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Report of the Working Group on Amendments

I.	Introduction.....	2
II.	Consideration of proposals to amend the Rome Statute	2
	A. Belgium	3
	B. Mexico.....	5
	C. Trinidad and Tobago.....	5
	D. South Africa	5
	E. Kenya.....	5
III.	Consideration of proposals to amend the Rules of Procedure and Evidence	5
	A. Provisional amendments to rule 165.....	5
	B. Proposed amendment to rule 76 (3).....	6
IV.	Information on the status of ratifications of the Kampala amendments to the Rome Statute as well as on the amendment adopted at the fourteenth session of the Assembly	6
V.	Decisions and Recommendations	6
Annex I:	Draft text for the omnibus resolution.....	7
Annex II:	Amendments to article 8 of the Rome Statute proposed by Belgium and circulated by the Depositary on 15 August 2017	8
Annex III:	Non-paper submitted by Belgium: proposal for elements of crimes relating to the proposed amendments to article 8	9
Annex IV:	Draft resolution proposed by Belgium	11
Annex V:	Non-paper submitted by France and Germany: Proposed amendments to provisional rule 165 of the Rules of Procedure and Evidence	12

I. Introduction

1. The present report is submitted pursuant to the mandate given by the Assembly of State Parties (“the Assembly”) to the Working Group on Amendments (“the Working Group”). The Working Group was established by Assembly resolution ICC-ASP/8/Res.6 for the purpose of considering amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly.
2. The Working Group’s consideration of amendment proposals to the Rome Statute and to the Rules of Procedure and Evidence is governed by the Terms of Reference set out in Assembly resolution ICC-ASP/11/Res.8, annex II. The amendment procedure for the Rules of Procedure and Evidence is also governed by the “Roadmap on reviewing the criminal procedures of the International Criminal Court”, the main purpose of which is to facilitate a structured dialogue between key stakeholders on proposed amendments to the Rules of Procedure and Evidence.¹ In endorsing the Roadmap by resolutions ICC-ASP/11/Res.8 and ICC-ASP/12/Res.8, the Assembly has reaffirmed the role of the Working Group in receiving and considering recommendations to the Assembly on proposals of amendments to the Rules of Procedure and Evidence.
3. At its fifteenth session, the Assembly invited the Working Group to continue its consideration of all amendment proposals in accordance with the Terms of Reference of the Working Group, and requested the Working Group to submit a report for the consideration of the Assembly at its sixteenth session.²
4. On 20 December 2016, the Bureau reappointed via a silence procedure Ambassador May-Elin Stener (Norway) as Chairperson of the Working Group.³
5. The Working Group met on 14 February 2017 to commence its work. Cognizant of the importance of holding regular meetings, the Working Group agreed to meet approximately every six weeks. It held seven intersessional meetings, on 14 February, 16 March, 24 April, 20 June, 28 August, 26 September, and 19 October 2017.

II. Consideration of proposals to amend the Rome Statute

6. The Working Group had before it those amendment proposals previously referred to it by the Assembly at its eighth session, as well as those transmitted by the Depositary of the Rome Statute on 14 March 2014.⁴ It also had before it the non-paper submitted by Belgium on 3 May 2016 containing new provisions complementing proposed amendments 2 and 3 relating to article 8 of the Rome Statute proposed by Belgium and co-sponsored by 13 delegations.⁵
7. As in the past, proponents were given the opportunity, at each meeting of the Working Group, to provide updates on their proposals. All delegations were invited to comment on the different proposals before the Working Group.

¹ The Roadmap is contained in the Report of the Bureau on the Study Group on Governance to the eleventh session of the Assembly (ICC/ASP/11/31), annex I. The Revised Roadmap is contained in the Report of the Bureau on the Study Group on Governance to the twelfth session of the Assembly (ICC-ASP/12/37, annex I).

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifteenth session, The Hague, 16 - 24 November 2016* (ICC-ASP/15/20), vol. I, part III, ICC-ASP/15/Res.5, annex I, paras. 19(a) and (b).

³ Bureau of the Assembly of States Parties, 1st meeting, 16 February 2017, Agenda and decisions, annex, available at https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2017-Bureau-01-16Feb2017.pdf

⁴ These amendment proposals are contained in the Report of the Working Group on Amendments to the thirteenth session of the Assembly (ICC-ASP/13/31). They are available on the website of the Assembly https://asp.icc-cpi.int/en_menus/asp/WGA/Pages/default.aspx and, having been notified to the Depositary, are also available at the United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-10&chapter=18&clang=_en.

