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Tenth report on the draft Code of crimes against the peace and security of mankind, by Mr. Doudou Thiam, Special Rapporteur

Topic:

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DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

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Multilateral instruments cited in the present report

	Source
Convention on the Prevention and Punishment of the Crime of Genocide (New York, 9 December 1948)	United Nations, *Treaty Series*, vol. 78, p. 277.
International Covenant on Civil and Political Rights (New York, 16 December 1966)	Ibid., vol. 999, p. 171.
International Convention on the Suppression and Punishment of the Crime of Apartheid (New York, 30 November 1973)	Ibid., vol. 1015, p. 243.

Introduction

1. This report addresses the question of the possible establishment of an international criminal jurisdiction. Part one will be devoted to a consideration of certain objections to the possible establishment of an international criminal jurisdiction, while part two will deal with the formulation of some possible draft provisions. In this connection, it should be noted that the General Assembly, in resolution 46/54, invited the Commission

> ... to consider further and analyse the issues raised in its report on the work of its forty-second session concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the General Assembly to provide guidance on the matter.

2. It is a happy coincidence that this was precisely the approach taken in the ninth report of the Special Rapporteur, presented to the Commission at its forty-third session,[1] which sought to analyse two major issues raised by the establishment of an international criminal court, namely the jurisdiction of the court and criminal proceedings. That approach had involved proposing possible draft provisions for the sole purpose of better stimulating and guiding the Commission's discussion of those issues.

3. With the same aim, the present report will seek to return to those two major issues and devote to them two possible draft provisions prepared in the light of the discussions on the topic at the forty-third session of the Commission[2] and at the forty-sixth session of the General Assembly.[3]

4. In addition, new possible draft provisions are being submitted to the Commission, dealing with the law to be applied by the court, proceedings relating to compensation for injury, the handing over of the alleged perpetrator to the court, and the double-hearing principle.

[1] See *Yearbook ... 1991*, vol. II (Part One), p. 37, document A/CN.4/435 and Add.1.

[2] For a summary of the discussions, see *Yearbook ... 1991*, vol. II (Part Two), paras. 67-165.

[3] For a summary of the discussions, see "Topical summary, prepared by the secretariat, of the discussion in the Sixth Committee on the report of the Commission during the forty-sixth session of the General Assembly" (A/CN.4/L.469), paras. 217-255.

Part one. Consideration of certain objections to the possible establishment of an international criminal jurisdiction

5. Before examining in detail some of the issues relating to the establishment of an international criminal court, it may be useful to take a hard look at certain reservations or objections voiced by some States in United Nations forums or within their own domestic institutions, regarding the establishment of such a court. Some of the objections have to do with the desirability or otherwise of establishing such a court, given the current international situation, others relate to the question of compatibility between such a court and domestic legal provisions of States.

6. One of the objections falling within the first category is that the current system of international proceedings based on the rule of universal jurisdiction has produced reasonably satisfactory results, and that the establishment of a court could restrict the scope of that rule and impede its application.

7. This objection fails to take account of the fact that the principle of universal jurisdiction has major drawbacks. States are often placed under extreme duress, or even become victims of blackmail or violent crimes perpetrated by groups of terrorists or other criminals bent on blocking either the trial of an offender by the State concerned or extradition. Under such duress, the State concerned fails to extradite the accused, and if it decides to prosecute, the outcome of the trial may not be equitable:

either because the defendant is acquitted or because the penalty imposed is completely farcical—a slap on the wrist that does not fit the crime. Because of the principle *non bis in idem* the accused cannot be prosecuted again.

8. It has also been argued that a State that was reluctant to extradite a suspect at the request of another State would be just as reluctant to deal with an international criminal court. An international court, however, would seem to offer greater guarantees of objectivity and independence than a third State, which would be more open to all kinds of pressures and more responsive to political interference.

9. Another contention is that an international criminal court might become politicized, and thus might often be lacking in objectivity. International experience shows that this is much more likely to happen when the proceedings are instituted by a weak State whose governmental structure is not strong enough to counter moves by criminal organizations. Moreover, recent international developments make the politicization of an international criminal court a much more remote possibility.

