



21 March 2011

**Annual report of the Advisory Committee on Legal Texts issued pursuant to rule 16 of the Rules of Procedure of the Advisory Committee on Legal Texts**

A. Issuance of this annual report

1. This first annual report of the Advisory Committee on Legal Texts (“ACLT” or “committee”), produced in English and French, is issued pursuant to rule 16 of the Rules of Procedure of the ACLT, which provides as follows:

**“16. Annual Report**

16.1 The ACLT shall produce an annual report in English and French summarising its activities for the previous year.

16.2 The ACLT annual report shall be public.”

2. Since this is the first annual report to be issued by the committee, it summarises the committee’s activities since its first constituting meeting, which took place on 27 February 2006, until the date of issuance of this report. It also summarises how the ACLT works and its mandate.

B. Mandate of the ACLT

3. The ACLT was established pursuant to regulation 4 of the Regulations of the Court which were adopted by the judges of the Court on 26 May 2004, pursuant to article 52 of the Rome Statute.<sup>1</sup>

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<sup>1</sup> Article 52 (Regulations of the Court) provides:

“1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.”

4. Regulation 4 (4) provides:

4. The Advisory Committee shall consider and report on proposals for amendments to the Rules, Elements of Crimes and these Regulations. Subject to sub-regulation 5, it shall submit a written report in both working languages of the Court setting out its recommendations on such proposals to a plenary session. A copy thereof shall be provided to the Prosecutor and the Registrar. The Advisory Committee shall also consider and report on any matter referred to it by the Presidency.
5. When a proposal for an amendment to the Rules or to the Elements of Crimes is presented by the Prosecutor, the Advisory Committee shall transmit its report to the Prosecutor.

5. In this respect, the task of the committee is the consideration of amendments to the Rules of Procedure and Evidence, the Elements of Crimes and the Regulations of the Court, and subsequent recommendations in relation thereto, in addition to the consideration of referrals submitted to it by the Presidency.

6. Referrals by the Presidency are also referred to specifically in regulation 23 (2) of the Regulations of the Court, providing that “[t]he Presidency may refer any matter relating to the standard forms and templates to the Advisory Committee on Legal Texts for its consideration”, and regulation 107 (1) of the Regulations of the Court which provides that agreements referred to in that provision “shall be negotiated under the authority of the President who may seek recommendations from the Advisory Committee on Legal Texts.”<sup>2</sup>

#### C. ACLT Meetings

7. The ACLT is required to “meet at least twice a year and at any time at the request of the Presidency”<sup>3</sup>. To date, no such additional request by the Presidency has been made and all ACLT meetings have been convened by the chairperson of the committee.

8. Rule 7 of the Rules of Procedure of the ACLT (on the ACLT Rules, see further below) deals with ACLT meetings and provides in sub-rule 1:

- “1. Subject to regulation 4 (2) of the Regulations of the Court, ACLT meetings shall be convened by the Chairperson at intervals which he or she deems appropriate or at a member’s request and when the Chairperson deems

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<sup>2</sup> This regulation was amended on 14 November 2007; previously it provided that the President “shall seek recommendations from the Advisory Committee on Legal Texts.”

<sup>3</sup> Regulation 4 (2) of the Regulations of the Court.

necessary. In convening ACLT meetings, the Chairperson shall take into account the dates envisaged for plenary sessions as referred to in rule 4 of the Rules of Procedure and Evidence.”

9. The ACLT has been in existence since 27 February 2006 and has so far held thirteen meetings; it has generally held its meetings with either the elected members present or, in his or her absence, a substitute member, as provided for in rule 6 of the Rules of Procedure of the ACLT (see below). In addition, because the representative of counsel from the list of counsel is based in the United States of America, he has not always attended meetings in person and has, on several occasions, participated by way of telephone conference call.

D. Composition of the ACLT

10. Regulation 4 (1) of the Regulations of the Court provides:

- “1. There shall be an Advisory Committee on Legal Texts comprised of:
- (a) Three judges, one from each Division, elected from amongst the members of the Division, who shall be members of the Advisory Committee for a period of three years;
  - (b) One representative from the Office of the Prosecutor;
  - (c) One representative from the Registry; and
  - (d) One representative of counsel included in the list of counsel.”

