

Fordham International Law Journal

Volume 25, Issue 3

2001

Article 8

Rule of Procedure of the Assembly of States parties to the Rome Statute of the International Criminal Court

Saeid Mirzaee Yengejeh*

*

Copyright ©2001 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

Rule of Procedure of the Assembly of States parties to the Rome Statute of the International Criminal Court

Saeid Mirzaee Yengejeh

Abstract

In this Essay, the author intends to elaborate only on those Rules that are unique, or were the subject of lengthy discussion in the working group. It is practically impossible to discuss all rules contained in the Rules of Procedure. Before beginning, one point needs to be clarified. There are a number of rules in the Rules of Procedure that simply repeat the provisions of the Statute. This was a conscious decision made by the working group, which included harmless repetitions in order to provide a handy set of rules for future delegates to the Assembly that will cover all aspects of its activities.

RULES OF PROCEDURE OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

*Saeid Mirzaee Yengejeh**

I. AN ASSEMBLY WITH UNPRECEDENTED POWERS

The Rome Statute (“Statute”) of the International Criminal Court (“the Court”)¹ is a unique multilateral treaty. Never before had an international criminal court been established by way of an international treaty. The two *ad hoc* criminal tribunals for prosecution of persons who committed genocide, and crimes under international humanitarian law committed in the territory of Rwanda and the former Yugoslavia were established by the Security Council under Chapter VII of the Charter.² The Security Council, as the constituent organ, plays a primary role in decision-making in the United Nations on matters pertaining to the *ad hoc* tribunals, whereas, the General Assembly of the United Nations plays a limited role on issues relating to these tribunals. A brief discussion of the role of the Security Council and the General Assembly on the following areas will clearly illustrate the point mentioned. It will also indicate issues in which decision-making by the constituent organ of an international criminal tribunal is essential.

* Dr. Saeid Mirzaee Yengejeh is a Senior Counselor and the legal advisor of the Permanent Mission of the Islamic Republic of Iran to the United Nations. He was the coordinator of the working group on the Rules of Procedure of the Assembly of States Parties of the Preparatory Commission for the International Criminal Court.

1. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9* (1998), available at http://www.un.org/law/icc/statute/99_corr/3.htm [hereinafter Rome Statute].

2. Statute of International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states, between January 1, 1994 and December 31, 1994, U.N. Doc. S/RES/955 (1994), amended by U.N. Doc. S/RES/1165 (1998); U.N. Doc. S/RES/1329 (2000) [hereinafter ICTR Statute]; Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, U.N. Doc. S/RES/827 (1993), amended by U.N. Doc. S/RES/1166 (1998); U.N. Doc. S/RES/1329 (2000) [hereinafter ICTY Statute].

First, the Security Council adopted the Statutes of the *ad hoc* Tribunals (“ICTY Statute” and “ICTR Statute”).³ These Tribunals are subsidiary bodies of the Security Council. Although Member States of the United Nations provided views, ideas, and comments on the draft Statutes, the Security Council approved the final versions of these instruments, which had been prepared by the Secretariat of the United Nations. The General Assembly did not play any role in their preparation and adoption. The same is true regarding amendments to the Statutes of the Tribunals.⁴

Second, the General Assembly plays a secondary role in election of the judges to these tribunals. The Security Council selects a specified number of eligible individuals⁵ from among candidates presented by the Member States of the United Nations. Then, the list of individuals chosen is presented to the General Assembly for election of the required number of judges for either of the Tribunals.

Third, the expenses of the *ad hoc* Tribunals are the expenses of the Organization in accordance with Article 17 of the Charter.⁶ Thus, the General Assembly approves the budget of the Tribunals, which is borne by the Members of the Organization.

Fourth, political issues pertaining to the Tribunals, including cases of non-cooperation, are considered and decided by the Security Council. The General Assembly receives the annual reports of these Tribunals, and also provides an opportunity for the Member States to make comments on them. But, it does not make any recommendation on the activities of the Tribunals. The above-mentioned points are at the core of the issues related to the Tribunals, which are discussed and decided by the United Nations. The United Nations does not interfere in the judicial functions of the Tribunals, including the procedure governing their activities. The Tribunals have been authorized to adopt their rules of procedure and evidence and amend them, as they

3. ICTY Statute, *supra* note 2; ICTR Statute, *supra* note 2.

4. The ICTY Statute was amended twice, first in 1998, and then in 2000. *See, e.g.*, S.C. Res. 1166, U.N. SCOR, 3877th mtg, U.N. Doc. S/RES/1165 (1998); S.C. Res. 1329, U.N. SCOR, 4240th mtg, U.N. Doc. S/RES/1329 (2000).