10. Another objection to the possible establishment of an international criminal court is based on the complexity of the problems posed. There are those who doubt that it would be possible to reach international agreement on such complicated and intractable problems as the waiver by a State of its sovereign competence to try its nationals, the jurisdiction of the court, the rules of procedure, evidence, the prosecuting authority, and applicable penalties.

11. The fact is, however, that most of those issues are no more complex than similar issues already considered and settled at the time of the establishment of other international judicial organs, such as ICJ or the European Court of Human Rights. Instead of pointing to a technical snag, such objections seem to reflect a lack of political will.

12. On the question of the incompatibility between an international criminal court and domestic legal provisions of some States, the argument most often cited as the most important is perhaps that of the protection of basic human rights. The objection here is that an international court would be less capable of guaranteeing protection of those rights than a national court, which would be bound by constitutional provisions of domestic law governing human rights.

13. Yet, a cursory review of the international situation seems to point to just the opposite conclusion. Very often, when a State is alone in trying to combat the activities of organized crime, such as terrorism or drug trafficking, it encounters difficulties which it can only handle by using enforcement methods that are sometimes far from compatible with respect for basic human rights. An international court, however, would make it possible to put some distance between the alleged offender and the victim State, thus establishing all the internationally required judicial guarantees.

14. In fact, behind many of the objections lies an apparent failure to recognize the existence of a very wide range of possible solutions which could ease the concerns raised, if only there was a willingness to search them out. That is what the draft provisions below aim to do.

Part two. Possible draft provisions

A. The law to be applied

1. Possible draft provision (alternatives A and B)

15. On the subject of the law to be applied, and for the purposes stated in paragraphs 2 and 3 above, the following two versions of a possible draft provision are proposed:

Alternative A

The Court shall apply international criminal law and, where appropriate, national law.

Alternative B

The Court shall apply:

(*a*) International conventions, whether general or particular, relating to the prosecution and prevention of crimes under international law;

(*b*) International custom, as evidence of a practice accepted as law;

(*c*) The general principles of criminal law recognized by the United Nations;

(*d*) Judicial decisions and teachings of highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law;

(*e*) Internal law, where appropriate.

2. Comments

16. Alternative A is generic and all-encompassing, whereas alternative B is analytical and enumerative, but there is no substantive difference between them.

17. The "international criminal law" covered globally by alternative A is constituted by international conventions, international custom, the general principles of criminal law, judicial decisions and international doctrine, all of which are enumerated in alternative B. Alternative A is based on the approach used in the revised draft statute prepared by the 1953 United Nations Committee on International Criminal Jurisdiction.[4] According to article 2 of that draft

[4] See "Report of the 1953 Committee on International Criminal Jurisdiction, 27 July-20 August 1953" (*Official Records of the General Assembly, Ninth Session, Supplement No. 12*) (A/2645), annex.

The Court shall apply international law, including international criminal law, and where appropriate, national law.[5]

18. He preferred to use in French the term *droit international pénal* instead of *droit pénal international*, because there is a difference in the content and scope of those two concepts, at least in French law. The French term *droit pénal international* refers to a discipline involving the study of conflicts between domestic criminal laws, and the solutions offered by States, acting unilaterally or on the basis of agreements or conventions, to such conflicts. In that sense, *droit pénal international* would be a branch of domestic law, for it is States, as sovereign entities, that enact the rules to be applied to such conflicts of law or conclude the relevant agreements.

19. The French term *droit international pénal* covers a completely different area. It is not concerned with conflicts between domestic laws. Its sphere is that of crimes under international law (*jus gentium*), that is to say, crimes which because of their extreme seriousness or their particularly heinous or monstrous nature, affect the human race as a whole. That is why the definition and characterization of such offences are generally considered to be matters of international law. It is therefore understandable that the international community should be seeking an international system to combat such crimes.

20. There are already two international conventions in existence that explicitly confer jurisdiction (admittedly, optional jurisdiction) on an international penal tribunal to take cognizance of such offences, namely the Convention on the Prevention and Punishment of the Crime of Genocide (art. VI) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (art. V).

21. Before the adoption of those Conventions, the Charters annexed to the London Agreement of 8 August 1945 for the prosecution and punishment of the major war criminals of the European Axis,[6] and to the special proclamation by the Supreme Commander for the Allied Powers, issued at Tokyo on 19 January 1946,[7] had laid the juridical basis for the establishment of the International Military Tribunals at Nürnberg and Tokyo respectively, with a view to punishing the major war criminals. For its part, Law No. 10 of the Allied Control Council[8] established international tribunals in the occupation zones to punish war criminals who had held lower-ranking posts in the military, administrative or civilian hierarchy.

