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## Organization of the International Criminal Court: Administrative and Financial Issues

### Keywords

International Criminal Court, Procedure, International Courts and Tribunals, International Criminal Law

# Organization of the International Criminal Court: Administrative and Financial Issues

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## I. INTRODUCTION

1. A permanent International Criminal Court (ICC) has progressed from a dream to the threshold of reality in a span of time few thought possible.<sup>1</sup> A substantial amount of work on the ICC's Statute has been done. Scholars have prepared texts and the United Nations' Sixth Committee has convened sessions of a Preparatory Committee (PrepCom) to develop a Statute. A diplomatic conference is now set for 1998. Today, the ICC is being discussed in practical and immediate terms.

2. This paper focuses on administrative and financial issues that relate to the International Criminal Court. Why is this important? The experience of the two *ad hoc* tribunals has shown that practical and administrative issues are important in determining how effective institutions of international justice can be. Table 1 highlights reasons why these issues are important enough to command the attention of diplomats, scholars, and practitioners today.

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1. This paper uses the term "International Criminal Court" (ICC) because of its common usage. As analyses such as this one make clear, it is sometimes necessary to distinguish between the institution as a whole and the judicial organ, which is more commonly referred to as the Court. This paper uses the term "Tribunal" to refer to the institution as a whole. Using the name International Criminal Tribunal would also follow the practice used by the United Nations in naming the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

**Table 1**  
**Importance of Administrative and Financial Issues**

1. **Credibility will be the ICC's strongest asset.**
  2. **Sound administration builds credibility.**
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3. **Bureaucratic delays and financial difficulties can block the course of justice.**
  4. **Swift action is essential for effective investigations and can deter crime.**
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5. **Smooth administration allows the ICC to better achieve its mission.**
  6. **Only an effective ICC can deliver justice.**

3. The final row in Table 1 deserves special mention. The world has many ways to do justice—civil law, common law, and Islamic law being only three such systems. Many of the decisions being made in the drafting of the ICC's Statute draw on the elements of one legal system or another. However vigorous those debates may be, everyone involved shares the viewpoint that only an EFFECTIVE court can deliver justice. Diplomats involved in shaping the ICC's Statute will want to take into full account the practical, administrative, and financial issues that will determine the effectiveness of the ICC.

*A. Eight Opportunities with the International Criminal Court*

4. Consider the following eight opportunities to improve upon the *ad hoc* tribunals that can be created by careful shaping of the Statute of the ICC:

1. Avoid slow startup

5. Both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were criticized for being slow to start their work. The Statute of the ICTY was adopted by the United Nations Security Council on May 25, 1993.<sup>2</sup> A Prosecutor was not chosen until late October 1993, although he resigned before relocating to The Hague. A new Prosecutor was not agreed upon until July 1994. And even though a Deputy Prosecutor took office in February 1994, bureaucratic obstacles in hiring key personnel prevented the first field investigation from starting until late July 1994.<sup>3</sup>

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2. U.N. SCOR, 3217th mtg., 48th Sess. at 2, U.N. Doc. S/RES/827 (1993).

3. I. Guest, *On Trial: The United Nations, War Crimes, and the Former Yugoslavia*, Sept. 1995. This important monograph highlights the problems of the United Nations

6. The Statute of the ICTR was adopted by the Security Council on November 8, 1994.<sup>4</sup> Although Prosecutor Richard Goldstone of the ICTY was named Prosecutor of the ICTR, as well, and although the Appeal Chamber of the ICTY also serves as the Appeal Chamber of the ICTR, similar startup problems plagued the work of the ICTR. It was not until mid-1995 that several key administrators were fully in place at the seat of the Tribunal in Arusha, Tanzania. The start-up problems of the ICTR can be highlighted with a single statistic: OF THE \$12.9 MILLION BUDGETED FOR THE ICTR IN 1995, ONLY \$1.6 MILLION OF IT WAS SPENT.<sup>5</sup>

7. In contrast to the ICTY and the ICTR, the opportunity exists for the ICC to create a small, permanent "core" staff that can quickly be "ramped-up" to larger size whenever needed.

## 2. Avoid funding problems

8. The work of the ICTY was particularly delayed by three specific funding problems:

- **PAYMENT OF BILLS.** A two-year dispute over whether the ICTY would be funded out of the general U.N. budget or the peacekeeping budget made it difficult for United Nations financial officials to raise and manage cash to pay the ICTY's expenses. Also, the need to shift cash from one account to another in order to fund the ICTY was a drain on bureaucratic resources until mid-1995.
- **MIS-ALLOCATION OF RESOURCES.** Initial budgets for the ICTY, prepared at United Nations headquarters, allocated most of the budget — roughly two-thirds — to judges, administration and overhead and only \$562,300 to the expenses of investigations over a two-year period. In part, this was due to inexperience in managing an enterprise like a tribunal. Later budgets, prepared in The Hague, had more balanced allocations between the expenses of investigations, salaries, and the other costs of operating a court.
- **CHRONIC CASH SHORTAGES.** Arrearages of certain States, particularly the United States, make fiscal life a challenge for the ICTY. Cash shortages at the United Nations that occur regularly in the

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Commission of Experts on the Former Yugoslavia and of the ICTY. See also C. Bassiouni, *Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, Occasional Paper No. 2, International Human Rights Law Institute, DePaul University College of Law (1996), for a discussion of the bureaucratic problems faced by the Commission of Experts.

4. U.N. SCOR, 3453rd mtg., 49th Sess. at 2, U.N. Doc. S/RES/955 (1994).

5. *Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible 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 Neighbouring States Between 1 January and 31 December, 1994, Report of the Advisory Committee on Administrative and Budgetary Questions*, U.N. GAOR, 50th Sess., Agenda Item 160, at 1, U.N. Doc. A/50/9 (1996) [hereinafter *Report of the Advisory Committee on Administrative and Budgetary Questions*]. All references to dollars in this paper are to United States dollars.

fourth quarter of each year have disrupted important travel by investigators working for the Office of the Prosecutor (OTP).

9. With the ICC, mechanisms need to be set up to avoid those funding problems.

### 3. Avoid apprehension problems

10. Both the ICTY and the ICTR have had difficulty in persuading authorities to apprehend indicted war criminals within their jurisdictions. Recent reports by Non-Governmental Organizations (NGO's) have highlighted the fact that the whereabouts of many indicted, and often notorious, war criminals are known, yet authorities do nothing to apprehend those who have been indicted.<sup>6</sup>

11. For the ICC, the opportunity exists to mitigate this problem, even if it may not be solved altogether. The ICC can hire staff members capable of facilitating national apprehension efforts. To some extent, however, the issue may be moot if the ICC Statute requires the consent of the State in which an individual is located before a case can be brought against that individual.

4. Avoid security problems with the Aegon building as presently configured

12. The ICTY is headquartered in The Hague in the former office building of an insurance company, Aegon. When the United Nations chose The Netherlands as the seat of the ICTY in 1993, it became important to find a building to house the ICTY that met as many of the necessary criteria as possible, and that could be occupied as quickly as possible. The Aegon building was the best available on short notice for a tribunal whose long-term future was, at the time, unknown. However, the Aegon building was not chosen explicitly as the site of a permanent international criminal court. Experience has shown that, for long-term use, the Aegon building will require a number of improvements to increase security. These problems need to be considered, at least, before a decision can be taken to headquarter the ICC in the Aegon building permanently. It may be less costly in the long run, and more secure, to locate the ICC elsewhere in The Hague.

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6. See Steven Lee Myers, *Rights Group Says Bosnian Suspects Flaunt Freedom*, N.Y. TIMES, Nov. 26, 1996, at A11 (reporting on the Coalition for International Justice's report on the whereabouts of 36 of 67 at-large indicted war criminals from the ICTY). Human Rights Watch and the International Federation of Human Rights Leagues released a similar report on 13 December 1996 on the whereabouts of war criminals indicted by the ICTR.

5. Avoid allegations (such as those made against one individual in the ICTR) of mismanagement in personnel decisions and procurement

13. Administrative support for the ICTR became a public issue when the New York Times reported on October 30, 1996, that someone on the staff of the U.N.'s Office of Investigative Oversight Services (OIOS) was investigating the Chief of Administration of the ICTR.<sup>7</sup> It was not clear which body within the United Nations structure, if any, should have been responsible for supervising the activities of the ICTR Registry.

14. For the ICC, it will be possible to set up a supervisory structure that will help minimize the risk of mismanagement, without, at the same time, engaging in micromanagement or binding the ICC in bureaucratic red tape. One way this can be achieved is to establish a Committee of States Parties with overall responsibility for the budget of the ICC and to have the Committee select a smaller council to handle oversights.

6. Improve the administrative chain of command

15. Another issue with the ICTY and the ICTR is the administrative chain of command. Under the Tribunals' statutes, much of the administrative support for the activities of the OTP is handled through the Registry.<sup>8</sup> Thus, those performing certain important tasks for the Prosecutor's office do not report to the Prosecutor, but instead report to the Registrar. While this organizational structure may produce certain administrative efficiencies, this "dotted-line" relationship has not proven efficient overall.

16. For the ICC, the administrative staff for the Prosecutor should be accountable directly to the Prosecutor.

7. Provide better protection for witnesses

17. Witness protection is handled in a separate unit in the Registries of both the ICTY and the ICTR. Both units are small and rely on cooperation from States to protect witnesses whose lives or families are at risk from reprisals and intimidation. These units do not have enough resources to protect those at risk. Witnesses who would have testified for the ICTR have already been killed, and ICTY witnesses have already been intimidated.

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7. Barbara Crossette, *U.N. Investigates Rwanda War Crimes Tribunal Officials*, N.Y. TIMES, Oct. 30, 1996, at A3.

8. ICTY Statute, Article 17(1), "The Registry shall be responsible for the administration and servicing of the International Tribunal." ICTR Statute, Article 16(1), adds "for Rwanda" to the same sentence.

18. For the ICC, the opportunity exists to fund witness protection more fully.

8. Improve staff management

19. With the ICTY and the ICTR both wanting to start investigations as quickly as possible, delays in making personnel decisions translate into lost investigative opportunities.

20. For the ICC, the opportunity exists to develop personnel rules tailored to the unique needs of a prosecutorial and judicial body, while still taking into account the need for equitable geographic distribution and the need to recruit internationally from the five regions of the world.

21. A similar problem faced by the ICTY and the ICTR has been a problem with second staff. The ICC should be able to develop an experienced core (senior) staff, with second staff supporting them.

*B. Five Successes of the Ad Hoc Tribunals To Continue in the International Criminal Court*

22. At the same time, as the establishment of the ICC creates opportunities to solve some of the problems that have affected the work of the *ad hoc* tribunals, there are a number of administrative aspects of the ICTY and ICTR that have worked and should be kept in the ICC:

1. Independence of the Chief Prosecutor from outside political influences

23. The Chief Prosecutors of the ICTY and the ICTR have always considered the position to be independent of outside political influences. This independence needs to be continued in the ICC.

2. Ability to attract the highest-quality professionals from around the world

24. Because of the historic importance of the ICTY and ICTR, both tribunals have been able to attract excellent candidates from many States, either as direct hires or secondaries. Keeping up this level of quality is important for the work of the ICC, as well. The ICC must impose demanding recruiting standards that take into account the need for equitable geographic distribution and the need to recruit internationally from the five regions of the world.

3. Having The Netherlands as host country

25. Having The Netherlands as host country for the ICTY has worked well. The Netherlands is regarded by many outside observers as an excellent potential host for the ICC.



#### 4. Ability to accept help from outside sources

26. Under the Security Council resolutions that established the ICTY and ICTR, both tribunals are able to accept help from States, Inter-Governmental Organizations (IGO's) and Non-Governmental Organizations (NGO's).<sup>9</sup> The ICC should be able to do the same.

#### 5. Free flow of discussion among Prosecutorial staff

27. One important management practice that has worked well in the ICTY is the free flow of discussion among Prosecutorial staff. This is mediated by intra-office email, but it is also part of the culture of the office. This practice should continue in the OTP of the ICC.

28. In one respect, the ICC will be different: its staff are likely to be dispersed in field offices around the world. In addition, not all staff will be on active duty, and a way must, and can, be found for a wide-spread staff to communicate securely.

## II. OVERVIEW OF ICC PROCEDURE

### A. *When a "Matter" Arises*

29. Part II presents an overview of the procedures to be used in the ICC. It is not intended as a formal analysis of the substantive or procedural provisions of the proposed ICC Statute. Instead, it is intended to provide context for the discussion of administrative and financial issues in the remaining six parts of this paper.

30. The starting point is how a "matter" would come before the ICC. In this paper, "matter" is used to refer to the scope of the Prosecutor's investigation. For example, "the Former Yugoslavia, 1991–present," if it had occurred after an ICC came into being, would have been counted as one matter. "Rwanda 1994" would have been counted as another matter.

31. For this paper, a matter consists of one or more "cases." A case would include a relatively discrete number of witnesses and potential defendants. For example, "Mass Killings at Omarska Camp" would be one case and "Siege of Sarajevo" would be another case.

32. Chart 1 shows how a matter proceeds through the ICC. First, a matter is initiated by a complaint. Who can bring a complaint is discussed in subpart II C below. Second, the Prosecutor then investigates the complaint. This is discussed in more detail in subpart II F below.

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9. Under S.C. Res. 827 (1993), paragraph 5, the Security Council "[u]rges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal [for the former Yugoslavia], including the offer of expert personnel." S.C. Res. 955 (1994) uses the same language in paragraph 4 with respect to the ICTR.

33. If the Prosecutor decides a case is meritorious enough, the indictment is presented to the Indictment and Preliminary Matters Chamber (IPMC). The purpose of the IPMC is to review the evidence presented by the Prosecutor and decide whether to issue the indictment. The IPMC thus serves as the "filter mechanism" to ensure that only meritorious cases go forward. The IPMC consists of three judges and one alternate judge. It is in permanent session in The Hague and is able to hear urgent matters without delay. The IPMC also holds pre-trial hearings and can have one or more of its members serve as supervising judges where appropriate to protect the interests of potentially interested but unidentified parties during the early stage of an investigation.

