

## **Draft Statute for an International Criminal Court** 1994

Text adopted by the Commission at its forty-sixth session, in 1994, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1994*, vol. II (Part Two).



**Draft Statute for an International Criminal Court,  
including Annex and Appendices I to III**

**(a) Draft Statute for an International Criminal Court**

*The States Parties to this Statute,*

*Desiring* to further international cooperation to enhance the effective prosecution and suppression of crimes of international concern, and for that purpose to establish an international criminal court;

*Emphasizing* that such a court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole;

*Emphasizing further* that such a court is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective;

*Have agreed as follows:*

PART ONE  
ESTABLISHMENT OF THE COURT

*Article 1  
The Court*

There is established an International Criminal Court (“the Court”), whose jurisdiction and functioning shall be governed by the provisions of this Statute.

*Article 2  
Relationship of the Court to the United Nations*

The President, with the approval of the States Parties to this Statute (“States Parties”), may conclude an agreement establishing an appropriate relationship between the Court and the United Nations.

*Article 3  
Seat of the Court*

1. The seat of the Court shall be established at ... in ... (“the host State”).
2. The President, with the approval of the States Parties, may conclude an agreement with the host State establishing the relationship between that State and the Court.
3. The Court may exercise its powers and functions on the territory of any State Party and, by special agreement, on the territory of any other State.

*Article 4*  
*Status and legal capacity*

1. The Court is a permanent institution open to States Parties in accordance with this Statute. It shall act when required to consider a case submitted to it.

2. The Court shall enjoy in the territory of each State Party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

PART TWO  
COMPOSITION AND ADMINISTRATION OF THE COURT

*Article 5*  
*Organs of the Court*

The Court consists of the following organs:

- (a) a Presidency, as provided in article 8;
- (b) an Appeals Chamber, Trial Chambers and other chambers, as provided in article 9;
- (c) a Procuracy, as provided in article 12;
- (d) a Registry, as provided in article 13.

*Article 6*  
*Qualification and election of judges*

1. The judges of the Court shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and have, in addition:

- (a) criminal trial experience;
- (b) recognized competence in international law.

2. Each State Party may nominate for election not more than two persons, of different nationality, who possess the qualification referred to in paragraph 1 (a) or that referred to in paragraph 1 (b), and who are willing to serve as may be required on the Court.

3. Eighteen judges shall be elected by an absolute majority vote of the States Parties by secret ballot. Ten judges shall first be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (a). Eight judges shall then be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (b).

4. No two judges may be nationals of the same State.

5. States Parties should bear in mind in the election of the judges that the representation of the principal legal systems of the world should be assured.

6. Judges hold office for a term of nine years and, subject to paragraph 7 and article 7, paragraph 2, are not eligible for re-election. A judge shall, however, continue in office in order to complete any case the hearing of which has commenced.

7. At the first election, six judges chosen by lot shall serve for a term of three years and are eligible for re-election; six judges chosen by lot shall serve for a term of six years; and the remainder shall serve for a term of nine years.

8. Judges nominated as having the qualification referred to in paragraphs 1 (a) or 1 (b), as the case may be, shall be replaced by persons nominated as having the same qualification.

*Article 7*  
*Judicial vacancies*

1. In the event of a vacancy, a replacement judge shall be elected in accordance with article 6.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term, and if that period is less than five years is eligible for re-election for a further term.

*Article 8*  
*The Presidency*

1. The President, the first and second Vice-Presidents and two alternate Vice-Presidents shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their term of office as judges, whichever is earlier.

2. The first or second Vice-President, as the case may be, may act in place of the President in the event that the President is unavailable or disqualified. An alternate Vice-President may act in place of either Vice-President as required.

3. The President and the Vice-Presidents shall constitute the Presidency which shall be responsible for:

- (a) the due administration of the Court;
- (b) the other functions conferred on it by this Statute.

4. Unless otherwise indicated, pre-trial and other procedural functions conferred under this Statute on the Court may be exercised by the Presidency in any case where a chamber of the Court is not seized of the matter.

5. The Presidency may, in accordance with the Rules, delegate to one or more judges the exercise of a power vested in it under article 26, paragraphs 3, 27, paragraphs 5, 28, 29 or 30, paragraph 3, in relation to a case, during the period before a trial chamber is established for that case.

*Article 9*  
*Chambers*

1. As soon as possible after each election of judges to the Court, the Presidency shall in accordance with the Rules constitute an Appeals Chamber consisting of the President and six other judges, of whom at least three shall be judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (b). The President shall preside over the Appeals Chamber.

2. The Appeals Chamber shall be constituted for a term of three years. Members of the Appeals Chamber shall, however, continue to sit on the Chamber in order to complete any case the hearing of which has commenced.

3. Judges may be renewed as members of the Appeals Chamber for a second or subsequent term.

4. Judges not members of the Appeals Chamber shall be available to serve on Trial Chambers and other chambers required by this Statute, and to act as substitute members of the Appeals Chamber in the event that a member of that Chamber is unavailable or disqualified.

5. The Presidency shall nominate in accordance with the Rules five such judges to be members of the Trial Chamber for a given case. A Trial Chamber shall include at least three judges elected from among the persons nominated as having the qualification referred to in article 6, paragraph 1 (a).

6. The Rules may provide for alternate judges to be nominated to attend a trial and to act as members of the Trial Chamber in the event that a judge dies or becomes unavailable during the course of the trial.

7. No judge who is a national of a complainant State or of a State of which the accused is a national shall be a member of a chamber dealing with the case.

*Article 10*  
*Independence of the judges*

1. In performing their functions, the judges shall be independent.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence. In particular, they shall not while holding the office of judge be a member of the legislative or executive branches of the Government of a State, or of a body responsible for the investigation or prosecution of crimes.

3. Any question as to the application of paragraph 2 shall be decided by the Presidency.

4. On the recommendation of the Presidency, the States Parties may by a two-thirds majority decide that the workload of the Court requires that the judges should serve on a full-time basis. In that case:

- (a) existing judges who elect to serve on a full-time basis shall not hold any other office or employment;
- (b) judges subsequently elected shall not hold any other office or employment.

*Article 11*  
*Excusing and disqualification of judges*

1. The Presidency at the request of a judge may excuse that judge from the exercise of a function under this Statute.

2. Judges shall not participate in any case in which they have previously been involved in any capacity or in which their impartiality might reasonably be doubted on any ground, including an actual, apparent or potential conflict of interest.

3. The Prosecutor or the accused may request the disqualification of a judge under paragraph 2.

4. Any question as to the disqualification of a judge shall be decided by an absolute majority of the members of the Chamber concerned. The challenged judge shall not take part in the decision.