22. It is true that the establishment of those jurisdictions has been criticized on the grounds that they were ad hoc tribunals instituted for a specific purpose, in violation of the rule *nullum crimen sine lege, nulla poena sine lege*. The fact remains, however, that their establishment was consistent with the belief that the serious, heinous and monstrous nature of some crimes justified giving competence to an international criminal jurisdiction.

23. Within the confines of a commentary, it is impossible to list all the conventions dealing with internationally wrongful acts that may today be described as international crimes. Reference may be made to the draft Code of Crimes against the Peace and Security of Mankind, which, if adopted, would constitute the broadest normative base to be found in a treaty instrument, for it enumerates the criminal acts which, as of now, are of greatest concern to the international community. Conventions are not, however, the only source of applicable law, despite all the codification work undertaken. Custom also plays a role that must not be overlooked.

24. The draft Convention for the Creation of an International Criminal Court, adopted by the London International Assembly in 1943,[9] listed custom first among the rules of law to be applied by an international criminal jurisdiction, pending the adoption of a convention laying down the main principles of international criminal law, defining the crimes and affixing penalties to them (art. 27).

25. It should also be noted that the draft Statute of the International Penal Court, prepared by ILA in 1926,[10] had referred to "international custom, as evidence of a general practice accepted as law" (art. 23, para. 2).

26. All the same, it is very awkward to apply custom in international criminal law, because of the strict nature of that branch of law, where written rules usually prevail.

27. It may be difficult to apply custom, but it is no less difficult to apply general principles of law. Their application also provokes much discussion. Members of a certain formalistic school used to argue that some principles, such as the principle *nullum crimen sine lege*, could only be recognized in international criminal law if they were established in conventions.

28. This controversy has died down now that the principle has been established in international instruments with the adoption of the Universal Declaration of Human Rights[11] (art. 11, para. 2) and the International Covenant on Civil and Political Rights (art. 15, para. 1), but the difficulty remains with regard to the principle *non bis in idem*, which was given only a lukewarm reception by the Commission in article 9 of the draft Code of Crimes against the Peace and Security of Mankind, adopted on first reading.[12] As a rule, however, the principles relating to basic human rights are undoubtedly applicable under international criminal law.

29. It may be worth pointing out that ILA, in the draft Statute for an International Criminal Court, adopted at its

[5] Ibid., p. 23.

[6] Nürnberg Charter (United Nations, *Treaty Series*, vol. 82, p. 279).

[7] Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, Tokyo, 19 January 1946, *Documents on American Foreign Relations* (Princeton University Press, vol. VIII, 1948), pp. 354 *et seq.*

[8] Law relating to the punishment of persons guilty of war crimes, crimes against peace and against humanity, enacted at Berlin on 20 December 1945 (Allied Control Council, *Military Government Legislation* (Berlin, 1946)).

[9] For the text of the draft, see United Nations, *Historical survey . . .*, p. 97, appendix 9 B.

[10] See ILA, *Report of the Thirty-fourth Conference, Vienna, 5-11 August 1926* (London, 1927), pp. 113-125. Reproduced in United Nations, *Historical survey . . .*, p. 61, appendix 4.

[11] General Assembly resolution 217 A (III).

[12] For the text of the draft Code as provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 94-97.

Sixty-first Conference, held in Paris in 1984,[13] included the following wording (art. 22):

> The Court shall apply the definition of a particular offence which is prescribed by convention(s) in force in the appropriate Contracting State(s). The Court shall apply international law including general principles of law recognized by nations.

There can also be no doubt that judicial decisions and doctrine are applicable in international criminal law when they reflect a generally accepted practice.

30. Lastly, the elements constituting the law to be applied must also include national law. It should not be forgotten that the court may have to apply the national law of a State which has conferred jurisdiction on it, for example in the determination of the penalty. Of course, in such a situation, the national law of the State must not be incompatible with the general principles of criminal law.