5. The Security Council selects a list not less than two times and not more than three times of the number of judges that should be elected, and presents it to the General Assembly for election of the required number of judges. *See* ICTY Statute, *supra* note 2, arts. 12-13.

6. *See* ICTR Statute, *supra* note 2, arts. 30, 32.

deem appropriate.⁷ Consequently, the Tribunals have extensive liberty in conducting their judicial and administrative affairs.

By contrast, the Court is an independent institution and is not a judicial organ of the United Nations. It shall be brought into a relationship with the United Nations through an agreement ("Draft Relationship Agreement").⁸ Therefore, the United Nations will not have any role on decision-making pertaining to the Court's affairs. This role is given to a powerful Assembly of States Parties ("Assembly"), which will be established in accordance with Article 112 of the Statute after its entry into force. The Assembly shall make such decisions that are jointly being made by the Security Council and the General Assembly of the United Nations with respect to the *ad hoc* Tribunals. These functions include election of the judges, the Prosecutor, and the Deputy Prosecutor of the Court; altering the number of judges, approval of the budget of the Court; approval of instruments prepared by the Preparatory Commission ("the Commission"); and consideration of questions of non-compliance.

The Assembly will also have additional powers in comparison to the decision-making authority of the United Nations with regards to the *ad hoc* Tribunals. A few instances could be cited as examples. The Assembly will provide management oversight to the Presidency, the Prosecutor, and the Registrar regarding the administration of the Court. It will also approve the Rules of Procedure and Evidence and the Elements of Crimes and will amend them if it deems appropriate.⁹ Furthermore, the Assembly shall perform other functions consistent with the Statute or the Rules of Procedure and Evidence of the Court. For instance, a decision to remove a judge, the Prosecutor, or a Deputy Prosecutor from office should be made by the Assembly in accordance with paragraph 2 of Article 46 of the Statute. The Bureau of the Assembly should make a decision, in accordance with rule 27 of

7. See ICTR Statute, *supra* note 2, arts. 14, 15.

8. See Rome Statute, *supra* note 1, art. 2. The Preparatory Commission for the International Criminal Court adopted the draft relationship agreement between the United Nations and the International Criminal Court during its eighth session in 2001. *Draft Relationship Agreement between the United Nations and the International Criminal Court*, U.N. Doc. PCNICC/2001/WGICC-UN/L.1 (Oct. 4, 2001) [hereinafter *Draft Relationship Agreement*].

9. See Rome Statute, *supra* note 1, arts. 9, 51.

the Rules of Procedure and Evidence, concerning disciplinary measures against the Prosecutor or a Deputy Prosecutor.

The above-mentioned points indicate that the Rome Conference consciously opted for closer oversight and control over the activities and functions of the Court, and therefore, granted to the Assembly unmatched powers. Consequently, the Rules of Procedure, which shall apply to the work of the Assembly, regulates its various functions as provided for in the Statute.

II. PREPARATION OF THE RULES OF PROCEDURE OF THE ASSEMBLY

In accordance with Resolution F,¹⁰ adopted by the Rome Conference, the Commission was given the mandate, among others, to prepare the draft Rules of Procedure of the Assembly of States Parties ("Rules of Procedure"). The Commission at its sixth session established a working group to prepare the draft Rules of Procedure.¹¹ The working group held a number of meetings during the seventh and eighth sessions of the Commission and prepared a set of ninety-six rules to be applicable to the work of the Assembly and its subsidiary bodies.¹² The Rules of Procedure adopted by the Commission in its plenary meeting on October 5, 2001, along with other documents prepared by the Commission, shall be submitted to the first session of the Assembly for approval.

In preparation of the draft Rules of Procedure, the working group followed, first and foremost, the provisions of the Statute, and the Rules of Procedure and Evidence¹³ adopted by the Commission at its fifth session. The Rules of Procedure of the Gen-

10. Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF.183/10* (July 17, 1998) [hereinafter Final Act], Resolution F.