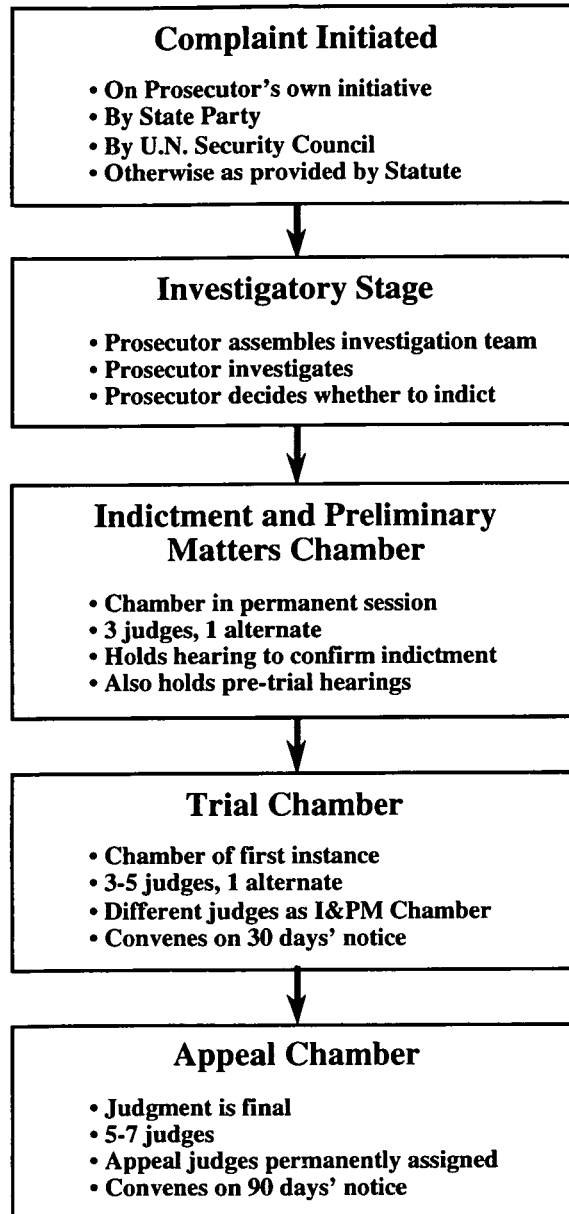
34. An indicted suspect is brought to trial in the first instance before a Trial Chamber. The Trial Chamber consists of three judges with one alternate.<sup>10</sup> The judges on a trial chamber would have to be ready to convene within 30 days' notice.

35. After the Trial Chamber delivers its verdict, the case can be appealed to an Appeal Chamber. The decision of the Appeal Chamber is final. The Appeal Chamber consists of five or seven judges, who are assigned permanently to the Appeal Chamber. It would need to be ready to convene on 90 days' notice.

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10. Some experts say the Trial Chamber should consist of five judges.

**Chart 1**  
**How a Matter Proceeds Through the ICC**



### B. *Crimes in the ICC's Mandate*

36. Which crimes are to be included in the ICC's mandate is a matter of much debate.<sup>11</sup> For planning purposes, the following crimes are assumed to be within the mandate of the ICC:

1. Genocide.
2. Aggression.
3. Violations of the Laws and Customs of War.
4. Crimes Against Humanity.
5. Treaty Crimes.

37. Treaty crimes — cases brought to the ICC by the agreement of States that do not fall in any of the first four categories — require separate discussion in this paper. The scope of a treaty crime prosecuted by the ICC would be set out in the reference by the treaty States to the ICC. Treaty crimes might not be of a magnitude of Genocide or Crimes Against Humanity. It could trivialize the prosecution of more horrible crimes if, at the same time, a chamber were hearing a case involving one or two victims that was before the court only because two States did not trust each other's judicial system to prosecute the defendant.<sup>12</sup> For that reason, it may be desirable to try treaty crime cases before a separate chamber of judges.

38. Treaty crime cases might also have a separate status in the way resources are allocated to them. For example, interested States may offer to contribute prosecutors (including a special Deputy Prosecutor), investigators, and other resources to treaty crime cases. Because of the potential impact treaty crime cases could have on other needs of the Tribunal, the Prosecutor should be able to decide whether to accept a treaty crime matter, whether to accept contributed staff offered by an interested State, and what other terms and conditions must be met before the ICC takes on a treaty crime case.

### C. *Potential Sources of Complaints*

39. Who can bring complaints to be investigated by the Prosecutor of an ICC is also a controversial issue.<sup>13</sup> There are four possibilities:

1. ICC States Parties.
2. The United Nations Security Council.

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11. See generally *Report of the Preparatory Committee on the Establishment of an International Criminal Court*, U.N. GAOR, 51st Sess., Supp. No. 22, Vol. I, ¶¶ 58-115, U.N. Doc. A/51/22 (1996) (hereinafter *PrepCom Report*).

12. That is not to say that such small cases should not be before the ICC. Much of the ICC's work, at least at first, may involve treaty crime cases where States believe that only an international criminal body can fairly prosecute and judge a certain defendant.

13. See generally *PrepCom Report*, *supra* note 11, at ¶¶ 129-52.

### 3. The Prosecutor.

4. States Parties to the Genocide Convention may be able to bring complaints raising allegations of Genocide even if they are not parties to the ICC treaty.

#### D. *Elements of a Complaint by a State*

40. The necessary elements of a complaint are not fully settled, but their outline seems clear.<sup>14</sup> A complaint must provide the following information:

- a. Jurisdictional basis in the ICC's Statute.
- b. Allegations of specific criminal conduct at a specified time and place.
- c. Identity and whereabouts of suspects, if known.
- d. Identity and whereabouts of witnesses, if known.
- e. Location of evidence.
- f. Details of investigations undertaken by the complaining State or other States.

#### E. *The "Filter Mechanism"*

41. At some point before there is a full trial, there will be a judicial "filter mechanism" to prevent non-meritorious cases from going forward. Clearly, the Prosecutor acts as a filter, as it is assumed that the Prosecutor will not bring non-meritorious cases. A second, judicial filter will occur during the review of the indictment by the Indictment and Preliminary Matters Chamber (IPMC), before a case goes to a Trial Chamber.

42. Some States, however, have suggested a judicial "filter mechanism" that would occur even before the Prosecutor can begin an investigation. They may view even the *initiation* of an investigation by the Prosecutor as having an important political effect. This kind of "filter mechanism" would arguably prevent a "runaway Prosecutor" from launching an investigation.

43. It is hard to see how such a mechanism would be effective in practice. Such a "filter mechanism" can almost certainly be outflanked by an adroit Prosecutor. For example, assume that there must be a judicial review before a Prosecutor can launch an investigation *sua sponte*. Assume further that there is no such judicial review of complaints brought by States. Under such a system, an adroit Prosecutor should have no difficulty finding a State Party to bring the complaint, obviating the need for the Prosecutor to initiate the complaint directly.

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14. See *id.* at ¶ 217; see also *id.* at ¶¶ 120, 216-19.

44. In addition, if a single judge serves as the pre-investigative "filtering mechanism," there will probably be a rotation process to ensure that one judge does not carry the "filtration" burden alone. Judicial rotation in confirmation of indictments is the practice at the ICTY, where this responsibility is periodically assigned to a different judge. The Prosecutor of the ICC could wait until the rotation process turns up a favorable judge before going through the "filter mechanism."

45. In any case, judicial review prior to the Prosecutor's investigation presents numerous practical and legal challenges. The most obvious of the practical challenges is how the judges would make an informed decision. In the absence of an investigation, judges would have to rely on information available to the Prosecutor and to them, namely government sources and media reports. The obvious questions are "which government?" and "whose media?," as allegations of bias in covering atrocities is one of the most challenging problems that analysts have faced. The same questions can be asked about IGO and NGO reports of atrocities. In many cases, only field investigations are likely to yield conclusive evidence.

46. An obvious legal problem with a judicial "filter mechanism" is the legal standard to be used. The ICTY rules of procedure require the Prosecutor to have "reasonable grounds" before submitting an indictment for confirmation.<sup>15</sup> In common-law States, police are required to have "probable cause" before taking action, such as a search, against a citizen. Should the standard for review, even before an investigation has been made be "reasonable grounds," "probable cause," or some lesser standard? It is hard to see what level of judicial scrutiny is appropriate.

47. Finally, the delay caused by any pre-investigative "filter mechanism" would create the opportunity for political pressure to be brought against the Court or the Prosecutor by any State wishing to bring such pressure. This is particularly so if, as many supporters of a filter mechanism have called for, the potential defendant or an interested State is allowed to appear before the judges to contest the Prosecutor's application to begin an investigation. Such political pressure should be prohibited, but that prohibition is likely to shape the way in which the pressure is brought — not to prevent the pressure from being brought in the first place.

48. The most likely solution, many observers believe, is that the appropriate place for a judicial "filter" is in the review of the indictment by the Indictment and Preliminary Matters Chamber. This provides the proper check on Prosecutorial discretion.

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15. ICTY Rules of Procedure, Rule 47(A).

#### F. *Investigation to Indictment*

49. An investigation would formally be initiated by a written order of the Prosecutor.<sup>16</sup> The internal details of an investigation are supposed to be confidential. Cooperation of concerned states is expected. The Prosecutor can proceed without cooperation in exceptional circumstances where there are concerns regarding the objectivity of national authorities.

50. If, after an investigation, the Prosecutor decides not to seek an indictment, it is likely that the complainant will be notified. It is possible that there may be judicial review of a decision not to bring an indictment, although this might well jeopardize the confidentiality of the Prosecutor's investigation.

51. If the Prosecutor seeks confirmation of the indictment, the evidence will be submitted to the Indictment and Preliminary Matters Chamber (IPMC). The indictment review thus serves as the "filter mechanism." There will probably be a preliminary hearing, at which the Prosecutor will present evidence from the investigation to date. It is possible that the target of the investigation, or a concerned State, may have the right to present evidence, although this will likely compromise the confidentiality of the proceedings. The judges will have the opportunity to question the Prosecutor and any witnesses who appear in support of or opposition to the indictment. Allowing a target or a State to present evidence may turn the indictment hearing into a mini-trial of the Prosecution's case — which is something the drafters of the ICC Statute should explicitly decide is permissible or not.

52. If the IPMC confirms the indictment, States would be notified to arrest the accused and to assist any further investigation the Prosecutor may require. There may be hearings before the IPMC on preliminary legal issues. If the accused has accumulated assets, the IPMC may be able to consider freezing those assets. In the event that the accused is not arrested, the IPMC may choose to hold a hearing in the absence of the accused that is modeled on the ICTY's Rule 61 procedure.

53. In some field investigations, the IPMC may find it necessary to use a supervising judge to oversee certain aspects of an investigation to protect evidence for future use at trial while also protecting the rights of as-yet unidentified defendants. For example, prior to the confirmation of an indictment, the supervising judge could help to protect the interests of as-yet unidentified defendants in preserving evidence from a mass grave exhumation. If a partially damaged building must be demolished, a supervising judge could be used to supervise an investigation into the source of the shelling that damaged the building. The supervising judge does not gather the evidence, but rather has the

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16. See generally *PrepCom Report*, *supra* note 11, at ¶¶ 232-31, 246-52.

power to direct the Office of the Prosecutor as to the procedures and protocols to be used. Obviously, the supervising judge could not be called as a witness at trial, although the supervising judge's rulings would be part of the record available to the Trial Chamber and the parties.

54. The alternative procedure, which is accepted practice in most common-law countries, is for the Prosecutor's office or the police to follow established procedures for investigations. If the procedures are not followed, however, the use of the evidence in court may be jeopardized.

55. A comparable approach is to specifically empower the Prosecutor's office to consider the rights of possible suspects in gathering evidence and to require the Prosecutor to gather potentially exculpatory evidence during any investigation. This leaves open the possibility of challenge if the Prosecutor is deemed after-the-fact not to have been diligent enough in protecting the rights of possible accused.

56. The use of a supervising judge allows the correction of investigative errors with less risk of jeopardizing the use of evidence at trial. On the other hand, the Prosecutor may not want a judge involved in the investigative process. An aggressive supervising judge could come into conflict with the Prosecutor's office, diminishing the effectiveness of both.

57. The essential objective is that someone have the ability to protect the rights of those not present at a field investigation or that there be some way that the Court, sitting after-the-fact, can be assured that it hears all the relevant evidence it wants to hear about field investigations.

58. Regardless of the procedure chosen by the drafters of the Statute and the rules, there is the possibility that the IPMC will play an active role in a case before the case goes to trial. This is one of the reasons why the IPMC must be available full-time at the seat of the Tribunal.

#### G. *Trial at First Instance*

59. The trial at first instance before the ICC generally follows common-law procedure (see Chart 2). First, the Prosecution presents its case in chief. Then, the defense presents its case in chief. Each side has the opportunity for rebuttal, after which the Chamber renders a verdict of conviction or acquittal.

#### H. *Appeal*

60. As presently contemplated, the ICC Statute will allow both the prosecution and defense to appeal. Grounds for appeal will include erroneous rulings of law, erroneous findings of fact, errors in procedure, and errors in the disproportionality of sentences.



61. It is possible that only the defense may be able to assert erroneous findings of fact as a ground for appeal. Many common-law systems do not allow the prosecution to appeal from an allegedly erroneous finding of fact. The countervailing argument is that the offenses under consideration by the ICC are the most heinous known and the need for justice to be done requires that the Prosecutor be able to appeal from an erroneous ruling of fact.

62. In addition, the defense would be able to assert as a ground for appeal that newly discovered evidence warrants setting aside the verdict or reducing the sentence.<sup>17</sup> If such an appeal were upheld, the case would probably be referred back to a Trial Chamber for further proceedings.

63. The Appeal Chamber would review any alleged errors of the Trial Chamber and issue an opinion. The ultimate decision of the Appeal Chamber would be final.

### III. LOCUS AND PHYSICAL PREMISES OF THE TRIBUNAL

#### A. *Objectives in Selecting the Location*

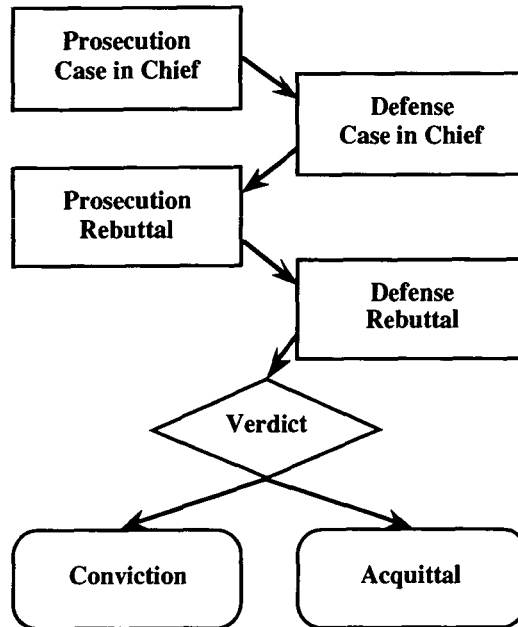
64. In a sense, one of the first practical decisions that must be made is to select the location of the seat of the Tribunal. While the ICTY is based in The Hague, The Netherlands, and the ICTR is based in Arusha, Tanzania, those locations and others should be considered as the possible seat of a permanent international criminal tribunal. Among the criteria should be:

- Full diplomatic support from the host State.
- A host State internationally respected for observing the rule of law.
- Access to international transportation networks.
- Excellent telecommunications infrastructure.
- Reasonable cost of living for support staff.
- Availability of multilingual local-hire personnel, particularly in the ICC's official languages.
- Reasonably attractive living conditions for international staff and their families.

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17. One expert has pointed out that if the prosecutor is allowed to appeal on the basis of an error of fact, this will allow the prosecution to bring to the Court's attention during the appellate process any newly discovered evidence that becomes known prior to the issuance of the Appeal Chamber's decision. In this limited situation, the ground of newly discovered evidence would be available to the Prosecutor also.

**Chart 2**  
**Trial at First Instance Follows Common-Law Procedure**



65. For many reasons, the site of the Tribunal should be in The Netherlands in general, and in The Hague in particular. The Hague meets the practical criteria outlined above.