*Article 12*  
*The Procuracy*

1. The Procuracy is an independent organ of the Court responsible for the investigation of complaints brought in accordance with this Statute and for the conduct of prosecutions. A member of the Procuracy shall not seek or act on instructions from any external source.

2. The Procuracy shall be headed by the Prosecutor, assisted by one or more Deputy Prosecutors, who may act in place of the Prosecutor in the event that the Prosecutor is unavailable. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. The Prosecutor may appoint such other qualified staff as may be required.

3. The Prosecutor and Deputy Prosecutors shall be persons of high moral character and have high competence and experience in the prosecution of criminal cases. They shall be elected by secret ballot by an absolute majority of the States Parties, from among candidates nominated by States Parties. Unless a shorter term is otherwise decided on at the time of their election, they shall hold office for a term of five years and are eligible for re-election.

4. The States Parties may elect the Prosecutor and Deputy Prosecutors on the basis that they are willing to serve as required.

5. The Prosecutor and Deputy Prosecutors shall not act in relation to a complaint involving a person of their own nationality.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor at their request from acting in a particular case, and shall decide any question raised in a particular case as to the disqualification of the Prosecutor or a Deputy Prosecutor.

7. The staff of the Procuracy shall be subject to Staff Regulations drawn up by the Prosecutor.

*Article 13*  
*The Registry*

1. On the proposal of the Presidency, the judges by an absolute majority by secret ballot shall elect a Registrar, who shall be the principal administrative officer of the Court. They may in the same manner elect a Deputy Registrar.

2. The Registrar shall hold office for a term of five years, is eligible for re-election and shall be available on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided on, and may be elected on the basis that the Deputy Registrar is willing to serve as required.

3. The Presidency may appoint or authorize the Registrar to appoint such other staff of the Registry as may be necessary.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar.

*Article 14*  
*Solemn undertaking*

Before first exercising their functions under this Statute, judges and other officers of the Court shall make a public and solemn undertaking to do so impartially and conscientiously.

*Article 15*  
*Loss of office*

1. A judge, the Prosecutor or other officer of the Court who is found to have committed misconduct or a serious breach of this Statute, or to be unable to exercise the functions required by this Statute because of long-term illness or disability, shall cease to hold office.

2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot:

- (a) in the case of the Prosecutor or a Deputy Prosecutor, by an absolute majority of the States Parties;
- (b) in any other case, by a two-thirds majority of the judges.

3. The judge, the Prosecutor or any other officer whose conduct or fitness for office is impugned shall have full opportunity to present evidence and to make submissions but shall not otherwise participate in the discussion of the question.

*Article 16*  
*Privileges and immunities*

1. The judges, the Prosecutor, the Deputy Prosecutors and the staff of the Procuracy, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.

2. The staff of the Registry shall enjoy the privileges, immunities and facilities necessary to the performance of their functions.

3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

4. The judges may by an absolute majority decide to revoke a privilege or waive an immunity conferred by this article, other than an immunity of a judge, the Prosecutor or Registrar as such. In the case of other officers and staff of the Procuracy or Registry, they may do so only on the recommendation of the Prosecutor or Registrar, as the case may be.

*Article 17*  
*Allowances and expenses*

1. The President shall receive an annual allowance.

2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.

3. Subject to paragraph 4, the judges shall receive a daily allowance during the period in which they exercise their functions. They may continue to receive a salary payable in respect of another position occupied by them consistently with article 10.

4. If it is decided under article 10, paragraph 4, that judges shall thereafter serve on a full-time basis, existing judges who elect to serve on a full-time basis, and all judges subsequently elected, shall be paid a salary.

*Article 18*  
*Working languages*

The working languages of the Court shall be English and French.

*Article 19*  
*Rules of the Court*



1. Subject to paragraphs 2 and 3, the judges may by an absolute majority make rules for the functioning of the Court in accordance with this Statute, including rules regulating:

- (a) the conduct of investigations;
- (b) the procedure to be followed and the rules of evidence to be applied;
- (c) any other matter which is necessary for the implementation of this Statute.

2. The initial Rules of the Court shall be drafted by the judges within six months of the first elections for the Court, and submitted to a conference of States Parties for approval. The judges may decide that a rule subsequently made under paragraph 1 should also be submitted to a conference of States Parties for approval.

3. In any case to which paragraph 2 does not apply, rules made under paragraph 1 shall be transmitted to States Parties and may be confirmed by the Presidency unless, within six months after transmission, a majority of States Parties have communicated in writing their objections.

4. A rule may provide for its provisional application in the period prior to its approval or confirmation. A rule not approved or confirmed shall lapse.

PART THREE  
JURISDICTION OF THE COURT

*Article 20*  
*Crimes within the jurisdiction of the Court*

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) the crime of genocide;
- (b) the crime of aggression;
- (c) serious violations of the laws and customs applicable in armed conflict;
- (d) crimes against humanity;
- (e) crimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern.

*Article 21*  
*Preconditions to the exercise of jurisdiction*

1. The Court may exercise its jurisdiction over a person with respect to a crime referred to in article 20 if:

- (a) in a case of genocide, a complaint is brought under article 25, paragraph 1;
- (b) in any other case, a complaint is brought under article 25, paragraph 2, and the jurisdiction of the Court with respect to the crime is accepted under article 22:
  - (i) by the State which has custody of the suspect with respect to the crime (“the custodial State”);
  - (ii) by the State on the territory of which the act or omission in question occurred.

2. if, with respect to a crime to which paragraph 1 (b) applies, the custodial State has received, under an international agreement, a request from another State to surrender a suspect for the purposes of prosecution, then, unless the request is rejected, the acceptance by the requesting State of the Court’s jurisdiction with respect to the crime is also required.

*Article 22*  
*Acceptance of the jurisdiction of the Court*  
*for the purposes of article 21*

1. A State Party to this Statute may:

- (a) at the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or
- (b) at a later time, by declaration lodged with the Registrar;

accept the jurisdiction of the Court with respect to such of the crimes referred to in article 20 as it specifies in the declaration.

2. A declaration may be of general application, or may be limited to particular conduct or to conduct committed during a particular period of time.

3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving six months’ notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. If under article 21 the acceptance of a State which is not a party to this Statute is required, that State may, by declaration lodged with the Registrar, consent to the Court exercising jurisdiction with respect to the crime.

*Article 23*  
*Action by the Security Council*

1. Notwithstanding article 21, the Court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.

2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.