31. The situation envisaged above was covered in the 1943 draft prepared by the London International Assembly, which stated:

> If the Court has to consider . . . the law of a State of which no judge sitting on the Bench is a national, the Court may invite a jurist who has an acknowledged authority on such law to sit with it, in a consultative capacity on points of law only (art. 27, para. 4).[14]

32. This, then, is what is covered by the French term *droit international pénal.*

33. Alternative A, which is generic and all-encompassing in nature, is not as innovative as it might appear. It follows the approach taken in the draft prepared by the 1953 United Nations Committee on International Criminal Jurisdiction,[15] except for the difference in terminology noted at the beginning of this commentary.

34. Alternative B reflects the more usual trend. All the proposed statutes of an international criminal court prepared to date, with the exception of the draft mentioned in paragraphs 17 and 33 above, have used this enumerative method. This is equally true of the draft Convention prepared by the London International Assembly in 1943[16] (art. 27); the ILA draft Statute of 1926[17] (art. 23); and, in another context, Article 38 of the Statute of ICJ.

35. In sum, there are no substantive differences between the two versions; it will be for the Commission to choose.

B. Jurisdiction of the court *ratione materiae*

1. Possible draft provision

36. On the subject of the jurisdiction of the court *ratione materiae*, and for the purposes stated in paragraphs 2 and 3 above, the following possible draft provision is proposed:

1. All States Parties to this Statute shall recognize the exclusive and compulsory jurisdiction of the Court in respect of the following crimes:

Genocide;

Systematic or mass violations of human rights;

Apartheid;

Illicit international trafficking in drugs;

Seizure of aircraft and kidnapping of diplomats or internationally protected persons.

2. The Court may take cognizance of crimes other than those listed above only if jurisdiction has been conferred on it by the State(s) in whose territory the crime is alleged to have been committed and by the State which has been the victim or whose nationals have been the victims.

3. The Court shall not be competent to hear appeals against decisions rendered by national jurisdictions.

2. Comments

37. The above provision provides a dual regime of jurisdiction: exclusive jurisdiction and optional jurisdiction.

Paragraph 1

38. Paragraph 1 deals with the exclusive jurisdiction of the court. Any State acceding to the statute of the court shall recognize that exclusive jurisdiction. Certain crimes because of their particular gravity, heinous nature, and the considerable detriment they cause to mankind, must come within the purview of an international criminal court.

39. The proposed list is restrictive. However, the Commission may wish to expand it or, on the contrary, shorten it. The approach to be taken will be based on the need for prudence. The court will have to demonstrate wisdom and restraint in order to inspire confidence and overcome reluctance. In this way, the scope of exclusive jurisdiction may gradually be expanded.

Paragraph 2

40. Some quite strong opposition had emerged within the Commission to the rule of exclusive jurisdiction. The opponents of that rule took the view that recourse should be had to the court only if jurisdiction was conferred on it by the States directly affected by the crime, either because it had been committed in their territory, or because they or their nationals had been the victims. For this reason, paragraph 2 also provides for optional jurisdiction. This dual regime of jurisdiction thus reduces the scope of the conferment-of-jurisdiction rule, which is no longer as systematic and absolute as in the draft prepared by the 1953 United Nations Committee[18] (art. 27). By this means, it is possible to make a distinction between the most serious crimes, such as genocide and apartheid, which involve mass and systematic violations of universal values, and other crimes, and to limit the exclusive-jurisdiction rule to crimes in the first category.

[13] ILA, *Report of the Sixty-first Conference, Paris, 26 August-1 September 1984* (London, 1985), p. 257, appendix A 1.

[14] See footnote 9 above.

[15] See footnote 4 above.

[16] See footnote 9 above.

[17] See footnote 10 above.

[18] See footnote 4 above.

41. The present possible draft provision is therefore a midway solution between the demand for exclusive jurisdiction and the demand for systematic and general application of the conferment-of-jurisdiction rule.

Paragraph 3

42. Paragraph 3 closes a discussion that emerged in the Commission as to whether the court could be competent to hear appeals against decisions handed down by the highest national jurisdictions. The view taken by many representatives in statements before the Sixth Committee of the General Assembly was that such an appeal would be incompatible with State sovereignty.[19]

C. Complaints before the court

1. Possible draft provision

43. On the subject of complaints before the court, and for the purposes stated in paragraphs 2 and 3 above, the following possible draft provision, governing the submission of cases to the court, is proposed:

1. Only States and international organizations shall have the right to bring complaints before the Court.

2. It shall be immaterial whether the person against whom a complaint is directed acted as a private individual or in an official capacity.