66. From a symbolic perspective, The Hague is also the best choice for the site of the ICC. The Hague has long been regarded as the focal point for institutions of international justice. The Hague is the site of the International Court of Justice, the Permanent Court of International Arbitration, the Iran–United States Claims Tribunal, the ICTY, Europol (European Police), and other institutions. The Hague has also served as the host for important international conferences and agreements. The Hague is the best location available for the site of the ICC.

*B. Physical Premises of the Tribunal*

67. The building in which the ICC is headquartered should have certain characteristics. The headquarters of the ICC must be secure, but must also provide dignified office and courtroom facilities appropriate for the seat of international criminal justice. The building should have at least two courtrooms so that a single case does not prevent

other cases from being heard. The building should also have holding cells and secure areas for moving those in custody without exposing them to public areas. This is done for the security of those in custody as well as the security of the public and Tribunal personnel. (Longer-term detention facilities would presumably be off-site.)

68. There must be adequate space for press and communications equipment. The ICC will need its own satellite dish for communications to field offices and staff.

69. In many cases, trials in the first instance will be held in, or close to, where the crimes occurred. In deciding whether to hold trials in the first instance at the seat of the Tribunal or elsewhere, some issues that must be considered are security, how long investigations and trials are likely to take, the number of defendants, and the other criteria used to select the seat of the Tribunal discussed in subpart A above.

#### *C. The Importance of Security in Choosing a Building for the ICC*

70. One of the most important issues in choosing the premises of the Tribunal is security. Obviously, access to the building must be controllable. Beyond this, however, are other concerns. For example, it would be preferable to avoid having adjacent buildings easily accessible to the public. Any space in the Tribunal building for parking vehicles must be especially secure. Ideally, the building should be a safe distance from streets. Finally, the building should be reasonably safe from surveillance.

#### *D. Major Expenditures Are Required To Make the Aegon Building in The Hague a Secure Site for a Permanent Tribunal*

71. The working assumption used in this paper is that the seat of the ICC will be in The Hague. At present, the ICTY occupies the Aegon building, an impressive edifice that formerly was the office of a major international insurance company, Aegon, N.V.

72. The United Nations has invested considerable sums to make the Aegon building into a suitable headquarters building for the ICTY. Nevertheless, when the ICC is set up, consideration should be given afresh as to whether the Aegon building is indeed the best place for the seat of a permanent ICC. Of particular concern should be issues of security. For example:

1. The Aegon building is adjacent to the Congresgebouw (Conference Center) in The Hague. A hotel is being constructed above the Congresgebouw that overlooks the Aegon building. The ICC would have to consider installing and maintaining security controls in nearby buildings, including the Congresgebouw and its hotel. This is estimated to cost \$250,000 for metal detectors, plus an annual cost of \$400,000 for 15 full-time security guards, 1 supervisor, and their equipment.

2. A partial alternative would be to do major remodeling in the Aegon building to move the current courtroom and the as yet incomplete second courtroom into the interior portion of the Aegon building. This is estimated to cost \$3,000,000, but this does nothing to secure much of the building, including its entrance and offices.
3. An essential security provision is to install barriers to control car and truck traffic into and out of the Aegon garage. This is estimated to cost \$150,000.
4. The security of the Aegon building could be improved significantly by closing the adjacent streets, Johann de Wittlaan and Eisenhowerlaan. It would cost relatively little to do this — perhaps \$100,000 for traffic flow barriers and \$250,000 to relocate the tram lines on Eisenhowerlaan. However, there would be major disruptions to traffic patterns in The Hague from the closure of Johann de Wittlaan. The cost of this disruption, while non-monetary, needs to be taken into account.
5. The ICC could consider buying the adjacent residential and office buildings on northwest side of Eisenhowerlaan. This is estimated to cost \$6,000,000, but the buildings could be used as non-secure office space or as residences for Tribunal staff.

73. The expenses of securing the Aegon building could be so high that the Committee on States Parties should consider whether to either locate or construct a new building in a more secure location in The Hague. This might require some assistance from the Government of The Netherlands in locating a suitable site. The Netherlands may wish to donate the land on which the Committee of States Parties would pay to have a building constructed. The Committee should consider establishing a building fund to pay for the cost of the building. However, given the problems that the ICTY had in 1994, it seemed to some observers that renovating the Aegon building had a higher priority for the United Nations than paying the expenses of investigations. The Committee should be sensitive to the need to fund ongoing investigations first.

#### E. *Transition from the Ad Hoc Tribunals to the ICC*

74. An issue with important administrative and financial implications — not to mention political and legal implications — is the relationship between the *ad hoc* tribunals, especially the ICTY, and the ICC. This subject is addressed here because it may not be possible for both the ICTY and the ICC to occupy the Aegon building at the same time.

75. Clearly, after the ICC Statute is approved, the United Nations Security Council will have to decide whether to merge the caseload or responsibilities of the ICTY and the ICTR into the ICC. The time period between approval of the ICC Statute and its coming into force will give the Security Council adequate time to make this decision. Merging the institutions offers advantages in consistency of prosecutorial

and judicial decisions, as well as significant administrative cost savings amounting to millions of dollars a year.

76. For administrative and budgetary reasons, if nothing else, the drafters of the ICC Statute should consider the possibility that the ICC will be assigned certain responsibilities from the ICTY and the ICTR. If this happens, the ICC will require a significant number of prosecutorial and administrative staff at the outset and a more significant budget than if the ICC were kept separate from the ICTY and the ICTR. If the ICC undertakes some of the responsibilities of the ICTY and ICTR, the United Nations should be required to contribute some of the funding for any ongoing investigations or prosecutions.<sup>18</sup> The Committee of States Parties of the ICC will have to consider whether to appoint new or existing ICTY/ICTR judges and officials to posts in the ICC.

77. This paper recommends that, at a minimum, the ICC should inherit the long-term responsibilities of the *ad hoc* tribunals. This would include:

- Prosecutions of indicted persons not apprehended until after many years.
- Supervision of the terms and conditions of persons sentenced by the ICTY or the ICTR.
- Appeals on the basis of newly discovered evidence.
- Continuation of efforts to apprehend indicted suspects still at large.
- Maintenance of the archives of the ICTY and ICTR when they are no longer active.

#### IV. OFFICE OF THE PROSECUTOR

##### A. *Concepts*

78. The Office of the Prosecutor (OTP) is the largest component of the ICC. As the experience of the ICTY and ICTR has shown, the OTP will be the driving engine in the work of the ICC. The size and organization of the OTP are determined, in turn, by the caseload of the ICC.

79. The caseload of the ICC is difficult to predict with much certainty. Historical precedent suggests that the number of wars and other situations that might have been referred to the ICC, if it had existed, is considerable. This implies a steady workload. On the other hand, many experts believe that the end of the Cold War will, over the long run, reduce the frequency of conflicts that would give rise to matters before an ICC. In addition, one of the goals of the ICC is to deter the violations of international humanitarian law that are within the

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18. For planning purposes in this paper, it is assumed that the United Nations pays for the incremental costs of ICTY and ICTR investigations and prosecutions.

mandate of the ICC. If the ICC is successful, its existence and effectiveness will cause it to have fewer matters to handle than it would have handled in the immediate post-World War II world.

80. We can expect that the ICC may have some very busy periods, analogous to 1997, when there are two active *ad hoc* international criminal tribunals. It is also possible that the ICC will go through periods of substantial inactivity. The structure of the OTP must reflect these potential swings in the workload.

#### 1. Minimize overhead, maximize capability

81. One way to accommodate swings in workload is to minimize the overhead of the ICC when there are no active matters and yet also be able to "ramp-up" quickly to be able to handle a large caseload if the need arises. If there are no active matters, the ICC must strive to keep costs to a minimum. High costs during periods of substantial inactivity will diminish public support for the institution. The sight of a large and (by the standards of many States) well-paid staff with apparently little to do except polish the rules of procedure will discourage States from supporting the ICC until they need the ICC to do something. As with a fire department, the ICC must be kept going if it is to be able to respond quickly when called into action.

82. This means that the OTP will need a small, permanent staff of a sufficient size so that it can respond quickly to crises. When a matter becomes active, someone has to be around to take swift steps to preserve evidence and start interviewing witnesses. Someone else has to be around to "ramp up" the office by mobilizing the full investigative and prosecutorial team. In an ongoing matter where crimes are still being committed, lengthy delays to hire staff will diminish the ICC's capacity to deter further crimes.

#### 2. Model: The Military Reserve System

83. One model for the OTP to follow is the military reserve system in use in many States. Table 2 shows how this analogy works:

**Table 2**  
**The Reserves Analogy for the Office of the Prosecutor**

1. Permanent OTP Staff (the "active duty" staff).
2. Case Units (the "active reserves").
3. Advisers and Consultants (the "inactive reserves").

84. The permanent OTP staff is analogous to active duty military forces: able to respond immediately to matters that arise. The active duty forces also include those necessary to mobilize the "active reserve" Case Units of prosecutors and investigators. Unlike most mili-

tary forces, however, for the OTP, the permanent staff would be significantly smaller than the number of prosecutors and investigators in active reserves.

85. Those prosecutors and investigators who have retired or may be unavailable to serve on full-time status with the ICC OTP may be available nevertheless as an “inactive reserve” of advisers who can assist on particular projects or can be consulted by the Prosecutor on a confidential basis in making particular decisions.

86. Another key concept in the OTP is the creation of a Startup Unit, for a short, initial period. The purpose of the Startup Unit is to develop the procedures and protocols for the OTP. The Startup Unit should draw in part on ICTY and ICTR veterans. The Startup Unit is discussed in more detail in section IV B 2, paragraph 91, below.

87. The OTP must also have a Deployment Unit of administrators responsible for handling the mobilization of the Case Units. This is discussed in subsection IV B 3 a, paragraph 96.

88. The Case Units are the heart of the OTP during an active matter. They handle the investigation and prosecution of cases. One Case Unit must be a “ready reserve” unit able to be activated at short notice — a week or less. (If the workload justifies it, this unit might become part of the permanent staff.) This is discussed in section IV B 3 b, paragraph 97. Other Case Units would be activated on reasonable notice, such as 30 days. See section IV B 4, paragraph 100.

89. If the workload is sufficiently great, the OTP should also have specialized Support Units to handle technical aspects of investigations. Support Units are discussed below in section IV B 5, paragraph 107.

## **B. *Organization of the Office of the Prosecutor***

### **1. The Permanent Staff**

90. The permanent staff of the OTP should include:

- The **CHIEF PROSECUTOR**. As with the ICTY/ICTR, the Prosecutor would hold the equivalent rank of a United Nations Undersecretary-General.
- **DEPUTY PROSECUTORS** will be needed to head up Case Units. They should be pre-selected, but should not be part of the permanent staff.
- The **IMMEDIATE OFFICE OF THE PROSECUTOR** would include a Chief of Staff and a Personal Assistant to the Prosecutor.
- An **ADMINISTRATIVE STAFF** that handles (i) administration, (ii) budget and finance, (iii) personnel, and (iv) travel. This unit would consist of five professionals — one in each functional area, plus one chief of the unit — along with 3 support staff. Note that this represents a change from the way the ICTY and ICTR are organized. In the ICTY and the ICTR, the administrators, who perform these functions for the OTP, are located in the Registry, and report to the Registrar, not the Prosecutor. In most governments and in the

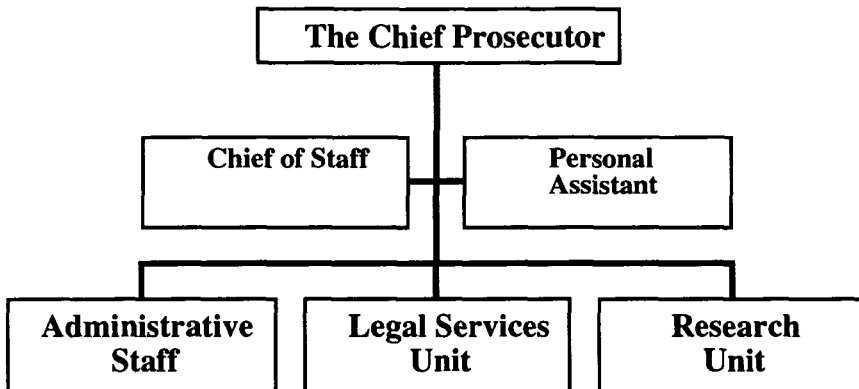
private sector, such an arrangement is unusual, to say the least. In the case of the *ad hoc* tribunals, it created the potential, at least, for conflicting priorities such as if the Registrar were to think one task the most important and the Prosecutor were to think another task deserved the most attention. Giving the Prosecutor the management responsibility for administrative staff who service the OTP is an important and necessary step toward improving the administrative support for the OTP within the Tribunal. This will require specific language in the ICC Statute to implement.

- A LEGAL SERVICES UNIT that consists of (i) a counsel for international humanitarian law and the law of war, (ii) a counsel for comparative criminal law and comparative criminal procedure, (iii) a counsel for international legal assistance, including extradition, mutual legal assistance and the transfer of prisoners. These three professionals would be assisted by a paralegal (also known as a legal assistant) and a secretary. These three counselors should be relatively senior and should be world-class experts in at least one of the fields for which they are responsible. One of their responsibilities is to know who are the other experts in their respective fields.

- A RESEARCH UNIT whose purpose is to track open source information, to keep in touch with governments, inter-governmental organizations, and other relevant organizations. The members of this unit are not criminal investigators. (Under the plan proposed in this paper, the Prosecutor has no permanent investigators on staff until an investigation formally begins.) Instead, their purpose is to monitor world developments for information that might be potentially relevant if a matter were to arise. The office consists of (i) a chief of unit, (ii) a liaison to ministries of foreign affairs and inter-governmental organizations, (iii) a liaison to ministries of defense and regional security bodies such as NATO, (iv) a liaison to national police forces and INTERPOL, and (v) an archivist to preserve records and evidence. As an example of how regional diversity might apply, one of the four staff professionals in this unit might be from a "neutral" country, one might be from an English-speaking country such as the United States or the United Kingdom, one might be from France, Italy or another European country whose police force enjoys international respect, and the fourth would be from a southern country.



**Chart 3**  
**Office of the Prosecutor**  
**Permanent (“Core” or Full-Time) Staff**

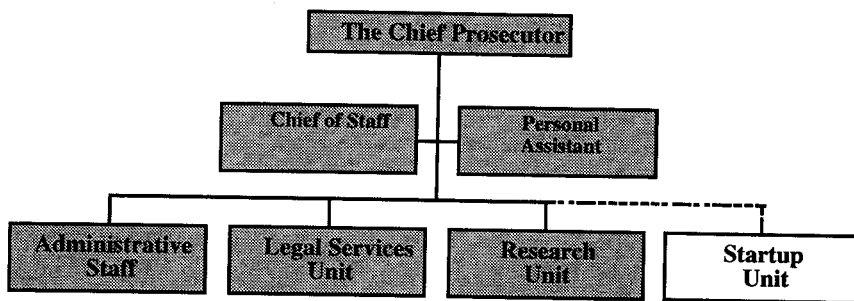


2. For the first 18 months after ICC startup

91. When the ICC is first established, during the first 18 months or so, a group of 6-8 prosecutors, investigators and other professional staff members, along with 2-4 support staff, should have the responsibility of setting up the Office of the Prosecutor. The responsibilities of this STARTUP UNIT would include:

- Establishing office procedures and protocols.
- Ensuring premises and equipment are operational.
- Establishing work plans for various contingencies, including having matters arise in various parts of the world.
- Establishing initial contacts with governments, inter-governmental organizations, and others.
- Helping to interview and hire the permanent staff.
- Working for ratification of the ICC treaty by States.
- Negotiating and signing cooperation agreements with States Parties.

