and 8 are normative because they recall classical and basic rules of the law of friendly relations: the prohibition of the use of force stated more or less in the same words than in Articles 2 and 4 of the UN Charter, and the prohibition of intervention in the domestic affairs of the States (A/RES/2131 (XX), 21 Dec. 1965; Declaration on Friendly Relationship, 2625 (XXV), 24 October 1970, 3rd Principle; 36/103, 9 December 1981).

18. Paragraph 10 states the complementarity principle which is repeated in Articles 1 and 17 of the Statute. This is not the place to address extensively this principle (relevant literature does not miss; cf. a.o. ibid., E. DAVID, 2009, para. 14.4.26) which is consistent with the obligation of the States to punish the crimes provided for by the Statute (above). The principle was already in the preamble of the draft Statute prepared by the ILC in 1994 (Ann. CDI 1994, II, Part 2, p. 28).

19. The eleventh and last paragraph is a solemn commitment which squares with the importance of the establishment of the ICC in the history of international relations. There is consequently some logic that States express pledges which commit them more than wedding promises. This formula can seem a little bit naïve, but it does not matter: they are written and law is a semantic discipline. As Antoine Loyal wrote in 1607, ‘on lie les bœufs par les cornes et les hommes par les paroles’ ... (A. LOYSEL, Institutes Coutumières, 1846 ed., in webu2.upmf-grenoble.fr/Haiti/Cours/Pdf/Loysel1.pdf).
PART 1

ESTABLISHMENT OF THE COURT

Art. 1. The Court

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

DIANE BERNARD

Article 1 formally establishes an International Criminal Court. This introductory provision may appear as redundant or even superfluous (W.A. SCHABAS, The International Criminal Court: A Commentary on the Rome Statute, Oxford, Oxford University Press, 2010, p. 57). But the establishment of the Court constitutes indeed the rationale of the Statute as a whole. That the Court would be established by a treaty had been widely accepted long before the 1998 Rome Conference (according to the ad hoc Committee itself, see Report of the ad hoc Committee on the Establishment of an International Criminal Court, A/50/22, paras. 15-16). Moreover, it is stated in the Preamble and other provisions of the Statute that the Court is ‘permanent’ (in Rome, the Drafting Committee transplanted this precision from Article 4 to Article 1: see the Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 10). The debate lost its intensity after the creation by a treaty was chosen, the permanent character of the Court being deeply connected to the issue of its independence from States’ pressions – See O. TRIFFTERER, ‘Article 1. The Court’ in O. T RIFFTERER (ed.), Commentary on the Rome Statute of the International Court: Observers’ Notes, Article by Article, Munich/Oxford/Baden-Baden, Beck/Hart/Nomos, 2008, p. 50), with jurisdiction to ‘the most serious crimes’ and ‘complementary’ to national jurisdictions. As such, it seems that Article 1 merely summarises issues set out elsewhere in the Statute. It nevertheless appears to be customary for statutes of international criminal tribunals to start with such a declaratory provision (see e.g.the London Agreement creating the International Military Tribunal of Nuremberg, 8 August 1945, Art. 1, or the Charter of the International Military Tribunal for the Far East, 19 January 1946, Art. 1).

Due to its general character and the fact that it has been discussed in informal consultations during the negotiations of the Statute, the precise historical drafting of this Article is difficult to reconstruct (ibid. O. TRIFFTERER, 2008, p. 50) and the official record does not provide any revealing insights. A few remarks can nevertheless be made.