2. Comments

44. In connection with a possible draft provision proposed in the ninth report of the Special Rapporteur,[20] an interesting discussion developed in the Commission concerning the conditions under which the public right of action could be exercised.[21] One aspect of the debate had to do with whether the public right of action could be exercised by States. It turned out to be a non-issue. It is obvious that no State has the right itself to exercise directly a power that has been vested in the court alone or in an authority competent to bring a public action at the international level. It is equally obvious, however, that any State injured by an international offence has the power to bring a complaint before the court. If the complaint is justified, it should set in motion a public action at the international level.

45. The draft Statute for the Creation of a Criminal Chamber of the International Court of Justice, adopted by the International Association for Penal Law in Paris, on 16 January 1928, and revised in 1946[22] in chapter III, section 1 (International criminal proceedings), stated that international criminal proceedings "may equally be undertaken by any State" (art. 20, second para.).

46. In order to put an end to any discussion on this point, the wording "complaints before the Court" has been preferred here.

47. Paragraph 2 makes a necessary clarification. There might be a temptation to believe that complaints may be directed only against private individuals. That would be a serious mistake. Most of the crimes falling within the exclusive jurisdiction of the court (genocide, apartheid, and the like) can be committed only by persons vested with the power of command. Such crimes also take the form of abuses of power or authority. The perpetrators of such crimes would be able to go unpunished if their official position gave them some kind of impunity.

48. Moreover, both the 1954 draft Code of Offences against the Peace and Security of Mankind[23] (art. 3) and the Nürnberg Principles adopted by the Commission[24] (Principle III) state that the fact that the perpetrator of the crime acted as head of State or responsible government official does not relieve him of responsibility under international law. Likewise, the draft Code of Crimes against the Peace and Security of Mankind, adopted on first reading,[25] states:

Article 13. Official position and responsibility

The official position of an individual who commits a crime against the peace and security of mankind ... does not relieve him of criminal responsibility.

49. The draft provision proposed in paragraph 43 above gives only States and international organizations the right to bring a complaint. The question arises as to whether juridical persons under municipal law, such as anti-racist or human rights organizations, should be able to bring a complaint before the court. Although such organizations are constituted under municipal law, would it not be possible to take into consideration the universality of their goals? This report takes no clear-cut position, but the question certainly merits discussion by the Commission.

D. Proceedings relating to compensation

1. Possible draft provision

50. On the subject of proceedings relating to compensation, and for the purposes stated in paragraphs 2 and 3 above, the following possible draft provision is proposed:

1. Any State or international organization may bring proceedings to obtain compensation for injury sustained as a result of a crime referred to the Court.

2. A State may also bring such proceedings on behalf of its nationals.

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[19] For a summary of the discussion, see "Topical summary ..." (footnote 3 above), para. 233.

[20] See footnote 1 above.

[21] See the ninth report of the Special Rapporteur (footnote 1 above), paras. 56-59, and *Yearbook ... 1991*, vol. II (Part Two), paras. 146-152.

[22] Reproduced in United Nations, *Historical survey ...*, p. 75, appendix 7.

[23] Adopted by the Commission at its sixth session. The text is reproduced in *Yearbook ... 1985*, vol. II (Part Two), p. 8, para. 18.

[24] Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal. Text reproduced in *Yearbook ... 1985*, vol. II (Part Two), p. 12, para. 45.

[25] See footnote 12 above.

2. COMMENTS

Paragraph 1

51. Paragraph 1 sets forth the general principle of the right to compensation. Proceedings relating to compensation for injury sustained as a result of a criminal act may be brought concurrently with criminal proceedings, or separately.

52. Under national law, proceedings relating to compensation may be combined with criminal proceedings. In such instances, the criminal-court judge is required to rule in response to both the criminal proceedings and the civil action. There are also situations in which the victim of an offence prefers to seek compensation for injury in civil court rather than bringing a criminal action.