⁵ Report of the Working Group on Amendments to the fifteenth session of the Assembly (ICC-ASP/15/24), annex III. The non-paper also included a proposal on elements of crimes relating to the proposed amendments to article 8 of the Rome Statute.

A. Belgium

8. Following its consideration of the above-mentioned non-paper submitted by Belgium during the previous intersessional period, the Working Group had agreed to consider the proposal to amend article 8 of the Rome Statute in depth at its future meetings on the basis of that non-paper, which would develop into a rolling text reflecting the state of the discussions, with the aim of submitting a recommendation to the Assembly at its sixteenth session.⁶

9. At the first meeting, on 14 February 2017, the Working Group thus continued its consideration of the non-paper, which was further discussed at the second to fourth meetings, on 16 March, 24 April and 20 June.

10. Belgium recalled the history of the proposal and emphasized its topicality, as the four types of weapons covered either had been recently used or were increasingly likely to be used by State and non-State actors. Recalling the requirement in article 121, paragraph 2, of the Rome Statute, the sponsor expressed the hope that agreement would be reached in time for the Assembly to be in a position to take up the proposal at its sixteenth session.

11. Over the course of the discussion, the sponsor introduced several revisions to the proposal in response to comments and concerns raised by delegations. In proposed article 8, paragraph 2 (b) (xxvii) and paragraph 2 (e) (xvi), as well as the corresponding elements of crimes, the expression “[including their] equipment or means of delivery” was suppressed since it created confusion. In proposed article 8, paragraph 2 (b) (xxviii) and paragraph 2 (e) (xvii), as well as the corresponding elements of crimes, the terms “employing/employed” were replaced with “using/used” to ensure consistency with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. In paragraph 1 of the elements of crimes relating to article 8, paragraph 2 (b) (xxvii) and paragraph 2 (e) (xvi), the expression “designed to use” was replaced with the more inclusive term “which”. In the elements of crimes relating to article 8, paragraph 2 (b) (xxvii) and paragraph 2 (e) (xvi), the expression “whatever their origin or method of production” had been added in paragraph 1 and paragraph 2 had been deleted, for purposes of consistency with the definitions of the crimes themselves. In paragraph 2 of the elements of crimes relating to article 8, paragraph 2 (b) (xxx) and paragraph 2 (e) (xix), the term “is” was replaced with “was”.⁷

12. At the third meeting, on 24 April, Belgium introduced a draft resolution based on Review Conference resolution RC/Res.5. It emphasized that the intention was not to prejudge the outcome of the discussion, but to assist the Working Group in its consideration of the issue, given the time constraints under which it was operating. Following concerns raised by a few delegations, Belgium presented a revised draft resolution at the fourth meeting, on 20 June, where the reference to customary international law in the sixth preambular paragraph was deleted in recognition of the absence of general agreement that the proposed crimes were all crimes under existing customary international law.⁸

13. In the course of the discussion, widespread support was expressed for the proposed amendments. Some delegations cautioned against the inclusion in the Statute of the proposed crimes. A few delegations were not convinced by the proponent’s argument that the proposed crimes could be seen as reflective of customary international law. A few delegations also argued that the existence of a criminal prohibition under customary international law was a prerequisite or at least a key factor for the inclusion of war crimes in the Rome Statute. It was also maintained that the drafters of the Rome Statute had considered but ultimately rejected including in the war crimes provision three of the four types of weapons covered by the amendment proposal and that no convincing reasons warranted a departure from the balance carefully struck in Rome. Questions were also asked whether the four weapon types should be treated with equity given the varying degree of support for the treaties prohibiting their usage. Some also argued that additional amendments would fragment the Rome Statute system in general and article 8 in particular, which could have a negative effect on universality, especially by deterring ratifications to

⁶ Ibid., para. 16.

⁷ The revised proposal on the elements of crimes is reproduced in annex III of the present report.

⁸ The draft resolution is reproduced in annex IV of the present report.

the Rome Statute by States not Parties to the relevant treaties on which the amendments were based.

14. In response, it was maintained that the amendments could be said to codify crimes under customary international law, all the while acknowledging that States could have a different position on the matter. It was also argued that neither the Rome Statute nor subsequent amendment practice indicated that amendments had to reflect crimes under customary international law. It was further argued that article 8 already included crimes not prohibited under customary international law at the time of their inclusion in the Rome Statute, such as the recruitment of children and attacks against peacekeepers. It was stated that adoption of the amendments would strengthen the Court by enhancing the scope of protection from war crimes. Moreover, it was pointed out that the Rome Statute allowed new States Parties to ratify the original text only; any amendments would therefore not prevent ratification by future States Parties and indeed, by making the Court more relevant, could have a positive impact on universality. As to existing State Parties, they would be free to ratify the amendments or not.