First, the title of the first international, permanent institution and criminal jurisdiction was the subject of some debate: Article 1 establishes a ‘Court’ and not a ‘Tribunal’. In 1993, the International Law Commission changed the term ‘Court’ (used since the beginning of the debates within the United Nations) to ‘Tribunal’, in order to present the ‘Court’ or the judicial organ, the ‘Registry’ and the ‘Procuracy’ (the future Office of the Prosecutor) ‘as constituting an international judicial system as a whole’ (Report of the International Law Commission to the General Assembly on the work of its 45th session, A/CN.4/SER.A/1993/Add.1 (Part 2), 101, para. 12). The same year, the UN Security Council had chosen to call the ad hoc judicial body with authority to prosecute mass atrocities in the Balkans a ‘Tribunal’. However, some members of the International Law Commission thought that it was unusual to have a ‘Court’ within a ‘Tribunal’, and others preferred not to use the word ‘Tribunal’ in relation to a permanent body intended to exercise criminal jurisdiction (Report of the International Law Commission to the General Assembly on the work of its 46th session, A/CN.4/SER.A/1994/Add.1, Part 2, p. 27). The Commission then decided ‘that the term ‘Court’ should be used to refer to the entity as a whole, and that where specific functions were intended to be exercised by particular organs (such as the Presidency, the Procuracy, the Registry), this would be specifically stated’ (ibid., p. 27). In its final draft, the UN GA, the Preparatory Committee on the Establishment of the International Criminal Court, established by the General Assembly of the United Nations, recommended to use the term ‘Court’ to include its constituent organs, including the Prosecutor (Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 10). This recommendation does not seem to have been followed in the Statute. In several provisions, the term ‘Court’ is used to refer to the Chambers or the judges. Article 15(4) for instance refers to ‘determinations by the Court’ re-
International Criminal Law and Procedure

Rome Statute of the International Criminal Court (Art. 1)

Regarding jurisdiction and admissibility, and obviously means the Chambers (see also Art. 19(4), Art. 19(8) and Art. 103 of the Statute).

Secondly, an explicit reference to the principle of complementarity is made in Article 1, which indicates clearly that this mechanism constitutes ‘the cornerstone of the Statute and of the functioning of the Court’ (ICC, Situation in Uganda, Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, ICC-02/04-01/05, Decision on the admissibility of the case under Article 19(1) of the Statute, 10 March 2009, para. 34. See also K. AMBOS e.a., ‘Establishing an International Criminal Court and an International Criminal Code, Observations from an International Criminal Law Viewpoint’, European Journal of International Law, 7, 1996-4, p. 523 or S.A. WILLIAMS and W.A. SCHABAS, ‘Article 17. Issues of admissibility’ in O. TRIFTERER (ed.), Commentary on the Rome Statute of the International Court: Observers’ Notes, Article by Article, Munich/Oxford/Baden-Baden, Beck/Hart/Nomos, 2008, p. 606). Complementarity is not defined as such in the Statute: but is proclaimed by the Preamble, repeated in Article 1 and then further elaborated in several Articles (see Art. 17 and 18 in particular, but also Art. 12 to 15 or 86 to 102). Its insertion in Article 1 met ‘certain concerns about the symbolism and image of the very first Article of the draft Statute’ (as explained in Rome by the coordinator of Part 1 of the Statute, Summary record of the 1st meeting, UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, A/Conf.183/C.1/SR.1, 16 June 1998, para. 10).

Finally, it should be noted that the Court’s ‘power to exercise its jurisdiction’ applies to ‘persons’ (natural persons, as made explicit by Article 25(1)) and is limited to what is ‘referred to in this Statute’ (see ibid. O. TRIFTERER, 2008, p. 54-55).
Art. 2. Relationship of the Court with the United Nations

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

MATTHIAS VANHULLEBUSCH

1. The Relationship of the ICC with the UN as Defined by the Rome Statute

Though the International Criminal Court ('ICC') is an independent organization established by its own treaty, i.e. the 1998 Rome Statute, it has a formal relationship with the United Nations ('UN'). The Preamble of the Statute explicitly reaffirms the need to establish such an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole. As the ICC has international legal personality (below, the annotation on Art. 4 of the Rome Statute), it could enter into this relationship, in accordance with Article 2 of the Rome Statute, by virtue of the Negotiated Relationship Agreement signed between the ICC and the UN and which entered into force on 22 July 2004. While the ICC and the UN are strictly independent organizations, this Agreement acknowledges their different mandates and addresses different areas of exchange, coordination and cooperation between both institutions.