3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

*Article 24*

*Duty of the Court as to jurisdiction*

The Court shall satisfy itself that it has jurisdiction in any case brought before it.

PART FOUR

INVESTIGATION AND PROSECUTION

*Article 25*

*Complaint*

1. A State Party which is also a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 may lodge a complaint with the Prosecutor alleging that a crime of genocide appears to have been committed.

2. A State Party which accepts the jurisdiction of the Court under article 22 with respect to a crime may lodge a complaint with the Prosecutor alleging that such a crime appears to have been committed.

3. As far as possible a complaint shall specify the circumstances of the alleged crime and the identity and whereabouts of any suspect, and be accompanied by such supporting documentation as is available to the complainant State.

4. In a case to which article 23, paragraph 1, applies, a complaint is not required for the initiation of an investigation.

*Article 26*

*Investigation of alleged crimes*

1. On receiving a complaint or upon notification of a decision of the Security Council referred to in article 23, paragraph 1, the Prosecutor shall initiate an investigation unless the Prosecutor concludes that there is no possible basis for a prosecution under this Statute and decides not to initiate an investigation, in which case the Prosecutor shall so inform the Presidency.

2. The Prosecutor may:

(a) request the presence of and question suspects, victims and witnesses;

- (b) collect documentary and other evidence;
- (c) conduct on-site investigations;
- (d) take necessary measures to ensure the confidentiality of information or the protection of any person;
- (e) as appropriate, seek the cooperation of any State or of the United Nations.

3. The Presidency may, at the request of the Prosecutor, issue such subpoenas and warrants as may be required for the purposes of an investigation, including a warrant under article 28, paragraph 1, for the provisional arrest of a suspect.

4. If, upon investigation and having regard, inter alia, to the matters referred to in article 35, the Prosecutor concludes that there is no sufficient basis for a prosecution under this Statute and decides not to file an indictment, the Prosecutor shall so inform the Presidency giving details of the nature and basis of the complaint and of the reasons for not filing an indictment.

5. At the request of a complainant State or, in a case to which article 23, paragraph 1, applies, at the request of the Security Council, the Presidency shall review a decision of the Prosecutor not to initiate an investigation or not to file an indictment, and may request the Prosecutor to reconsider the decision.

6. A person suspected of a crime under this Statute shall:

- (a) prior to being questioned, be informed that the person is a suspect and of the rights:
  - (i) to remain silent, without such silence being a consideration in the determination of guilt or innocence;
  - (ii) to have the assistance of counsel of the suspect's choice or, if the suspect lacks the means to retain counsel, to have legal assistance assigned by the Court;
- (b) not be compelled to testify or to confess guilt;
- (c) if questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services and with a translation of any document on which the suspect is to be questioned.

*Article 27*  
*Commencement of prosecution*

1. If upon investigation the Prosecutor concludes that there is a prima facie case, the Prosecutor shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.

2. The Presidency shall examine the indictment and any supporting material and determine:

- (a) whether a prima facie case exists with respect to a crime within the jurisdiction of the Court; and
- (b) whether, having regard, inter alia, to the matters referred to in article 35, the case should on the information available be heard by the Court.

If so, it shall confirm the indictment and establish a trial chamber in accordance with article 9.

3. If, after any adjournment that may be necessary to allow additional material to be produced, the Presidency decides not to confirm the indictment, it shall so inform the complainant State or, in a case to which article 23, paragraph 1, applies, the Security Council.

4. The Presidency may at the request of the Prosecutor amend the indictment, in which case it shall make any necessary orders to ensure that the accused is notified of the amendment and has adequate time to prepare a defence.

5. The Presidency may make any further orders required for the conduct of the trial, including an order:

- (a) determining the language or languages to be used during the trial;
- (b) requiring the disclosure to the defence, within a sufficient time before the trial to enable the preparation of the defence, of documentary or other evidence available to the Prosecutor, whether or not the Prosecutor intends to rely on that evidence;
- (c) providing for the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial;
- (d) providing for the protection of the accused, victims and witnesses and of confidential information.

#### *Article 28*

##### *Arrest*

1. At any time after an investigation has been initiated, the Presidency may at the request of the Prosecutor issue a warrant for the provisional arrest of a suspect if:

- (a) there is probable cause to believe that the suspect may have committed a crime within the jurisdiction of the Court; and
- (b) the suspect may not be available to stand trial unless provisionally arrested.

2. A suspect who has been provisionally arrested is entitled to release from arrest if the indictment has not been confirmed within 90 days of the arrest, or such longer time as the Presidency may allow.

3. As soon as practicable after the confirmation of the indictment, the Prosecutor shall seek from the Presidency a warrant for the arrest and transfer of the accused. The Presidency shall issue such a warrant unless it is satisfied that:

- (a) the accused will voluntarily appear for trial; or
- (b) there are special circumstances making it unnecessary for the time being to issue the warrant.

4. A person arrested shall be informed at the time of arrest of the reasons for the arrest and shall be promptly informed of any charges.

*Article 29*  
*Pre-trial detention or release*

1. A person arrested shall be brought promptly before a judicial officer of the State where the arrest occurred. The judicial officer shall determine, in accordance with the procedures applicable in that State, that the warrant has been duly served and that the rights of the accused have been respected.

2. A person arrested may apply to the Presidency for release pending trial. The Presidency may release the person unconditionally or on bail if it is satisfied that the accused will appear at the trial.

3. A person arrested may apply to the Presidency for a determination of the lawfulness under this Statute of the arrest or detention. If the Presidency decides that the arrest or detention was unlawful, it shall order the release of the accused, and may award compensation.

4. A person arrested shall be held, pending trial or release on bail, in an appropriate place of detention in the arresting State, in the State in which the trial is to be held or if necessary, in the host State.

*Article 30*  
*Notification of the indictment*

1. The Prosecutor shall ensure that a person who has been arrested is personally served, as soon as possible after being taken into custody, with certified copies of the following documents, in a language understood by that person:

- (a) in the case of a suspect provisionally arrested, a statement of the grounds for the arrest;
- (b) in any other case, the confirmed indictment;
- (c) a statement of the accused's rights under this Statute.

2. In any case to which paragraph 1 (a) applies, the indictment shall be served on the accused as soon as possible after it has been confirmed.

3. If, 60 days after the indictment has been confirmed, the accused is not in custody pursuant to a warrant issued under article 28, paragraph 3, or for some reason the requirements of paragraph 1 cannot be complied with, the Presidency may on the application of the Prosecutor prescribe some other manner of bringing the indictment to the attention of the accused.

