

## ANNEX A

### COMPILATION OF THE PREPARATORY WORKS FOR THE DRAFTING OF ARTICLE 43(6) AND ARTICLE 68 OF THE ROME STATUTE

#### I. INTERNATIONAL LAW COMMISSION

1) A/48/10, 3 May – 23 July 1993

Document Type: Report

Submitted by: International Law Commission

[http://untreaty.un.org/ilc/documentation/english/A\\_48\\_10.pdf](http://untreaty.un.org/ilc/documentation/english/A_48_10.pdf)

#### Article 46

##### Protection of the accused, victims and witnesses

*The Chamber shall take all necessary measures available to it to protect the accused, victims and witnesses, and may to that end conduct proceedings in camera or allow the presentation of evidence by electronic or other special means.*

#### Commentary

- (1) The Chamber, acting on behalf of the Court, has the responsibility and the authority to take the necessary steps to protect the accused, as well as victims and witnesses participating in the proceedings. The non-exhaustive list of such measures provided in this article includes ordering that the trial shall be conducted in closed proceedings or allowing the presentation of evidence by electronic means such as video cameras.
- (2) In conducting the proceedings, the Court must have due regard for the need to protect both victims and witnesses but only to the extent that this is consistent with full respect for the rights of the accused, in accordance with article 40. For example, allowing a key prosecution witness to testify by video camera may raise questions concerning the right of the defendant to examine prosecution witnesses and the ability of the judges to assess the credibility of witnesses, which is often critical in criminal proceedings, if they are not present in the courtroom. At the same time, such procedures may be the only way to obtain the testimony of a particularly vulnerable victim or witness.

2) Draft Statute for an International Criminal Court

Yearbook of the International Law Commission, 1994, Vol. II (Part Two)

[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/7\\_4\\_1994.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/7_4_1994.pdf)

**Article 13 [Current Article 43]****Registry**

[...]

**Article 43 [Current Article 68]**

*The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

**Commentary**

- (1) The court should throughout take the necessary steps to protect the accused, as well as victims and witnesses. The non-exhaustive list of such measures provided in this article include ordering that the trial should be conducted in closed proceedings or allowing the presentation of evidence by electronic means such as video cameras.
- (2) While the court is required to have due regard for the protection of victims and witnesses, this must not interfere with full respect for the right of the accused to a fair trial. Thus while the court may order the nondisclosure to the media or the general public of the identity of a victim or witness, the right of an accused to question the prosecution witnesses must be respected (see art. 41, para. 1 (e)). On the other hand, such procedures as giving testimony by video camera may be the only way to allow a particularly vulnerable victim or witness (such as a child who has witnessed some atrocity) to speak.
- (3) The security of the record of proceedings is vital, and should be a matter for regulation under the rules.

**3) A/CN.4/L.491/Rev.1, 8 July 1994**

Document Type: Report

Submitted by: Working Group on the Draft Statute for ICC

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G94/630/45/pdf/G9463045.pdf?OpenElement>

**Article 43 [Current Article 68]****Protection of the accused, victims and witnesses**

*The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

**4) A/49/10 (SUPP), 2 May – 22 July 1994**

Document Type: Report

Submitted by: International Law Commission

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/349/28/img/N9434928.pdf?OpenElement>

**Article 43 [Current Article 68]****Protection of the accused, victims and witnesses**

*The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

**Commentary**

- (1) The Chamber, acting on behalf of the Court, has the responsibility and the authority to take the necessary steps to protect the accused, as well as victims and witnesses participating in the proceedings. The non-exhaustive list of such measures provided in this article includes ordering that the trial shall be conducted in closed proceedings or allowing the presentation of evidence by electronic means such as video cameras.
- (2) While the Court is required to have due regard for the protection of victims and witnesses, this must not interfere with full respect for the right of the accused to a fair trial. Thus while the Court may order the non-disclosure to the media or the general public of the identity of a victim or witness, the right of an accused to question the prosecution witnesses must be respected: see article 41 (1) (e). On the other hand, such procedures as giving testimony by video camera may be the only way to allow a particularly vulnerable victim or witness (e.g. a child who has witnessed some atrocity) to speak.
- (3) The security of the record of proceedings is vital, and should be a matter for regulation under the Rules.

**5) A/49/355, 1 September 1994**

Document Type: Report

Submitted by: International Law Commission

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/349/89/img/N9434989.pdf?OpenElement>

**Article 43 [Current Article 68]****Protection of the accused, victims and witnesses**

*The Court shall take necessary measures available to it to protect the accused victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

## II. PREPARATORY COMMITTEE

[1996]

### 1) Updated Siracusa-Draft, 15 March 1996

Document Type: Draft Report

Submitted by: [Association Internationale de Droit Pénal (U.N./NGO) International Institute of Higher Studies in Criminal Sciences U.N./NGO, also Affiliated with the United Nations Crime Prevention and Criminal Justice Programme) International Scientific and Professional Advisory Council (U.N./NGO, also Affiliated with the United Nations Crime Prevention and Criminal Justice Programme) Parliamentarians for Global Action (U.N./NGO) World Federalist Movement/Institute for Global Policy (U.N./NGO) Max-Planck Institute for International and Comparative Criminal Law International Human Rights Law Institute, DePaul University Done in Siracusa/Freiburg/Chicago)]

[For Consideration by the Preparatory Committee on the Establishment of a Permanent International Criminal Court Pursuant to General Assembly Resolution A/Res 50/46 (18 December 1995) 1994 ILC Draft Statute for an International Criminal Court With Suggested Modifications Prepared by a Committee of Experts:]