11. The initial draft rules of procedure of the Assembly of States Parties had been prepared by the Secretariat of the United Nations. See *Draft Rules of Procedure of the Assembly of States Parties, Prepared by the Secretariat*, U.N. Doc. PCNICC/2000/WGRPASP/L.1 (Dec. 20, 2000). A number of proposals made by the members of the Commission in the course of negotiations were considered by the Working Group and then appropriately incorporated in the draft Rules of Procedure. See *Draft Rules of Procedure of the Assembly of States Parties, Discussion paper proposed by the Coordinator*, U.N. Doc. PCNICC/2001/WGRPASP/RT.1/Rev.1 (Oct. 1, 2001) [hereinafter *Draft Rules of Procedure*].

12. See *Draft Rules of Procedure*, *supra* note 11.

13. See *Report of the Preparatory Commission for the International Criminal Court*, U.N. Doc. PCNICC/2000/1/Add.1 (Nov. 2, 2000).

eral Assembly of the United Nations and the rules of procedure of other treaty bodies, such as the Rules of Procedure for Meetings of States Parties to the United Nations Convention on the Law of the Sea,¹⁴ assisted the working group, to a great extent, in developing the Rules of Procedure. There was considerable practice pertaining to a great number of rules produced by the working group, which undoubtedly helped the working group to move fast in preparation of the Rules of Procedure. However, there were many unique provisions that the working group had to ponder and discuss in order to come up with generally agreed upon formulations.

In this Essay, the author intends to elaborate only on those Rules that are unique, or were the subject of lengthy discussion in the working group. It is practically impossible to discuss all rules contained in the Rules of Procedure. Before beginning, one point needs to be clarified. There are a number of rules in the Rules of Procedure that simply repeat the provisions of the Statute. This was a conscious decision made by the working group, which included harmless repetitions in order to provide a handy set of rules for future delegates to the Assembly that will cover all aspects of its activities.

III. SCOPE OF THE RULES OF PROCEDURE

There was no dispute in the working group as to the application of the Rules of Procedure to the work of the regular and special sessions of the Assembly, as well as to the work of its subsidiary bodies. Therefore, the application of the Rules of Procedure to the above meetings is clearly defined in paragraph 1 of Article 2.¹⁵ However, it should be clarified that the Rules of Procedure not only regulate the meetings of the Assembly and its subsidiary bodies, but also cover other activities of the Assembly and its Bureau, for which meetings will not be required. For instance, duties of the secretariat of the Assembly, which are defined in Rule 37, preparation of the provisional agenda of the Assembly as specified in Rule 11, and communications concern-

14. United Nations Convention on the Law of the Sea, Meeting of States Parties, Rules of Procedure for Meetings of States Parties, U.N. Doc. SPLOS/2/Rev.3 (1995), available at http://www.un.org/Depts/los/meeting_states_parties/documents/splos_2r3e.pdf.

15. See *Draft Rules of Procedure*, *supra* note 11.

ing disciplinary proceedings as set out in Rules 81 and 82, are matters that have been regulated in the Rules of Procedure, but no meeting is required for the performance of these functions. The phrase "the work of the Assembly," was intentionally incorporated to cover all activities of the Assembly, which are regulated by the Rules of Procedure.

Concerning the applications of the Rules of Procedure to the review conferences that would be convened in accordance with Articles 121(2) and 123 of the Statute, divergent views were expressed at the initial stages of the negotiations. Some delegations expressed the view that the review conferences are different institutions, and therefore, separate rules of procedure should apply to their proceedings. Proponents of this view did not object however, to the application of the Rules of Procedure to the review conferences if a decision is made to this effect by a review conference.

On the contrary, other delegations argued that although the review conferences are different in nature, the member States of the review conferences will be the members of the Statute. There was no reason in their view to prepare separate rules to be applied to the review conferences. They advocated the application of these rules to the review conferences that would be convened in accordance with the relevant provisions of the Statute.

After considerable discussion, the working group arrived at a compromise formulation, which is contained in paragraph 2 of Article 2. In accordance with that rule, the Rules of Procedure shall apply to the proceedings of the review conferences, if no decision to the contrary is made by the review conference. In other words, it will be up to the review conference to decide as to the application of rules other than the Rules of Procedure. In the absence of such a decision, the Rules of Procedure shall apply to the proceedings of the review conferences.