*Article 31*

*Persons made available to assist in a prosecution*

1. The Prosecutor may request a State Party to make persons available to assist in a prosecution in accordance with paragraph 2.

2. Such persons should be available for the duration of the prosecution, unless otherwise agreed. They shall serve at the direction of the Prosecutor, and shall not seek or receive instructions from any Government or source other than the Prosecutor in relation to their exercise of functions under this article.

3. The terms and conditions on which persons may be made available under this article shall be approved by the Presidency on the recommendation of the Prosecutor.

PART FIVE

THE TRIAL

*Article 32*

*Place of trial*

Unless otherwise decided by the Presidency, the place of the trial will be the seat of the Court.

*Article 33*

*Applicable law*

The Court shall apply:

- (a) this Statute;
- (b) applicable treaties and the principles and rules of general international law;
- (c) to the extent applicable, any rule of national law.

*Article 34*

*Challenges to jurisdiction*

Challenges to the jurisdiction of the Court may be made, in accordance with the Rules:

- (a) prior to or at the commencement of the hearing, by an accused or any interested State; and
- (b) at any later stage of the trial, by an accused.

*Article 35*  
*Issues of admissibility*

The Court may, on application by the accused or at the request of an interested State at any time prior to the commencement of the trial, or of its own motion, decide, having regard to the purposes of this Statute set out in the preamble, that a case before it is inadmissible on the ground that the crime in question:

- (a) has been duly investigated by a State with jurisdiction over it, and the decision of that State not to proceed to a prosecution is apparently well-founded;
- (b) is under investigation by a State which has or may have jurisdiction over it, and there is no reason for the Court to take any further action for the time being with respect to the crime; or
- (c) is not of such gravity to justify further action by the Court.

*Article 36*  
*Procedure under articles 34 and 35*

1. In proceedings under articles 34 and 35, the accused and the complainant State have the right to be heard.

2. Proceedings under articles 34 and 35 shall be decided by the Trial Chamber, unless it considers, having regard to the importance of the issues involved, that the matter should be referred to the Appeals Chamber.

*Article 37*  
*Trial in the presence of the accused*

1. As a general rule, the accused should be present during the trial.

2. The Trial Chamber may order that the trial proceed in the absence of the accused if:

- (a) the accused is in custody, or has been released pending trial, and for reasons of security or the ill-health of the accused it is undesirable for the accused to be present;
- (b) the accused is continuing to disrupt the trial; or
- (c) the accused has escaped from lawful custody under this Statute or has broken bail.

3. The Chamber shall, if it makes an order under paragraph 2, ensure that the rights of the accused under this Statute are respected, and in particular:

- (a) that all reasonable steps have been taken to inform the accused of the charge; and
- (b) that the accused is legally represented, if necessary by a lawyer appointed by the Court.



4. In cases where a trial cannot be held because of the deliberate absence of an accused, the Court may establish, in accordance with the Rules, an Indictment Chamber for the purpose of:

- (a) recording the evidence;
- (b) considering whether the evidence establishes a prima facie case of a crime within the jurisdiction of the Court; and
- (c) issuing and publishing a warrant of arrest in respect of an accused against whom a prima facie case is established.

5. If the accused is subsequently tried under this Statute:

- (a) the record of evidence before the Indictment Chamber shall be admissible;
- (b) any judge who was a member of the Indictment Chamber may not be a member of the Trial Chamber.

#### *Article 38*

#### *Functions and powers of the Trial Chamber*

1. At the commencement of the trial, the Trial Chamber shall:

- (a) have the indictment read;
- (b) ensure that articles 27, paragraph 5 (b), and 30 have been complied with sufficiently in advance of the trial to enable adequate preparation of the defence;
- (c) satisfy itself that the other rights of the accused under this Statute have been respected; and
- (d) allow the accused to enter a plea of guilty or not guilty.

2. The Chamber shall ensure that a trial is fair and expeditious and is conducted in accordance with this Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. The Chamber may, subject to the Rules, hear charges against more than one accused arising out of the same factual situation.

4. The trial shall be held in public, unless the Chamber determines that certain proceedings be in closed session in accordance with article 43, or for the purpose of protecting confidential or sensitive information which is to be given in evidence.

5. The Chamber shall, subject to this Statute and the Rules have, *inter alia*, the power on the application of a party or of its own motion, to:

- (a) issue a warrant for the arrest and transfer of an accused who is not already in the custody of the Court;
- (b) require the attendance and testimony of witnesses;
- (c) require the production of documentary and other evidentiary materials;
- (d) rule on the admissibility or relevance of evidence;
- (e) protect confidential information;
- (f) maintain order in the course of a hearing.

6. The Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is maintained and preserved by the Registrar.

*Article 39*

*Principle of legality (nullum crimen sine lege)*

An accused shall not be held guilty:

- (a) in the case of a prosecution with respect to a crime referred to in article 20, subparagraphs (a) to (d), unless the act or omission in question constituted a crime under international law;
- (b) in the case of a prosecution with respect to a crime referred to in article 20, subparagraph (e), unless the treaty in question was applicable to the conduct of the accused;

at the time the act or omission occurred.

*Article 40*

*Presumption of innocence*

An accused shall be presumed innocent until proved guilty in accordance with the law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt.

*Article 41*

*Rights of the accused*

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 43, and to the following minimum guarantees:

- (a) to be informed promptly and in detail, in a language which the accused understands, of the nature and cause of the charge;

(b) to have adequate time and facilities for the preparation of the defence, and to communicate with counsel of the accused's choosing;

(c) to be tried without undue delay;

(d) subject to article 37, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court, without payment if the accused lacks sufficient means to pay for such assistance;

(e) to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;

(f) if any of the proceedings or documents presented to the Court are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;

(g) not to be compelled to testify or to confess guilt.

2. Exculpatory evidence that becomes available to the Procuracy prior to the conclusion of the trial shall be made available to the defence. In case of doubt as to the application of this paragraph or as to the admissibility of the evidence, the Trial Chamber shall decide.

#### *Article 42*

##### *Non bis in idem*

1. No person shall be tried before any other court for acts constituting a crime of the kind referred to in article 20 for which that person has already been tried by the Court.

2. A person who has been tried by another court for acts constituting a crime of the kind referred to in article 20 may be tried under this Statute only if:

(a) the acts in question were characterized by that court as an ordinary crime and not as a crime which is within the jurisdiction of the Court; or

(b) the proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which a penalty imposed by another court on the same person for the same act has already been served.