### Article 43 [Current Articles 43(6) & 68]

#### Protection of the accused, victims and witnesses

- (1) *The Court shall take necessary measures available to it to protect the accused victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means, provided that the measures are consistent with the rights of the accused.*
- (2) *The court shall ensure the safety of the accused, victims and witnesses, as well as that of their families, from intimidation and retaliation before, during and after the trial. To this end a Victims and Witness Service shall be established. The Court may request all States Parties to cooperate with the Service in order to provide adequate protection to victims and witnesses.*
- (3) *Additional measures may be taken to protect the integrity and privacy of sexual assault survivors.*

#### Commentary on Article 43

As drafted by the ILC; Article 42 may be read as elevating the rights and interests of victims and witnesses over those of the accused. There may be cases in which protection of witnesses cannot be consistent with the accused's right of confrontation. The U.S. Supreme Court expressed the importance of this right as follows: "Face-to-face confrontation generally serves to enhance the accuracy of fact finding by reducing the risk that a witness will wrongfully

implicate an innocent person." See *Maryland v. Craig*, 497 U.S. 836, 846 (1990). The proposed revision to paragraph 1, which is based on the language of Rule 75 of the Rules of Procedure and Evidence of ICTFY, would make clear that protective measures for witnesses must be consistent with the basic rights of the accused, including the right to confront all accusatory witnesses. However, in instances involving young children and/or sexual assault survivors, the Court shall have discretion to balance the accused's right to face-to-face confrontation with the survivor's right to preservation of privacy. It has been recognized that young children and sexual assault victims usually suffer severe psychological and emotional harm as the result of an assault, harm which is in addition to the usual harm for crimes against the person. For sexual assault victims, the assault has violated the most sacred parts of their body. Further, most victims are unarmed females, and most accused are armed males, adding to the trauma of the assault, and making face-to-face confrontation even more difficult.

As experience in the former Yugoslavia and Rwanda shows, victims and witnesses who may have to appear before an International Tribunal are extremely vulnerable and in need of protection. Article 43 of the Statute, as well as Article 38 (2) and (4), take account of that fact in various ways, to shield the identity of a witness from the accused or third persons on a permanent basis, however, is not possible since that would necessarily infringe upon the accused's right to examine, or have examined, the prosecution's witnesses. The accused must be allowed to confront the witness or victim and should be able to inquire into aspects of that person's life that may have bearing on his credibility. In most instances, however, the address or current whereabouts of the witness need not be made available for such a person, nor should they be made available if there is a risk of intimidation or retaliation. Additionally, the Court [Tribunal] should make every effort to seal or protect the identity of survivors or witnesses from public record or scrutiny. For instance, while the testimony of a rape victim may and should be available to the public, the name of the victim should be shielded from the public, as well as information within the testimony which would identify the victim, if protection of her physical or moral integrity so requires. There is, unfortunately, shame and stigma attached to victims of sexual assault. The survivor may be rejected by society, even placed in harm by his family. There are severe societal repercussions for making the name of a sexual assault survivor available to the public. As drafted, the Statute offers victims and witnesses little or no protection against intimidation or retaliation that may occur after the trial. This will make witnesses extremely reluctant to appear before the Court [Tribunal]. A victim and witness protection programme is therefore a necessity. For this programme to be effective, the cooperation of States Parties is indispensable. Included within the scope of protection should be victims or witnesses who testify to a general policy or scheme. For instance, a rape survivor might testify, not that the accused himself raped her, but that she was raped by a soldier who wore a uniform that would be considered under the command of the accused. Or a women forced into prostitution might testify as to the nationality or ethnicity of the "brothel" owners or patrons. It has become a recognized part of humanitarian law that leaders and commanders may be held responsible for acts or omissions committed by persons under their command. The purview of this section encompasses leaders and commanders whom may not have committed a particular act themselves, but who can nevertheless be held responsible for its commission under a theory of command responsibility.

The language of the first sentence in proposed new paragraph 2 is derived from the 1985 UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (GA Res 40/734). It is deliberately phrased in a way that makes it possible to argue that victims and

witnesses have an individual right to protection. The second sentence is derived from Rule 34 of ICTY's Rules. For merely practical reasons, the Court [Tribunal] will have to determine whether the Service should function within the Office of the Prosecution or under the auspices of the Court [Tribunal].

The first option might be more practical, effective, and efficient. The second option is likely to ensure a higher degree of objectivity and impartiality in giving protection to persons, including defence witnesses.

43.3 was added because sex crimes are more personally invasive crimes than other crimes against the person, and special provisions are often needed to ensure that a victim's right to privacy is taken into account.

## 2) A/AC.249/L.2, 26 July 1996

Document Type: Working Paper

Submitted by: Australia and the Netherlands

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/N96/191/03/pdf/N9619103.pdf?OpenElement>

### **Draft Set of Rules of Procedure and Evidence for the ICC**

#### **Rule 40**

##### **Victims and Witnesses Unit**

*(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:*

*(i) Recommend protective measures for victims and witnesses in accordance with article X (A 43 ILC) of the Statute;*

*(ii) Provide counselling and support for them, in particular in cases of rape and sexual assault.*

*(B) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.*

**[Note:** Such a unit might also be located in the Prosecutor's Office. Counselling would obviously be required where persons had suffered violent crimes.]

#### **Rule 86**

##### **Protection of Victims and Witnesses**

*(A) In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.*

*(B) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Unit.*

*(C) Subject to rule 95, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.*

**[Note:** The protection of victims and witnesses will be an important responsibility of the Court. The non-disclosure of the identity of victims and witnesses needs to be balanced against the right of an accused to prepare his or her defence.]