15. As regards the question of the appropriateness of moving forward with the proposal, a large number of delegations supported such action and favoured its circulation by the Chair of the Working Group in time to comply with the three-month notification rule. They stressed the fact that the proposal had been under consideration for many years and had been refined through lengthy and thorough consultations between the sponsor and other delegations.

16. Some delegations had other, more overarching objections against amending the Rome Statute as the Court was faced with challenges such as non-cooperation and threats of withdrawal. Some delegations also argued that the Assembly had other particularly important matters to tackle, especially the activation of the crime of aggression. In response, it was argued that the various topics on the agenda of the Assembly had to be addressed on their individual merits.

17. At the fourth meeting, on 20 June, the Chair observed that, while there was strong support for the circulation of a Chair's text with a view to its submission to the Depositary, she was not in a position to proceed, given the absence of consensus. She would continue consultations with interested delegations in the coming weeks.

18. On 15 August, the Secretary-General of the United Nations, in his capacity as Depositary of the Rome Statute, circulated the text of amendments to article 8 of the Statute, at the request of Belgium.⁹

19. At the fifth meeting of the Working Group, on 28 August, Belgium explained that it had decided to submit the proposal to the Depositary in order to satisfy the procedural requirements in article 121, paragraph 2, of the Rome Statute, since the absence of consensus impeded the Chair from doing so. In the ensuing debate, widespread support was again expressed for the proposal. However, some delegations maintained their above-mentioned reservations. A few delegations, irrespective of their national position on the amendment proposals, recalled the importance of achieving consensus before recommending them to the Assembly for adoption.

20. At the sixth meeting of the Working Group, on 26 September, the Chair recalled her proposal to hold discussion within an open-ended small group of interested delegations. However, while a few delegations expressed their openness to the proposal, most delegations expressed concerns that such open-ended small group would not bring any added value unless discussions focused on addressing remaining issues with concerned States Parties.

21. At the seventh meeting of the Working Group, on 19 October, the Chair recalled that there was strong support in favour of recommending that the Assembly adopt the amendment proposal. However, some delegations reiterated the above-mentioned concerns and maintained that they did not support recommending that the Assembly adopt the proposal. The Chair encouraged those States with outstanding concerns to continue

⁹ Depositary Notification C.N.480.2017, issued on 15 August 2017 by the United Nations Secretary-General, in his capacity as Depositary of the Rome Statute of the International Criminal Court. The text of the proposed amendments is reproduced in annex II of the present report.

working to address such concerns, given the strong support but absence of consensus for the amendments.

22. The Working Group agreed to reconvene in advance of, and if need be, during the sixteenth session of the Assembly to continue the discussion on the amendment proposal.

B. Mexico

23. At the first meeting, on 14 February 2016, Mexico indicated that it would present an updated paper on its proposal after the conclusion of the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination.

C. Trinidad and Tobago

24. No further updates were provided by Trinidad and Tobago concerning its proposal during the intersessional period.

D. South Africa

25. No further updates were provided by South Africa concerning its proposal during the intersessional period.

E. Kenya

26. No further updates were provided by Kenya concerning its proposal during the intersessional period.

III. Consideration of proposals to amend the Rules of Procedure and Evidence

A. Provisional amendments to rule 165

27. The Working Group had before it the provisional amendments to rule 165 adopted by the Court on 10 February 2016 and referred to it by the Study Group on Governance,¹⁰ as well the non-paper jointly submitted by France and Germany containing a proposal to amend the text of provisional rule 165.¹¹

28. At its first meeting, on 14 February 2017, the Working Group continued its consideration of the provisional amendments to rule 165. France and Germany referred to the proposal they had submitted in 2016, which was aimed at addressing their concerns with regard to the legality of the provisional amendments, while taking into account the need to enhance the efficiency of the proceedings. However, the French and German proposal did not attract support. France and Germany stressed that they were open to further discussions regarding their proposal, including amending the text of the proposal.

29. The Chair, at the sixth meeting, on 26 September 2017, noted that, although a large majority of States Parties supported the adoption of the provisional amendments by the Assembly, there was no consensus in light of the outstanding concerns of a few States. The Working Group was therefore not in a position to make a concrete recommendation to the Assembly regarding the provisional amendments.