11. Rule 6 of the Rules of Procedure of the ACLT (Substitute members) provides:

The members may each nominate a substitute. That substitute must fulfil the criteria for eligibility as a member of the ACLT from that member’s constituency and may represent the relevant member at ACLT meetings. Substitute members shall not be entitled to vote.

12. The ACLT is thus comprised of 6 members; one judge from each of the judicial Divisions (pre-trial, trial and appeals) and one representative each from the Office of the Prosecutor, the Registry and the list of counsel as described in rule 21 (2) of the Rules of Procedure and Evidence. The judges are each elected for a period of three years by their respective constituencies (regulation 4 (1) a) of the Regulations of the Court).

13. The positions of the representative from the Registry and the representative of counsel included in the list of counsel are further dealt with in regulation 3 of the Regulations of the Registry (Designation of members of the Advisory Committee on

14. As for the representative of counsel included in the list of counsel, regulation 3 (2) of the Regulations of the Registry sets out the procedure dealing with the election of this representative; this includes that after the election “[t]he Registry shall notify the successful candidate of his or her election to the Advisory Committee, inform counsel on the list of counsel of the outcome of the election and have the results published on the Court website”.<sup>4</sup> The procedure also includes a right for candidates who were not elected to “file a complaint with the Registrar concerning any issue relating to the election procedure”<sup>5</sup> and, in the case of rejection of this complaint, to seek review of the matter from the Presidency.<sup>6</sup> Regulation 3 (3) of the Regulations of the Registry provides that “[c]ounsel elected shall serve as a member of the Advisory Committee for a period of three years. He or she may be re-elected once.”

15. Elections of the representative of counsel included in the list of counsel have been held twice. On both occasions, Professor Kenneth S. Gallant, a member of the list of counsel, was elected; he was first elected in 2005 and was then re-elected on 1 May 2009.

16. In the first term of the ACLT (2006 – 2009), the members of the committee were:

**Judge Erkki Kourula**, a judge in the Appeals Division

**Judge Sir Adrian Fulford**, a judge in the Trial Division

**Judge Hans-Peter Kaul**, a judge in the Pre-Trial Division

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<sup>4</sup> Regulation 3 (2) (f) of the Regulations of the Registry.

<sup>5</sup> Regulation 3 (2) (g) of the Regulations of the Registry.

<sup>6</sup> Regulation 3 (2) (h) of the Regulations of the Registry.

**Fabricio Guariglia**, representative from the Office of the Prosecutor

**Marc Dubuisson**, representative from the Registry

**Professor Kenneth S. Gallant**, representative of counsel included in the list of counsel.

17. Christine Chung and Rod Rastan have served as substitutes to Fabricio Guariglia.

18. The ACLT's work was triggered by its first constituting meeting, held on 27 February 2006. At this meeting, Judge Erkki Kourula was elected by the members as chairperson of the committee. In this regard, regulation 4 (2) of the Regulations of the Court provides that "[t]he Advisory Committee shall elect a judge as chairperson for a period of three years who shall be eligible for re-election once."

19. The terms of office of the three judges and the representative of counsel, as listed above, ended on 26 February 2009. A gap in time, before the ACLT reconstituted, enabled newly-elected judges, whose mandates began on 11 March 2009, to become eligible for election to the committee. Thereafter, as seen above, Professor Kenneth S. Gallant was re-elected as the representative of counsel included in the list of counsel. In addition, different judges were elected from amongst the members of their respective Divisions to serve on the committee. The composition of the ACLT, as it began its second term, was as follows:

**Judge Akua Kuenyehia**, a judge in the Appeals Division

**Judge Christine Van den Wyngaert**, a judge in the Trial Division

**Judge Ekaterina Trendafilova**, a judge in the Pre-Trial Division

**Fabricio Guariglia**, representative from the Office of the Prosecutor

**Marc Dubuisson**, representative from the Registry

**Professor Kenneth S. Gallant**, representative of counsel included in the list of counsel.

20. The ACLT held its second constituting meeting on 2 September 2009 and, at this meeting, Judge Akua Kuenyehia was elected as chairperson of the committee. Judge Kuenyehia will, pursuant to regulation 4 (2) of the Regulations of the Court,