**Chart 4**  
**Office of the Prosecutor**  
**First 18 Months After ICC Startup**



92. To ensure continuity with the ICTY and the ICTR, at least half of the startup staff should have some kind of experience with either one of the *ad hoc* tribunals. However, to ensure fresh thinking on problems, at least a fourth member should be chosen from outside the ICTY and ICTR.

93. The Startup Unit would be headed by a Deputy Prosecutor. After the Startup Unit was complete, the Deputy Prosecutor would presumably head up the “ready reserve” Case Unit.

94. At the end of the 18 month startup period, the Startup Unit would formally be disbanded. Some Startup Unit staff would no doubt continue to serve the Tribunal in other capacities. Some would serve on the permanent staff of the ICC OTP. Others would serve on “reserve” Case Units.

### 3. During the initial weeks of an investigation

95. After the Prosecutor has made the written determination to initiate an investigation, the OTP must “ramp up” its investigation of the matter. This is done through two units: the Deployment Unit and the “ready reserve” Case Unit.

#### a. The Deployment Unit

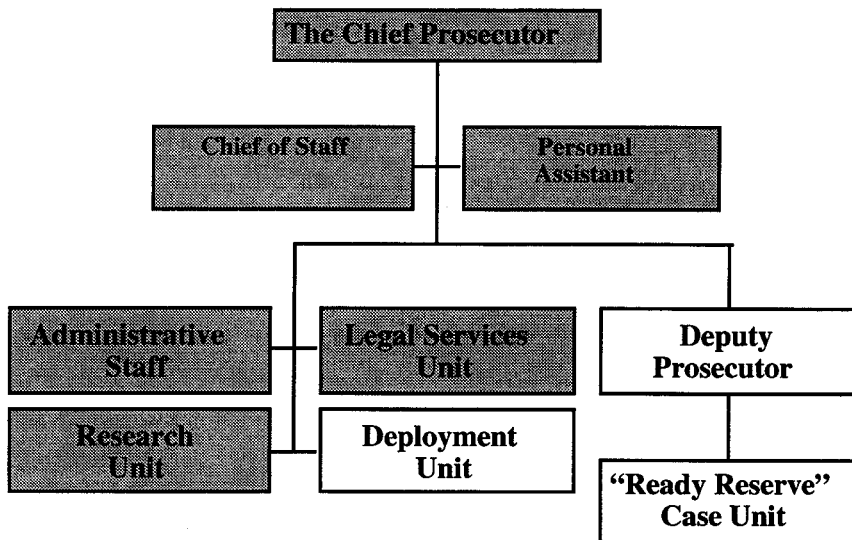
96. The purpose of the Deployment Unit is to mobilize a Case Unit when a matter begins. The Deployment Unit would consist of 3-5 administrators and 2-4 support staff. It must be available to begin work on very short notice — as little as a week. As a practical matter, this means that Deployment Unit staff should come from near the seat of the Tribunal. Thus, if the seat of the ICC is The Netherlands, Deploy-

ment Unit personnel might come from The Netherlands or Belgium. Assuming that members of the Deployment Unit are government administrators, their governments must agree to second those individuals for a period of 2-3 months at a time. Some may stay on indefinitely, or they may be replaced by permanent staff if the workload for the Deployment Unit justifies hiring permanent staff.

b. The “Ready Reserve” Case Unit

97. The purpose of the “ready reserve” Case Unit is to investigate whether the matter should (a) go forward as a formal investigation by the Prosecutor, (b) be referred to national prosecution, or (c) be dropped. This unit also must be available on very short notice — about a week or less. The unit should be headed by a Deputy Prosecutor. To ensure that a Deputy Prosecutor need not investigate crimes allegedly committed by, or against, his own nationals, there should be several Deputy Prosecutors available to the Prosecutor.<sup>19</sup>

**Chart 5**  
**Office of the Prosecutor**  
**During the Initial Weeks of an Investigation**



98. The size of the “ready reserve” Case Unit will depend on the matter. In most cases, it may be sufficient to begin with a staff of 2-4 lawyers, 2-4 investigators, 1-2 legal assistants, 4-6 translators, 1 liai-

19. Which Deputy Prosecutor should take charge of a Case Unit is obviously a matter that should, in virtually all circumstances, be left to the discretion of the Prosecutor.

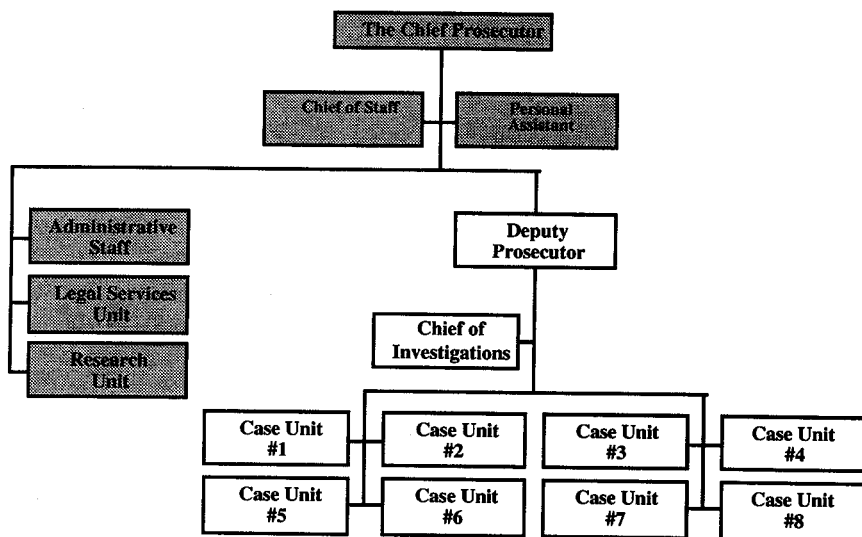
son officer, and 3 support staff. The exact mix of personnel will depend on the matter.

99. The call-up process for the "ready reserve" Case Unit means that the number of personnel available must be slightly more than the number that will actually be fielded. Despite the best intentions, other professional or personal obligations may make someone unable to join a Case Unit when a matter arises.

#### 4. Case Units

100. As an investigation moves forward towards indictment and prosecution, the OTP must be expanded into a larger organization. Chart 6 shows how the OTP might operate. This is based on the experience of the ICTY and ICTR.

**Chart 6**  
**Office of the Prosecutor**  
**During the First Matter**



101. Prosecution of a matter would customarily be in the hands of a Deputy Prosecutor responsible for that matter. Each matter would be the responsibility of anywhere from 1 to 20 Case Units, with 3-12 Case Units being a more typical range.

102. In 1996, the ICTY and the ICTR formally had nine Case Units each; however, in practice, the approach was more flexible than this, as some Case Units were larger or smaller than their nominal staff allotment. The exact number of Case Units in a Task Force will depend on the specifics of the matter. For example, in the context of the ICTY, there might be a Case Unit assigned to the ethnic cleansing of Prijedor, with another Case Unit assigned to the siege of Sarajevo.

103. Case Units would be grouped into "Task Forces." Thus, if the ICC had existed when the two *ad hoc* tribunals were established, there might now be an ex-Yugoslavia Task Force and a Rwanda Task Force.

104. Each Case Unit would consist of 10-20 professionals and support staff. Included in a Case Unit would be prosecutors, investigators, legal assistants, liaison officers (to handle relations with governments, local officials and the public), translators and interpreters, and support staff. Case Units may need armed security guards for security in the field. Case Units may also benefit from outside advisers on specific issues. These could be "alumni" of the OTP and respected academics and practitioners. These advisers would be the "inactive reserves" of the OTP.

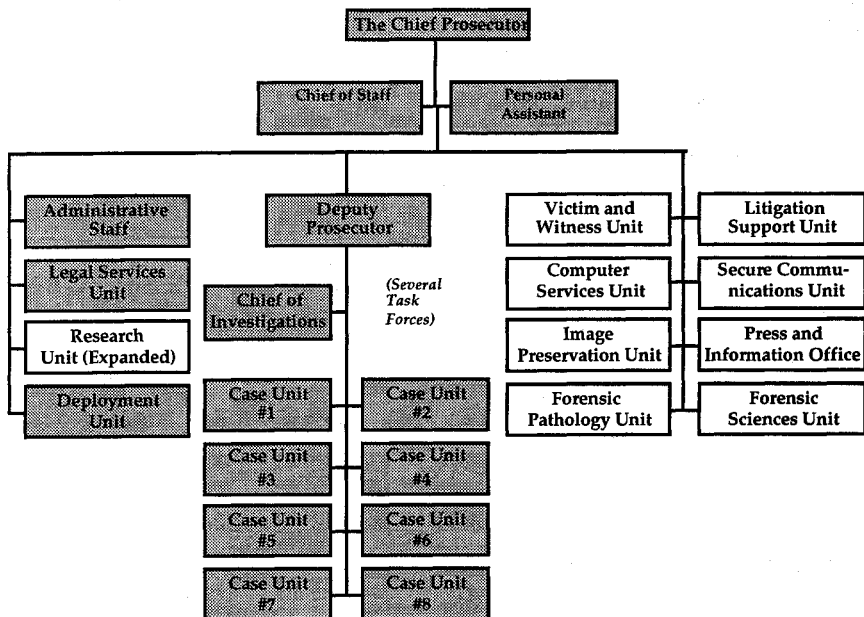
105. Case Units would be headed by a Deputy Prosecutor. If the ICC has many ongoing matters, a Deputy Prosecutor might handle more than one matter. However, the factual expertise required to supervise investigations and prosecutions means that a Deputy Prosecutor will likely handle only one matter. Very small cases might not require a Deputy Prosecutor, but could be handled by a senior trial attorney.

106. The Deputy Prosecutor would be assisted by the Chief of Investigations. How the Deputy Prosecutor, the Chief of Investigations and the Case Units relate to each other organizationally will depend upon the matter being prosecuted, the phase of the investigation — early in an investigation it may make more sense to have the Chief of Investigations more involved than later in the prosecution phase — and even the personal backgrounds of those in charge.

## 5. Support Units

107. If the workload of the OTP is sufficiently large, the OTP should add specialized Support Units to support the Case Units. These units would be staffed permanently if the ICC has more than a few active matters at a time. If active matters are few, the OTP would staff Support Units through seconded personnel or by obtaining necessary services or expertise directly from outside agencies, private contractors or other organizations.

**Chart 7**  
**Office of the Prosecutor**  
**Assuming Many Active Matters**



108. Examples of possible Support Units in an active OTP are:

a. Victim and Witness Unit

109. The Victim and Witness Unit would arrange for protection and security of the prosecution's witnesses, when and where needed. (A separate unit in the Registry would take care of witnesses for the defense.) In some cases, witness protection is handled by Western-style relocation to another country. In other cases, the witnesses may have to be given protection within their own cultural milieu. This unit would also handle logistics and counseling for witnesses who will be testifying in court. This unit would consist of 3-20 people.

b. Litigation Support Unit

110. The Litigation Support Unit would handle document management for investigations and prosecutions. The Unit would also handle setting up computer databases for the OTP. This unit would consist of 5-50 people.

c. Computer Services Unit

111. The Computer Services Unit would handle computer support and system maintenance for the OTP. This unit would consist of 3-10 people.

d. Secure Communications Unit

112. The Secure Communications Unit would handle the ordering and maintenance of secure communications equipment. Its purpose is to permit secure communications between the OTP and field units. This unit would consist of 1-10 people.

e. Research Unit (Expanded)

113. In most cases, the ICC OTP will have a good idea of who should be prosecuted. In other cases, it will be necessary to use a Strategy Team to identify the targets of investigations. Both the ICTY and the ICTR have Strategy Teams. If the number of active matters justifies it, the Research Unit should be expanded by an additional 5-50 people to handle factual research other than field investigations.

f. Video and Photo Preservation and Analysis Unit

114. The Video and Photo Preservation and Analysis Unit would ensure that videotape and photographic evidence is preserved for trial, it would edit videotape for courtroom presentation, and it would handle research into videotape evidence. This unit would consist of 2-10 people.

g. Press and Information Office

115. The Press and Information office of the OTP would handle media relations and is responsible for developing a media strategy. This unit would consist of 2 people. It would serve only the Office of the Prosecutor; another PIO would serve the Court.

h. Forensic Pathology Unit

116. The Forensic Pathology Unit would perform and coordinate post-mortem examinations of mass graves and similar evidence. It would consist of 1-7 people.

i. Forensic Sciences Unit

117. The Forensic Sciences Unit would handle and coordinate scientific investigations other than mass grave exhumation and analysis. It would also act as liaison to major crime laboratories around the world. Its personnel would also be available to testify as experts for the prosecution. This unit would consist of 1-5 people.

C. *Field Offices*

118. Both *ad hoc* tribunals have used field offices out of which to run their investigations. During the war in Bosnia, the ICTY managed investigations out of its offices in The Hague. However, since the signing of the Bosnia Peace Agreement in Paris in December 1995, the

ICTY has begun to work more out of cities in the region, establishing offices in Zagreb, Sarajevo and, to a limited extent, Belgrade. The ICTR OTP has been based in Kigali, Rwanda, since the office has been operational.

119. Clearly, the choice of whether or not to set up a field office will depend on the specifics of the matter. Among the considerations that should be used are:

- The availability of transportation links from the prospective field office to the seat of the Tribunal.
- Communications infrastructure at the prospective field office.
- Security issues.
- The time difference between the prospective field office and the seat of the Tribunal. As a practical matter, it is likely to be impossible to run an investigation from headquarters if it is more than a few hours away from the place where crimes are being investigated.
- The anticipated length of the investigation. If the investigation is likely to be brief, it may not be necessary to establish a formal field office.
- Whether the case under investigation is a specific incident or a series of acts over time.
- Whether the trial chamber will sit locally or at the seat of the Tribunal. If the Trial Chamber will sit locally, the OTP will almost certainly want to have a field office there.

120. In general, in the initial stage of a matter, the Case Unit should probably be based in or near the area where the investigation takes place.

#### D. *Hiring*

121. As with all appointed positions in the Tribunal, hiring of personnel for the OTP must be based on qualifications and experience, with due regard for geographical diversity. The staff should be recruited internationally from the five regions of the world, representing equitable geographical distribution.

122. The OTP will be relying significantly on seconded personnel in order to avoid either (i) having to maintain a costly full-time staff or (ii) having to face lengthy delays to hire staff whenever a matter arises. In particular, most of the staff of Case Units will be secondaries from governments, IGO's, the private sector, and other relevant organizations. Secondaries should be paid by the ICC.