53. A similar situation is conceivable under international law. There would be nothing to prevent the victim of an internationally wrongful act that constitutes a crime from having recourse to ICJ, under Article 36, paragraph 2 (*d*), of its Statute, solely in order to obtain compensation for the injury sustained, even if an international criminal court existed. The question that arises is whether it would be possible to invoke, in such a situation, the rule that criminal proceedings take precedence over civil actions. Would ICJ have to suspend consideration of the proceedings relating to compensation pending a ruling by the international criminal court on culpability?

54. This would be tantamount to anticipating how rules of national law are to be applied under international law, and it might be better to be cautious at this stage in the development of international criminal law.

Paragraph 2

55. This paragraph gives only States and international organizations the right to bring proceedings relating to compensation, and States may act either on their own behalf or on behalf of their nationals. The question arises, however, whether national associations or organizations pursuing humanitarian goals should not also be authorized to bring proceedings relating to compensation before the international criminal court. This is a matter of choice, on which the Commission's discussion could provide useful guidance.

E. Handing over the subject of criminal proceedings to the court

1. POSSIBLE DRAFT PROVISION (ALTERNATIVES A AND B)

56. On the question of handing over the subject of criminal proceedings to the court, and for the purposes stated in paragraphs 2 and 3 above, the following two versions of a possible draft provision are proposed:

ALTERNATIVE A

The handing over of an alleged perpetrator of a crime to the prosecuting authority of the Court is not an extradition. The International Criminal Court is deemed for the purpose of this Statute a Court common to all the States Parties to the Statute, and justice administered by this Court shall not be considered as justice emanating from a foreign court.

ALTERNATIVE B

Every State Party to this Statute shall be required to hand over to the prosecuting authority of the Court, at the request of the Court, any alleged perpetrator of a crime coming within its jurisdiction.

2. COMMENTS

57. The words "handing over" in the title of this draft provision are used advisedly, in order to make it clear that extradition is not involved here. Extradition takes place in a system of universal jurisdiction, such as the one provided for in article 6 (formerly article 4) of the draft Code of Crimes against the Peace and Security of Mankind as adopted on first reading.[26] Extradition may also take place between the court and a State not party to its statute.

58. However, when a State party to the statute of the court is concerned, it seems that what is involved cannot be extradition, but rather a handing over to the court. The introduction of this provision into the statute of the court would settle the matter once and for all. Every State party, knowing that it was bound by the statute, would also know that it was bound by the obligation set forth therein.

59. Alternative A, which is longer and more explanatory, clearly shows why the process is not an extradition, but simply a handing over, when a State party to the statute of the court is involved. Extradition occurs only when a State not party to the statute of the court is involved.

60. Alternative A is based on article 5 of the 1943 draft Convention for the Creation of an International Criminal Court, which reads as follows:

Article 5. Legal nature of the handing over to the [International Criminal Court] of Accused Persons

The handing over of an accused person to the prosecuting authority of the [International Criminal Court] is not an extradition. The [International Criminal Court] is deemed for the purpose of this Convention a Criminal Court common to all nations, and justice administered by this Court shall not be considered as foreign.[27]

61. Alternative B, which is shorter, merely states the rule, without explanation. There is no substantive difference between the two versions.

F. The court and the double-hearing principle

1. POSSIBLE DRAFT PROVISION

62. On the subject of the double-hearing principle, and for the purposes stated in paragraphs 2 and 3 above, the following possible draft provision is proposed:

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[26] Ibid.

[27] See footnote 9 above.

1. The Court shall be both a court of first instance and a court of final appeal in respect of criminal cases within its jurisdiction.

2. Nevertheless, in order to guarantee the double-hearing principle, a special chamber of judges, excluding those who were involved in making a ruling, may consider an appeal against that ruling.

2. COMMENTS

Paragraph 1

63. Paragraph 1 is based on the practice in certain legal systems according to which rulings by the assizes, the highest national courts hearing criminal cases, are not subject to appeal. This is the situation in the French legal system and in systems related to it. The only possible recourse against rulings by the assizes is an application for judicial review, a review which is limited to consideration of whether the ruling was in conformity with the law, but in which the facts of the case cannot be reopened.

Paragraph 2

64. Paragraph 2 takes into account the opinion expressed in the Commission, that the right of appeal is a basic human right. Since it is impossible to establish an appellate jurisdiction that would be hierarchically superior to the international criminal court, an internal appellate system has been devised to give judges who were not involved in making a ruling the power to review it on appeal.