**Rule 95****Measures for the protection of victims and witnesses**

(A) *As provided for in article X (A 38(4), 43 ILC) of the Statute, a Trial Chamber may, proprio motu or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused as provided for in the Statute and the Rules, in particular the right to examine, or have examined, prosecution witnesses.*

(B) *A Trial Chamber may hold an in camera proceeding to determine whether to order:*

(i) *Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him or her by such means as:*

- (a) *Expunging names and identifying information from the Chamber's public records;*
- (b) *Non-disclosure to the public of any records identifying the victim;*
- (c) *Giving of testimony through image or voice altering devices or closed circuit television;*
- (d) *Assignment of a pseudonym;*

(ii) *Closed sessions, in accordance with rule 91;*

(iii) *Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.*

(C) *A Trial Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.*

[Note: The power of the Trial Chamber to issue a protective order to ensure the safety and security of a particular victim or witness needs to be considered.]

**3) A/AC.249/L.3, 6 August 1996**

Document Type: Working Paper

Submitted by: France

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/198/65/img/N9619865.pdf?OpenElement>

**Draft Statute for the ICC****Article 50****Rights of the Victims**

1. *Anyone who has personally suffered direct injury caused by a crime submitted to the Court may inform the Registrar of the Court in writing of the acts having caused injury to him and the nature and amount of the losses which he has sustained.*
2. *When a hearing is held, under article 48, the Registrar of the Court shall transmit to the Preliminary Investigations Chamber the correspondence received from victims pursuant to paragraph 1 of this article.*
3. *When it confirms the indictment in its entirety or in part, the Preliminary investigations Chamber may order the provisional seizure of all or part of the property of the person committed for trial, if it believe that such a measure is necessary to compensate the victims who have come forward in accordance with paragraph 1 of this article.*

*In that event, the preliminary Investigation Chamber shall ask the Prosecutor to secure the cooperation of the States in whose territory the provisionally seized property is situated, requesting them, inter alia, to freeze assets and appoint official receivers.*

*The provision of the preceding subparagraph shall also apply in the situations described in article 49."*

**Article 102****Measures for ensuring the protection of victims and witnesses**

1. *The Trial Chamber may, at the request of the prosecutor, the accused, the victim or the witness concerned, order appropriate measures to protect the privacy and security of victims or witnesses, provided the said measures are not prejudicial to the rights of the accused. The States parties are required, where necessary, to execute these measures, subject to observations of their internal law.*
2. *The Trial Chamber may hold a hearing in camera for the purpose of determining, without prejudice to the rights of the accused, the necessity of ordering:*
  - a. *Measures to prevent disclosure to the public or the information media of the identity of a victim or a witness, of a person related to them or associated with them, or of their locality such as:*
    - *Deletion, from the court records, of the name of the person concerned and of the particulars by means of which he might be identified,*
    - *Prohibition of access by the public to any evidence in the file by means of which the victim might be identified,*
    - *The use, during testimony, of technical methods of altering appearances or voices, or the use of closed-circuit television,*
    - *The use of pseudonym*
  - b. *The holdings in camera, in accordance with article 104, paragraph 2 and 3;*
  - c. *Appropriate measures to facilitate testimony by a victim or by a vulnerable witness, e.g. by means of closed-circuit television.*

**4) A/AC.249/WP.11, 19 August 1996**

Document Type: Proposal

Submitted by: Egypt

**Concerning the protection and rights of witnesses and victims (Article 43 of the ILC draft statute)****Article 43 [~~Current Article 68~~]**

1. *Article 43 of the ILC draft statute contains certain protections for witnesses and victims of crimes but does not extend to the substantive right of compensation to the victims of crimes, nor does it provide for a mechanism allowing the victim, as "partie civile", to participate in the proceedings. Furthermore, neither article 43 nor any other provision of the ILC draft statute provides for a judicial mechanism for the recognition of the rights of victims to compensation.*
2. *The delegation of Japan in a working paper (A/AC.249/L.8) proposes that compensation be given by the tribunal directly to those who have been found innocent of the criminal charges by virtue of a final judgement. The Egyptian delegation supports that proposal and wishes to add that victims of crimes should also be compensated.*
3. *The Egyptian delegation therefore recommends the following:*
  - (a) *Adding to article 43 a paragraph 2 stating that:*  
*"The Court shall ensure the safety of the accused, victims and witnesses, as well as that of their families, from intimidation and retaliation before, during and after the trial. To this end a special service shall be established to achieve that purpose and States Parties should cooperate with this service in their respective territories. In particular this service, as well as States Parties, shall take*



*additional measures to protect the integrity, privacy and physical and psychological well-being of victims of sexual assault and of children who are victims or witnesses.”;*

*(b) Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation;*

*(c) The judgement of the Court shall also include a determination of the scope and extent of the victimization in order to allow victims to rely on that judgement for the pursuit of civil remedies, including compensation, either in national courts or through their Governments, in accordance with international law;*

*(d) The Rules of Procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly in its resolution 40/34 of 29 November 1985, which was recalled by the Economic and Social Council in its resolution 1996/14 of 23 July 1996 in paragraph 6 of which the Council “requests the Secretary-General to bring to the attention of the Preparatory Committee for the Establishment of an International Criminal Court the potential applicability of the basic principles, contained in the Declaration”, and the Principles Guaranteeing the Rights and Interests of Victims in the Proceeding of the Proposed International Criminal Court adopted by the Commission on Crime Prevention and Criminal Justice.”*

**5) A/AC.249/WP.16, 20 August 1996**

Document Type: Proposal

Submitted by: Argentina & Canada

**Article 43 [Current Article 68]**

Add the following phrase, "subject to article 41", as follows:

*"The Court shall take necessary measures available to it to protect, subject to article 41, the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means."*

**6) A/AC.249/L.15, 23 August 1996**

Document Type: Draft Report

Submitted by: Preparatory Committee

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/N96/217/43/pdf/N9621743.pdf?OpenElement>