IV. SECRETARIAT OF THE ASSEMBLY

Functions of the secretariat of the Assembly are described in Rule 37 of the Rules of Procedure. The duties mentioned therein are normal functions carried out by the secretariats of the international organizations, which include translation, reproduction of documents, reports and decisions, and circulation

of documents and their preservation in the archives. Moreover, in accordance with Rule 11, the secretariat is also required to draw up the provisional agenda of the Assembly. These functions were not disputed in the course of negotiations.

However, one issue relating to the secretariat of the Assembly, which was the subject of extensive discussion, should be particularly mentioned. Since the Statute is silent on the secretariat of the Assembly, the question came up in the course of discussions as to which organ would carry out the functions of the secretariat of Assembly. Two options were mentioned. In accordance with one view, the Assembly is an independent treaty body and therefore an independent secretariat needs to be established to carry out functions prescribed in Rule 37. However, for practical and financial reasons, others preferred that the United Nations Secretariat carry out these functions.

After hearing the arguments of the proponents of either group of delegations, the working group preferred not to make any decision in this regard. It was felt that a decision on the nature of the secretariat of the Assembly falls outside the mandate entrusted to the working group. However, the Commission has entrusted another working group,¹⁶ which was established during its eighth session, to consider and make appropriate recommendations concerning the secretariat of the Assembly.

V. BUREAU OF THE ASSEMBLY

Paragraph 3 of Article 112 of the Statute delineates the composition and functions of the Bureau of the Assembly. The Assembly shall elect a President, two Vice-presidents, and eighteen members of the Bureau, for three-year terms. In electing the members of the Bureau, the Assembly should take into account equitable geographical distribution and adequate representation of the principal legal systems. Rule 29 repeats the provision of the Statute in this regard.

At this stage two comments may be made with regards to the composition of the Bureau. First, in the course of negotiations a proposal was made to apply a staggering mechanism in the elec-

16. The working group on the Assembly of States Parties Preparatory Documents was established at the 33rd meeting of the Commission on October 5, 2001. See *Proceedings of the Preparatory Commission at its Eighth session*, U.N. Doc. PCNICC/2001/L. 3/Rev.1 (Oct. 11, 2001).

tion of the members of the Bureau. A staggering mechanism exists in election of a number of international organs to safeguard continuity and change in the composition of these organs.¹⁷ However, the working group could not accept this proposal. It was felt that such a system has not been provided for in the Statute. The Statute provides that the members of the Bureau shall be elected for three-year terms, whereas, in a staggering system, as was proposed, the term of office of a third of the members of the Bureau would have expired after one year. It was found that this proposal contradicts the Statute provision. Second, the Rules of Procedure do not provide a mechanism for the application of equitable geographical distribution and the adequate representation of the principal legal systems in the election of the members of the Bureau. In the absence of such a mechanism, it will be up to the members of the Assembly to take into consideration the aforementioned principles in electing the members of the Bureau. However, the working group on the Assembly of States Parties preparatory documents has been entrusted to reflect on the composition of the Bureau of the first session of the Assembly. Thus, there will be an opportunity to ponder on this issue with a view to providing some practical suggestions to respect the above considerations.

The provisions of the Statute do not elaborate on the functions of the Bureau. They simply stipulate that the Bureau shall meet as often as necessary, and it shall assist the Assembly in the discharge of its responsibilities. Rule 29 of the Rules of Procedure repeats the provisions of the Statute in respect to the composition and functions of the Bureau. It seems that by providing a general term on the functions of the Bureau, its functions could be developed in practice. The Assembly itself may assign specific functions to be carried out by the Bureau, particularly at the times that it will not be in session.

VI. PUBLIC AND PRIVATE MEETINGS

Rule 42 of the Rules of Procedure regulates public and private meetings of the Assembly and its subsidiary bodies. As will be explained, since the convening of the Rome Conference there has been enormous interest on the part of civil society to

17. See *e.g.*, Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, art. 13.

observe and disseminate information concerning developments on the establishment of the Court. This enthusiasm will surely continue after the establishment of the Court. Therefore, non-governmental organizations have sought to have the meetings of the Assembly held, as much as possible, in public, so that they can participate in such meetings, express their opinion on matters before the Assembly, and disseminate information to the public. On the contrary, private meetings of the Assembly, and its subsidiary bodies would be necessary for the sake of efficiency or while considering matters that should not be made available to the public. Rule 42 strikes a delicate balance between the requirement of holding public meetings and the necessity of convening private meetings.

