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**Preparatory Commission for the International
Criminal Court**

**Working Group on an Agreement on the Privileges and
Immunities of the International Criminal Court**

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**Draft agreement on the privileges and immunities of
the Court**

**Discussion paper proposed by the Coordinator on articles 17 and
19 in PCNICC/2001/L.1/Rev.1/Add.3**

Article 17

Witnesses ~~and victims~~

1. ~~Witnesses and victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy~~ **[in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business,]** the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence, including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them ~~[in the course of] in connection with~~ their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;

(c) Inviolability of documents, papers and materials **in whatever form** relating to their testimony;

(d) **For purposes of their communications with the Court and counsel in connection with their testimony,** the right to receive and send **papers, documents and materials in whatever form** ~~papers or correspondence relating to their~~



~~testimony by courier or in sealed bags and to receive and send electronic communications relating to their testimony;~~

(e) Exemption from immigration restrictions or alien registration ~~[-when they travel to and from the Court for purposes of their testimony-];~~

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of **the concerned witness counsel, or persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence, concerned;**

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

2. ~~Witnesses and victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence~~ who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 17 bis Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy **[in any State Party in which they may be on the business of the Court, or in any State Party through which they may pass on such business,]** the following privileges, immunities and facilities to the extent necessary for their appearance before the Court ~~for purposes of giving evidence,~~ including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them ~~[in the course of]~~ ~~[-]~~ in connection with ~~[-]~~ their ~~testimony~~ **appearance before the Court,** which immunity shall continue to be accorded even after their appearance ~~and testimony~~ before the Court;

(c) Exemption from immigration restrictions or alien registration ~~[-when they travel to and from the Court for purposes of their~~ **appearance** ~~testimony-];~~

2. ~~Witnesses and~~ Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying ~~that their participation in the proceedings of the Court~~ **their participation in the proceedings of the Court** ~~presence is required at the seat of the Court~~ and specifying a time period during which such presence is necessary.

Article 18

Experts and other persons required to be present at the seat of the Court

1. Experts and other persons required to be present at the seat of the Court shall, **[in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business,]** to the extent necessary for their testimony or the performance of their necessary functions for the Court, including the time spent on journeys in connection with their appearance or the performance of their functions, be accorded the privileges, immunities and facilities provided for in article 16, subparagraphs (a) to (f), of the present Agreement, subject to the production of the document referred to in paragraph 3 of this article.
2. Experts and other persons required to be present at the seat of the Court shall be accorded repatriation facilities in time of international crisis.
3. Experts and other persons required to be present at the seat of the Court shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 19

Experts on mission

1. Experts performing missions for the Court shall be accorded **[in any State Party in which they may be on the business of the Court, or in any State Party through which they may pass on such business]** the following privileges, immunities and facilities ~~[as are necessary]~~ ~~[-to the extent necessary]~~ for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions, subject to the production of the document referred to in paragraph 2 of this article:
 - (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
 - (b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their mission, which immunity shall continue to be accorded even after they have ceased to be employed on missions for the Court;
 - (c) Inviolability of documents, ~~papers records~~ and materials **in whatever form** relating to their missions;
 - (d) For the purposes of their communications with the Court, the right to receive and send **documents, papers, correspondence or other and materials in whatever form relating to their missions** ~~by courier or in sealed bags and to receive and send electronic communications;~~
 - (e) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;
 - (f) The same facilities in respect of currency and exchange as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(h) Exemption from immigration restrictions or alien registration for the duration of their mission, as specified in the document referred to in paragraph 2 of this Article.

2. Experts on mission who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that they are on a mission for the Court and a time period for which such a mission will last.

**Article xx (21)*
Waiver of privileges and immunities**

1. The privileges and immunities provided for in articles 14 to 19 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:

(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) In the case of the Registrar, by the Presidency of the Court;

(c) In the case of the Deputy Prosecutors and the staff of the Office of the Prosecutor, by the Prosecutor;

(d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(e) In the case of counsel, by **the Presidency**;

(f) In the case of personnel ~~recruited locally and assigned to hourly rates referred to in Article 15 bis, by the head of the organ of the Court employing such personnel if, in the opinion of the head of the organ, such personnel's immunity would impede the course of justice and the immunity can be waived without prejudice to the interests of the Court~~ **the Presidency** ~~the Prosecutor~~ ~~the Registrar~~;

(g) In the case of witnesses and victims, by **the Presidency**;

(h) In the case of experts and other persons required to be present at the seat of the Court, by **the Presidency**;

(i) In the case of experts on mission, by the head of the organ of the Court employing the expert if, in the opinion of the head of the organ, the expert's immunity would impede the course of justice and the immunity can be waived without prejudice to the interests of the Court.

* Article to be numbered as appropriate.