**Article 43 [Current Article 68]**

**Protection of the accused, victims and witnesses**

*It was pointed out that this article was of a very general nature and should be further elaborated and more precisely formulated. Attention was drawn in this regard to the principles of justice for victims of crimes contained in the 1985 United Nations Declaration on the topic, as well as principles, recently elaborated by an expert group, guaranteeing the rights and interests of victims in the proceedings of the Court. The view was also expressed that the protection of the accused, victims and witnesses should be the obligation of the State concerned. Given the importance of protecting victims and witnesses, it was*

*further recommended that their protection should be addressed in a separate provision from that of protection of the accused. At the same time, the point was made that the statute must contain a balance of rights between the two groups and that any protections bestowed on victims and witnesses should not undermine the rights of the accused to receive a fair trial.*

*It was stated that measures of protection employed should be non-exhaustive. Reference was made to the witness protection programmes found in many national jurisdictions. It was suggested that provision be made to protect the identity of victims and witnesses in particular cases which, at the same time, would not unduly prejudice the defence. It was further suggested that the Court should obtain the cooperation of the victim or witness before offering any type of protection. The view was also expressed that victims and witnesses should be encouraged to come forward, and in this connection a court should be created that treated these individuals with concern and respect.*

*Particular concern should be given to children and the mentally impaired and victims of sexual assault. There were also proposals relating to the need to keep victims and witnesses informed of the progress of the case. Attention was drawn to proposals, as well as the precedent of the Yugoslavia Tribunal, for a witness and victim unit to be established to provide services and support to victims and witnesses, under the supervision of the offices of either the Registrar or the Prosecutor.*

*It was recommended that provision be made in the statute for payment of compensation to victims who have suffered damages. There were several proposals concerning this issue and included the possibility of the Court being empowered to make decisions on these matters, including the administration of a compensation fund, as well as to decide on other types of reparation. It was further proposed that both the victim and the accused should be allowed to take part in such a proceeding. Concern, however, was expressed over the Court's ability to adequately follow through and ensure that restitution was made. The view was also put forward that since the question of compensation was essentially a civil matter, the Court could decide the scope of the victimization and, relying on this judgment, the victim could pursue the matter of remedies through the appropriate national jurisdiction.*

*With respect to specific drafting points, it was suggested that the words "subject to article 41" be added to article 43.*

#### **7) A/AC.249/CRP.11, 27 August 1996**

Document Type: Informal Compilation of Proposals

Submitted by: Working Group

#### **On the Composition and Administration of the Court**

##### **Victims and Witnesses Unit**

*(a) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:*

*(i) Recommend protective measures for victims and witnesses in accordance with Article X (A 43 ILC) of the Statute; and*

*(ii) Provide counselling and support for them, in particular in cases of rape and sexual assault.*

*(b) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.*

8) **A/AC.249/CRP.14, 27 August 1996**

Document Type: Report

Submitted by: Informal Group

**Rule 86**

**Protection of Victims and Witnesses**

(A) *In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the nondisclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.*

(B) *In the determination of protective measures for victims and witnesses the Trial Chamber may consult the victims and witnesses unit.*

(C) *Subject to rule 95, the identity of the victim or witnesses shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.*

**[Note:** The protection of victims and witnesses will be an important responsibility of the Court. The non-disclosure of the identity of victims and witnesses needs to be balanced against the right of an accused to prepare his or her defence.]

**Rule 95**

**Measures for the protection of victims and witnesses**

(A) *As provided for in article X (A 38(4), 43 ILC) of the Statute, a Trial Chamber may, proprio motu or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused as provided for in the Statute and the Rules, in particular the right to examine, or have examined, prosecution witnesses.*

(B) *A Trial Chamber may hold an in camera proceeding to determine whether to order:*

(i) *Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him or her by such means as:*

- (a) *Expunging names and identifying information from the Chamber's public records;*
- (b) *Non-disclosure to the public of any records identifying the victim;*
- (c) *Giving of testimony through image or voice altering devices or closed circuit television;*
- (d) *Assignment of a pseudonym;*

(ii) *Closed sessions, in accordance with rule 91;*

(iii) *Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.*

(C) *A Trial Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.*

**[Note:** The power of the Trial Chamber to issue a protective order to ensure the safety and security of a particular victim or witness needs to be considered.]

**Article 43 [Current Article 68]**

**Protection of the accused, victims and witnesses**

*The Court shall take necessary measures available to it to protect (subject to article 41) the accused victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

## 1. Victims and witnesses services unit. Rights of the victims

### A.

[(a). adding to article 43 a paragraph 2 stating that:

*"The Court shall ensure the safety of the accused, victims' and witnesses, as well as that of their families, from intimidation and retaliation before, during and after the trial. To this end a special service shall be established to achieve that purpose and State Parties should cooperate with this service in their respective territories. In particular this service, as well as States Parties, shall take additional measures to protect the integrity, privacy and physical and psychological well-being of victims of sexual assault and of children who are victims or witnesses."*

*(b) Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation;*

*(c) The judgement of the Court shall also include a determination of the scope and extent of the victimization in order to allow victims to rely on the judgement for the pursuit of civil remedies, including compensation, either national courts or through their Governments, in accordance with international law;*

*(d) The Rules of Procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime Abuse of Power adopted by the General Assembly in its resolution 40/34, 29 November 1985, which was recalled by the Economic and Social Council in its resolution 1996/14 of 23 July 1996 in paragraph 6 of which the Council "request the Secretary-General to bring to the attention of the Preparatory Committee the Establishment of an International Criminal Court the potential applicability of the basic principles, contained in the Declaration", and the Principles Guaranteeing the Rights and Interests of Victims in the Proceeding of the Proposed International Criminal Court adopted by the Commission on Crime Prevention and Criminal Justice."*]

### B.

#### **Victims and Witnesses Unit**

[(a) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:

*(i) Recommend protective measures for victims and witnesses in accordance with Article X (A 43 ILC) of the Statute; and*