123. The use of seconded personnel has generated some recent controversy within the United Nations system. The United Nations Security Council expressly stated in resolutions 827 and 955 that it urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel. Despite this statement by the Security Council, a recent Report of the Secretary-



General<sup>20</sup> takes the position that secondment is

only acceptable on a temporary basis for specific short-term projects or pending a transition, which should be accomplished promptly, to budgetary posts funded from assessed contributions . . . *Gratis* personnel should be accepted on an exceptional basis, for a defined, limited period . . .<sup>21</sup>

124. There is likely to be opposition to the report of the Secretary-General as the report is considered by the Fifth Committee. Regardless of the merits, if any, of the Secretary-General's position as applied to the ICTY and the ICTR, this position is not a viable option for an ICC that must be able to "ramp up" quickly with qualified personnel when a matter arises. The OTP of the ICC must be able to rely on secondment of qualified personnel, on terms acceptable to the Prosecutor, in order to be able to handle important matters as soon as the Prosecutor has decided to launch an investigation.<sup>22</sup>

#### E. *Other Expenses*

125. The OTP must also budget for other expenses of investigations.

##### 1. Travel expenses

126. The OTP must allow for substantial expenses for travel of investigators and prosecutors. Not having enough travel funds has been a major impediment to the work of the ICTY and ICTR.

##### 2. Secure computers and communications equipment

127. The OTP needs to have secure telephone and telefax equipment. Its computer systems also need to be secured. Some computers must be Tempest-certified to avoid such attacks. The OTP will need to have experts keep up with the state-of-the-art in computer and communications security.

##### 3. LEXIS/NEXIS and other computer databases

128. The OTP must have access to computer databases that allow cost-effective research into both legal and factual issues. LEXIS and NEXIS are the best known; there are many others in English, French, and other languages. One area of concern is that an unscrupulous person at a database provider could analyze the searches of the OTP and thereby learn what the OTP was investigating. The OTP must there-

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20. See *Gratis Personnel Provided by Governments and Other Entities*, U.N. GAOR, 51st Sess., Agenda Items 116, 120, 137, 139 and 140(a), U.N. Doc. A/51/688 (1996).

21. *Id.* ¶¶ 68-69.

22. Secondment may be useful for the Registry, but the Registry should have enough lead time to hire qualified personnel when the need arises.

fore develop a database usage strategy to avoid giving away clues as to what it is investigating.

#### 4. Armored cars and vans

129. The OTP may need armored cars and vans to transport personnel in insecure areas, and also to transport prisoners even in safe areas.

#### 5. Equipment for mass grave exhumations

130. Many of the crimes investigated by the ICC OTP will probably involve mass grave exhumation and analysis. As the experience of the ICTY and ICTR has shown, mass grave exhumations are expensive, consuming at a minimum tens of thousands of dollars of disposable supplies and equipment.

6. Helicopters for transportation in countries where road transportation is difficult or unsafe

131. Travel by road will not always be feasible where the OTP operates. Local road conditions may be impassable during the rainy season, or roads and bridges may have been effectively destroyed during an armed conflict. The OTP may, in some cases, need helicopters for transportation.

#### F. *Annual Meetings of the Staff of the Office of the Prosecutor*

132. The Permanent staff and the "reserves" of the Office of the Prosecutor need to meet annually. The OTP should hold an annual 4-day conference at the seat of the Tribunal. The purpose of this meeting would be to update the "reserves" on current legal, procedural, and practical developments that would affect their work. The meetings would also cross-fertilize, for the benefit of the OTP, any new skills and techniques learned by the "reserves" in their regular work. The meetings would also bring in speakers to lecture on legal, factual, or political issues likely to arise during the next year ahead. This will allow the OTP to consult non-lawyers with regional or local expertise to benefit from their factual knowledge. Finally, the meetings would serve to establish and maintain personal relationships among OTP staff. If "reserves" are activated during the year, they can expect that the work will require close teamwork.

#### V. THE REGISTRY

133. The Registry handles administrative and judicial support for the Court and all those aspects of the ICC other than the Office of the Prosecutor.

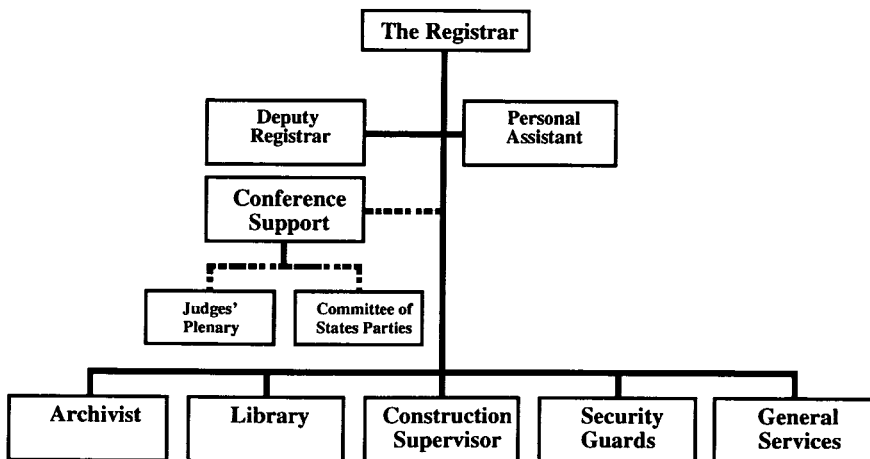
134. In concept, the Registry should follow the same principle as the Office of the Prosecutor: minimize overhead in times of relative in-

activity, and maximize capability to handle busy caseloads when they occur. For the Registry, this will be easier than for the Office of the Prosecutor. Because the Registry of the ICC will not have to support the initial “ramp-up” of the OTP, the Registry will have sufficient time to “ramp up” its operations in an orderly way. Thus, the Registry will not need a “reserve system” to the degree required to make the OTP effective. The Registry will likely have anywhere from 30 days to a year to staff itself fully. It will have time to recruit qualified personnel from the five regions of the world when, and as, they are needed to staff the operations of the ICC.

#### A. *The Permanent Staff*

135. When the ICC is relatively inactive, the functions of the Registry will be somewhat limited. The permanent staff of the Registry should include:

**Chart 8**  
**The Registry – Permanent Staff**



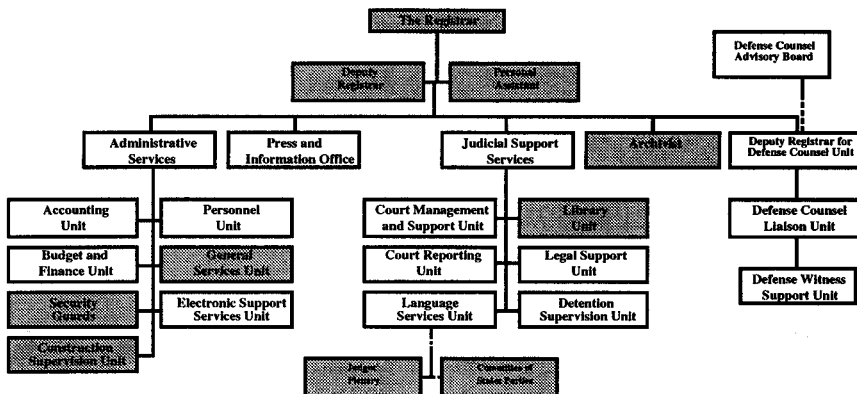
- The REGISTRAR. As with the ICTY/ICTR, the Registrar would hold the equivalent rank of a United Nations Assistant Secretary-General.
- The IMMEDIATE OFFICE OF THE REGISTRAR. This would include a Deputy Registrar and a Personal Assistant to the Registrar.
- An ARCHIVIST whose job it is to preserve the records of the ICC and, presumably, the archives of the ICTY and ICTR when they are no longer active. Preservation of all this material is vital for the historical record. The Archivist will also be responsible for arranging exhibitions of ICC (and ICTY and ICTR) archives at museums and other exhibitions around the world. If an important part of the ICC's function is to serve as a historical reminder of the importance of international justice, this will be one of the most important functions within the ICC.

- A LIBRARY, staffed by a Head Librarian and 2 assistants. The library will maintain a collection of international legal materials relevant to the work of the ICC and will serve as a resource for scholars and practitioners around the world. The library will also be responsible for making ICC (and ICTY and ICTR) materials available to government officials, scholars, practitioners, journalists and the public, worldwide, over the Internet, or by whatever future means allow the most cost-effective delivery of information worldwide.
- A CONSTRUCTION SUPERVISOR who will handle construction and support work in the event the ICC (both the OTP and the Court) need to establish field offices. This is a skill that, arguably, will not be needed frequently, and some might argue it is not necessarily to have someone permanently on staff who can do this. The experience of the ICTY and, particularly, the ICTR teaches otherwise. The number of people who can do this kind of job extraordinarily well is so small that the ICC cannot afford to take the chance that the right person will be available when the ICC's need arises.
- SECURITY GUARDS.
- GENERAL SERVICES.
- CONFERENCE SUPPORT. Even when the ICC has no active cases, the Registry will need to support the plenary sessions of the judges. These should be held twice a year. The Registry will also need to support the Committee of States Parties once a year and to support any executive council the Committee appoints to meet more frequently.

B. *The Registry During Active Matters*

136. During active matters, the Registry will have to expand considerably. The remainder of this subpart will discuss several of the Sections and Units within the Registry.

**Chart 9**  
**The Registry – During Active Matters**



### 1. Administrative Services Section

137. The Registry will need to maintain separate units to handle accounting, budgeting and finance, and personnel. The Administrative Services Section will have to supervise the Electronic Support Services Unit, the security guards, the Construction Supervision Unit, and the General Services Unit.

138. Unlike the Registry of the ICTY and ICTR, the Administrative Services Section will serve only the Registry, the Chambers (see part VI below) and defense counsel (see subpart V B 8 below), not the Office of the Prosecutor. Thus, its size will be smaller than the Administrative Services Section of the *ad hoc* tribunals.

139. Because the ICC will be funded by initial contributions from States Parties, cash management skills will be important in this section. When the ICC is relatively inactive, the budgetary needs of the ICC should be relatively predictable. During an active matter, however, considerable expertise will be required to ensure that funds are available when needed.

### 2. Electronic Support Services Unit

140. The Electronic Support Services Unit will handle computer support and system maintenance for the Registry and the Chambers. It will also be responsible for the audio-visual equipment in the courtrooms and for technical liaison with the media. It will report to the head of the Administrative Services Section.

### 3. Construction Supervision Unit

141. When the workload warrants, the Construction Supervisor (see previous section) will be assisted by a unit that will be responsible for establishing courtroom and office facilities for cases being tried in, or near, where the crimes occurred. The unit would probably include a contract officer and assistant. Much of the work will be done by outside contractors acting under the supervision of the unit. The Construction Supervision Unit will report to the head of the Administrative Services Section.

### 4. Additional security guards and general services personnel

142. During an active matter, the ICC will require additional security guards and general services personnel. These units will report to the head of the Administrative Services Section.

### 5. Press and Information Office

143. During active matters, a Press and Information Office (PIO) will handle media relations for the Court and the ICC as an institution. (Press relations for the OTP are handled from within the OTP.) The PIO will report directly to the Registrar.

## 6. Judicial Support Services Section

144. In addition to the Administrative Services Section, the other principal section of the Registry is Judicial Support Services. It will handle support for trials. Separate units within this Section will handle court management and support (responsible for court files), court reporting (supervises court reporters, transcribes testimony, proofs, and releases transcripts), legal support (provides legal advice to the Registry), and the library. It also will supervise Court Management and Support Unit, Language Services Unit and the Detention Unit. It will report to the Registrar, but must be responsive to the needs of the judges.

## 7. The Language Services Unit

145. The Language Services Unit will handle translation and interpretation for the Registry and the Court. (Translation and interpretation for the Prosecution is handled within the Office of the Prosecutor.) The official languages of the ICC will be French and English, but the unit must also be able to work in whatever language is used by witnesses and defendants. This unit will report to the head of the Judicial Support Services Section. This is a change from ICTY practice, where Language Services is within Administrative Services.

## 8. The Defense Counsel Liaison Unit

146. The ICC has an obligation to provide defense counsel to defendants who cannot afford qualified counsel. The ICC may also have to fund the cost of investigators, translators, and other expenses for some defendants. Having full-time defense counsel paid by the Tribunal (a "public defender's" office) is not likely to be cost-effective. In many cases tried by the ICC, multiple defendants will require their own counsel, as a lawyer's best argument is often likely to be that some other defendant was more culpable than the lawyer's client. Separate counsel will be required in many cases, even where there are multiple defendants with similar defenses.

147. Instead of full-time counsel for the defense, defense counsel should formally be independent of the Registry, even if funded by it. This creates the need for two types of supervision.

148. First, the Defense Counsel Liaison Unit should be headed by a second Deputy Registrar. This Deputy Registrar reports directly to the Registrar. The Deputy Registrar will be expected to speak directly to the Registrar to ensure that counsel for the defense are provided with adequate resources. Failure to provide adequate resources to defense counsel in a timely way has been a major problem for both the ICTY and ICTR.

149. Second, a Defense Counsel Advisory Board, consisting of prominent outside attorneys from a variety of legal systems around

the world should advise the Deputy Registrar on a variety of matters pertaining to defense counsel. The Defense Counsel Advisory Board should be consulted on such matters as compensation for defense counsel, the amount of assistance required to assist lead counsel in a given case, and rules regarding the activities of counsel for defendants.

150. Within the Defense Counsel Liaison Unit is a Defense Witness Support Unit. This unit will handle both witness support and, where necessary, witness protection for the defense. (Witness support and protection for the prosecution is handled within the OTP.)

### *C. The Detention Supervision Unit*

151. When the ICC has suspects in custody (and earlier, if the ICC is given, and accepts, responsibility for prisoners of the ICTY and ICTR), a Detention Supervision Unit will be responsible for management of those in custody.

152. Pre-trial detainees will, to the extent possible, be detained at the seat of the Trial Chamber, wherever that may be. This is important so that defense counsel can consult with their clients in preparation for trial.

153. Defendants convicted by the Trial Chamber may be kept in prison at the seat of the Trial Chamber, or, as is more likely, they may be transferred to the seat of the Appeal Chamber in The Hague. The ICC will thus want to continue the relationship established between the ICTY and the Scheveningen Prison just outside The Hague, where ICTY prisoners are presently held awaiting trial.

154. If the Appeal Chamber upholds conviction, prisoners will be detained either in a State that will receive them or in a facility managed by the ICC. The idea of a prison exclusively for those convicted by the ICC sounds unlikely, given the extraordinarily high security that would be expected at an institution that incarcerates only those convicted of the world's most heinous crimes. Logic suggests that dispersal of those convicted may make more sense.