E. Work of the committee to date

a. Proposals for amendments to the Regulations of the Court

21. As seen above, regulation 4 (4) of the Regulations of the Court provides:
4. The Advisory Committee shall consider and report on proposals for amendments to the Rules, Elements of Crimes and these Regulations. Subject to sub-regulation 5, it shall submit a written report in both working languages of the Court setting out its recommendations on such proposals to a plenary session. A copy thereof shall be provided to the Prosecutor and the Registrar. The Advisory Committee shall also consider and report on any matter referred to it by the Presidency.
22. The ACLT has submitted two reports to plenary sessions pursuant to regulation 4 (4) of the Regulations of the Court. Both reports dealt with proposals for amendments to the Regulations of the Court which had been submitted to the committee in accordance with regulation 6 of the Regulations of the Court (Amendments to these Regulations):
1. Any proposal for amendments to these Regulations shall be accompanied by explanatory material, and those documents shall be presented in writing to the Advisory Committee on Legal Texts in both working languages of the Court.
  2. In urgent cases, the Presidency, on its own motion or at the request of a judge, the Prosecutor or the Registrar, may submit proposals for amendments to these Regulations directly to the judges for their consideration in a plenary session.
  3. Amendments to these Regulations shall not be applied retroactively to the detriment of the person to whom article 55, paragraph 2, or article 58 applies, the accused, convicted or acquitted person.

i. First ACLT Report

23. The ACLT's first report to a plenary session dealt with 18 proposals to amend the Regulations of the Court which had been submitted to it for its consideration between August 2006 and May 2007. The ACLT carried out its work

24. The ACLT submitted its report on the proposals to the plenary session in June 2007. The plenary adopted amendments in relation to 6 regulations in the Regulations of the Court during plenary sessions held on 14 June and 14 November 2007. All of the proposals entered into force on 18 December 2007. As to what these amendments were, first, three new regulations were adopted and inserted into the text:

Regulation 19 *bis* – judicial recess;

Regulation 23 *bis* – Filing of documents marked *ex parte*, under seal or confidential; and

Regulation 24 *bis* – Submissions by the Registrar.

25. Second, amendments were made to three regulations which were already in force:

Regulation 33 – Calculation of time limits; sub-regulations 1 and 2 were amended and new sub-regulations 1 (c), 1 (d) and 3 were added;

Regulation 36 – Format of documents and calculation of page limits; former sub-regulation 3 was deleted and former sub-regulation 4 was renumbered as sub-regulation 3; and

Regulation 107 – Arrangements and agreements on cooperation; sub-regulation 1 was amended.

## ii. Second ACLT Report

26. The ACLT's second report to a plenary session dealt with proposals for amendments to the Regulations of the Court that had been submitted to the committee in December 2008. In considering these proposals, although the official

*b. The Rules of Procedure of the ACLT*

27. Regulation 4 (7) provides that “[t]he Advisory Committee shall adopt its own rules of procedure.” The ACLT, between 2006 and 2009, deliberated on and ultimately adopted, on 26 February 2009, the Rules of Procedure of the ACLT. The issues covered by these rules, which are also published on the Court’s website, include the following:

Election of the chairperson, including that he or she shall be elected by consensus unless otherwise requested by a member;

The nomination of substitute members, who may represent the relevant member at ACLT meetings but who shall not be entitled to vote;

The holding of meetings and records of meetings;

ACLT records;

Decision-making, including that the ACLT shall attempt to achieve unanimity in their decisions; in the event that that cannot be reached, each member casts one vote; decisions shall be taken by a two-thirds majority of the members;

The procedure for the submission of proposals, referrals or suggestions to the ACLT;

ACLT reports; and

The obtaining of views of interested groups or persons or the advice of experts, as referred to in regulation 4 (3) of the Regulations of the Court.



28. On 14 December 2010, the ACLT amended rule 13, dealing with ACLT Reports, and adopted rule 8, dealing with the question of confidentiality of ACLT work. The ACLT decided, in particular, that the ACLT Report would in principle be public, unless otherwise decided by the ACLT. In cases where the report was confidential, it decided that the ACLT may issue a public summary or public redacted version thereof.

29. On 4 March 2011, the ACLT amended rules 4, 8 and 16.

*c. Referral from the Presidency*

30. During its first term, the Advisory Committee on Legal Texts received one referral from the Presidency under Regulation 107 of the Regulations of the Court, concerning the text of a proposed agreement between the Court and a non-party State or an international organization. This matter was handled confidentially by the ACLT.