*(ii) Provide counselling and support for them, in particular in cases of rape and sexual assault.*

*(b) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.]*

## 9) A/51/22 Vol. I. (Proceedings of the Preparatory Committee during March-April and August 1996)

Document Type: Report

Submitted by: Preparatory Committee

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/239/27/pdf/N9623927.pdf?OpenElement>

## On the Establishment of an ICC – Volume I

### Article 43 [*Current Article 68*]

#### Protection of the accused, victims and witnesses

280. It was pointed out that the article was of a very general nature and should be further elaborated and more precisely formulated. Attention was drawn in this regard to the principles of justice for victims of crimes contained in the 1985 United Nations Declaration on the topic, as well as principles, recently elaborated by an expert group, guaranteeing the rights and interests of victims in the proceedings of the Court. The view was also expressed that the protection of the accused, victims and witnesses should be the obligation of the State concerned. Given the importance of protecting victims and witnesses, it was further recommended that their protection should be addressed in a separate provision from that concerning protection of the accused. At the same time, the point was made that the Statute must contain a balance of rights between the two groups and that any protections bestowed on victims and witnesses should not undermine the right of the accused to receive a fair trial.

281. It was stated that measures of protection employed should be non-exhaustive. Reference was made to the witness protection programmes found in many national jurisdictions. It was suggested that provision be made to protect the identity of victims and witnesses in particular cases which, at the same time, would not unduly prejudice the defence. It was further suggested that the Court should obtain the cooperation of the victim or witness before offering any type of protection. The view was also expressed that victims and witnesses should be encouraged to come forward, and in this connection a Court should be created that treated these individuals with concern and respect. Particular concern should be given to children and the mentally impaired and victims of sexual assault. Proposals were also put forward regarding the need to keep victims and witnesses informed of the progress of the case. Attention was drawn to proposals, as well as the precedent of the Yugoslavia Tribunal, for a witness and victim unit to be established to provide services and support to victims and witnesses, under the supervision of the office of either the Registrar or the Prosecutor.

282. It was recommended that provision be made in the Statute for payment of compensation to victims who have suffered damages. Several proposals were made concerning this issue, including the possibility of the Court being empowered to make decisions on these matters, among them the administration of a compensation fund, as well as to decide on other types of reparation. It was further proposed that both the victim and the accused should be allowed to take part in such a proceeding. Concern was expressed however over the Court's ability to follow through adequately and to ensure that restitution was made. The view was also put forward that since the question of compensation was essentially a civil matter, the Court could decide the scope of the victimization and determine the principles relating to compensation for damage caused to the victim; relying on this judgement, the victim could pursue the matter of remedies through the appropriate national jurisdiction, which would be bound by the decision of the Court.

283. With respect to specific drafting points, it was suggested that the words "subject to article 41" should be added to article 43.

**10) A/51/22 Vol. II (Compilation of proposals)<sup>1</sup>**

Document Type:                      Compilation of Proposals

Submitted by:                        Preparatory Committee

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/239/45/img/N9623945.pdf?OpenElement>

[1997]

**1) Non-Paper WG.4/IP, 4 August 1997**

Abbreviated Compilation of Proposals on Procedural Matters

**Article 43 [Current Article 68]**

*The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.*

*[However, said measures may not be [inconsistent with] [prejudicial to] the rights of the accused [as provided for in the Statute and the Rules, in particular the right to examine, or have examined, prosecution witnesses.]*

*[The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*

*[Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]*

**Matters that might be dealt with in the Rules**

Note: The following text is drawn from "B. Measures for protection on page 205 of the report, vol. II. The matters raised in the text could be better addressed in the Rules.

*"The [a] Trial Chamber may hold a hearing [proceeding] in camera [to determine] [for the purpose of determining, without prejudice to the rights of the accused] [whether to order] [the necessity of ordering]: (a) measures to prevent disclosure to the public or the [information] media of the identity [or whereabouts] of a victim or a witness, of persons related to them or associated with them, [or of their locality], by such means as:*

*(i) [deletion from the court records of the name of the person concerned and of particulars by means of which he might be identified] [expunging names and identifying information from the Chamber's public records];*

*(ii) [prohibition of access by the public to any evidence in the file by means of which the victim might be identified] [non-disclosure to the public of any records identifying the victim];*

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<sup>1</sup> All the aforementioned proposals are compiled here, see p. 204 – 206

- (iii) *[the use during testimony of [image or voice altering devices] [of technical methods for altering appearances or voices] or [the use of] closed circuit television];*
- (iv) *[assignment of a pseudonym];*

(b) *[closed sessions, in accordance with rule 91] [the holding of hearings in camera, in accordance with article 38];*

(c) *appropriate measures to facilitate testimony [of vulnerable victims and] [by a victim or by a vulnerable] witness[es], [such as] [by means of] [one-way] closed circuit television.*

*[A Trial Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.]*

## **2) Non-Paper/WG.4/No. 15, 13 August 1997**

Document Type: Proposal

Submitted by: Canada

### **Article 26 or 43 [Current Article 68]**

*The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take into account the interests and personal circumstances of victims and witnesses, including age, gender and health, and the nature of the crime, particularly those involving sexual or gender violence.*

## **3) Non-Paper/WG.4/No. 19, 13 August 1997**

Document Type: Proposal

Submitted by: New Zealand

### **Article 43 [Current Article 68]**

1. *The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, integrity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence.*

2. *The Court shall, upon motion of any party, the Victims and Witnesses Unit, or upon its own motion, take such measures as are necessary to ensure the safety, integrity, and privacy of victims and witnesses, at all stages of the process, including but not limited to, victims and witnesses of sexual and gender violence, and consistent with the rights of the accused. These measures may extend to family members and others at risk on account of testimony given by such witnesses.*

3. *The Court shall enable victims of the crimes charged and/or their legal representatives to participate in the proceedings in order to "allow the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected," consistent with the rights of the accused and a fair and impartial trial.*

4. *The Victims and Witnesses Unit, established under Article 13 of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights.*

**4) Non-Paper/WG.4/No. 19/Rev.1, 13 August 1997**

Document Type: Amended Proposal

Submitted by: New Zealand

**Article 43 [Current Article 68]**

1. The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, integrity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.