As a matter of principle, the meetings of the Assembly shall be held in public. Likewise, the meetings of the subsidiary bodies of the Assembly, which are open to all States Parties,¹⁸ shall be held in public. By contrast, the meetings of the Bureau and other subsidiary bodies with limited membership shall be held in private. However, the Assembly and its subsidiary bodies are empowered, in accordance with this Rule, to make a decision to the contrary if in certain circumstances they do not want to follow the principles set out in this Rule.

As will be explained, representatives of observer States, intergovernmental organizations, and non-governmental organizations will be able to participate in the public meetings of the Assembly and its subsidiary bodies. On the contrary, they will not be able to participate in the private meetings of the said organs. However, paragraph 4 of Rule 42 sets out modalities for providing information to the public with regards to decisions made in private meetings.

VII. *PARTICIPATION OF OBSERVERS*

As previously indicated, the Assembly is empowered by the Statute to make important decisions concerning various aspects of the activities of the Court. At the initial stages of the activities

18. The phrasing used in paragraph 3 of Rule 42 is "general membership," which is understood to be tantamount to States Parties. It is further understood that States that have not ratified the Statute cannot be the members of the Assembly and its subsidiary bodies. As will be explained, States that are not parties to the Statute can participate as observers in the meetings of the Assembly. See *Draft Rules of Procedure*, *supra* note 11, rule 42(3), and its corrigendum.

of the Assembly, a limited number of States that have ratified the Statute will be involved in its decision-making process. However, other States, pending the ratification of the Statute, will also be interested in participating in the activities of the Assembly. To this end, a mechanism that exists in other treaty bodies has also been made applicable to the work of the Assembly (i.e., non-States parties will be able to participate in the work of the Assembly as observers, without having the right to vote).

On the other hand, relevant intergovernmental organizations and non-governmental organizations, which have shown tremendous enthusiasm to follow up and be part of the process leading to the establishment of the Court, are eager to participate in the work of the Assembly. Taking into account these factors, the working group has elaborated on provisions concerning their participation as observers in the Assembly. Chapter XX of the Rules of Procedure provides for the modalities of participation of observers in the Assembly. Rules 92 through 95 deal with the participation of States, intergovernmental organizations, and non-governmental organizations in the Assembly. As will be explained, the United Nations has been dealt with separately in the Rules of Procedure. Therefore, the Rules on the United Nations participations are not included in Chapter XX.

A. *Observer States*

In accordance with paragraph 1 of Article 112 of the Statute, States that are not parties to the Statute but have signed it or have signed the Final Act of the Rome Conference can participate in the Assembly as observers. This provision is repeated in Rule 1, on the definition of Observer States.

However, there are twenty-six States that have neither signed the Statute nor the Final Act. The question came up in the working group as to whether these States can participate in the Assembly, and on what conditions. As to the first question, a view was expressed that the Statute deliberately has mentioned signatory States to promote adherence to it. In accordance with this view, States that have not signed the Statute or the Final Act should not be permitted to participate in the Assembly as observers. On the other hand, it was felt that the Statute does not prohibit the participation of States that have neither signed the Statute nor the Final Act in the Assembly. This view prevailed in the

working group. Political consideration was also taken into account in this regard. It was argued that the Court is intended to be a universal criminal court, and therefore universal adherence to it would be highly desirable. This objective can best be achieved through an inclusive policy, rather than isolating certain States. Thus, the working group decided to provide a provision in the Rules of Procedure, which sets out ways and means of participation in this category of States in the Assembly.

Regarding the modalities of participation of these States, the working group felt that they should not participate as observers as prescribed in paragraph 1 of Article 112 of the Statute. A separate mechanism was prepared concerning their participation. The Assembly is authorized to make a decision at the beginning of each session concerning the participation of a representative from this category of States in the Assembly. A representative of these States is entitled, subject to the authorization by the Assembly, to be present in the Assembly and to make a statement.¹⁹

B. *Non-State Actors*

Non-State actors including entities and intergovernmental organizations that have a standing invitation from the General Assembly of the United Nations would be able to participate as observers in the Assembly.²⁰ It needs to be clarified that the working group was aware that the word "entities" appears twice in Rule 92. The first "entities" refers to the non-State actors that have territories under their control, but have not been recognized as a State by the international community.²¹ The other "entities" mentioned in this Rule covers entities that do not have territories under their control, but are neither intergovernmental organizations nor non-governmental organizations.²² Representatives of regional intergovernmental organizations that were either invited to the Rome Conference, accredited to the Preparatory Commission, or invited by the Assembly will also be permitted to participate in the Assembly.