Apart from the Relationship Agreement, some provisions of the Rome Statute similarly cover the interaction between the Court and some other organs of the UN, such as the Security Council, the International Court of Justice and the Secretary-General. In this regard, Articles 13 and 16 of the Rome Statute authorise the Security Council respectively to trigger the jurisdiction of the Court by referring situations and to defer or suspend the proceedings of situations before the jurisdiction of the Court. Articles 121, 123, and 125-128 of the Rome Statute determine the depositary responsibilities of the Secretary-General. Finally, Article 119, para. 2 of the Statute assigns the International Court of Justice the role to settle disputes 'between two or more States Parties relating to the interpretation or application of this Statute'. Besides these interactions, the Rome Statute reaffirms the respect for the Purposes and Principles of the Charter of the UN regarding 'States to refrain from the threat or use of force against the territorial integrity or political independence of any State' (cf. Article 2(4) of the UN Charter and the Preamble of the Rome Statute).

The establishment of this close though loose relationship between the ICC and the UN was preceded by serious discussions in several diplomatic and legal forums about the nature and scope of their interaction. Since 1990, the International Law Commission uttered two major options, namely to integrate the ICC within the UN system as an organ of the UN or to set up an independent organization in relationship with the UN (Thiam, Eighth Report, paras. 86-88; 'Report of the International Law Commission on the work of its forty-second session (1 May – 20 July 1990)', UN Doc. A/45/10, paras. 139-140). The former option would require amending the Charter of the UN and would face political opposition to accomplish this goal. The latter would only necessitate the signing of a new treaty. Also in the 1990s, the creation of the International Criminal Tribunal for the former Yugoslavia and for Rwanda as subsidiary bodies of the Security Council by its Chapter VII Resolutions, proved to be an efficient response to give jurisdiction to a new subsidiary body having jurisdiction over the most heinous crimes of concern to the international community as a whole. Understandably, the authority of such subsidiary organ would heavily rely on the decisions of the Security Council ('Report of the International Law Commission on the work of its forty-fifth session (3 May – 23 July 1993)', UN Doc. A/48/10, para. 61). Alternatively, as part of the UN system, the new Court could be a specialised agency of the UN and be brought into relationship with the UN in accordance with Article 57 and 63 of the UN Charter. The latter 'special relationship' (see W.A. SCHABAS, The International Criminal Court: A Commentary on the Rome Statute, Oxford, Oxford University Press, 2010, p. 71) has been reflected in the language of the final version of the Statute, in the establishment of the Court and Relationship with the UN (‘Consolidated texts for Articles 2 and 4, and A to E, on financing’, UN Doc. A/AC.249/1998/wg.8/CBP.1; 'Text of the Draft Statute for the International Criminal Court’, UN Doc A/AC.249/1998/CRP.7; 'Report of the Working Group on the Establishment of the Court and Relationship with the United Nations’, UN Doc. A/AC.249/1998/L.19).

2. The Relationship of the ICC with the UN according to the Negotiated Relationship Agreement
The Negotiated Relationship Agreement (UN Doc. A/RES/58/318) further defines the areas of exchange, coordination and cooperation between the Court and UN.

The Preamble of the Negotiated Relationship Agreement reaffirms the respect for the Purposes and Principles of the Charter of the UN and the desire 'to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated'.

The other four sections, entitled 'General Provisions', 'Institutional Relations', 'Cooperation and Judicial Assistance' and 'Final Provisions', operationalize these objectives accordingly.

2.1. 'General Provisions' (Art. 1-3)

The first section, 'General Provisions' (Art. 1-3), outlines the mutual recognition of the status, legal personality, mandate and responsibilities by both organizations as defined under their respective constitutive treaties, i.e. the Charter of the UN and the Rome Statute.