2. The Court shall, upon motion of any party, the Victims and Witnesses Unit, or upon its own motion, take such measures as are necessary to ensure the safety, integrity, and privacy of victims and witnesses, at all stages of the process, including but not limited to, victims and witnesses of sexual and gender violence, and these measures will be consistent with the rights of the accused. These measures may extend to family members and others at risk on account of testimony given by such witnesses.

3. The Court shall permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.

4. The Victims and Witnesses Unit, established under Article 13 of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights.

**5) A/AC.249/1997/L.8/Rev.1, 14 August 1997**

Document Type: Decision

Taken by: Preparatory Committee at its session held from 4 to 15 August 1997

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/N97/224/74/pdf/N9722474.pdf?OpenElement>

**Article 43****Protection of the [accused], victims and witnesses [and their participation in the proceedings]**

1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means. Notwithstanding the principle of public hearings, the Court may order that the proceedings be closed, in the interest of the accused, the victims or the witnesses. [In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or at the request of a victim of sexual violence.]

2. [The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, physical and psychological well-being, dignity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.]

3. The Court shall take such measures as are necessary to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, at all stages of the process, including, but not



*limited to, victims and witnesses of sexual and gender violence. However, these measures [may not] [shall not] be [inconsistent with] [prejudicial to] the rights of the accused.*

*4. [The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.]*

*[5. The Victims and Witnesses Unit, established under article 13 of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights. These measures may extend to family members and others at risk on account of testimony given by such witnesses.]*

*[6. Notwithstanding paragraph 1 of article 27, if disclosure of any evidence and/or any of the particulars referred to in that paragraph will probably lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for purposes of these proceedings, withhold such particulars and submit a summary of such evidence. Such a summary shall, for purposes of any later trial proceedings before the Court, be deemed to form part of the particulars of the indictment.]*

*[7. The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*

*[8. Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]*

*9. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.*

#### **6) A/AC.249/1997/WG.4/CRP.9, 14 August 1997**

Document Type: Revised Abbreviated Compilation

Submitted by: Preparatory Committee

#### **Protection of the [accused], victims and witnesses [and their participation in the proceedings]**

*1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means. Notwithstanding the principle of public hearings, the Court may order that the proceedings be closed, in the interest of the accused, the victims or the witnesses. [In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or at the request of a victim of sexual violence.]*

*2. [The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, physical and psychological well-being, dignity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.]*

*3. The Court shall take such measures as are necessary to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, at all stages of the process, including, but not limited to, victims and witnesses of sexual and gender violence. However, these measures [may not] [shall not] be [inconsistent with] [prejudicial to] the rights of the accused.*

*4. [The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.]*

[5. The Victims and Witnesses Unit, established under article 13 of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights. These measures may extend to family members and others at risk on account of testimony given by such witnesses.]

[6. Notwithstanding paragraph 1 of article 27, if disclosure of any evidence and/or any of the particulars referred to in that paragraph will probably lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for purposes of these proceedings, withhold such particulars and submit a summary of such evidence. Such a summary shall, for purposes of any later trial proceedings before the Court, be deemed to form part of the particulars of the indictment.]

[7. The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]

[8. Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]

9. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.

[1998]

1) **A/AC.249/1998/L.13, 4 February 1998**

Document Type: Report of the Intersessional Meeting

Submitted in: Zutphen – The Netherlands

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/N98/025/28/pdf/N9802528.pdf?OpenElement>

**Article 61[43] [Current Article 68]**

**Protection of the [accused], victims and witnesses [and their participation in the proceedings]**

1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means. Notwithstanding the principle of public hearings, the Court may order that the proceedings be closed, in the interest of the accused, the victims or the witnesses. [In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or at the request of a victim of sexual violence.]

N.B. To avoid repetition, the proposals under this paragraph may be merged to read as follows:

1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses. Notwithstanding the principle of public hearings, the Court may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.

[In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or by a victim of sexual violence.]

2. [The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, physical and psychological well-being, dignity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.]

N.B. See also article 47[26] (2) (d bis) (Investigation of alleged crimes).

3. The Court shall take such measures as are necessary to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, at all stages of the process, including, but not limited to, victims and witnesses of sexual and gender violence. However, these measures [may not] [shall not] be [inconsistent with] [prejudicial to] the rights of the accused.

4. [The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.]

[5. The Victims and Witnesses Unit, established under article 37[13] of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights. These measures may extend to family members and others at risk on account of testimony given by such witnesses.]

[6. Notwithstanding paragraph 1 of article 51[27], if disclosure of any evidence and/or any of the particulars referred to in that paragraph will probably lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for purposes of these proceedings, withhold such particulars and submit a summary of such evidence. Such a summary shall, for purposes of any later trial proceedings before the Court, be deemed to form part of the particulars of the indictment.]

[7. The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]

[8. Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]

N.B. This paragraph should be reviewed in the light of the discussions on article 66[45 bis] (Compensation to victims).

9. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.

**2) A/AC.249/1998/L.14/Add.1, 31 March 1998**

Document Type: Report

Submitted by: Working Group on Composition and Administration of the Court

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/N98/089/51/pdf/N9808951.pdf?OpenElement>

**Article 37 [Current Article 43(6)]**

The first part of paragraph 4 should read:

[4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide counselling and other assistance to victims, [defence] witnesses, their family members and others at risk on account of testimony given by such witnesses and shall advise ...]