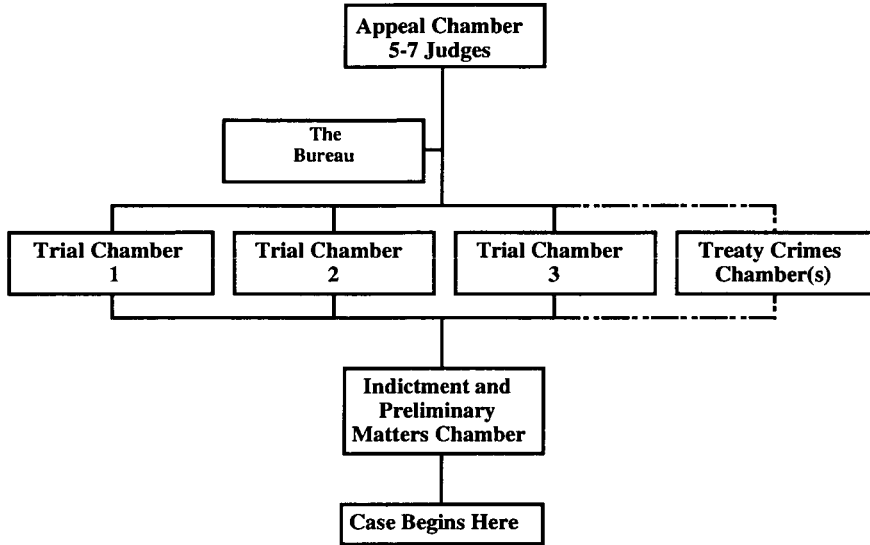
155. Regardless of where prisoners serve their sentences, the ICC should have a voice — and probably the controlling voice — in the terms and conditions of sentence.

## VI. CHAMBERS

### *A. Organization*

156. The judicial organ of the ICC is divided into Chambers, organized as shown in Chart 10. A case is first brought before the Indictment and Preliminary Matters Chamber (IPMC). This chamber confirms indictments and thereafter hears preliminary legal and procedural rulings until the case is ready for trial.

**Chart 10**  
**Chambers**  
 (Read Starting with "Case Begins Here")



157. The trial in the first instance is held before a Trial Chamber.<sup>23</sup> For present purposes, it is assumed that there will be three regular Trial Chambers, with the possibility of a separate chamber to hear treaty crime cases for the reasons discussed above in subpart IIB. For this reason, the Treaty Crimes Chamber is shown with dotted lines in Chart 10. It is possible that there may be more than one Treaty Crime Chamber.

158. Appeals from the decisions of the Trial Chambers are heard by the Appeal Chamber. The PrepCom has not yet determined whether judges may publish concurring or dissenting opinions. The Appeal Chamber's judgments are final.<sup>24</sup>

159. Chambers also includes a Bureau to make administrative decisions for the Court. The Bureau is discussed further in subpart VI D, below.

#### B. *Status and Compensation of Judges*

160. The IPMC and the Trial Chambers consist of four judges, one of whom is an alternate. The Appeal Chamber consists of either five or

23. The precise stage at which a case is passed from the IPMC to the Trial Chamber will have to be addressed in the rules of procedure.

24. The drafters of the ICC Statute may want to make clear that decisions of the ICC may not be appealed to national or other supranational courts.



seven judges. Excluding the possibility of one or more Treaty Crimes Chambers, this means that the Court will consist of a total of 21 or 23 judges.<sup>25</sup>

161. The only judges who will be on full-time status in The Hague will be the four judges of the IPMC and the President of the Court. Unless the workload of the Court is sufficiently great to justify full-time status for other judges, other judges will be on a part-time status, paid a nominal amount plus a per diem when on active service.

162. Compensation for judges should be based on the equivalent of a United Nations Undersecretary-General. This is the compensation level for judges sitting on the ICTY and ICTR.

163. Some creativity will be required to set a fair compensation for judges who are not permanently sitting in The Hague. The PrepCom has considered limiting the nature of outside work that part-time judges could undertake while not sitting in the ICC. This will effectively limit the pool of candidates for judicial appointments to already-sitting judges and academics. The pool may be further limited because only large and relatively prosperous States can easily afford to have a senior judge on leave for what could be months at a time. Similarly, only large and relatively prosperous academic institutions could afford to have one of their finest scholars away from teaching, research, and administrative responsibilities for an extended period. It is likely that there will need to be some flexibility in allowing judges to earn outside income.

164. A further complicating factor is the question of pensions for ICC judges. In many States, judges are awarded relatively generous pensions both because of their many years of service in the law, and also to make it easier for judges of advanced years or infirmity to step down with honor and dignity, knowing that their decision need not be affected in any way by personal financial considerations.

165. The issue of pensions for ICTY and ICTR judges has come up virtually every year before the United Nations' Advisory Committee on Administrative and Budgetary Questions (ACABQ). ICTY and ICTR judges have argued for parity between the *ad hoc* criminal tribunals, whose judges serve 4-year terms, and the International Court of Justice, whose judges serve 12-year terms. Whatever the proper outcome of that dispute, the argument for pensions for ICC judges is stronger.

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25. Concern was expressed at a recent PrepCom session by one State that the number of judges should be limited for reasons of economy. Seen in perspective, this concern is misplaced. The cost to support a single additional judge, even on a full-time basis, is less than 2% of the baseline budget of the ICC, which assumes no active matters. If the ICC has even a single active matter, the cost of an additional full-time judge is likely to be less than one-tenth of one percent of the annual ICC budget. Economics should not play a role in determining the proper number of judges in the ICC.

166. Whatever proposal is adopted for compensation of judges of the ICC, all those involved — both the judges and the States Parties — should incorporate into their thinking that the Committee of States Parties will review judges' compensation after the Court has been in operation for several years. The importance of the judicial function is so overwhelmingly important that the Committee may well decide, after a few years, to pay all judges on a full-time basis, notwithstanding the additional cost this would involve. It will probably take several years of experience with a part-time basis for compensation to convince a skeptical international community that this additional cost is justified by the need to have the most qualified candidates willing and able to serve on the Court.

### C. *Plenary Meetings*

167. All the judges of the Court should meet together once a year in a plenary session. If the Court is busy, plenary meetings may need to be held twice a year, as is the case with the judges of the ICTY and ICTR.

168. At plenary sessions, the judges would adopt and amend rules of procedure, rules regarding detention, rules governing defense counsel and other matters. Some of these decisions will need to be approved by the Committee of States Parties (see Part VII below), but the Committee will benefit from the considered thinking of the judges on these issues.

### D. *The President and the Bureau*

169. The judges of the ICC should annually elect a President from among the judges of the Appeal Chamber. Each of the other chambers would also elect a presiding judge for that chamber. The presiding judge of the IPMC would serve *ex officio* as the First Vice President of the Court. A Second Vice President would be elected by the judges of the Trial Chamber.

170. The President of the Court and the presiding judge of the IPMC would together serve as the Bureau of the ICC. Both the President and the presiding judge of the IPMC are full-time residents at the seat of the Tribunal. The Second Vice President, who would not be a full-time resident at the seat of the Tribunal, would serve on the Bureau only in the event of the death or disability of the President or the First Vice President.

171. The Bureau's functions are:

- To issue formal orders activating the Trial Chambers or the Appeal Chamber, as needed.
- To make the initial decision where the Trial Chamber should hear cases. (The Trial Chamber may review this decision.)
- To prepare and propose the agenda for plenary meetings of the judges.

- To decide issues involving recusal or disqualification of judges, and the assignment of judges to chambers.
- To propose amendments to the rules of procedure and other rules (though other judges may also make such proposals).
- To make other decisions relating to the functioning of the judicial organ of the Tribunal.

172. On some issues, such as when considering changes in the rules of procedure, the Bureau should consult with the Prosecutor or the Registrar.

173. Because the Bureau consists of two judges, it should act by consensus whenever possible, but in the event of a difference of opinion, the decision of the President should prevail.

174. Administrative support for the Bureau should include one legal assistant, one administrative assistant, and one secretary.

#### *E. The Indictment and Preliminary Matters Chamber*

##### 1. Composition and Purpose

175. The Indictment and Preliminary Matters Chamber (IPMC) consists of four judges who are full-time residents at the seat of the Tribunal. Three judges are regular members of the IPMC and one judge serves as an alternate in case one of the three regular judges is unable to participate for any reason.

176. The IPMC serves the following purposes:

- The IPMC issues rulings prior to the confirmation of indictments.
- The IPMC confirms indictments sought by the Prosecutor.
- The IPMC issues rulings subsequent to indictments if Trial Chamber has not yet been convened.
- The IPMC may appoint one of its members to serve as a supervising judge to protect the rights of as-yet unidentified defendants in cases where this is required.

177. In addition to the four judges, the IPMC will be supported by one legal assistant, one administrative assistant, and one secretary. During active matters, the IPMC should have an usher to assist with court sessions.

##### 2. Role of the Alternate Judge in the IPMC and Trial Chambers

178. There are many issues regarding the role of the alternate judge for the drafters of the ICC Statute to consider.

179. The first and most fundamental question is whether to allow for alternate judges at all. This paper strongly endorses the use of alternate judges in the IPMC and the Trial Chambers. When a matter has come before the IPMC or a Trial Chamber, the judges will become familiar with a body of factual issues that gave rise to that matter.

Continuity is important. It would be disruptive — not to mention a poor use of limited judicial, prosecutorial, and defense resources — if the judges' familiarity with those issues were to be lost if a chamber had to re-start completely when a judge could no longer continue with a case.

180. In particular cases, especially those before the Trial Chambers, trials may be lengthy affairs. Any number of reasons might cause a judge not to be able to participate completely through a lengthy trial. Losing a sitting judge during an ICC trial could be particularly costly and disruptive. For example, if a judge has to be replaced and witnesses have to be re-heard, it would be expensive to bring back witnesses who have already testified. Some witnesses might not want to come back. What happens then? One possibility is that the judges who heard the witness the first time would consider that witness's testimony, while the new judge would be able to consider only a written or video transcript, without regard to the judge's personal observations of the witness's credibility and demeanor. The more likely outcome is that the witness's testimony could not be considered by any of the judges. This creates potential for serious mischief, as there could be significant tactical advantages to the prosecution or the defense to force out one judge and thereby lose the testimony of a damaging witness. The alternative — going forward after replacing a judge with another judge who has not heard the evidence and been able to form a first-hand opinion about the credibility of the witness — creates grave problems of perceived injustice to one or both sides in the trial.

181. For these reasons, it is vitally important that the IPMC and Trial Chambers have an alternate judge. This is not so necessary on the Appeal Chamber, where all submissions except oral argument would be in writing. Also, the loss of a judge from a five-member or seven-member chamber would be relatively less severe than the loss of one-third of a three-judge Trial Chamber.

182. Assuming that there is an alternate judge in the IPMC and Trial Chamber, what is the role of the alternate in proceedings? This paper submits that the alternate judge should participate as fully in the trial as any other judge. However, only the three regular judges should participate in deliberations. If one of the regular judges fell seriously ill during deliberations, it would not be so much of a burden to repeat deliberations with the alternate judge present.

183. Another option is to have the alternate judge participate in deliberations but not to vote. This gives the alternate judge more power than simply that of a "back-up" to the regular judges.

184. One possibility independent of the two options just discussed is to choose the alternate judge by lot at the start of deliberations. This makes all judges equal during trial (except for the role of the presiding judge at trial), and prevents any judge from being seen to have "second-class" status by virtue of being the alternate judge. On the

other hand, the Committee of States Parties may prefer to choose which judges sit as regular members and which judge serves as the alternate judge.

#### F. *Trial Chambers*

185. The Trial Chambers do not permanently sit at the seat of the Tribunal. Instead, they are activated by order of the Bureau when they are to consider active cases. Normally, a Trial Chamber should expect 30 days' notice before being required to hear a case. This should give the judges time to arrange their affairs and take up residence at the seat of the Tribunal. It will also allow time to determine where the Trial Chamber should hear cases. The initial choice of location should be made by the Bureau, but the Trial Chamber should have the power to decide where to hear cases if it is persuaded that one or another location would best serve the interests of justice.

186. Initially, there should be three Trial Chambers. This number may need to be increased by the Committee of States Parties if the caseload warrants it.

187. Each Trial Chamber includes three regular judges and one alternate judge. (For a discussion of alternate judges, see section VI E 2, ¶ 180, above.)

188. Administratively, when a Trial Chamber is active, it should have a support staff of one legal assistant, four law clerks, one administrative assistant, one secretary, and one usher.

189. Depending on the nature of the matter, an active Trial Chamber may also require its own computer specialist and its own document management specialist. Under ordinary cases, the Trial Chamber can rely on the Registry for this support. However, if the Trial Chamber is located away from the seat of the Tribunal, or if the matters before the Trial Chamber are especially sensitive, the computer and the document management specialists should be under the administrative control of the Chamber.

#### G. *The Appeal Chamber*

190. The Appeal Chamber does not sit permanently at the seat of the Tribunal. Instead, it would be activated by the Bureau on 90 days' notice when a matter is brought to the Appeal Chamber. In many cases, the rules should provide sufficient guidance for an appeal to be lodged formally with the Appeal Chamber even though most of its judges have not yet gathered together.

191. The Appeal Chamber consists of five or seven judges. The President of the Court presides over the Appeal Chamber. There are no alternates.

192. The administrative staff of the Appeal Chamber, when active, would include one legal assistant, five or seven law clerks (one for

each judge), one administrative assistant, two secretaries, and one usher.

## VII. COMMITTEE OF STATES PARTIES

### A. *Management Oversight of the ICC*

193. Overall responsibility for management oversight of the ICC is in the hands of the Committee of States Parties. The Committee includes all States that are a party to the treaty establishing the ICC. The Committee should meet at least annually, though it must be possible to hold emergency meetings of the full Committee if needed. Each State has one vote in the Committee. An Executive Council, discussed below, must be available to meet more frequently.

194. The purposes of the Committee are:

- To be responsible for management oversight. The Committee must avoid getting involved in specific cases.
- To elect Judges, the Prosecutor, and the Registrar. If a vacancy occurs between sessions, the Executive Committee may fill the vacancy until the next meeting of the Committee.
- To add Trial Chambers, if needed.
- To approve rules of procedure, rules on detention, rules relating to defense counsel, and so on.
- To approve budgets and to apportion costs. Budgeting should be on a two to three years-ahead basis.
- To direct the audit of accounts.
- To appoint an Investigator General who could, if the need should ever arise, look into causes of misconduct by Tribunal officials.
- To establish, if the need is sufficient, an administrative tribunal for ICC personnel.
- To make the final decision on charges of misconduct against senior Tribunal officials.

195. To ensure that States meet their financial obligations to support the ICC, States that are not current on their financial obligations may participate in the Committee but have their vote suspended.

### B. *The Executive Council*

196. The Executive Council is an organ of the Committee of States Parties and provides a means for more frequent management meetings to assist the work of the ICC. Its purposes are:

- To review possible candidates for judges, the Prosecutor and the Registrar, and to make nominations to the Committee.
- In the event of a vacancy in the Prosecutor or Registrar, the normal scenario would be for the principal Deputy Prosecutor or the Deputy Registrar to assume the formal responsibilities of Prosecutor or Registrar. However, in some cases, it may be necessary for the Executive Council to make interim appointments for someone to serve as acting Prosecutor or Registrar.

- To work with the Prosecutor, the Registrar and the Bureau to develop budgets for presentation to the Committee of States Parties.

197. The Executive Council acts by majority vote. There should be no vetoes. It should meet at least quarterly, with urgent consultations made on an as-needed basis. Each State on the Executive Council must have a designated representative at the seat of the Tribunal or within a few hours' train ride. For example, if the seat of the Tribunal is The Hague, a designated representative could be permanently based in Brussels and still be able to participate in urgent meetings of the Executive Council.