Beyond these general principles, Article 3 further supports the preambulary clauses, namely to 'cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute'.

2.2. 'Institutional Relations' (Art. 4-14)

The second section, 'Institutional Relations' (Art. 4-14), explains the nature and scope of the mutual institutional relationship between the Court and the UN.

Article 4, 'Reciprocal representation', on the one hand, authorises the UN Secretary-General to attend the public hearings of the ICC. On the other hand, the ICC can attend and participate, as an observer, in the work of the UN General Assembly. Moreover, the President or Prosecutor can be invited to address the UN Security Council whenever it deals with issues related to the activities of the ICC.

According to Article 5, 'Exchange of information', the UN and the ICC 'shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest'. They shall do so 'where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information'.

Pursuant to Article 6, 'Reports to the United Nations', the ICC submits reports to the UN on an annual basis.

Article 7, 'Agenda items', allows the UN and the ICC to propose points for consideration to the agenda of their respective (specialized) organs of the UN or the Assembly of States Parties.

Article 8, 'Personal arrangements', governs the cooperation and consultation between the UN and the ICC in 'matters of mutual interest relating to the employment of their officers and staff [...] in order to achieve the most efficient use of specialized personnel, systems and services'.

In order to avoid duplication of efforts and to save costs, Article 9, 'Administrative cooperation', imposes the UN and the ICC to consult about the use of their respective facilities or services and about 'common facilities or services in specific areas'.

Article 10, 'Services and facilities', further specifies the terms and conditions of the availability of UN services and facilities as requested by the Court.

According to Article 11, 'Access to United Nations Headquarters', the Assembly of States Parties, the ICC Bureau or other subsidiary bodies may have access to the UN Headquarters whenever they hold their meetings.

Article 12, 'Laissez-passer', gives officials of the ICC the permission to use the UN laissez-passer which is a travel document recognized by the Convention on the Privileges and Immunities of the
UN ((1946) 1 UNTS 15) and by the Agreement on the Privileges and Immunities of the ICC (ICC-ASP/1/3, Art. 29).

Article 13, ‘Financial matters’, deals with the financial costs supported by ICC, in particular those ‘expenses incurred due to referrals by the Security Council’ (Art. 115(b) of the Statute), that are subject to separate arrangements between the UN and the ICC.

Pursuant to Article 14, ‘Other agreements concluded by the Court’, the ‘United Nations and the Court shall consult, when appropriate, on the registration or filing and recording with the United Nations of agreements concluded by the Court with States or international organizations’.

2.3. ‘Cooperation and Judicial Assistance’ (Art. 15-20)

The third section, ‘Cooperation and Judicial Assistance’ (Art. 15-20), governs the specific relation between the UN organs and the ICC bodies in the fulfilment of the latter’s proceedings before its jurisdiction.

In this regard, Article 15, ‘General provisions regarding cooperation between the United Nations and the Court’, and pursuant to Article 87, para. 6 of the Rome Statute, specifies the nature and scope of judicial cooperation and assistance between the UN and the ICC in terms of disclosure of information and documentation in the hands of the UN or other forms of cooperation and assistance that the UN can provide to the Court.

Article 16, ‘Testimony of the officials of the United Nations’, deals with the waiver of the obligation of confidentiality of UN officials as well as the appointment of a representative whenever the former have to appear as witnesses before the Court.

According to Article 17, ‘Cooperation between the Security Council of the United Nations and the Court’, both the UN Security Council and the ICC are due to communicate their activities to each other. The UN Security Council can decide to refer a situation, pursuant to Article 13(b) of the Rome Statute, to the jurisdiction of the Court or to defer an investigation or prosecution, pursuant to Article 16 of the Rome Statute. The UN Secretary-General shall respectively ‘transmit the written decision of the Security Council to the Prosecutor together with documents and other materials’ or notify the deferral to the President and Prosecutor of the ICC. Whenever the Court decides to take actions in both cases, it shall generally inform the UN Security Council through the UN Secretary-General accordingly; particularly, in case of referral, when a state fails to cooperate. In this regard, pursuant to Article 87, para. 5(b) or para. 7 of the Rome Statute, ‘the Court shall inform the Security Council or refer the matter to it, as the case may be, and the Registrar shall convey to the Security Council through the Secretary-General the decision of the Court, together with relevant information in the case’.