**3) A/AC.249/1998/CRP.10, 1 April 1998**

Document Type: Draft Statute for the ICC

Submitted by: Preparatory Committee

## Part 4 - Composition and Administration of the Court

### Article 37 [~~Current Article 43(6)~~]

#### The Registry

[...]

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide counselling and other assistance to victims, [defence] witnesses, their family members and others at risk on account of testimony given by such witnesses and shall advise the organs of the Court on appropriate measures of protection and other matters affecting the rights and the well-being of such persons. The unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.]

#### 4) A/AC.249/1998/CRP.12, 1 April 1998

Document Type: Draft Statute for the ICC

Submitted by: Preparatory Committee

## Part 6

### The Trial

#### Article 61 [~~Current Article 68~~]

##### Protection of the [accused], victims and witnesses [and their participation in the proceedings]

1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses. Notwithstanding the principle of public hearings, the Court may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means. [In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or by a victim of sexual violence.]

2. [The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, physical and psychological well-being, dignity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.]

N.B. See also article 47 [26] (2) (d bis) (Investigation of alleged crimes).

3. The Court shall take such measures as are necessary to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, at all stages of the process, including, but not limited to, victims and witnesses of sexual and gender violence. However, these measures [may not] [shall not] be [inconsistent with] [prejudicial to] the rights of the accused. 4. [The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.]

[5. The Victims and Witnesses Unit, established under article 37 [13] of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights. These measures may extend to family members and others at risk on account of testimony given by such witnesses.]

N.B. See Article 37(4)

[6. Notwithstanding paragraph 1 of article 51 [27], if disclosure of any evidence and/or any of the particulars referred to in that paragraph will probably lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for purposes of these proceedings, withhold such particulars

*and submit a summary of such evidence. Such a summary shall, for purposes of any later trial proceedings before the Court, be deemed to form part of the particulars of the indictment.]*

*[7. The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*

*[8. Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]*

N.B. This paragraph should be reviewed in the light of the text on article 66 [45 bis] (Reparation to victims).

9. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.

#### 5) A/CONF.183/2/Add.1, 14 April 1998

Document Type: Report

Submitted by: Preparatory Committee on the Establishment of the ICC

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N98/101/05/pdf/N9810105.pdf?OpenElement>

#### **Draft Statute for the ICC**

#### **Article 44 [~~Current Article 43(6)~~]**

##### **The Registry**

[...]

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide counselling and other assistance to victims, [defence] witnesses, their family members and others at risk on account of testimony given by such witnesses and shall advise the organs of the Court on appropriate measures of protection and other matters affecting the rights and the well-being of such persons. The unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.]

#### **Article 68 [~~Current Article 68~~]**

##### **Protection of the [accused], victims and witnesses [and their participation in the proceedings]**

1. The Court shall take the necessary measures available to it to protect the accused, victims and witnesses. Notwithstanding the principle of public hearings, the Court may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means. [In camera hearings are mandatory when they are requested by an accused who was a minor at the time of the commission of the acts or by a victim of sexual violence.]

2. [The Prosecutor shall, in ensuring the effective investigation and prosecution of crimes, respect and take appropriate measures to protect the privacy, physical and psychological well-being, dignity and security of victims and witnesses, having regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence. These measures will be consistent with the rights of the accused.]

N.B. See also article 54, paragraph 4 (e) (Investigation of alleged crimes).

3. The Court shall take such measures as are necessary to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, at all stages of the process, including, but not limited to, victims and witnesses of sexual and gender violence. However, these measures [may not] [shall not] be [inconsistent with] [prejudicial to] the rights of the accused.

4. *[The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is consistent with the rights of the accused and a fair and impartial trial.]*

5. *The Victims and Witnesses Unit, established under article 44 of this Statute, shall provide counselling and other assistance to victims and witnesses and advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting their rights. These measures may extend to family members and others at risk on account of testimony given by such witnesses.]*

6. *Notwithstanding paragraph 1 of article 58, if disclosure of any evidence and/or any of the particulars referred to in that paragraph will probably lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for purposes of these proceedings, withhold such particulars and submit a summary of such evidence. Such a summary shall, for purposes of any later trial proceedings before the Court, be deemed to form part of the particulars of the indictment.]*

7. *The rules of procedure shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*

8. *Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for their right to pursue civil compensation.]*

N.B. This paragraph should be reviewed in the light of the text on article 73 (Reparations to victims).

9. *A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.*

### III. UN DIPLOMATIC CONFERENCE OF PLENIPOTENTIARIES ON THE ESTABLISHMENT OF AN ICC

#### 1) A/CONF.183/C.1/L.36, 30 June 1998

Document Type: Text

Submitted by: Coordinators Text on Article 43 and 44

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/707/77/pdf/G9870777.pdf?OpenElement>

#### Article 44 [Current Article 43(6)]

##### The Registry

4. *The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and for others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.*

#### 2) A/CONF.183/C.1/L.43, 3 July 1998

Document Type: Proposal

Submitted by: Republic of Congo & Niger

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/710/53/pdf/G9871053.pdf?OpenElement>

#### Article 44 [Current Article 43(6)]

##### The Registry

4. *The Registrar shall set up a Victims and Witnesses Unit within the Registry. The Unit shall act in accordance with article 68. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.*

#### 3) A/CONF.183/C.1/L.45, 4 July 1998

Document Type: Recommendations of the Coordinator

Submitted by: Committee

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/711/75/pdf/G9871175.pdf?OpenElement>

### Part 4 Composition and Administration of the Court

#### Article 44 [Current Article 43(6)]

##### The Registry

4. *The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling*

*and other appropriate assistance for witnesses, victims who appear before the Court, and for others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.*