198. The size and manner of election of the Executive Council is beyond the scope of this paper. Major contributors are likely to insist on seats. However, any State that is not current on its financial obligations may participate in the Executive Council, but should have its vote suspended.

## VIII. COST ESTIMATES

199. This Part will present cost estimates for the ICC under a variety of operating assumptions. Many of those assumptions have been set out in Parts III-VII of this paper. In addition, however, there are some philosophical assumptions that affect resource demands. These assumptions should be addressed explicitly.

### A. *Some Philosophical Assumptions That Affect the Budget*

#### 1. The ICC prosecutes "Big Fish"

200. Limited resources, both economic and judicial, mean that the ICC should focus its attention on the most serious of crimes and the most culpable of defendants — the so-called "big fish." Thus, the number of defendants per matter will be on the order of 1-100, but not in the thousands or tens of thousands, even where (as in Rwanda) the number of culpable persons is very large.

201. The experience of the ICTY and ICTR suggests that it may be easier to prosecute cases against high-level perpetrators rather than against lower-level trigger-pullers. The doctrine of command responsibility helps produce this result. In a case involving, for example, a camp guard, the prosecution must tie the defendant to a specific crime more than just an ordinary murder, rape, or beating. Given the uncertainty of human memory under the most stressful of situations, such cases are a challenge to present. In contrast, there is usually less uncertainty over who is the commander of a military unit or installation, or who holds high public office.

#### 2. Complementarity will encourage more national prosecutions.

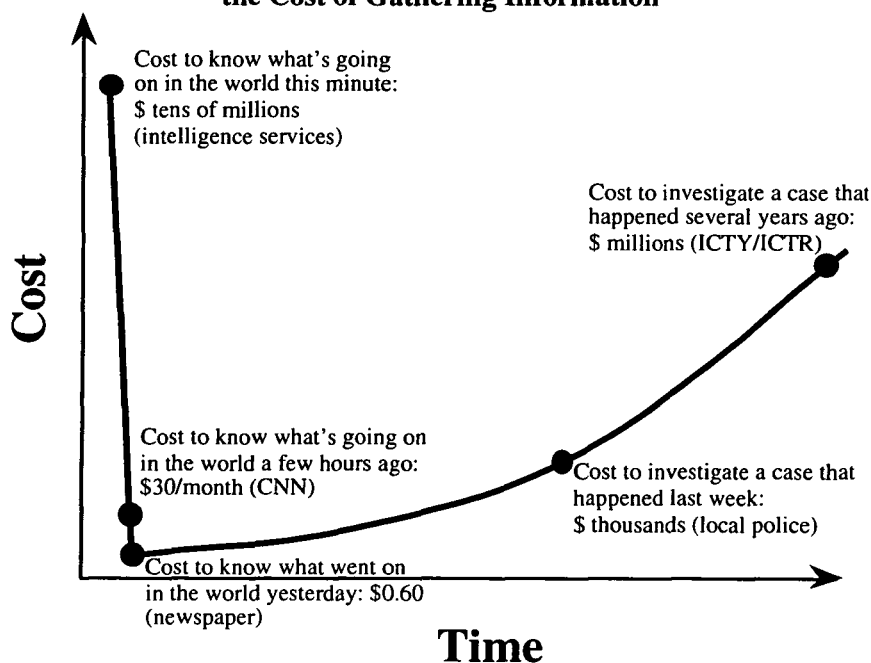
202. The existence of an ICC, along with the principle of complementarity, will encourage more national prosecutions of mid-level and

low-level perpetrators. The assumption is that States will want to prosecute their own where politically feasible. In many cases, both external and internal political pressures may call for the prosecution of top-level perpetrators by an international tribunal, namely the ICC. This will relieve the ICC of the need to focus investigative and prosecutorial resources on relatively lower-level participants.

3. Prompt investigations reduce costs — as well as increase deterrence

203. The delays in startup of the ICTY and ICTR have driven home the fact that prompt investigations can reduce costs. Prompt mobilization of ICC OTP Case Units will enable witness interviews to be undertaken before witnesses are dispersed. Evidence can be gathered quickly before it is lost.

**Chart 11**  
**Conceptual Illustration of How Time Affects**  
**the Cost of Gathering Information**



204. In general, the cost of gathering information increases when investigation is delayed. Chart 11 is a conceptual illustration of this principle. If a State wishes to know what is happening elsewhere in the world on a real-time basis, the State must employ intelligence agencies or national technical means, at a cost in the tens of millions of dollars. To find out what is happening on a few select stories within the past several hours, the cost drops to the subscription fee for CNN or other television news sources. To find out what happened within the



last 24-48 hours, the cost is reduced further to the price of a good newspaper, a fraction of a dollar a day.

205. Over time, however, the cost to reconstruct information increases. To investigate a major crime that occurred last week, a local police force may spend thousands of dollars to have half a dozen police investigators interview witnesses from the crime scene. Within a week of the crime, the witnesses have not had a chance to disperse, and their memories are relatively fresh. It may be necessary to interview only 4 or 5 witnesses to find out what, a year later, would require interviews of 15 or 20 witnesses.

206. The problem faced by the ICTY (and, to a lesser extent, the ICTR) was that, years after the crimes occurred, witnesses were widely dispersed. For example, survivors of crimes in Bosnia had been relocated throughout Europe, Asia, and North America. In addition, many witnesses had not moved far in distance but had moved to places whose authorities would not make them available to ICTY investigators.

207. A final point about the importance of a rapid response is that knowledge that the Prosecutor is moving quickly may help deter some crimes from occurring. In a number of instances — Rwanda being but one example — perpetrators of massive crimes have counted on little or no international media attention to give them time to commit their crimes. A Prosecutor with a rapid-response capability can help to mobilize international attention. International media attention may discourage crimes from being committed in the first place.

208. The key to rapid response is a staff of people with the cash resources to secure necessary transportation and other specialized investigative resources for the case at hand. Money but no staff would require the Prosecutor to take the time to recruit staff before going out into the field. Correspondingly, investigators without travel money are just as unable to get out into the field. Sometimes the investigators will need cash to hire extra security; other times, they may need their cash for forensic equipment. It is impossible to predict with absolute certainty what will be the most urgent need when a matter arises, but both ready staff and ready cash must be available at once.

#### *B. A Baseline Budget*

209. As discussed above in section IV A 1, ¶ 81, the baseline budget of the ICC — those resources that will be required when there are no active matters — should as small as possible, consistent with the need to be able to respond quickly when a matter arises.

##### *1. Staffing*

210. Appendix A is an outline of a staffing table for the Office of the Prosecutor, the Registry and Chambers. It shows, at the top, salaries for grades that approximate those of the United Nations system,

ranging from the top — Undersecretary-General, for the judges and the Prosecutor — down through P-2, general service level, and security. The personnel figures shown reflect the baseline or core staff described above in sections IV B 1, ¶ 90, and V A 1, ¶ 135. Other units that would become activated at a later time are also shown.

211. Table 3 summarizes the staffing required for the baseline budget of the Tribunal:

**Table 3**  
**Summary of Staffing Table – Baseline Budget**

	Professionals	Support Staff	Total
Office of the Prosecutor	15	8	23
Registry	7	23	30
Chambers	7	5	12
Total	29	36	65

#### 2. Annual baseline budget

212. Appendix B shows a detailed baseline budget for the ICC. Assuming there are no active matters, the budget is estimated at \$12.4 million a year. Table 4 summarizes the figures shown in Appendix B.

#### 3. Startup expenses.

213. Appendix C shows a detailed budget for the startup expenses of the ICC. Startup expenses are estimated at \$13.8 million. Table 5 summarizes the figures shown in Appendix B.

#### 4. Additional security at the Aegon building vs. the cost of a new building for the ICC

214. This does not include the cost to upgrade security at the Aegon building as discussed above in subpart III D, ¶ 71, or, in the alternative, to build a new facility to house the Tribunal. Appendix C also presents an estimate of these costs, which total \$11.75 million, though some of the costs are in the alternative. In particular, if the courtrooms are relocated to the interior of the Aegon building, at an estimated cost of \$3,000,000, then the need to increase security at the neighboring Congresgebouw, at a cost of \$2,250,000, is diminished.

**Table 4  
Summary of Baseline Budget**

	<b>Estimate</b>
<b>Office of the Prosecutor</b>	
Salaries	2,085,000
Travel	40,000
Office Expenses, Furniture and Equipment	115,750
Annual Meeting	<u>185,000</u>
OTP Subtotal	\$2,421,250
<b>The Registry</b>	
Salaries	\$1,808,875
Travel	30,000
Office Expenses, Furniture and Equipment, and Committee of States Parties	2,227,900
Rent and Related Services	<u>3,324,640</u>
Registry Subtotal	\$7,391,415
<b>Chambers</b>	
Salaries	\$1,477,688
Travel	<u>20,000</u>
Chambers Subtotal	<u>\$1,497,688</u>
<b>Subtotal</b>	\$11,310,353
10% Reserve for Contingencies	<u>\$1,131,035</u>
<b>Total</b>	<u><u>\$12,441,388</u></u>

215. To the \$11.75 million cost to upgrade security must be added the rental that the ICC would pay for the Aegon building. By the time of possible occupancy of the Aegon building by an ICC, the United Nations will be paying \$2,954,500 for rent, cleaning and building maintenance. Over five years, the rental on the Aegon building would total \$14.77 million.<sup>26</sup>

**Table 5**  
**Summary of Startup Expenses**

	<b>Estimate</b>
<b>Office of the Prosecutor</b>	
Salaries	\$2,248,375
Travel	150,000
Office Expenses, Furniture and Equipment, Computers and Secure Communications	1,262,766
OTP Subtotal	<u>\$3,661,141</u>
<b>The Registry</b>	
Furniture	\$2,000,000
Computers	4,500,000
Audiovisual and Communications Equipment	650,000
Deployable Field Office	<u>1,700,000</u>
Registry Subtotal	<u>\$8,850,000</u>
<b>Subtotal</b>	<b>\$12,511,141</b>
10% Reserve for Contingencies	<u>\$1,251,114</u>
<b>Total</b>	<b><u>\$13,762,255</u></b>

26. Given that the building rental by 1999 would be approximately \$2.45 million, this would imply a purchase price of between \$20.4 million and \$40.8 million, depending on the implied discount rate (these estimates assume a discount rate of between 6% and 12%). This estimate excludes any applicable taxes. To determine a fair purchase price for the Aegon building would require a formal appraisal. If the ICC is going to stay in the Aegon building, the building should probably be purchased by the Tribunal.

216. Thus, the total cost for the Aegon building with enhanced security could be \$26.5 million over a five-year period, with additional rental and other expenses beyond year five in addition to this. In contrast, if the Government of The Netherlands will donate a suitable site in The Hague, a new building could probably be constructed for \$15 million to \$25 million that would be more secure and better suited for the needs of the Tribunal. A new building may be more cost-effective in the long run.

### C. *One to Two Active Matters*

217. The cost to investigate and prosecute an active matter from start to finish is so dependent on the specific facts of the matter that any estimate is little more than an order-of-magnitude approximation. Indeed, the experience of the ICTY and the ICTR provides little worthwhile guidance.

218. The first budget for the ICTY was a four-line-item budget of \$31.2 million on the last page of the Secretary-General's report that formed the basis of the ICTY's Statute, adopted in May 1993.<sup>27</sup> This became the basis for a budget of \$33.2 million in December of 1993,<sup>28</sup> later revised to \$32.6 million in March of 1994.<sup>29</sup> This budget was for what, at the time, were the remaining seven quarters in the biennium 1994-95. This was increased slightly, so that the ICTY's expenditures for 1994-95 were approximately \$35.8 million (net).<sup>30</sup> The ACABQ approved a one-year budget for the ICTY for 1996 that was approximately \$40.8 million (gross),<sup>31</sup> and for the ICTR, \$38.8 million (gross).<sup>32</sup> There are indications in the budget made public by the Secretary-General that both Tribunals are expected to seek substantial increases for 1997.<sup>33</sup> In the meantime, the Secretary-General has sought what

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27. *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, U.N. SCOR, Addendum, Annex at 2, U.N. Doc. S/25704/Add.1 (1993).

28. *Financing of the International Tribunal for the Prosecution of Persons Responsible for the Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, U.N. GAOR, 5th Comm., 48th Sess., ¶ 56, U.N. Doc. A/C.5/48/44 (1993).

29. *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, U.N. GAOR, 5th Comm., Addendum, 48th Sess., ¶ 19, U.N. Doc. A/C.5/48/44 (1994).

30. *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991: Report of the Secretary General*, U.N. GAOR, 5th Comm., 51st Sess., Table 1, at 3, U.N. Doc. A/C.5/51/30 (1996).

31. *Id.*

32. *Report of the Advisory Committee on Administrative and Budgetary Questions*, *supra* note 5, at Table 1.

33. *Id.* at 1, for the ICTR; for the ICTY, see *Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Human-*

amounts to a zero-growth budget, in terms of staff, in the provisional dollar amounts for 1997 of \$53.5 million (gross) for the ICTY and \$46.7 million (gross) for the ICTR.

219. Even with these budgets, there are substantial unmet needs that both the ICTY and ICTR have. These include:

- WITNESS PROTECTION, SECURITY, OR RELOCATION. At present, a small staff in each Tribunal tries to arrange witness relocation. As a practical matter, this can be done only in high-profile cases. Many witnesses who deserve special protection, security, or relocation simply cannot get it.
- TRANSPORTATION. Neither the ICTY nor the ICTR have adequate transportation for investigators.
- MASS GRAVE EXHUMATION. So far, both *ad hoc* tribunals have been able to rely on voluntary contributions to undertake mass grave exhumations. This is not sustainable. It would be imprudent to assume that voluntary contributions will always be available to pay for these essential investigative needs.

220. Clearly, the budgets for the ICTY and the ICTR are not yet at equilibrium between the needs of those matters and the resources available to bring those matters to a successful conclusion.

221. Based on experience thus far, and given the range of matters that an ICC would have to investigate, it seems reasonable to plan on a cost for an active matter between a minimum of \$10 million and a maximum of \$150 million a year, with the most likely scenario being between \$30 million and \$60 million a year. These assumptions include an allowance of \$10 million per matter to establish field offices and courtroom facilities away from the seat of the Tribunal.

222. It should be recognized that these budget figures are in addition to the baseline budget, but they also imply a significantly stronger investigative and prosecutorial effort than either the ICTY or the ICTR has been able to mount to date. For example, about \$10 million of the baseline budget of the ICC is included in the ICTY's \$30 million–\$40 million budget. This includes rental on the Aegon building, salaries for some Tribunal personnel, equipment, and the like.

#### D. *Three or More Active Matters*

223. If the work of the ICC involves several ongoing matters at once, the cost of each additional matter would probably not be as great as the first one or two active matters then underway. Standard principles of economics suggest that the marginal cost of each additional investigation ought to be less. Table 6 below illustrates this principle.

### E. *Financing*

224. Initial discussion has already taken place on how the ICC should be financed.<sup>34</sup>

#### 1. Assume financing from States Parties by class

225. This paper recommends that the ICC be financed by the States Parties, by class. In this way, one State is not responsible for the dominant share of the ICC's expenses. (Nor could one State claim a dominant voice in the management of the ICC.) The wealthiest States Parties should all pay the same share. Second-tier States Parties would pay a lesser amount, and so on. The number of classes is somewhat arbitrary; but five seems a reasonable number.