Article 18, ‘Cooperation between the United Nations and the Prosecutor’, facilitates the cooperation between the UN and the ICC Prosecutor in its latter duty to investigate, pursuant to Article 54 of the Rome Statute, ‘all facts and evidence relevant to an assessment whether there is criminal responsibility’. Special arrangements have to made between the Prosecutor and the UN, its programs, offices and funds in view of ensuring the confidentiality of revealed information and the protection of UN personnel or any other activity or operation of the UN. Moreover, disclosure of information and documentation provided by the UN that generates new evidence shall not take place without the consent of the UN as underscore Article 18, para. 3 of the Negotiated Relationship Agreement and Article 54, para. 3(e) of the Rome Statute.

Nevertheless, Article 67, para. 2 of the Rome Statute and Rule 77 of the Rules of Procedure and Evidence mandate that such information in the hands of the Prosecutor should be disclosed whenever helpful to the defence to support his or her case. While Article 67, para. 2 of the Rome Statute as a general rule takes precedence over Article 54, para. 3(e) of the Rome Statute, the Trial Chamber of the ICC in the Lubanga case ordered a stay of proceedings as a result of the failure of the Prosecutor to disclose such evidence that could possibly exculpate the defence and its impact upon the defence’s right to a fair trial. The Prosecutor argued here that Article 67, para. 2 of the Rome Statute should be read in conjunction with Article 18, para. 3 of the Negotiated Relationship Agreement and that, in the result, the obligation [to disclose exculpatory material] is limited to material that has not been provided to the prosecution confidentially or whenever the information
International Criminal Law and Procedure

provider, under a confidentiality agreement, has granted consent' (ICC, Prosecutor v. Lubanga, ICC-01/04-01/06, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 13 June 2008, para. 34). Finally, the Appeals Chamber in the Lubanga case has ruled on this tension between the right to a fair trial and the respect for an agreement between the Prosecutor and the information provider that is covered by a confidentiality clause.

While Article 18(3) provides that the Prosecutor may agree that material may not be disclosed to other organs of the Court, including to the Chambers, this does not mean that reliance by the Prosecutor on this provision would be appropriate in all circumstances. The wording of Article 18(3) (‘may agree’) leaves room for other arrangements between the UN and the Prosecutor. Whenever material is offered to the Prosecutor on the condition of confidentiality, he will have to take into account the specific circumstances, including the expected content and nature of the documents, and its potential relevance to the defence. On that basis he will have to determine under what exact conditions he may accept the material in question, bearing in mind his obligations under the Statute, and particular under its Article 67(2) (ICC, Prosecutor v. Lubanga, ICC-01/04-01/06 OA, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled ‘Decision on the consequence of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008’, 21 October 2008, para. 51).

Moreover, the Appeals Chamber in this case confirmed the position of the Trial Chamber that evidence obtained by the Prosecutor under Article 54, para. 3(e) of the Rome Statute can be potentially used subject to ‘the prior consent of the provider of the material or information and adequate prior disclosure to the accused’, as stipulates Rule 82, para. 1 of the Rules of Procedure and Evidence. In the same case, the Appeals Chamber clarified the position of the Trial Chamber that the exceptional circumstances in which Article 54, para. 3(e) of the Rome Statute can be invoked, only apply ‘to the generation of new evidence and that the provision must be applied in light of the other obligations of the Prosecutor’ (ICC, Prosecutor v. Lubanga, ICC-01/04-01/06 OA, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled ‘Decision on the consequence of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008’, 21 October 2008, para. 55).