#### *Article 43*

##### *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.

*Article 44*

*Evidence*

1. Before testifying, each witness shall, in accordance with the Rules, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. States Parties shall extend their laws of perjury to cover evidence given under this Statute by their nationals, and shall cooperate with the Court in investigating and where appropriate prosecuting any case of suspected perjury.

3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its relevance or admissibility.

4. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

5. Evidence obtained by means of a serious violation of this Statute or of other rules of international law shall not be admissible.

*Article 45*

*Quorum and judgement*

1. At least four members of the Trial Chamber must be present at each stage of the trial.

2. The decisions of the Trial Chamber shall be taken by a majority of the judges. At least three judges must concur in a decision as to conviction or acquittal and as to the sentence to be imposed.

3. If after sufficient time for deliberation a Chamber which has been reduced to four judges is unable to agree on a decision, it may order a new trial.

4. The deliberations of the Court shall be and remain secret.

5. The judgement shall be in writing and shall contain a full and reasoned statement of the findings and conclusions. It shall be the sole judgement issued, and shall be delivered in open court.

*Article 46*

*Sentencing*

1. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor and the defence to make submissions and to consider the appropriate sentence to be imposed.

2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

*Article 47*  
*Applicable penalties*

1. The Court may impose on a person convicted of a crime under this Statute one or more of the following penalties:

- (a) a term of life imprisonment, or of imprisonment for a specified number of years;
- (b) a fine.

2. In determining the length of a term of imprisonment or the amount of a fine to be imposed, the Court may have regard to the penalties provided for by the law of:

- (a) the State of which the convicted person is a national;
- (b) the State where the crime was committed;
- (c) the State which had custody of and jurisdiction over the accused.

3. Fines paid may be transferred, by order of the Court, to one or more of the following:

- (a) the Registrar, to defray the costs of the trial;
- (b) a State of which the nationals were the victims of the crime;
- (c) a trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

PART SIX  
APPEAL AND REVIEW

*Article 48*  
*Appeal against judgement or sentence*

1. The Prosecutor and the convicted person may, in accordance with the Rules, appeal against a decision under articles 45 or 47 on grounds of procedural error, error of fact or of law, or disproportion between the crime and the sentence.

2. Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

*Article 49*  
*Proceedings on appeal*

1. The Appeals Chamber has all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair or that the decision is vitiated by error of fact or law, it may:

(a) if the appeal is brought by the convicted person, reverse or amend the decision, or, if necessary, order a new trial;

(b) if the appeal is brought by the Prosecutor against an acquittal, order a new trial.

3. If in an appeal against sentence the Chamber finds that the sentence is manifestly disproportionate to the crime, it may vary the sentence in accordance with article 47.

4. The decision of the Chamber shall be taken by a majority of the judges, and shall be delivered in open court. Six judges constitute a quorum.

5. Subject to article 50, the decision of the Chamber shall be final.

*Article 50*  
*Revision*

1. The convicted person or the Prosecutor may, in accordance with the Rules, apply to the Presidency for revision of a conviction on the ground that evidence has been discovered which was not available to the applicant at the time the conviction was pronounced or affirmed and which could have been a decisive factor in the conviction.

2. The Presidency shall request the Prosecutor or the convicted person, as the case may be, to present written observations on whether the application should be accepted.

3. If the Presidency is of the view that the new evidence could lead to the revision of the conviction, it may:

(a) reconvene the Trial Chamber;

(b) constitute a new Trial Chamber; or

(c) refer the matter to the Appeals Chamber;

with a view to the Chamber determining, after hearing the parties, whether the new evidence should lead to a revision of the conviction.

PART SEVEN  
INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

*Article 51*  
*Cooperation and judicial assistance*

1. States Parties shall cooperate with the Court in connection with criminal investigations and proceedings under this Statute.

2. The Registrar may transmit to any State a request for cooperation and judicial assistance with respect to a crime, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) any other request which may facilitate the administration of justice, including provisional measures as required.

3. Upon receipt of a request under paragraph 2:

- (a) in a case covered by article 21, paragraph 1 (a), all States Parties;
- (b) in any other case, States Parties which have accepted the jurisdiction of the Court with respect to the crime in question;

shall respond without undue delay to the request.

*Article 52*  
*Provisional measures*

1. In case of need, the Court may request a State to take necessary provisional measures, including the following:

- (a) to provisionally arrest a suspect;
- (b) to seize documents or other evidence; or
- (c) to prevent injury to or the intimidation of a witness or the destruction of evidence.

2. The Court shall follow up a request under paragraph 1 by providing, as soon as possible and in any case within 28 days, a formal request for assistance complying with article 57.

*Article 53*  
*Transfer of an accused to the Court*

1. The Registrar shall transmit to any State on the territory of which the accused may be found a warrant for the arrest and transfer of an accused issued under article 28, and shall request the cooperation of that State in the arrest and transfer of the accused.

2. Upon receipt of a request under paragraph 1:

(a) all States Parties:

(i) in a case covered by article 21, paragraph 1 (a); or

(ii) which have accepted the jurisdiction of the Court with respect to the crime in question; shall, subject to paragraphs 5 and 6, take immediate steps to arrest and transfer the accused to the Court;

(b) in the case of a crime to which article 20, subparagraph (e), applies, a State Party which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to that crime shall, if it decides not to transfer the accused to the Court, forthwith take all necessary steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution;

(c) in any other case, a State Party shall consider whether it can, in accordance with its legal procedures, take steps to arrest and transfer the accused to the Court, or whether it should take steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution.

3. The transfer of an accused to the Court constitutes, as between States Parties which accept the jurisdiction of the Court with respect to the crime, sufficient compliance with a provision of any treaty requiring that a suspect be extradited or the case referred to the competent authorities of the requested State for the purpose of prosecution.

4. A State Party which accepts the jurisdiction of the Court with respect to the crime shall, as far as possible, give priority to a request under paragraph 1 over requests for extradition from other States.

5. A State Party may delay complying with paragraph 2 if the accused is in its custody or control and is being proceeded against for a serious crime, or serving a sentence imposed by a court for a crime. It shall within 45 days of receiving the request inform the Registrar of the reasons for the delay. In such cases, the requested State:

(a) may agree to the temporary transfer of the accused for the purpose of standing trial under this Statute; or

(b) shall comply with paragraph 2 after the prosecution has been completed or abandoned or the sentence has been served, as the case may be.



6. A State Party may, within 45 days of receiving a request under paragraph 1, file a written application with the Registrar requesting the Court to set aside the request on specified grounds. Pending a decision of the Court on the application, the State concerned may delay complying with paragraph 2 but shall take any provisional measures necessary to ensure that the accused remains in its custody or control.