30. There was also no agreement as regards the question whether the provisional amendments were applicable pending a decision of the Assembly.¹² A few delegations maintained that the Court could not apply the provisional rule as long as the Assembly had

¹⁰ Report of the Working Group on Amendments to the fifteenth session of the Assembly (ICC-ASP/15/24), annex IV.

¹¹ *Ibid.*, annex V.

¹² Report of the Working Group on Amendments to the fifteenth session of the Assembly (ICC-ASP/15/24/Add.1), paras. 37 *bis* and 37 *ter*.

not decided whether to adopt, amend or reject the amendments. However, other delegations took the view that the provisional amendments remained applicable pending a decision by the Assembly of whether to adopt, amend or reject the amendments. In this connection, it was observed that it would not be for the Assembly to pronounce itself on this issue as it was for the Court to adjudicate the matter.

B. Proposed amendment to rule 76 (3)

31. At the first meeting, on 14 February 2017, the Chair reminded the Working Group that it remained seized of the proposed amendment to rule 76(3). No delegation provided any further update on the issue.

IV. Information on the status of ratifications of the Kampala amendments to the Rome Statute as well as on the amendment adopted at the fourteenth session of the Assembly

32. The Working Group was kept regularly informed of any ratifications of the amendments to the Rome Statute adopted at the 2010 Review Conference or at the fourteenth session of the Assembly. Since the submission of its last report, Argentina and Portugal had ratified the Kampala amendment relating to article 8 of the Rome Statute; Argentina and Portugal had ratified the Kampala amendments on the crime of aggression; and the Austria, Netherlands and Portugal had ratified the amendment to article 124 of the Rome Statute.

33. As of 9 October 2017, the Kampala amendment to article 8 had been ratified by 34 States Parties, the Kampala amendments on the crime of aggression had been ratified by 34 States Parties and the amendment to article 124 had been ratified by six States Parties.

V. Decisions and recommendations

34. The Working Group agrees to reconvene in advance of, and if need be, during the sixteenth session of the Assembly to continue the discussion on amending article 8 of the Rome Statute.

35. The Working Group recommends that regular meetings be held throughout 2018, including, if necessary, in expert meetings format.

36. The Working Group concludes its intersessional work by recommending to the Assembly the inclusion in the omnibus resolution of two paragraphs (annex I).

Annex I

Draft text for the omnibus resolution

1. Paragraph 125 of the 2016 omnibus resolution (ICC-ASP/15/Res.5) remains unchanged, reading:

“*Welcomes* the report of the Working Group on Amendments.”

2. Paragraph 19 of annex I (mandates) of the 2016 omnibus resolution (ICC-ASP/15/Res.5) is replaced by the following:

“(a) *invites* the Working Group to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group; and

(b) *requests* the Working Group to submit a report for the consideration of the Assembly at its seventeenth session;”

Annex II

Amendments to article 8 of the Rome Statute proposed by Belgium and circulated by the Depositary on 15 August 2017¹

- 1. To be inserted as article 8, paragraph 2 (b) (xxvii), and article 8, paragraph 2 (e) (xvi)**

Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production;

- 2. To be inserted as article 8, paragraph 2 (b) (xxviii), and article 8, paragraph 2 (e) (xvii)**

Using anti-personnel mines;

- 3. To be inserted as article 8, paragraph 2 (b) (xxix), and article 8, paragraph 2 (e) (xviii)**

Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;

- 4. To be inserted as article 8, paragraph 2 (b) (xxx), and article 8, paragraph 2 (e) (xix)**

Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices;

¹ Depositary Notification C.N.480.2017, issued on 15 August 2017 by the United Nations Secretary-General in his capacity as Depositary of the Rome Statute of the International Criminal Court.

Annex III

Non-paper submitted by Belgium: proposal for elements of crimes relating to the proposed amendments to article 8

A. New article 8-2-b)xxvii)

1. The perpetrator employed weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

B. New article 8-2-b)xxviii)

1. The perpetrator used mines¹ designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.²
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

C. New article 8-2-b)xxix)

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

D. New article 8-2-b)xxx)

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness³ to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

¹ The term “mines” means “a munition designed to be placed under, on or near the ground or other surface area” and to be exploded by the presence, proximity or contact of a person or a vehicle.

² It is understood that this element does not encompass the use of mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices. Those mines are not considered anti-personnel mines as a result of being so equipped.

The terms “anti-handling devices” mean “a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine”.

³ The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.