Article 19, ‘Rules concerning United Nations privileges and immunities’, regulates the waiver of privileges and immunities enjoyed by UN officials ‘necessary for the independent exercise of his or her work for the United Nations’; in order for the Court to exercise its jurisdiction over those persons who are ‘alleged to be criminally responsible for a crime within the jurisdiction of the Court’. UN officials who commit those crimes that fall under the jurisdiction of the Court would be barred from the Court’s jurisdiction as their privileges and immunities are determined by the Convention on the Privileges and Immunities of the United Nations. They are not affected by Article 27 of the Rome Statute that considers irrelevant only those immunities and privileges of nationals of States Parties to the Rome Statute and who were acting under an official capacity. Therefore, Article 19 of the Negotiated Relationship Agreement implicitly recognizes the immunities and privileges of UN officials and explicitly expects that the waiver of such immunities takes place ‘in accordance with the Convention on the Privileges and Immunities of the United Nations and the relevant rules of international law’ in order for those UN officials to be brought before the jurisdiction of the Court.

Pursuant to Article 20, ‘Protection of confidentiality’, the UN is obliged to seek the consent of the originator of ‘any information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental, international or non-governmental organization or an individual’ and inform the ICC accordingly of that consent.

2.4. ‘Final Provisions’ (Art. 21-23)

The fourth section, ‘Final Provisions’ (Art. 21-23), deals with ‘Supplementary arrangements for the implementation of the present Agreement’ (Art. 21), ‘Amendments’ (Art. 22), and ‘Entry into force’ (Art. 23).
Art. 3. Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands («the host State»).

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

MATTHIAS VANHULLEBUSCH

1. The Seat of the ICC in the Host State (Art. 3, para. 1 of the Rome Statute)

Since 1998, The Hague, the ‘legal capital of the world’ (P.J. VAN KRIEKEN and D. MCKAY (eds.), The Hague, Legal Capital of the World, The Hague, J.M.C. Asser Press, 2005), has once again been chosen to host another international judicial institution. Besides the International Court of Justice (‘ICJ’), the International Criminal Tribunal for the former Yugoslavia (‘ICTY’) and the Appeals Chamber of the International Criminal Tribunal for Rwanda (‘ICTR’), the Trial Chamber of the Special Court for Sierra Leone (‘SCSL’) and the Special Tribunal for Lebanon (‘STL’), it also welcomes the International Criminal Court (‘ICC’).

Already in 1995, ‘the degree of cooperation of the host country in providing the necessary premises (e.g., courtrooms, office buildings) and detention facilities’ (‘Provisional Estimates of the Staffing, Structure and Costs of the Establishment and Operation of an International Criminal Court, Preliminary Report of the Secretary-General’, UN Doc. A/AC.244/L.2, para. 48(c)), has been a determining factor for the United Nations (‘UN’) Secretariat in assessing the financial costs of siting the future Court in any host State.

The Rome Statute in its Article 3, para. 1 explicitly recognizes the Netherlands as the host State and considers the seat of the Court in The Hague to be mandatory and hence not subject to removal except when the Rome Statute would be amended accordingly. However, as the last paragraph of this Article indicates, the Court can sit in other locations when deemed desirable (below).

2. The Headquarters Agreement (Art. 3, para. 2 of the Rome Statute)

Before the final version of the Headquarters Agreement was approved by the Assembly of States Parties in 2006, the relationship between the ICC and the Netherlands, i.e. the host State, was provisionally governed by the Agreement between the UN and the Netherlands concerning the Headquarters of the ICTY (‘Report on the Draft Headquarters Agreement between the International Criminal Court and the Host State’, ICC-ASP/25, para. 3). Ultimately, the Headquarters Agreement only entered into force on 1 March 2008 (see ‘Headquarters Agreement between the International Criminal Court and the Host State’, ICC-BD/04-01-08).