**Table 6**  
**Cost of Many Active Matters at Once**

	Annual Cost per Matter for One or Two Matters	Annual Cost per Matter for Three or More Matters
Minimum Cost	\$10 million	\$5 million
Maximum Cost	\$150 million	\$100 million
<b>Range of Most Likely Matters</b>	<b>\$30–\$60 million</b>	<b>\$20–\$50 million</b>

2. States that bring complaints should not ordinarily be expected to contribute to the cost of that case

226. While some have suggested that States that bring complaints should pay for the costs of investigation and prosecution of those complaints, this paper takes the view that this should not be required. Requiring contributions in every case creates the appearance of a conflict of interest between those paying the bills and those who must, impartially, conduct the investigation. Instead, the cost of the case should be apportioned among the States Parties by class as part of the cost of international justice.

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34. See, e.g., *Committee Is Told Proposed International Criminal Court Should Be Complementary to National Jurisdictions*, U.N. press release, U.N. Doc. GA/L/2876, (1995); *Preparatory Committee for International Criminal Court Continues Discussing Creation of Court by Treaty*, U.N. press release, U.N. Doc. GA/L/2808, (1996); *Preparatory Committee for International Criminal Court Concludes Second Session*, U.N. press release, U.N. Doc. GA/L/2813, 30 August 1996. See also Institute for Global Policy, *Prospects for the Financing of an International Criminal Court*, 1996.

227. Voluntary contributions should not be refused. They should be accepted at the discretion of the Prosecutor or the Registry, as the case may be.

3. States Parties that bring Treaty Crime complaints may contribute to cost of that case

228. In treaty crime cases, funding by the States bringing the case to the ICC may be appropriate. Presumably, all involved States would agree on a percentage share of costs to be paid by each of them. Wealthier States may want to contribute to a voluntary fund so that smaller States Parties are not prevented from bringing treaty crime cases.

4. Sixty States Parties should be able to give the Tribunal adequate funding that its successful startup is assured

229. If each of 60 States Parties sign the treaty setting up the ICC, and each State pays \$1 million upon signing the treaty, this would give the Tribunal a startup fund of \$60 million. This sum should be adequate to finance startup costs and one large or two small active matters during the first year or two of operations. The Committee of the States Parties will then have a year to review a budget for subsequent years.

5. The ICC should budget three years ahead

230. The ICC should adopt the practice of preparing budgets three years ahead, so that the States Parties can plan how to fulfill their financial obligations to the Tribunal. Presumably, in any given budget year, the budget for the next year should be highly specific, the budget for two years out will be general, and the budget for three years ahead would be contingent. Requiring advance planning will be an important exercise to ensure that ICC staff and the States Parties have adequately planned for the Tribunal's future needs.

## IX. CONCLUSION

231. With only a limited amount of PrepCom time available, now is the time for those involved in drafting the ICC Statute to consider administrative and financial issues affecting the future of the ICC:

- **EASIER TO DO NOW THAN LATER.** Small changes can be made now to the ICC Statute to improve administrative efficiency. Those changes, at the present time, are likely to be non-controversial. Changing the Statute at a later date may be difficult.
- **A SUCCESSFUL START FOR THE ICC IS VITAL.** If the ICC is seen from the outset as doing justice, its authority and legitimacy will be strengthened. This strength will not only increase cooperation with the ICC, it should also help deter violations of international humanitarian law from being committed. Administrative and finan-



cial issues must not be allowed to cause the ICC to stumble. A first success will create the momentum for further successes.

- **MANY LESSONS ARE AVAILABLE FROM EXPERIENCE OF ICTY AND ICTR.** The experiences of the ICTY and the ICTR have taught the international community much about what an international criminal tribunal needs to succeed. That experience should be applied in the drafting of the ICC Statute.

- **PROPER HANDLING OF ADMINISTRATIVE AND FINANCIAL ISSUES ARE ESSENTIAL FOR THE ICC'S SUCCESS.** For the ICC to succeed, considerable efforts and talents from States Parties and from the best jurists, prosecutors, investigators and administrators will be essential. The Statute of the International Criminal Court must provide a sound administrative and financial foundation to ensure that the ICC becomes an effective instrument of international justice.

## Administrative and Financial Issues of the International Criminal Court – Appendices Appendix A – Staffing

(\$ Thousands)	USG	ASG	D-2	D-1	P-5	P-4	P-3	P-2	GS-PL	GS-OL	SS
Base Salary	145	125	115	105	95	85	75	50	40	30	30
Full-Cost (+25%)	181	156	144	131	119	106	94	63	50	38	38

*(Figures shown are rounded to nearest thousand; unrounded figures used in calculations)*

### Staffing Table

#### Office of the Prosecutor–Permanent Staff

Prosecutor	1										
Chief of Staff				1							
Personal Asst.									1		
<b>Administration Unit</b>											
Ch. Admin.				1					1		
Budget Officer						1		1			
Personnel Officer								1			1
Travel Officer								1			1
<b>Legal Services Unit</b>											
Counsel					3				1		1
<b>Research Unit</b>											
Director				1							1
Staff					1	2	1				1
Column Totals	1	0	0	3	4	3	3	1	3	5	0
<b>Total</b>	Professionals		15	Support Staff		8					
<b>Startup Unit</b>											
Staff			1		2	2	2	2			4
<b>Deployment Unit</b>											
Staff					1	1	3				4
<b>First Case Unit</b>											
Lawyers			1		1	2	1	2			2
Investigators					1	2	1				1
Translators						1	2	3			
Liaison Officer							1				
<b>Victim &amp; Witness Unit</b>											
Staff						1	3-10	1-8			3-5
<b>Litigation Support Unit</b>											
Staff						1	2-5	2-5			20-40
<b>Computer Services Unit</b>											
Staff						1	0-1	0-1			2-8

USG ASG D-2 D-1 P-5 P-4 P-3 P-2 GS-PL GS-OL SS

**Secure Communications Unit**

Staff 1 0-1 0-8

**Research Unit (expanded)**

Staff

**Video Preservation and Analysis Unit**

Staff

**Press and Information Office**

Staff

**Forensic Pathology Unit**

Staff

**Forensic Sciences Unit**

Staff

**The Registry**

Registrar	1										
Deputy Registrar			1								
Personal assistant								1			
Archivist							1				
<b>Library</b>											
Head Librarian						1					
Staff										2	
<b>Other</b>											
Construction Supervisor						1					
General Services								1		8	
Guards											12
Conference Support							1				
Column Totals	0	1	0	1	0	2	2	1	1	10	12
<b>Total</b>	Professionals		7	Support Staff			23				

**During Active Matters****Administration Services**

Administration			1						1		
Budget & Finance						1					1
Electronic Support Services Unit						1		3			2
General Services											
Guards											24
Construction Supervision							1				1
<b>Judicial Support Services</b>											
Court management and Support							varies			varies	
Court Reporting							varies	varies	varies		
Legal Support											
Language Services Unit							varies	varies	varies		
Library											
<b>Other</b>											
Press and Information Office							1				1



1997

ORGANIZATION

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USG ASG D-2 D-1 P-5 P-4 P-3 P-2 GS-PL GS-OL SS

*Active Trial Chambers (3d active chamber)*

Judges	4									
Secretaries								1	1	
Legal Assistants/Clerks						1	4			
Usher								1		

*Other*

Computer Specialist							1			
Document Management Specialist							1			

**When No Active Matters**

<b>Total</b>	Professionals	7	Support Staff	4
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<b>Maximum</b>	Professionals	69	Support Staff	23
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## Appendix B – Baseline Budget

(Assuming no active matters)

All figures in US\$

### Office of the Prosecutor

#### Salaries

Salaries at Full Cost	2,050,000	See staffing table. <i>1 USG, 0 ASG, 0 D-2, 3 D-1, 4 P-5, 3 P-4, 3 P-3, 1 P-2/1, 3 GS-PL, 5 GS-OL, 0 Security</i>
Temporary Assistance and Overtime	20,500	1% of salaries, based on ICTY 1995 experience.
Consultants and Experts	10,000	Assumption.
		<i>Subtotal: \$2,080,500</i>

#### Travel

Travel for Permanent Staff	40,000	Assumes no matters become active.
		<i>Subtotal: \$40,000</i>

#### Other Expenses

General Operating Expenses, Supplies and Materials	30,750	1.5% of salaries, based on ICTY 1996 (ICTY 1995 was 0.5%)
Furniture Maintenance and Replacement	5,000	Assumption. Acquisition of furniture is covered under Startup Expenses.
Computer Database Maintenance and Expenses	80,000	Hardware and software maintenance, subscriptions to electronic services
		<i>Subtotal: \$115,750</i>

#### Annual Meeting

Travel	157,500	Assume 50 people travel at an average cost per person of \$1500 airfare, \$350/day hotel+meals for 4 days, and \$250 for taxis and incidentals
Language Services for Meeting	20,000	Contract translation for four days.
Speakers' Honoraria	7,500	Assume 5 speakers at \$1500 each.
		<i>Subtotal: \$185,000</i>
		<i>OTP Subtotal: \$2,421,250</i>

### The Registry

#### Salaries

Salaries at Full Cost	1,625,000	
		<i>0 USG, 1 ASG, 0 D-2, 1 D-1, 0 P-5, 2 P-4, 2 P-3, 1 P-2/1, 1 GS-PL, 10 GS-OL, 12 Security</i>
Temporary Assistance and Overtime	173,875	10.7% of salaries, based on ICTY 1996 experience.
Consultants and Experts	10,000	Assumption.
		<i>Subtotal: \$1,808,875</i>

#### Travel

Travel for Registry Staff	30,000	Assumes no matters become active.
		<i>Subtotal: \$30,000</i>

#### Other Expenses

General Operating Expenses, Supplies and Materials	2,000,000	ICTY 1995-97 have budgeted \$4 million-\$5 million
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Furniture Maintenance and Replacement	5,000	Assumption. Acquisition of furniture is covered under Startup Expenses.
Computer Database Maintenance and Expenses	20,000	Hardware and software maintenance, subscriptions to electronic services.
Hospitality	2,900	ICTY 1997.
Expenses of Conference of States Parties	200,000	Estimated cost of translators, setup, rental of conference facility. Assume that each State pays its own direct costs. <i>Subtotal: \$2,227,900</i>
<b>Operating Expenses</b>		
Rent	2,766,700	Based on rental of all of Aegon building. Another approach would be to have a small office for core staff and to acquire additional office space only when necessary.
Detention Facilities	50,000	An "option" on jail cells at Scheveningen prison.
Cleaning Service	212,700	ICTY 1997. Assumes all of Aegon or equivalent space.
Supplies	295,240	20% of ICTY 1997 supplies. <i>Subtotal: \$3,324,640</i> <i>Registry Subtotal: \$7,391,415</i>
<b>Chambers</b>		
Salaries at Full Cost	1,331,250	<i>5 USG, 0 ASG, 0 D-2, 0 D-1, 0 P-5, 2 P-4, 0 P-3, 0 P-2/1, 2 GS-PL, 3 GS-OL, 0 Security</i>
Common Costs of Judges	133,125	10% of salaries.
Overtime	13,313	1% of salaries
Travel	20,000	Estimate. <i>Chambers Subtotal: \$1,497,688</i>
<b>Subtotal</b>	<u>11,310,353</u>	
Reserve for Contingencies	1,131,035	10% for contingencies
<b>Total</b>	<u>12,441,388</u>	

## Appendix C – Startup Expenses

(During the first 18 months)

### Office of the Prosecutor

#### Salaries

Startup Unit Salaries at Full Cost	1,584,375	For 1.5 years. See staffing table.
Relocation allowances for Permanent Staff	460,000	Assume average of \$20,000 per person.
Relocation allowances for 40% of Startup Unit Consultants and Experts	104,000	Assume 60% of Startup Unit comes from ICTY.
	100,000	Assumption.
		<i>Subtotal: \$2,248,375</i>

#### Travel

Travel for Startup Unit Staff	150,000	Assumption.
		<i>Subtotal: \$150,000</i>

#### Other Expenses

General Operating Expenses, Supplies and Materials	23,766	Same 1.5% of salaries as Baseline Budget.
Furniture Acquisition	460,000	Based on ICTY 1995+1996; much ICTY 1994 furniture was donated by Aegon.
Secure Communications Equipment - 2 satellite earth stations (wait to buy until needed)	545,000	Based on ICTY 1997 cost of satellite earth stations (\$555,000 for 3 earth stations) plus 8 secure telephones and 8 secure fax machines (ICTY budgeted \$25,000 for 2 secure telephones and 2 secure faxes) plus \$75,000 for other equipment.
Computers	234,000	36 workstations plus related peripherals: 4 Tempest-certified computers.
		<i>Subtotal: \$1,262,766</i>
		<i>OTP Subtotal: \$3,661,141</i>

### The Registry

#### Office Equipment

Furniture	2,000,000	Based on \$3.4 million for ICTY in 1994-95, \$1.3 million in 1996 and 2.8 million in 1997. This assumes some furniture will need to be bought for temporary quarters, but that eventually the Aegon building (or at least its furniture) will be available.
Computers	4,500,000	Will probably have to upgrade computers used by ICTY.
Audiovisual equipment	250,000	Will eventually use ICTY equipment, but will need some for evidence preservation purposes in the meantime.
Communications Equipment	400,000	Secure telephones, radiotelephones and computers. Cannot wait until a matter arises to acquire this equipment.

#### Field Office

Pre-Fab Office for Deployment in the Field	1,700,000	
		<i>Registry Subtotal: \$8,850,000</i>



<b>Subtotal</b>	<u>12,511,141</u>
Reserve for Contingencies	1,251,114 10% for contingencies
<b>Total</b>	<u>13,762,255</u>

### Improving Aegon Building Security

Congresgebouw		
Metal Detectors	250,000	
15 Security Guards for 5 Years, Plus Supervisor	2,000,000	Assume guard + equipment is \$25,000/year
Courtroom Remodeling	3,000,000	May not be feasible given building interior.
Barriers to Garage	150,000	
Close Johann de Wittlaan Eisenhowerlaan near Aegon	350,000	Does not value the effect of a major disruption to traffic in The Hague.
Buy Adjacent Residential Office Buildings on Northwest Side of Eisenhowerlaan	6,000,000	Does not value benefit to ICC of having non-secure office space or residences for Tribunal staff.
<b>Total for Additional Aegon Security</b>	<u>11,750,000</u>	

*Figure above does not include rent on the Aegon building*

Rent Through 2007	2,450,800	ICTY 1997 excl. courtroom renovation
Cleaning Cost (annual)	212,700	Based on ICTY 1997 use of space
Building Maintenance (annual)	291,000	Based on ICTY 1997 use of space
<b>Total</b>	<u>2,954,500</u>	
Five-year rental	14,772,500	
<b>Total Cost to Secure Aegon Building and Rent for Five Years</b>	<u>26,522,500</u>	

#### Alternative: Constructing a New Building for Tribunal

Likely Minimum	15,000,000
Likely Maximum	25,000,000

