



27 September 2012

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 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 (“ACLT Rules”), 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. This report summarises the activities of the ACLT since the date of the last annual report of 21 March 2011. Details of how the ACLT generally functions, in addition to its mandate, are not repeated in this report as they are contained in the aforementioned report which was the first to be issued by the ACLT.

B. Composition of the ACLT

3. 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.”

2. The Advisory Committee shall elect a judge as chairperson for a period of three years who shall be eligible for re-election once. [...].

4. Rule 6 of the ACLT Rules (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.

5. The ACLT, in the reporting period, was comprised of:

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;

Didier Preira, Deputy-Registrar and representative from the Registry;

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

6. In the reporting period, Judge Akua Kuenyehia served as chairperson of the committee, having been elected at the constituting meeting of this composition of the committee on 2 September 2009 pursuant to regulation 4 (2) of the Regulations of the Court. Under this provision, the elected judge shall act as chairperson for a period of three years. In respect of the representatives from the Office of the Prosecutor and the Registry, Rod Rastan and Marc Dubuisson, respectively, acted as substitutes but in the reporting period did not have to fulfil this role.

7. The mandates of the three elected judges on the committee began on 2 September 2009 and expired on 1 September 2012. Three new judges from the respective Divisions were elected to serve on the ACLT and their mandates will commence as of the date of the next constituting meeting of the ACLT.

8. In respect of the representative of counsel included in the list of counsel, 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.” Professor Kenneth S. Gallant, a member of the list of counsel, has served on the ACLT for the maximum period of two terms (regulation 3 (3) of the Regulations of the Registry) as the representative of counsel from the list of counsel, being first elected in 2005 and then re-elected on 1 May 2009. In the reporting period, given the end of his mandate, elections were carried

out to elect the new representative of counsel pursuant to regulation 3 (2) of the Regulations of the Registry; the new representative will be Thomas Charles Viles.¹ The length of the mandates of the representatives of the Office of the Prosecutor and the Registry is not specified in the Court's legal texts and the representatives from those offices will currently remain Fabricio Guariglia and Didier Preira, respectively.

9. As of the date of the next constituting meeting, the members of the ACLT will be:

Judge Akua Kuenyehia, a judge in the Appeals Division;

Judge Joyce Aluoch, a judge in the Trial Division;

Judge Silvia Fernández de Gurmendi, a judge in the Pre-Trial Division;

Fabricio Guariglia, representative from the Office of the Prosecutor, with substitute Rod Rastan;

Didier Preira, Deputy Registrar and representative from the Registry, with substitute Marc Dubuisson;

Thomas Charles Viles, representative of counsel included in the list of counsel.

10. The chairperson of the committee will be elected at the constituting meeting (regulation 4 (2) of the Regulations of the Court).

C. ACLT Meetings

11. The ACLT is required to “meet at least twice a year and at any time at the request of the Presidency” (regulation 4 (2) of the Regulations of the Court). Rule 7 of the ACLT Rules 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 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.”

¹ <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Defence/Counsel/Representative/>

12. No additional request that a meeting should be convened was made by the Presidency in the reporting period and both ACLT meetings held in the reporting period were convened by the chairperson of the committee. The two meetings took place on 10 October 2011 and 26 January 2012. A second meeting was not convened in 2011. Because the representative of counsel from the list of counsel is based in the United States of America, he did not attend the meetings in person but rather participated by way of telephone conference call.

D. Activities of the ACLT in the reporting period

13. Regulation 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.
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.

14. In the reporting period, the ACLT submitted one report to a plenary session pursuant to regulation 4 (4) of the Regulations of the Court and rule 13 of the ACLT Rules. The report dealt with a proposal for amendment to the Rules of Procedure and Evidence. In this respect, regulation 5 of the Regulations of the Court (Amendments to the Rules and Elements of Crimes) provides:

1. Any proposal for amendments to the Rules pursuant to article 51 or to the Elements of Crimes pursuant to article 9 shall be submitted by a judge to the Advisory Committee on Legal Texts. The Prosecutor may submit proposals to the Advisory Committee on Legal Texts. All proposals, together with any explanatory material, shall be presented in writing in both working languages of the Court.
2. In urgent cases, where the Rules do not provide for a specific situation before the Court, the Presidency, on its own motion or at the request of a judge or the Prosecutor, may submit proposals for provisional rules under article 51, paragraph 3, directly to the judges for their consideration in a plenary session.

15. Article 51 of the Statute (Rules of Procedure and Evidence) provides:

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Rules of Procedure and Evidence may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority; or
 - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

16. In this case, the ACLT, by way of memorandum of 12 July 2011, received a proposal for the amendment of the Rules of Procedure and Evidence by the addition of a provisional rule as referred to in article 51 (3) of the Statute (see above). The proposed new rule provided for the possibility of enabling one judge in a Trial Chamber to act on behalf of the whole Trial Chamber in relation to certain issues; the proposal possessed some similarities with the idea of the single judge in a Pre-Trial Chamber, as referred to in article 39 (2) (b) (iii) of the Statute.²

17. The ACLT carried out its work on this proposal both by way of exchanges of views in the two meetings referred to above and through written correspondence and proposed redrafts of the provision. The ACLT submitted its report on the proposal, with annexes, to the plenary session on 21 February 2012. The report is currently confidential (rules 8 and 13 of the ACLT Rules).

² “The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence.”

18. In the reporting period, there were no proposals to amend the Regulations of the Court nor were any referrals received from the Presidency.

19. Finally, in the reporting period, the ACLT Rules (rule 3 of the ACLT Rules) and the first ACLT Annual Report (rule 16 of the ACLT Rules) were published on the Court's website. An email account was also set up for the committee (rule 11.1 of the ACLT Rules).