The Headquarters Agreement defines the nature and scope of the relationship between the ICC and the Netherlands in order ‘to facilitate the smooth and efficient functioning of the Court in the host State’ (see ‘Headquarters Agreement between the International Criminal Court and the Host State’, ICC-BD/04-01-08, Preamble).

The preamble of the Headquarters Agreement continues and recognizes, firstly, the necessity for the Court to enter into a relationship with the host State, pursuant to Article 3, para. 2 of the Rome Statute, secondly, the Court’s international legal capacity to do so, pursuant to Article 4 of the Rome Statute, thirdly, the enjoyment of the immunities and privileges ‘necessary for the fulfilment of its purposes […] in the territory of each State Party, pursuant to Article 48 of the Rome Statute, and fourthly, the availability of detention facilities by the host State, pursuant to Article 103 of the Rome Statute.


2.1. ‘General Provisions’ (Art. 1-2)
Article 1, 'Use of terms', is an enumeration of the several denominations used in the present Headquarters Agreement.

Article 2, 'Purpose and scope of this Agreement', highlights the nature and scope of regulating all matters related to proper functioning of the Court, its Secretariat, and Assembly of States Parties, its Bureau and other subsidiary bodies.

### 2.2. 'Status of the Court' (Art. 3-16)

Article 3, 'Legal status and juridical personality of the Court', sets out the international legal personality of the Court and its legal capacity 'necessary for the exercise of its functions and the fulfilment [sic] of its purposes', in accordance with Article 4, para. 1 of the Rome Statute (below, Commentary Art. 4 of the Rome Statute).

Article 4, 'Freedom of assembly', gives the Assembly of States Parties, its Bureau and other subsidiary bodies the 'full freedom of assembly, including freedom of discussion, decision and publication', as guaranteed by the host State.

According to Article 5, 'Privileges, immunities and facilities of the Court', the ICC 'shall enjoy, in the territory of the host State, such privileges, immunities and facilities as are necessary for the fulfilment [sic] of its purposes'.

Article 6, 'Inviolability of the premises of the Court', Article 7, 'Protection of the premises of the Court and their vicinity', Article 8, 'Law and authority on the premises of the Court', and Article 9, 'Public services for the premises of the Court', give a detailed explanation of the respective responsibilities of the Court and the host State with respect to the inviolability, use, protection and law applicable on the premises of the Court, both in the normal conduct of its activities but also in case of emergency scenarios. Article 10, 'Flag, emblem and markings', gives equal entitlement to the Court to 'display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes'.

Article 11, 'Funds, assets and other property', exempts 'funds, assets and other property of the Court, wherever located and by whomsoever held', and which are immune from legal process or 'search, seizure, requisition, confiscation, expropriation and any other form of interference', and 'from restrictions, regulations, control or moratoria of any nature'.

Linked with the inviolability of the premises of the Court, its funds, assets and other property, pursuant to Article 12, 'Inviolability of archives, documents and materials', 'the archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable'.

Article 13, 'Facilities in respect of communications', regulates the rights and duties of the Court with respect to its 'official communication and correspondence'.

Linked with the exemption stipulated under Article 11 of the Headquarters Agreement, pursuant to Article 14, 'Freedom of financial assets from restrictions', the Court can freely dispose and raise its funds, purchase any currency and 'shall enjoy treatment not less favourable than that accorded by the host State to any intergovernmental organization or diplomatic mission in respect of rates of exchange for its financial transactions'.

According to Article 15, 'Exemption from taxes and duties for the Court and its property', '[w]ithin the scope of its official activities, the Court, its assets, income and other property shall be exempt from all direct taxes, whether levied by national, provincial or local authorities', except for public utilities services charges.

Related to Article 13 of the Headquarters Agreement, Article 16, 'Exemption from import and export restrictions', does not impose any restrictions upon the Court to import or export Articles 'for its official use and in respect of its publications'.

### 2.3. 'Privileges, Immunities and Facilities accorded to Persons under this Agreement' (Art. 17-29)