*Article 54*  
*Obligation to extradite or prosecute*

In a case of a crime referred to in article 20, subparagraph (e), a custodial State Party to this Statute which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to the crime for the purposes of article 21, paragraph 1 (b) (i), shall either take all necessary steps to extradite the suspect to a requesting State for the purpose of prosecution or refer the case to its competent authorities for that purpose.

*Article 55*  
*Rule of speciality*

1. A person transferred to the Court under article 53 shall not be subject to prosecution or punishment for any crime other than that for which the person was transferred.

2. Evidence provided under this Part shall not, if the State when providing it so requests, be used as evidence for any purpose other than that for which it was provided, unless this is necessary to preserve the right of an accused under article 41, paragraph 2.

3. The Court may request the State concerned to waive the requirements of paragraphs 1 or 2, for the reasons and purposes specified in the request.

*Article 56*  
*Cooperation with States not parties to this Statute*

States not parties to this Statute may assist in relation to the matters referred to in this Part on the basis of comity, a unilateral declaration, an ad hoc arrangement or other agreement with the Court.

*Article 57*  
*Communications and documentation*

1. Requests under this Part shall be in writing, or be forthwith reduced to writing, and shall be between the competent national authority and the Registrar. States Parties shall inform the Registrar of the name and address of their national authority for this purpose.

2. When appropriate, communications may also be made through the International Criminal Police Organization.

3. A request under this Part shall include the following, as applicable:

- (a) a brief statement of the purpose of the request and of the assistance sought, including the legal basis and grounds for the request;
- (b) information concerning the person who is the subject of the request on the evidence sought, in sufficient detail to enable identification;
- (c) a brief description of the essential facts underlying the request; and
- (d) information concerning the complaint or charge to which the request relates and of the basis for the Court's jurisdiction.

4. A requested State which considers the information provided insufficient to enable the request to be complied with may seek further particulars.

PART EIGHT  
ENFORCEMENT

*Article 58*  
*Recognition of judgements*

States Parties undertake to recognize the judgements of the Court.

*Article 59*  
*Enforcement of sentences*

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

2. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State.

3. A sentence of imprisonment shall be subject to the supervision of the Court in accordance with the Rules.

*Article 60*  
*Pardon, parole and commutation of sentences*

1. If, under a generally applicable law of the State of imprisonment, a person in the same circumstances who had been convicted for the same conduct by a court of that State would be eligible for pardon, parole or commutation of sentence, the State shall so notify the Court.

2. If a notification has been given under paragraph 1, the prisoner may apply to the Court in accordance with the Rules, seeking an order for pardon, parole or commutation of the sentence.

3. If the Presidency decides that an application under paragraph 2 is apparently well-founded, it shall convene a Chamber of five judges to consider and decide whether in the interests of justice the person convicted should be pardoned or paroled or the sentence commuted, and on what basis.

4. When imposing a sentence of imprisonment, a Chamber may stipulate that the sentence is to be served in accordance with specified laws as to pardon, parole or commutation of sentence of the State of imprisonment. The consent of the Court is not required to subsequent action by that State in conformity with those laws, but the Court shall be given at least 45 days' notice of any decision which might materially affect the terms or extent of the imprisonment.

5. Except as provided in paragraphs 3 and 4, a person serving a sentence imposed by the Court is not to be released before the expiry of the sentence.

**(b) Annex**

**Crimes pursuant to treaties (see art. 20, subpara. (e))**

1. Grave breaches of:

(a) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, as defined by article 50 of that Convention;

(b) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, as defined by article 51 of that Convention;

(c) the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, as defined by article 130 of that Convention;

(d) the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, as defined by article 147 of that Convention;

(e) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977, as defined by article 85 of that Protocol.

2. The unlawful seizure of aircraft as defined by article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970.

3. The crimes defined by article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971.

4. Apartheid and related crimes as defined by article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973.

5. The crimes defined by article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973.

6. Hostage-taking and related crimes as defined by article 1 of the International Convention against the Taking of Hostages of 17 December 1979.

7. The crime of torture made punishable pursuant to article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

8. The crimes defined by article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and by article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, both of 10 March 1988.

9. Crimes involving illicit traffic in narcotic drugs and psychotropic substances as envisaged by article 3, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 which, having regard to article 2 of the Convention, are crimes with an international dimension.

**(c) Appendix I**  
**Possible Clauses of a Treaty to Accompany**  
**the Draft Statute**

1. The Commission envisages that the statute will be attached to a treaty between States Parties. That treaty would provide for the establishment of the court, and for the supervision of its administration by the States Parties. It would also deal with such matters as financing, entry into force, etc., as is required for any new instrument creating an entity such as the court.

2. The standard practice of the Commission is not to draft final clauses for its draft articles, and for that reason it has not sought to draft a set of clauses for a covering treaty which would contain clauses of that kind. However, in discussions in the Sixth Committee of the General Assembly, a number of the matters which it will be necessary to resolve in concluding such a treaty were discussed, and the Commission felt that it may be useful to outline some possible options for dealing with them.

3. Issues that will need to be dealt with include the following:

(a) *Entry into force*: The statute of the court is intended to reflect and represent the interests of the international community as a whole in relation to the prosecution of certain most serious crimes of international concern. In consequence, the statute and its covering treaty should require a substantial number of States Parties before it enters into force.

(b) *Administration*: The administration of the court as an entity is entrusted to the Presidency (see art. 8). However States Parties will need to meet from time to time to deal with such matters as the finances and administration of the court, and to consider periodic reports from the court, etc. The means by which States Parties will act together will need to be established.

(c) *Financing*: Detailed consideration must be given to financial issues at an early stage of any discussion of the proposed court. There are essentially two possibilities: direct financing by the States Parties or total or partial financing by the United Nations. United Nations financing is not necessarily excluded in the case of a separate entity in relationship with the United Nations (such as the Human

Rights Committee). The statute is drafted in such a way as to minimize the costs of establishment of the court itself. On the other hand, a number of members stressed that investigations and prosecutions under the statute could be expensive. Arrangements will also have to be made to cover the costs of imprisonment of persons convicted under the statute.

(d) *Amendment and review of the statute*: The covering treaty must of course provide for amendment of the statute. It should, in the Commission's view, provide for a review of the statute, at the request of a specified number of States Parties after, say, five years. One issue that will arise in considering amendment or review will be the question whether the list of crimes contained in the annex should be revised so as to incorporate new conventions establishing crimes. This may include such instruments in the course of preparation as the draft Code of Crimes against the Peace and Security of Mankind, and the proposed convention on the protection of United Nations peacekeepers.