**4) A/CONF.183/C.1/WGPM/L.58, 6 July 1998**

Document Type: Proposal

Submitted by: Canada

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/713/73/pdf/G9871373.pdf?OpenElement>

**Article 68**

**Protection of the victims and witnesses and their participation in the proceedings**

1. *The Court shall take measures as are necessary to ensure the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, whether the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*
2. *Notwithstanding the principle of public hearings in article 67, the Chambers of the Court may, to protect victims and witnesses, conduct closed proceedings or allow the presentation of evidence by electronic or other special means [ , in particular, when they are requested by a victim of sexual violence]. [In camera hearings are mandatory when they are requested by a victim of sexual violence.]*
3. *[The Court [shall] [may] permit the views and concerns of the victim to be presented and considered at appropriate stages of the proceedings where their personal interests are affected in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.] [Legal representatives of victims of crimes have the right to participate in the proceedings with a view to presenting additional evidence needed to establish the basis of criminal responsibility as a foundation for the right of victims to pursue reparations.]*
4. *The Victims and Witnesses Unit, in implementing its mandate under article 44 of this Statute, may advise the Prosecutor and the Court on appropriate measures of protection and other matters affecting the rights of victims and witnesses.]*
5. *In respect of any evidence or information referred to in article 61, if disclosure of such evidence or information may lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for the purposes of any proceedings under this Statute, withhold such evidence or information and submit a summary of such evidence or information. Such a summary shall, for the purposes of any later trial proceedings before the Court, be deemed to form part of the charges.]*
6. *The Rules of Procedure and Evidence shall include provisions giving effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*
7. *A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.*



5) A/CONF.183/C.1/WGPM/L.58/Rev.1, 6 July 1998

Document Type: Proposal

Submitted by: Canada

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/717/27/pdf/G9871727.pdf?OpenElement>

**Article 68**

**Protection of the victims and witnesses and their participation in the proceedings**

1. *The Court shall take appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims<sup>2</sup> and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*

2. *Notwithstanding the principle of public hearings in article 67, the Chambers of the Court may, to protect victims and witnesses, conduct closed proceedings or allow the presentation of evidence by electronic or other special means. Such measures shall be implemented where requested by a child witness or victim, or a victim of sexual violence, unless otherwise ordered by the Court.*

3. *The Court shall permit the views and concerns of the victims to be presented and considered at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected, in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.*

4. *The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance referred to in article 44, paragraph 4.*

5. *In respect of any evidence or information to be disclosed pursuant to this Statute, if disclosure of such evidence or information may lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and submit a summary of such evidence or information. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*

[6. *In the exercise of its powers under this article, the Court shall take<sup>3</sup> into consideration the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.]*

7. *A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.*

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<sup>2</sup> Delegations took the view that the protective measures contemplated by this article are intended to be afforded to witnesses, to victims (who are not witnesses) directly connected with an investigation or proceedings before the Court and to other persons who are at risk on account of the testimony given by such witnesses. Some delegations did not agree with this.

**6) A/CONF.183/C.1/L.58, 9 July 1998**

Document Type: Draft Statute for the ICC

Submitted by: Compendium of Draft Articles Referred to the Drafting Committee by the Committee of The Whole as Of 9 July 1998

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/716/97/pdf/G9871697.pdf?OpenElement>

**Article 44 [~~Current Article 43(6)~~]****The Registry**

[...]

4. *The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and for others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.*

**Article 68****Protection of the victims and witnesses and their participation in the proceedings**

[Pending]

**7) A/CONF.183/C.1/WGPM/L.2/Add.6, 11 July 1998**

Document Type: Report

Submitted by: Working Group on Procedural Matters

<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/719/82/pdf/G9871982.pdf?OpenElement>

**Article 68****Protection of the victims and witnesses and their participation in the proceedings**

1. [Pending]

2. [Pending]

3. *The Court shall permit the views and concerns of the victims to be presented and considered at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected, in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.*

4. *The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance referred to in article 44, paragraph 4.*

5. *In respect of any evidence or information to be disclosed pursuant to this Statute, if disclosure of such evidence or information may lead to the security of any witness or his/her family being gravely endangered, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and submit a summary of such evidence or information. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*

6. [Pending]

7. *A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of sensitive information.*

8. *[Deleted]*

9. *[Deleted]*

8) A/CONF.183/C.1/WGPM/L.2/Add.8, 15 July 1998

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<http://documents-dds-ny.un.org/doc/UNDOC/LTD/G98/723/73/pdf/G9872373.pdf?OpenElement>

**Article 68**

**Protection of the victims and witnesses and their participation in the proceedings**

1. *The Court shall take appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims<sup>3</sup> and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*

2. *As an exception to the principle of public hearings in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all of the circumstances, particularly the views of the victim or witness.[...]*

6. *[Deleted]*<sup>4</sup>

9) A/CONF.183/C.1/L.76/Add.6, 16 July 1996

Document Type: Draft Statute for the ICC

Submitted by: Drafting Committee

**Part 6**

**The Trial**

**Article 68**

**Protection of the victims and witnesses and their participation in the proceedings**

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<sup>3</sup> Delegations took the view that the protective measures contemplated by this article are intended to be afforded to witnesses, to victims (who are not witnesses) directly connected with an investigation or proceedings before the Court and to other persons who are at risk on account of the testimony given by such witnesses. Some delegations did not agree with this.

<sup>4</sup> In the exercise of its powers under this article, the Court shall take into consideration the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender, as defined in article [5 ter]. and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 44, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

**10) A/CONF.183/C.1/L.88, 16 July 1998**

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**Part 6  
The Trial**

**Article 68  
Protection of the victims and witnesses and their participation in the proceedings**

[Same as above document –No.10). A/CONF.i83/c.i/L.76/Add.6, 16 July 1996]

**11) A/CONF.183/9, 17 July 1998**

**ROME STATUTE**