E. New article 8-2-e)xvi)

1. The perpetrator employed weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

F. New article 8-2-e)xvii)

1. The perpetrator used mines⁴ designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.⁵
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

G. New article 8-2-e)xviii)

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

H. New article 8-2-e)xix)

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness⁶ to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

⁴ The term “mines” means “a munition designed to be placed under, on or near the ground or other surface area” and to be exploded by the presence, proximity or contact of a person or a vehicle.

⁵ It is understood that this element does not encompass the use of mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices. Those mines are not considered anti-personnel mines as a result of being so equipped.

The terms “anti-handling devices” mean “a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine”.

⁶ The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.

Annex IV

Draft resolution proposed by Belgium

The Assembly of the States Parties

Noting article 121, paragraphs 1 and 2, of the Rome Statute of the International Criminal Court which permits the Assembly of States Parties to adopt any proposed amendment to the Rome Statute after the expiry of seven years from the entry into force of the Statute,

Noting article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and *confirming* its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute,

Confirming that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendment contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

Noting article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

Considering that where the elements of the crimes specify that the conduct took place in the context of and was associated with an armed conflict, they consequently confirm the exclusion from the Court's jurisdiction of law enforcement situations,

Considering that the crimes referred to in article 8, paragraph 2 (b) (xxvii) and article 8, paragraph 2 (e) (xvi) (employing microbial, biological or toxins weapons); in article 8, paragraph 2 (b) (xviii) and article 8, paragraph 2 (e) (xvii) (using anti-personnel mines); in article 8, paragraph 2 (b) (xxix) and article 8, paragraph 2 (e) (xviii) (employing weapons that injure by fragments undetectable by X-rays) and in article 8, paragraph 2 (b) (xxx) and article 8, paragraph 2 (e) (xix) (employing laser blinding weapons) are serious violations of the laws applicable in international armed conflict and in armed conflict not of an international character,

1. *Decides* to adopt the amendment to article 8, paragraph 2 (b) and to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to the present resolution, which is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;
2. *Decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex II to the present resolution.

Annex V

Non-paper submitted by France and Germany: Proposed amendments to provisional rule 165 of the Rules of Procedure and Evidence

<i>Original Rule 165</i>	<i>Provisional Rule 165</i>	<i>Amendment to Provisional Rule 165</i>
Rule 165 Investigation, prosecution and trial	Rule 165 Investigation, prosecution, trial <u>and</u> <u>appeal</u>	Rule 165 Investigation, prosecution, and trial <u>and</u> <u>appeal</u>
1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.	1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.	1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.
2. Articles 53 and 59, and any rules thereunder, shall not apply.	2. Articles 39(2)(b) , 53, 57(2) , 59, 76(2) <u>and</u> 82(1)(d), and any rules thereunder, shall not apply. <u>A Chamber composed of one judge from the Pre-Trial Division shall exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58. A Chamber composed of one judge shall exercise the functions and powers of the Trial Chamber, and a panel of three judges shall decide appeals. The procedures for constitution of Chambers and the panel of three judges shall be established in the Regulations.</u>	2. Articles 39(2)(b) , 53, 57(2) , and 59, 76(2) <u>and</u> 82(1)(d) , and any rules thereunder, shall not apply. <u>A Chamber composed of at least one judge from the Pre-Trial Division shall exercise the functions and powers of the Pre-Trial Chamber from the moment of receipt of an application under article 58. When the Pre-Trial Chamber is seized of offences against the administration of justice under article 70, orders or rulings issued under article 61 paragraph 7 must be concurred in by a majority of judges. A Chamber composed of one judge shall exercise the functions and powers of the Trial Chamber, and a panel of three judges shall decide appeals. The procedures for constitution of Chambers and the panel of three judges shall be established in the Regulations.</u>
3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.	3. For purposes of article 61, the Pre-Trial Chamber, as constituted under sub-rule 2 , may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.	3. For purposes of article 61, the Pre-Trial Chamber, as constituted under sub-rule 2 , may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.
4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.	4. <u>The Trial Chamber seized of the case from which the article 70 proceedings originate may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges in the originating case. Where the Trial Chamber directs joinder of charges, the Trial Chamber seized of the originating case shall also be seized of the article 70 charge(s). Unless there is such a joinder, a case concerning charges under article 70 must be tried by a Trial Chamber composed of one judge.</u>	4. <u>The Trial Chamber seized of the case from which the article 70 proceedings originate may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges in the originating case. Where the Trial Chamber directs joinder of charges, the Trial Chamber seized of the originating case shall also be seized of the article 70 charge(s). Unless there is such a joinder, a case concerning charges under article 70 must be tried by a Trial Chamber composed of one judge.</u>