(e) *Reservations*: Whether or not the statute would be considered to be "a constituent instrument of an international organization" within the meaning of article 20, paragraph 3, of the Vienna Convention of the Law of Treaties, it is certainly closely analogous to a constituent instrument, and the considerations which led the drafters to require the consent of the "competent organ of that organization" under article 20, paragraph 3, apply in rather similar fashion to it. The draft statute has been constructed as an overall scheme, incorporating important balances and qualifications in relation to the working of the court: it is intended to operate as a whole. These considerations tend to support the view that reservations to the statute and its accompanying treaty should either not be permitted, or should be limited in scope. This is of course a matter for States Parties to consider in the context of negotiations for the conclusion of the statute and its accompanying treaty.

(f) *Settlement of disputes*: The court will of course have to determine its own jurisdiction (see arts. 24 and 34), and will accordingly have to deal with any issues of interpretation and application of the statute which arise in the exercise of that jurisdiction. Consideration will need to be given to ways in which other disputes, with regard to the interpretation and implementation of the treaty embodying the statute, arising between States Parties, should be resolved.

**(d) Appendix II**  
**Relevant Treaty Provisions Mentioned in the Annex**  
**(see art. 20, subpara. (e))**

**1. Geneva Convention for the amelioration of the  
condition of the wounded and sick in armed  
forces in the field of 12 August 1949**

*Article 50*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

**2. Geneva Convention for the amelioration of the  
conditions of wounded, sick and shipwrecked  
members of armed forces at sea  
of 12 August 1949**

*Article 51*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

**3. Geneva Convention Relative to the Treatment of  
Prisoners of War of 12 August 1949**

*Article 130*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

**4. Geneva Convention Relative to the Protection of Civilian  
Persons in Time of War, 12 August 1949**

*Article 147*

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

**5. Protocol Additional to the Geneva Conventions of  
12 August 1949, and relating to the protection of  
victims of international armed conflicts (Protocol I)**

*Article 85*

*Repression of breaches of this Protocol*

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse party protected by articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

- (a) making the civilian population or individual civilians the object of attack;
- (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);
- (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a) (iii);
- (d) making non-defended localities and demilitarized zones the object of attack;
- (e) making a person the object of attack in the knowledge that he is *hors de combat*;
- (f) the perfidious use, in violation of article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

- (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- (b) unjustifiable delay in the repatriation of prisoners of war or civilians;
- (c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by

special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;

(e) depriving a person protected by the Conventions or referred to in paragraph 2 of this article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

## **6. Convention for the Suppression of Unlawful Seizure of Aircraft**

### *Article 1*

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

(b) is an accomplice of a person who performs or attempts to perform any such act; or commits an offence (hereinafter referred to as "the offence").

## **7. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation**

### *Article 1*

1. Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.



2. Any person also commits an offence if he:

- (a) attempts to commit any of the offences mentioned in paragraph 1 of this article; or
- (b) is an accomplice of a person who commits or attempts to commit any such offence.

## **8. International Convention on the Suppression and Punishment of the Crime of apartheid**

### *Article II*

For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - (i) by murder of members of a racial group or groups;
  - (ii) by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
  - (iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- (b) deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- (d) any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- (e) exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

**9. Convention on the Prevention and Punishment  
of Crimes against internationally protected  
persons, including diplomatic agents**

*Article 2*

1. The intentional commission of:

- (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; and
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack;
- (e) an act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

**10. International Convention against the Taking of Hostages**

*Article 1*

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

- (a) attempts to commit an act of hostage-taking; or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking;

likewise commits an offence for the purposes of this Convention.

## **11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

### *Article 1*

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

...

### *Article 4*

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

## **12. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation**

### *Article 3*

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

### **13. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

#### *Article 2*

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or

(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

#### **14. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

##### *Article 2*

##### *Scope of the Convention*

1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

##### *Article 3*

##### *Offences and sanctions*

1. Each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) (i) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary

to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) the manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(v) the organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

(b) (i) the conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

(c) subject to its constitutional principles and the basic concepts of its legal system:

(i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) the possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

(iv) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

### (e) Appendix III

#### **Outline of Possible Ways whereby a Permanent International Criminal Court may Enter into Relationship with the United Nations**

1. The way in which a permanent international criminal court may enter into relationship with the United Nations must necessarily be considered in connection with the method adopted for its creation.

2. In this respect, two hypotheses may be envisaged: (a) the court becomes part of the organic structure of the United Nations; (b) the court does not become part of the organic structure of the United Nations.

#### **A. The court becomes part of the organic structure of the United Nations**

3. Under this hypothesis the court, as a result of the very act of its creation, is already in relationship with the United Nations. This may be achieved in two ways.

##### 1. THE COURT AS A PRINCIPAL ORGAN OF THE UNITED NATIONS

4. This solution would attach the maximum weight to the creation of the court by placing it on the same level with the other principal organs of the United Nations and, in particular, ICJ. It would also facilitate the ipso jure jurisdiction of the court over certain international crimes. Under this solution, the financing of the court would be provided for under the regular budget of the Organization.

5. On the other hand, this solution could give rise to potential obstacles in that it would require an amendment to the Charter of the United Nations under Chapter XVIII (Arts. 108-109). It should be noted, in this connection, that there is no precedent for the creation of any additional principal organ in the history of the Organization.

##### 2. THE COURT AS A SUBSIDIARY ORGAN OF THE UNITED NATIONS

6. By contrast, there is a well-developed practice whereby United Nations principal organs create subsidiary organs under the relevant provisions of the Charter of the United Nations (in particular, Arts. 22 and 29), for the performance of functions conferred upon them or upon the Organization as a whole by the Charter. There is practice along these lines even in the jurisdictional field. An early example is the establishment of the Administrative Tribunal of the United Nations.<sup>a</sup> A more recent example is the creation 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 (hereinafter referred to as the "International Tribunal").<sup>b</sup>

7. Normally and as concerns most fields of competence, the establishment of a subsidiary organ is essentially auxiliary in nature. The subsidiary organ's decisions will usually be in the nature of recommendations which the relevant principal organ is free to accept or reject.

8. In the judicial field, however, the subsidiary nature of an organ reflects itself mainly in the fact that its very existence, as well as the cessation of its functions, depends upon the relevant principal organ of the Organization. As regards the exercise of its functions, however, the very nature of the latter (judicial) makes them incompatible with the existence of hierarchical powers on the part of the principal organ which established the court or tribunal. Therefore, the principal organ has no power to reject or amend the decisions of the tribunal or court established. This was clearly ruled by ICJ as regards the

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<sup>a</sup> General Assembly resolution 351 A (IV) of 9 December 1949.