19. *Id.* rule 94.

20. *Id.* rule 92, para. 1.

21. Palestine is the only entity that falls within this category.

22. The International Committee of the Red Cross falls within this category of observers.

C. *Non-governmental Organizations*

The following non-governmental organizations are permitted, in accordance with Rule 93, to participate in the Assembly:

- a. Non-governmental organizations invited to the Rome Conference;
- b. Non-governmental organizations registered to the Preparatory Commission;
- c. Non-governmental organizations that have consultative status with the Economic and Social Council of the United Nations whose activities are relevant to the activities of the Court;
- d. Non-governmental organizations that might be invited by the Assembly.

Modalities of the participation of non-governmental organizations are set out in subparagraphs (a) through (d) of rule 93. As indicated earlier, representatives of non-governmental organizations are entitled to participate in the public meetings of the Assembly. They are also permitted to participate in the public meetings of subsidiary bodies of the Assembly that are open to the general membership of the Assembly. As a general rule, observers cannot vote in the Assembly.

VIII. *PARTICIPATION OF THE UNITED NATIONS*

The United Nations has been treated distinctly in the Rules of Procedure for two reasons. First, although the Court is not a judicial organ of the United Nations, the United Nations is the mother organization of the Court. The United Nations has played a primary role in developing the Statute and its adoption in the Rome Conference. There are a number of provisions in the Statute referring to the relationship of the United Nations with the Court. For instance, referral of cases by the Security Council to the Court has been provided for in Article 13(b) of the Statute. The details of the relationship between the two bodies are set out in the draft Relationship Agreement between the United Nations and the Court.²³ Additionally, the United Nations might be requested to provide conference facilities to the meetings of the Assembly.²⁴ Therefore, the relationship of the

23. *Draft Relationship Agreement*, *supra* note 8.

24. The Assembly shall meet at the seat of the Court or at the headquarters of the United Nations. Rome Statute, *supra* note 1, art. 112(6).

two organizations is unique, and thus, separate rules are provided in the Rules of Procedure to regulate the participation of the United Nations in the Assembly.

Two rules set out the ways and means of the participation of the United Nations in the work of the Assembly. According to rule 35, the United Nations shall have a standing invitation to participate, without the right to vote, in the work and deliberations of the Assembly. It seems that the United Nations also enjoys observer status because it does not have the right to vote in the Assembly. However, in accordance with paragraph 2 of Rule 42, there is no limitation for the participation of the Secretary General of the United Nations or his representatives in the meetings of subsidiary bodies of the Assembly when these bodies take up issues of interest to the United Nations. The Secretary General or his representative is entitled to participate in such a meeting without any restriction with regards to making statements or interventions. This right has not been granted to observers.

Rule 36 is intended to cover the situations in which the United Nations will be required to provide conference services to the Assembly. As a general rule, sessions of the Assembly shall be held at the seat of the Court, or at the United Nations headquarters in New York. The United Nations Secretariat will definitely provide conference services when the meetings are held in New York. The United Nations Secretariat might also be requested to provide conference services when sessions of the Assembly are held at The Hague. As a general practice, the Secretary General or his representatives must be present when the United Nations provides conference services. Thus, rule 36 covers the existing practice of the United Nations.

Moreover, the United Nations is also entitled to propose items for consideration by the Assembly. Paragraph 3 of Rule 11 stipulates that such a proposal should be communicated by the Secretary General to the President of the Bureau of the Assembly, along with relevant information for its possible inclusion on the agenda of the Assembly. This demonstrates the fact that the United Nations is treated differently than the observers, who do not enjoy similar advantages.

CONCLUSION

In conclusion, it should be pointed out that in preparing

the Rules of Procedure, the working group benefited a great deal from the experiences of existing international treaty bodies. The author did not wish to enter into the discussion of other rules that are taken from the existing rules of procedure of the General Assembly of the United Nations or other treaty bodies. Should there arise any dispute or question as to the application or interpretation of these rules, the practice of the United Nations and other treaty bodies could certainly provide valuable guidance in this respect. However, it has to be made clear that deficiencies in the Rules of Procedure might surface in practice. To this end the Assembly has been authorized to address possible shortcomings of the Rules of Procedure. Rule 96 sets out the procedure for the amendment of the Rules of Procedure.