<sup>b</sup> See Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993.

Administrative Tribunal of the United Nations<sup>c</sup> and also arises from certain articles of the statute of the International Tribunal (arts. 13, 15, 25, 26, etc.).<sup>d</sup>

9. As regards financing, the activities of a subsidiary organ of the Organization are financed from United Nations sources, whether budgetary allocations, assessed contributions or voluntary contributions.<sup>e</sup>

10. It should also be noted that, occasionally, the General Assembly has set up tribunals as subsidiary organs, on the basis of provisions contained in treaties concluded outside the United Nations. This was the case of the United Nations Tribunal for Libya and the United Nations Tribunal for Eritrea.<sup>f</sup> Although the matters dealt with by these tribunals were, broadly speaking, part of the generic competence of the General Assembly under Article 10 of the Charter of the United Nations, the provision which led to their creation was contained in annex XI, paragraph 3, of the Treaty of Peace with Italy.

11. The cases referred to in the preceding paragraph should be distinguished from those referred to in paragraphs 15 to 17 below in which the General Assembly undertakes certain functions with respect to organs established by the parties to a multilateral treaty.

**B. The Court does not become part of the organic  
structure of the United Nations and is  
set up by a treaty**

12. Under this hypothesis the court would be created by a treaty binding on States Parties thereto. There are two possible ways whereby such a court could be brought into relationship with the United Nations: by means of an agreement between the court and the United Nations; or by means of a resolution of a United Nations organ (such as the General Assembly).

1. THE COURT COMES INTO RELATIONSHIP WITH  
THE UNITED NATIONS BY MEANS OF AN AGREEMENT  
BETWEEN THE COURT AND THE UNITED NATIONS

13. Cooperation agreements are the typical way whereby specialized agencies and analogous bodies enter into relationship with the United Nations under Articles 57 and 63 of the Charter of the United Nations. Agreements are concluded between the specialized agency concerned and the Economic and Social Council and are subject to the approval of the General Assembly. The agreements regulate, inter alia, matters of cooperation with the United Nations in the respective fields of action of each specialized agency and questions related to a common system as regards personnel policies. Each specialized agency constitutes an autonomous international organization with its own budget and financial resources.

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<sup>c</sup> *Effect of awards of compensation made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954, p. 62.*

<sup>d</sup> Document S/25704, annex.

<sup>e</sup> See, for example, General Assembly resolution 48/251 of 14 April 1994.

<sup>f</sup> Set up, respectively, by General Assembly resolutions 388 A (V) of 15 December 1950 and 530 (VI) of 29 January 1952.



14. A case in point is article XVI of the statute of IAEA,<sup>g</sup> dealing with “Relationship with other organizations” which provides that the Board of Governors, with the approval of the General Conference, is authorized to enter into an agreement or agreements establishing an appropriate relationship between IAEA and the United Nations and any other organizations the work of which is related to that of IAEA. The Agreement governing the relationship between the United Nations and IAEA was approved by the General Assembly.<sup>h</sup> The Agreement, inter alia, regulates the submission of reports by IAEA to the United Nations, the exchange of information and documents, matters of reciprocal representation, consideration of items in the respective agendas, cooperation with the Security Council and ICJ, coordination and cooperation matters, budgetary and financial arrangements and personnel arrangements.

15. The conclusion of an international agreement with the United Nations is also the way being envisaged by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea to bring the projected tribunal into relationship with the United Nations. The final draft of that agreement<sup>i</sup> contemplates, inter alia, matters of legal relationship and mutual recognition, cooperation and coordination, relations with ICJ, relations with the Security Council, reciprocal representation, exchange of information and documents, reports to the United Nations, administrative cooperation and personnel arrangements. The draft agreement would also recognize “the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and the International Tribunal shall be carried out in the most efficient and economical manner possible, and that the maximum measure of coordination and uniformity with respect to these operations shall be secured”.

2. THE COURT COMES INTO RELATIONSHIP WITH  
THE UNITED NATIONS BY MEANS OF A RESOLUTION  
OF A UNITED NATIONS ORGAN

16. Finally, a court created by a multilateral treaty could also be brought into relationship with the United Nations by means of a resolution of a United Nations organ. In the case of a permanent international criminal court such a resolution could be adopted by the General Assembly, perhaps with the concurrent involvement of the Security Council.

17. It is in the field of the protection of human rights that international practice offers the most relevant examples of treaty organs coming into relationship with the United Nations by means of a General Assembly resolution. Typically, the treaty creating the organ already contains some provisions resorting to the United Nations for the performance of certain functions under the treaty, for example, the role of the Secretary-General in circulating invitations to States Parties for the election of the treaty organ, requests to the Secretary-General to provide the necessary staff and facilities for the effective performance of the functions of the treaty organ, and so forth. The United Nations, in its turn, takes such functions upon itself, by a resolution of the General Assembly which “adopts and opens for signature and ratification” the multilateral convention in question. Such a procedure has been followed, for instance, in the case of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International

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<sup>g</sup> United Nations, *Treaty Series*, vol. 276, p. 3.

<sup>h</sup> General Assembly resolution 1145 (XII) of 14 November 1957, annex.

<sup>i</sup> See document LOS/PCN/SCN.4/WP.16/Add.4.

Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. The adoption of such resolutions will usually have financial implications for the United Nations, making necessary the intervention of the Fifth Committee in the decision-making process. For instance, in the case of the Human Rights Committee, article 36 of the International Covenant on Civil and Political Rights provides that

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant, and also article 35 provides that

The Members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

19. The International Convention on the Elimination of All Forms of Racial Discrimination establishing the Committee on the Elimination of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishing the Committee against Torture both provide that the secretariat of the Committees (staff and facilities) shall be provided by the Secretary-General of the United Nations (see art. 10, paras. 3-4 and art. 18, para. 3, respectively), even though the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides in article 18, paragraph 5, that

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations  
....

Unlike the International Covenant on Civil and Political Rights, however, these two conventions place upon the States Parties and not upon the United Nations the expenses of the members of the committee while they are in the performance of their duties (see art. 8, para. 6 and art. 17, para. 7, respectively).

20. In practice the General Assembly may accept, with regard to such committees created by treaty, additional obligations to those already contained in the treaties concerned. Thus, by resolution 47/111, the General Assembly

9. *Endorses* the amendments to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requests the Secretary-General:

(a) To take the appropriate measures to provide for the financing of the committees established under the conventions from the regular budget of the United Nations, beginning with the budget for the biennium 1994-1995;

